



Jerry Hill State Attorney

<http://www.sao10.com>

Important Bartow Phone Numbers:

| | |
|--|----------|
| Switchboard | 534-4800 |
| Misdemeanor Intake | 534-4928 |
| Misdemeanor | 534-4926 |
| Victim Assistance | 534-4861 |
| Felony Intake | 534-4987 |
| Felony | 534-4964 |
| Investigations | 534-4804 |
| Violation of Probation | 534-4803 |
| Child Abuse / Neglect | 534-4857 |
| Homicide Division | 534-4959 |
| On Call Pager | 819-1526 |
| Worthless Checks | 534-4874 |
| Juvenile Division | 534-4905 |
| Fax | 534-4945 |
| Witness Management Misdemeanor/Traffic | 534-4021 |
| Witness Management Felony | 534-4020 |

OFFICE OF THE STATE ATTORNEY, TENTH JUDICIAL CIRCUIT

Legal Advisor

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UPDATE ON WARRANTLESS ARRESTS ON VIOLATIONS OF PROBATION AND COMMUNITY CONTROL

By Gary Allen, Assistant State Attorney

In 1997, the legislature amended Section 948.06, Florida Statutes, to authorize law enforcement officers to arrest, without warrant, violators of probation and community control. Since that time, this statute has proven to be an effective tool for getting dangerous repeat offenders off the streets. This article will give you an update on the use of the statute and some of the pitfalls that you'll want to avoid.

To bring everyone up to date, the statute allows the law enforcement officer to perform a warrant-less arrest of a person on probation if the following requirements are met:

1. The officer must have reasonable grounds to believe that the offender is on probation or community control.
2. The officer must have reasonable grounds to believe the offender has violated supervision in a material respect, and,
3. The officer must forthwith return the offender to the court granting probation or community control.

As for the first part, the best

source of information on this question is the defendant's probation officer. Here are the Department of Corrections business hours phone numbers for the 10th Circuit:

| | |
|------------------|----------------|
| • Bartow | (863) 534-7010 |
| • Lakeland North | (863) 668-3000 |
| • Lakeland South | (863) 499-2222 |
| • Lake Wales | (863) 679-4366 |
| • Winter Haven | (863) 291-5225 |
| • Sebring | (863) 386-6018 |
| • Wauchula | (863) 773-4777 |

The Department of Corrections website is also an excellent source. The address is:

<http://www.dc.state.fl.us>

Inside this Issue:

| | |
|--|---|
| UPDATE ON WARRANT-LESS ARRESTS ON VIOLATIONS OF PROBATION & COMMUNITY CONTROL ...continued from page 1... | 2 |
| SAO Employee Birthdays | 2 |
| UPDATE ON WARRANT-LESS ARRESTS ON VIOLATIONS OF PROBATION & COMMUNITY CONTROL | 3 |
| TOP COPS | 3 |
| From the Courts | 4 |

SAO EMPLOYEES

JUNE 2005

JUNE 3TIM COLEMAN,
MISDEMEANOR**JUNE 10**BRITTANY STAFFORD,
CHILD SUPPORT ENF.
REY OJEDA,
SPECIAL PROSECUTION**JUNE 11**GIDGET WILSON,
CHILD SUPPORT ENF.
SAMANTHA BABCOCK,
HIGHLANDS COUNTY
SAO**JUNE 13**WAYNE DURDEN,
FELONY**JUNE 17**TERESA CORTEZ,
HARDEE COUNTY
SAO*Happy
Birthday!*

State Attorney's Office

CLOSEDMonday, July 4, 2005
in observance of
INDEPENDENCE DAY.**UPDATE ON WARRANTLESS ARRESTS ON
VIOLATIONS OF PROBATION AND COMMUNITY CONTROL**

...CONTINUED FROM PAGE 1...

Look under "Offender Search." You'll be able to get full details on the offender's supervision status.

The second part requires the officer to have reasonable grounds to believe the person has materially violated supervision. If you have arrested the defendant on a new charge, that will certainly be a material violation and this part of the statute is satisfied. In fact, over the last few years, it appears law enforcement officers are pretty much confining their arrests to persons with new charges and leaving the technical violations to the probation officers.

Technical violations are things like curfew violations and other violations of supervision that aren't crimes. You can arrest for these types of violations but the burden is on you to verify that the offender is really violating his supervision. For example, people on supervision are not supposed to leave their county of residence. So if you stop somebody on probation from Dade County, there's a possibility he's in violation of his supervision. However, there are valid exceptions to that rule, such as a travel permit issued by the probation officer. You would need to check with the probation officer before you could be sure there was a violation.

In that situation, the better idea might be to document the contact with a field interrogation report (FIR) and



Gary Allen is an Assistant State Attorney in the Violation of Probation Section. Gary has been with the office since May 1986.

forward a copy to the probation officer for action. In fact, your FIRs are a valuable source of information for probation enforcement in general. Many violations are discovered simply because a law enforcement officer took the time to notify a probation officer about an encounter with an offender.

The last part requiring you to "forthwith bring the defendant before the court granting probation or community control" had been an earlier source of problems. There were no procedures for getting offenders before the court granting probation. Most of those problems have been solved and the system works fairly smoothly.

The most common problem today comes from trying to get the offender linked up with the right case.

UPDATE ON WARRANTLESS ARRESTS ON VIOLATIONS OF PROBATION AND COMMUNITY CONTROL

...CONTINUED FROM PAGE 2...

As you know, when you arrest an offender on a new charge, you'll have your agency number and that's about it. The court clerk assigns a CF/TT/MM number later but it doesn't require any action on your

part. However, if you're also arresting for a probation violation, you'll need to make a separate affidavit and put the correct case number for the probation case. Otherwise, the clerk sometimes has to guess for which probation case

you're arresting the offender and they don't always get it right. CJIS, FCIC, the probation officer and the Department of Corrections website are all sources of the original court case number.

Top Cops

I would like to take this opportunity to recognize **Winter Haven Police Officer Frank Storey**. Frank is a motorcycle officer with WHPD's traffic division. Recently, Frank sent over a Uniform Traffic Citation charging Reckless Driving in a case where the defendant drove at speed with two friends sitting on the hood of his car. The defendant suddenly slammed on the brakes, and caused them to fly off the car's hood. When I got the report, I did not have full information on the victims' medical condition. Frank responded to a contact letter I sent for more information in person, coming to see me after court on a recent Wednesday. He discussed the case in detail with me and gave me sufficient information that I referred the case first to our felony intake unit, and later to Juvenile for felony prosecution as a Reckless Driving/Serious Injury case. Frank also followed up with the victim and obtained the victim's medical records for the file,

which I subsequently transferred to Juvenile. Thanks to Frank's willingness to follow up, we were able to raise the bar on a case where the victim will be substantially disabled for the foreseeable future due to the defendant's actions.

Torie Avalon, Assistant State Attorney Winter Haven SAO

I would like to commend **Detective Russell Hilson** of the Polk County Sheriff's Office for his conduct at a recent suppression hearing. One of the issues at the hearing involved whether the defendant was read proper Miranda warnings. At the hearing, Det. Hilson originally testified that he used his waiver card in advising the defendant of his rights and that he also had the defendant sign a PCSO rights waiver form at the same time (subsequent appellate case law has ruled this form to not contain proper Miranda warnings). The rights card does contain adequate Miranda warnings. The defendant then gave a damaging taped state-

ment.

A couple of hours after the hearing, Det. Hilson called me to tell me that he had made a mistake and that he read the defendant his rights from the waiver form and not the card. Det Hilson said he used the card when he interviewed the defendant a second time a couple of days later at the defendant's request (this yielded nothing incriminating). The hearing was immediately rescheduled and Det. Hilson testified as stated above. Based on this, the trial court granted the motion to suppress the defendant's taped statement.

While this resulted in the State losing the motion to suppress and the damaging evidence against the defendant, what Det. Hilson did was clearly the right thing to do. Detective Hilson's ethical actions are commendable and were noted by the Judge in his order granting the Defendant's motion.

Pete Sternlicht, Assistant State Attorney & Chief, Felony - 2



Hardee County

124 South 9th Avenue
Wauchula, FL 33873
Phone: (863) 773-6613
Fax: (863) 773-0115

Highlands County

411 South Eucalyptus
Sebring, FL 33870
Phone: (863) 402-6549
Fax: (863) 402-6563

Polk County

P.O. Box 9000, Drawer SA
Bartow, FL 33831-9000
Phone: (863) 534-4800
Fax: (863) 534-4945

Child Support Enforcement

215 N. Floral Avenue
Bartow, FL 33830
Phone: (863) 519-4749
Fax: (863) 519-4759

Lakeland Branch Office

930 E. Parker Street, Suite 238
Lakeland, FL 33801
Phone: (863) 499-2596
Fax: (863) 499-2650

Winter Haven Branch Office

Gill Jones Plaza
3425 Lake Alfred Rd. 9
Winter Haven, FL 33881
Phone: (863) 401-2477
Fax: (863) 401-2483

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...FROM THE COURTS...

SEARCH INCIDENT TO CIVIL ARREST IS VALID

The defendant was charged with possession of a concealed firearm and filed a motion to suppress. The facts on which the motion was based were that an officer stopped the defendant's vehicle for an inoperable tag light. As he was in the process of writing a citation charging the defendant's passenger with a seat belt violation, he discovered that there were outstanding civil warrants for the passenger for failure to pay

child support. He arrested the passenger and conducted a search during which he discovered the gun. The trial court granted the motion to suppress, but on appeal, the Second District reversed, holding that the fact that an arrest is based on a civil order does not prevent an officer from conducting a search incident to that arrest. *State v. Gilbert*, 30 FLW D315 (Fla. 2d DCA Feb. 2, 2005).

DEFENDANT'S QUESTIONS NEED NOT BE ANSWERED DURING NONCUSTODIAL INTERROGATIONS

The defendant was charged with possession of child pornography and filed a motion to suppress his confession. The facts on which the motion was based were that officers went to the defendant's home where they questioned him about being involved with child pornography. During the questioning, the defendant asked the officers about whether he needed counsel. The officers failed to answer the question. Subse-

quently, the defendant confessed. The trial court denied the motion, and the defendant was convicted as charged. On appeal, the First District affirmed, holding that the requirement that an officer answer a suspect's questions about his or her right to counsel does not apply to non custodial interrogations. *Evans v. State*, 30 FLW D509 (Fla. 1st DCA Feb. 22, 2005).

FACTS DID NOT ESTABLISH CONSTRUCTIVE POSSESSION

The defendant was charged with possession of cocaine. The evidence established that officers saw a passenger in the defendant's car purchase what appeared to be drugs. During a subsequent stop of the car, they searched the passenger and found cocaine in her sock. The defendant admitted that he planned to smoke the cocaine along with the passenger. The defendant was con-

victed as charged. On appeal, the Second District reversed, holding that the evidence did not establish that the defendant had constructive possession of the cocaine because even though he knew of its presence and knew it was cocaine, he did not have dominion and control over it. *Lester v. State*, 30 FLW D361 (Fla. 2d DCA Feb. 4, 2005).

ANY CRACK IN WINDSHIELD JUSTIFIES STOP

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