OA 2-7-96

FILED
SID J. WHITE
JAN 12 1996
CLERK, SUPREME COURT
By _____
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

CASE NO. 86,284

JUAN SOCA,

Appellant,

-vs-

THE STATE OF FLORIDA,

Appellee.

ON PETITION FOR DISCRETIONARY REVIEW

AMENDED BRIEF OF PETITIONER ON THE MERITS

BENNETT H. BRUMMER
Public Defender
Eleventh Judicial Circuit
of Florida
1320 Northwest 14th Street
Miami, Florida 33125
(305) 545-1960

BRUCE A. ROSENTHAL
Assistant Public Defender
Florida Bar No. 227218

Counsel for Petitioner

TABLE OF CONTENTS

TABLE OF CITATIONS

OTHER AUTHORITIES

FLORIDA CONSTITUTION

UNITED STATES CONSTITUTION

FLA. ADMIN. CODE R.

INTRODUCTION

The Petitioner, JUAN SOCA, was the probationer and defendant in the trial court and the Appellant in the Third District Court of Appeal. The Respondent, the State, was the prosecution in the trial court and the Appellee in the District Court. The parties will be referred to as they stood before the lower court. The designation "R. [Case no.] at ___" will refer to the corresponding portion of the record on appeal, and the designation "T." will refer to the transcript, including proceedings on the motion to suppress on December 20, 1993 and January 3, 1994, in Case No. KW93-1231-CF. The designation "S.R." will refer to the supplemental record on appeal, consisting of the trial court's order denying the motion to suppress.

STATEMENT OF THE CASE AND FACTS

On April 15, 1994, the defendant was found guilty of trafficking in 400 grams or more of cocaine, and on May 3, 1994 was adjudicated guilty and sentenced to fifteen years imprisonment (and his probation in two underlying cases was revoked and he was sentenced to concurrent terms of one year imprisonment), on the basis of a quantity of cocaine seized from his house following a warrantless search conducted on less than probable cause by his probation officer acting at the behest of the State Attorney's Office. (R. KW93-1231-CF at 4, 111, 123, 129, 131; R. KW91-1714-CF at 89, 91, 92; R. KW91-2053-CF at 85, 89, 90, 91-95; T. 356-358.)

At the pretrial motion to suppress, Russ Papy, an investigator with the Key West State Attorney's Office, testified that on September 15, 1993, state attorney's investigator Meyers was advised by a confidential informant who had been used in the past that there was a possibility of making cocaine purchases from the defendant. (T. 5-6.) On September 16, 1993, under Papy's supervision the unidentified and otherwise undescribed[1] confidential informant made a controlled purchase outside Papy's presence from one Dolka Jerez of a half-ounce of white powder which was

---

[1] In its order denying the defendant's motion to suppress, filed after trial in this cause, the trial court found that information had been received "from a known reliable confidential informant that the Defendant was dealing in large quantities of cocaine and possessed a large quantity of cocaine." (S.R. 152, 161.) However, in fact the informant was unidentified; there was no testimony about his reliability; nor was there testimony (other than hearsay on hearsay) that the defendant was "dealing in large quantities of cocaine" or "possessed a large quantity of cocaine" other than the transaction as described herein.

field tested to be positive for cocaine. (T. 6-8.) The transaction occurred in Dolka Jerez's apartment. (T. 7.) According to Papy, the defendant was present, but did not do anything. (T. 8.)

On September 23, 1993, Papy went to Stock Island and had the confidential informant call the defendant to advise him that he was right there on Stock Island, and could he make a purchase. (T. 8.) The informant was advised at that time to go pick up Dolka Jerez and bring her to the Burger King area on Stock Island, and that she would go by and pick up the narcotics. (T. 8-9.) Papy called off the transaction, because he thought that Jerez was merely going to be a go-between, and he was not going to spend another $450.00 if he could not make a purchase out of the defendant's home. (T. 9.)

Papy ran a criminal history check on the defendant, and ascertained that he was on probation. (T. 9.) He spoke to Ms. Parr, the assistant state attorney who later prosecuted the instant case, and notified the Department of Corrections. (*Id.*)

On September 23 or 24, 1993, Papy, along with Department of Corrections Officers Millard ("Mid") Quad and Paul Meyers, went to the defendant's residence, No. 89 at Pearl Trailer Park, but the defendant was not home. (T. 9-10, 42.)

Papy testified that he was subsequently, on about September 30, "contacted by the confidential informant and advised that there was a large amount of cocaine that had come in from Miami and that he could make purchases." (T. 10.) This was linked in some unspecified way with the trailer. (T. 11.) Papy decided at that time that those purchases were to be made in the same way through Dolka Jerez, and

decided they would not attempt to do it again. (*Id.*) On October 2, 1993, he proceeded to the defendant's residence, No. 89 in Pearl Trailer Park, where the defendant and several other males were present, but the defendant was not. (T. 10-11.) Two weeks earlier, the defendant had a problem with a urinalysis test. (T. 11.) The probation officer advised the defendant's father that he wanted to check on him about that and his job, and the defendant's father paged the defendant, who returned to the residence approximately twenty minutes later. (T. 11-12, 48.)

Papy had been employed as an investigator for fourteen years, and knew the procedure for obtaining a search warrant; he had obtained more than a hundred and possibly a thousand of them. (T. 14.) When asked on cross-examination whether he thought he had probable cause for a search of the defendant's residence, he responded that he felt he had reasonable cause, and had contacted Chief Assistant State Attorney John Ellsworth, who advised him that on reasonable grounds *probation officers* could conduct the search but *not* (apparently referring to Papy and other law enforcement officers) *us*." (T. 15-17) (emphasis added). Papy expressly acknowledged that he determined because he did not have probable cause or to protect his informant that he would avoid approaching a neutral magistrate and would use the defendant's probationary status as the basis to gain entrance to the defendant's trailer after consultation with the state attorney. (T. 17-18.)

Papy further acknowledged that his purpose in obtaining the presence of Department of Corrections Officers Quad and White was to conduct the warrantless search of the residence. (T. 20-21.) The trailer was owned by the defendant's

parents, and apparently was their residence as well. (T. 18, 21-22, 39; see also T. 202, 213, 225-26, 255.)

Probation supervisor Lisa Kaminski testified that the defendant's original probation officer left the department; that the case was then transferred to an officer who also left; and that the case was unsupervised and monitored by different probation officers for a while. (T. 27.) When Ron Jones, who had been assigned to the case a week earlier, returned to Starke to make arrangements to move, Ms. Kaminski was contacted by investigator Meyers on September 15, 1993 and was informed that he had grounds to believe from a confidential informant that the defendant was dealing in drugs and that there was a substantial amount of contraband in his house. (T. 28.) Ms. Kaminski assigned Mid Quad to take over the defendant's case, and told him that she wanted to search the residence. (T. 28.) Quad had never met the defendant. (T. 19.)

Ms. Kaminski testified that the Department of Corrections had specific regulations regarding the search of a probationer's home, that it had to be approved by a supervisor and the supervisor had to have information or reason to search. (T. 29-30.) According to Ms. Kaminski, the manner in which she was told the search was conducted comported with DOC regulations. (T. 31.) Ms. Kaminski acknowledged that her officers went to the defendant's residence on September 23 or 24, 1993, for the purpose of making a search, which they did not conduct because the defendant was not home. (T. 33, 42.) Later that day, the defendant returned a telephone call to Quad and Quad verified his residence. (T. 50-51.)

Returning to the events of October 2, 1993, Corrections Officer Mid Quad testified that about fifteen or twenty minutes after he was beeped by his father, the defendant arrived at the residence. (T. 48.) Quad informed the defendant that he was working with state probation and parole officers and that they were going to search his residence; the defendant told him to go right ahead. (T. 48.) Quad acknowledged that when the defendant showed up, he showed the defendant his badge and told him that he had the right to search the house; the defendant said fine. (T. 62.) The search of the premises included the kitchen, bedroom, bathroom and hallway closet; after a search duration of what Quad testified at trial was 35 to 40 minutes and Meyers testified was 12 to 18 minutes, in a common-area hallway closet White observed a drill on the ceramic floor, lifted a tile,[2] saw a hole in the floor, reached through and lifted up a can of grease, and beneath that observed what looked like bread wrapped in tin foil. (T. 23, 67, 224, 243.) White picked it up, opened it up, and found cocaine. (*Id.*)

The defendant's father and three other males were in the trailer; after Miranda rights were read the defendant spontaneously said that the cocaine was his and nobody else's, and that his family didn't know anything about it. (T. 12-13, 50.)

After detailed argument from counsel and memoranda of law (T. 68-82; R. KW93-1231-CF at 28-37, 45-50), the trial court denied the motion to suppress. (T.

---

[2] At trial, White described what he lifted as two tiles, each about 24" by 24" and "fairly heavy." (T. 256.)

84.) Subsequent to trial in the cause, the trial court on September 8, 1994 filed an order denying the motion to suppress. (S.R. 152-60.)

On appeal, the Third District Court of Appeal affirmed the conviction and denial of the motion to suppress, incorrectly substituting (as will be set forth in the argument portion of this brief) its view of the proper regulatory scheme for a probationer for that of this Court, and refusing to certify the question (R. 176), contrary to *Hoffman v. Jones*, 280 So. 2d 431, 440 (Fla. 1973). *Soca v. State*, 656 So. 2d 536 (Fla. 3d DCA 1995).

Upon timely petition for discretionary review, jurisdiction was granted by this Court on November 6, 1995.

SUMMARY OF ARGUMENT

In Florida, a probation supervisor is authorized to conduct a warrantless search of a probationer, but that search (and evidence seized thereby) is lawful only with respect to a probation revocation proceeding and not with respect to a substantive case. *Grubbs v. State*, 373 So. 2d 905 (Fla. 1979). This principle is unaffected, under Article I, § 12 of the Florida Constitution as amended effective 1983, by *Griffin v. Wisconsin*, 483 U.S. 868, 107 S. Ct. 3164, 97 L. Ed. 2d 709 (1987), which merely upheld under the unique provisions of Wisconsin law a warrantless search of a probationer by a probation supervisor upon a higher standard of justification than required in Florida with respect to probationers and probation revocation proceedings.

The established scheme of *Grubbs v. State* may not be circumvented either by, both of which occurred in this case, police bypassing the warrant requirement by initiating a probation office warrantless search and thereby obtaining evidence to use in a substantive case, or by a district court of appeal substituting its judgment of the 'proper' regulatory scheme for that established by this Court.

ARGUMENT

ALTHOUGH EVIDENCE OBTAINED FROM A NON-CONSENSUAL, WARRANTLESS SEARCH OF THE DEFENDANT'S HOME BY PROBATION OFFICERS WAS PROPERLY ADMISSIBLE IN A PROBATION REVOCATION HEARING, IT WAS INADMISSIBLE IN A SUBSTANTIVE CRIMINAL CASE.

The matrix of Florida law with respect to the rights of a probationer in relation to searches and seizures is well-defined; evidence obtained from illegal searches or seizures is inadmissible either in a probation revocation proceeding, *State v. Dodd*, 419 So. 2d 333 (Fla. 1982), or in a substantive criminal proceeding. *Grubbs v. State*, 373 So. 2d 905, 909-10 (Fla. 1979); *Croteau v. State*, 334 So. 2d 577, 580 (Fla. 1976).[3] However, probationary status can be factored in the determination of legality; with respect to a probationer in relation to probation revocation proceedings, the right to search a probationer or his residence is not dependent upon the presence of an express search condition in the order of probation, and a warrantless search by a probation officer is valid to the extent that the evidence discovered is used only in probation violation proceedings. *Grubbs v. State, id.* at 907, 909.

The amendment of Article I, § 12 of the Florida Constitution, effective January 4, 1993,[4] has no impact on the foregoing structure of law, i.e., has no impact on a

---

[3] A statement in *Croteau* to the effect that the exclusionary rule does not apply in probation revocation proceedings, *id.* at 580, was recognized as dictum and as invalid in *State v. Dodd, id.* at 335 & n.2.

[4] That amendment provided in pertinent part that the "right [provided therein]

search, seizure or exclusionary rule issue, unless the United States Supreme Court has squarely ruled on the issue. *State v. Cross*, 487 So. 2d 1056, 1057-58 (Fla. 1986) (holding that notwithstanding amendment of Article I, § 12, the *Dodd* exclusionary rule is of continuing vitality; "[N]o United States Supreme Court decision specifically holds the exclusionary rule inapplicable to probation revocation proceedings. . . . The United States Supreme Court has not ruled on the issue presently before us. Therefore, it is not necessary to interpret the amendment to article I, section 12."), *cert. dismissed*, 479 U.S. 805, 107 S. Ct. 248, 93 L. Ed. 2d 172 (1986).

The lower court's conclusion that *Griffin v. Wisconsin*, 483 U.S. 868, 107 S. Ct. 3164, 97 L. Ed. 2d 709 (1987) ruled upon any issue which, for purposes of Florida law, alters the foregoing structure, is erroneous. Pursuant to a statute which placed probationers in the custody of a particular state agency and made them "subject . . . to . . . conditions set by the court and rules and regulations established by the department[,]" a regulation which permitted a warrantless search of a probationer's home by a probation officer upon "reasonable grounds" was upheld as constitutional. *Griffin*, 107 S. Ct. at 3166-67, 3171.[5] In so holding, the United States Supreme

---

shall be construed in conformity with the 4th Amendment to the United States Constitution, as interpreted by the United States Supreme Court. Articles or information obtained in violation of this right shall not be admissible in evidence if such articles or information would be inadmissible under decisions of the United States Supreme Court construing the 4th Amendment to the United States Constitution."

[5] It might be noted that the Supreme Court expressly refrained from reaching the question of whether "any search of a probationer's home by a probation officer

Court was actually passing upon a higher standard of justification than required by this Court of searches by probation officers with respect to probation revocation proceedings; this Court has recognized such searches as an implicit condition of any probation, but such search is "valid to the extent that the evidence discovered is used only in probation violation proceedings[.]" *Grubbs v. State, id.* at 907.

Therefore, as a definitional matter, the search upheld as legal by the state court in *Griffin v. Wisconsin*, and which was declared by the United States Supreme Court under the *Wisconsin* regulatory scheme to satisfy constitutional standards, is not valid in Florida with respect to a substantive offense. *Grubbs, id.* at 907, 910.[6]

---

satisfies the Fourth Amendment as long as the information . . . satisfies a federal 'reasonable grounds' standard" as distinct from "a regulation that itself satisfies the Fourth Amendment's reasonableness requirement[,]" 107 S. Ct. at 3167, and expressly left to the Wisconsin Supreme Court the determination of whether the state law requirements had been met. *Id.* at 3171 n.8. The *Griffin* court took, of course, the "regulation as it has been interpreted by . . . state courts. . . . [T]he Wisconsin Supreme Court [is] the ultimate authority on issues of Wisconsin law." *Id.* at 3169.

It is, of course, equally true that this Court is the ultimate authority on issues of Florida law, and it has defined a warrantless search by a probation officer as lawful *only* with respect to a probation revocation hearing. *Grubbs v. State, id.* at 907. This is a holding that lower courts are not free to alter or disregard. *Hoffman v. Jones,* 280 So. 2d 431, 440 (Fla. 1973). The issue presented herein has been implicitly correctly decided by the Second District. *Braxton v. State*, 524 So. 2d 1141 (Fla. 2d DCA 1988).

6

Notwithstanding the probation supervisor's testimony herein that the search comported with probation department regulations, no such regulation was admitted into evidence nor cited, nor is the appellant aware of any such regulation; the only Department of Corrections regulations of which the petitioner is aware authorize warrantless of sentenced inmates on supervised release. Fla. Admin. Code R. 23-21.0165, 23-22.013, 23-23.010. It might be noted that unlike revocation of inmate supervised release, which is statutorily entrusted to agency authority, which agency

In the same dichotomy that, while school officials may conduct a warrantless search of a student without probable cause,[7] but that same search conducted by a law enforcement officer would be unconstitutional,[8] and a warrantless home search conducted by a probation officer for purposes of supervision is lawful,[9] but one conducted by a law enforcement (i.e., police) officer, is not;[10] a probation officer may not become a "stalking horse" for police.[11] Such an impermissible action was

---

is thereby authorized to determine the conditions of supervision, probation supervision and revocation is entrusted to the courts, under, of course, the supervision of this Court. As has been stated, while this Court has held that the presence of an express search condition in an order of probation is not needed to justify a search of a probationer, such search by a probation supervisor "is valid to the extent that the evidence discovered is used *only* in probation violation proceedings[.]" *Grubbs, id.* at 907. (Emphasis added.)

[7] *New Jersey v. T.L.O.*, 469 U.S. 325, 105 S. Ct. 733, 83 L. Ed. 2d 720 (1985).

[8] *See, e.g., A.J.M. v. State*, 617 So. 2d 1137 (Fla. 1st DCA 1993); *In the Interest of F.P.*, 528 So. 2d 1253 (Fla. 1st DCA 1988).

[9] *Grubbs v. State, id.* at 907, 909.

[10] *Grubbs v. State, id.*

[11] *United States v. Merchant*, 760 F. 2d 963, 969 (9th Cir. 1985), *cert. dismissed*, 480 U.S. 615 (1987); *Smith v. Rhay*, 419 F. 2d 160, 162-63 (9th Cir. 1969); *United States v. Hallman*, 365 F. 2d 289, 292 (3d Cir. 1966).

Cf. State v. Vargas, 20 Fla. L. Weekly S594 (Fla. Dec. 14, 1995) (where execution of search warrant for blood sample from defendant was authorized to sheriff from one county but deputy from another county "was the primary actor in the execution[,]" motion to suppress should have been granted); *United States v. Sandoval Vargas*, 854 F. 2d 1132, 1136 (9th Cir.) (authority of customs, INS or Coast Guard officials to conduct warrantless border searches on subjective suspicion does not

precisely what was undertaken in this case. The state attorney's office, enlisted by police who were otherwise unable to make their case, initiated or caused to be initiated the warrantless search[12] of the defendant's residence by probation (corrections

---

extend to other officials such as FBI), *cert. denied*, 488 U.S. 912, 109 S. Ct. 270, 102 L. Ed. 2d 257 (1988).

[12] The trial court's findings that the defendant consented to the search (S.R. 153-56, ¶¶ 3, 5, 6) were correctly disregarded and implicitly rejected by the district court. The trial court's findings are unsupportable and a miscomprehension of the applicable law. First, it found that a condition in the probation orders (R. KW91-1714-CF at 42, ¶ 8, 47 ¶ 8; R. KW91-2053-CF at 34, ¶ 8) which permitted a probation officer to visit the defendant at his home or elsewhere constituted permission for the search. (S.R. 155.) While a mere condition to allow a visit of a probation officer itself obviously does not constitute permission to search, as previously stated no condition at all is necessary to support a warrantless search by a probation officer, *Grubbs v. State*, but such search is lawful in Florida only with respect to a probation revocation proceeding.

Second, to the extent the trial court found consent at the scene to the search (S.R. 153, ¶ 3; 156, ¶ 6), that is belied by the record and the applicable law. Probation supervisor Quad, who undisputedly was assigned to the case and went for the designated and singular purpose of searching the residence (T. 54, 64), expressly acknowledged on cross-examination the following:

> A. I said Mr. Soca, this is Mr. Quad. This is Mr. White. We work with the State Probation and Parole. I gave him my identification card and I showed him my badge. Identification card and badge, sir.
>
> Q. Showed it to him?
>
> A. Yes.
>
> Q. Okay.
>
> A. I can remember now and then I informed Mr. Soca I said this is your residence and he said yes, it is. I live here. I said fine. We are going to search your house now.
>
> Q. You didn't ask him. You said we are going to search

department) officers. State attorney's investigator Papy directly acknowledged at the suppression hearing that he knew he did not have probable cause to obtain a warrant, and therefore functionally bypassed the requirement, i.e., went through the probation office to effect a warrantless search which police officers could not (T. 15-18, 20-21). While, acknowledgedly, there is an independent policy interest in effective supervision of probationers and therefore the results of such a search, regardless of the reason for inception, are properly admissible in probation violation proceedings, *Grubbs v. State*,

---

> your house; is that correct?
>
> A. Yes.
>
> Q. And as a matter of fact you told him that under the law as his probation officer you got the right to search his house; isn't that correct?
>
> A. That is correct.
>
> Q. And you have -- you said I am your probation officer. You showed him your badge and told him you had the right to search his house. He said fine, correct?
>
> A. Correct.

[T. 61-62.]

The foregoing clearly manifests mere acquiescence to apparent (indeed, under *Grubbs*, actual) authority of the probation supervisor to perform the search for purposes of probation compliance only, and is not sufficient to establish voluntary consent with respect to admissibility of the evidence in the substantive case. *Correa v. State*, 389 So. 2d 1204 (Fla. 3d DCA 1980), *review denied*, 399 So. 2d 1146 (Fla. 1981); *Major v. State*, 389 So. 2d 1203 (Fla. 3d DCA 1980), *review denied*, 408 So. 2d 1095 (Fla. 1981).

id. at 907, there is a separate and distinct interest in not permitting that function to be pursued by law enforcement officers who can freely target probationers and then, bypassing established constitutional requirements, utilize the benefits of a probation department-conducted search in a new, substantive case.

Therefore, while use of the warrantless search-derived evidence in a probation violation hearing was acknowledgedly permissible, *Grubbs, id.,* its use was not, particularly where there is a separate deterrent interest in discouraging officers from bypassing constitutional requirements as in this case, permissible in a new substantive case. *Grubbs, id.*

The trial court improperly denied suppression in the substantive case, and, the Third District Court of Appeal incorrectly affirmed that denial, substituting its own regulatory scheme for that established by this Court.

Further, if *Griffin* were to signify what the lower court's strained opinion concludes it does, that is, if an eight-year-old obscure decision does what it has certainly not heretofore been understood to have done -- displace this Court's own authority to properly and meaningfully establish an appropriate part of the regulatory framework for probationers -- that only underscores the case for reconsideration of the primacy of the Florida Constitution. Article I, § 12 should no longer be given an *in futuro* (prospective as well as retrospective) "blank-check" self-nullifying interpretation. *Perez v. State*, 620 So. 2d 1256, 1262, 1264, 1270 (Fla. 1993) (dissents of Chief Justice Barkett and Justices Shaw and Kogan).

CONCLUSION

The lower court erred in affirming denial of the defendant's motion to suppress and in substituting its judgment for that of this Court and refusing certification; its decision should be quashed. Evidence obtained through a warrantless search of a probationer's home is inadmissible in a substantive case, and the conviction and sentence (Case No. KW93-1213-CF) should therefore be reversed and the cause remanded with directions to grant the defendant's motion to suppress as to that case.

Respectfully submitted,

BENNETT H. BRUMMER
Public Defender
Eleventh Judicial Circuit of
Florida
1320 Northwest 14th Street
Miami, Florida 33125

By: 
BRUCE A. ROSENTHAL
Assistant Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed to the Office of the Attorney General, 401 Northwest 2nd Avenue, Miami, Florida 33128, this 5th day of January, 1996.

BRUCE A. ROSENTHAL
Assistant Public Defender

IN THE SUPREME COURT OF FLORIDA

CASE NO. 86,284

JUAN SOCA,

Petitioner,

vs.

THE STATE OF FLORIDA,

Respondent.

_____/

APPENDIX TO BRIEF OF PETITIONER ON THE MERITS

PAGE

AFFIRMED IN PART; REVERSED IN PART AND REMANDED.

STONE and FARMER, JJ., concur.

Juan SOCA, Appellant,

v.

The STATE of Florida, Appellee.

No. 94-1214.

District Court of Appeal of Florida, Third District.

June 7, 1995.

Defendant was convicted in the Circuit Court, Monroe County, Richard J. Fowler, J., of cocaine possession and he pleaded guilty to two counts of violating probation. Defendant appealed. The District Court of Appeal, Levy, J., held that probation officer's warrantless search of defendant's home was valid.

Affirmed.

1. Searches and Seizures ⇐12

State constitutional article governing searches and seizures is to be interpreted in conformity with the Fourth Amendment and may not be read to provide any greater protections. U.S.C.A. Const.Amend. 4; West's F.S.A. Const. Art. 1, § 12.

2. Criminal Law ⇐394.4(1)

Due to fact that state constitutional article governing searches and seizures is to be interpreted in conformity with Fourth Amendment, an exclusionary rule that was once constitutionally mandated in Florida can now be eliminated by judicial decision of the United States Supreme Court; however, where the United States Supreme Court has not ruled on a particular search and seizure issue, it is appropriate to rely upon previous Florida cases. U.S.C.A. Const.Amend. 4; West's F.S.A. Const. Art 1, § 12.

3. Criminal Law ⇐982.8

In conducting analysis of whether warrantless search of probationer is valid under Supreme Court's decision in *Griffin* upholding warrantless search of probationer's home after probation officer received information from police that probationer had contraband in his home, District Court of Appeal was not limited to consideration of only statutes and administrative regulations; rather, court could engage in broader analysis of all legal authority, including applicable state case law and defendant's probation conditions, which may have served to provide regulatory frame work for a search of defendant's home by probation officer.

4. Criminal Law ⇐982.8

Probationer's residence was properly searched without warrant by his probation officer, and evidence found in search properly admitted in a new criminal proceeding, if officer had reasonable grounds to believe search would reveal evidence of material violation of probation given statute permitting probation officer to make a warrantless arrest of probationer if there are reasonable grounds to believe probationer violated probation, statute permitting court to determine terms and conditions of probation and include among them that probationer shall permit probation officers to visit him at his home or elsewhere, and given probation conditions allowing home visit and authorizing drug tests. West's F.S.A. §§ 948.03(1)(b), 948.06(1).

5. Criminal Law ⇐982.8

Probation officer had reasonable grounds to believe that search of probationer's home would reveal evidence of material violation of probation and, accordingly, warrantless search was valid and evidence found in search could be admitted in new criminal proceeding, where officer had received detailed information from confidential informant that probationer had been dealing cocaine, confidential informant made controlled purchase of cocaine while in probationer's presence, investigator was able to indepen-

dently confirm that purchase, probation officer was aware that probationer had recently had a urinalysis test which was positive for cocaine, and informant later told authorities that probationer had just received a large amount of cocaine. U.S.C.A. Const.Amend. 4; West's F.S.A. Const. Art. 1, § 12; West's F.S.A. §§ 948.03(1)(b), 948.06(1).

Bennett H. Brummer, Public Defender, and Bruce A. Rosenthal, Asst. Public Defender, for appellant.

Robert A. Butterworth, Atty. Gen., and Michael J. Neimand, Asst. Atty. Gen., for appellee.

Before LEVY, GERSTEN and GREEN, JJ.

LEVY, Judge.

The defendant appeals his conviction for cocaine possession, challenging the denial of his motion to suppress evidence found during a warrantless search of his residence by his probation officer. Because we find the search constitutional, we affirm.

I.

The defendant, Juan Soca, was on probation from two previous criminal convictions, and was living in a trailer in Monroe County with his parents. An investigator from the Monroe State Attorney's office obtained information from a confidential informant that the defendant was dealing cocaine. The investigator set up a controlled purchase, at which the informant purchased cocaine from another individual while in the presence of the defendant. The investigator was nearby at the time, and was able to independently confirm that a purchase had been made. The informant later reported that the defendant was in possession of a large quantity of cocaine which had just come in from Miami. The investigator contacted the defendant's probation officer, and relayed what his investigation had revealed. The probation officer indicated that the defendant had recently undergone urinalysis, and had tested positive for cocaine. Based upon this information, the probation officer consulted with his supervisor, who instructed the officer to search the defendant's residence for contraband which might indicate that the defendant had violated the terms of his probation.

The probation officer and the investigator went to the defendant's trailer. The defendant was not home, but his father beeped him and he appeared within 20 minutes. The probation officer informed the defendant that he was going to search the trailer in order to monitor compliance with the terms of the defendant's probation, and the defendant told him to go ahead and search. The probation officer conducted the search himself; the investigator did not participate. The search revealed cocaine hidden under the floor of a hallway closet in the trailer. No search warrant was ever sought or obtained.

The defendant was charged with possession of over 400 grams of cocaine, in violation of Florida Statutes Section 893.135. He moved to suppress the cocaine, arguing that the search of his trailer was warrantless and unconstitutional. In his motion, the defendant admitted that the evidence found during the search could be used against him in a probation revocation proceeding, but argued that it could not be used to support the independent criminal charge of cocaine possession.

The defendant's motion was denied. The trial court found that the probation officer had a reasonable suspicion that contraband would be found in the trailer. Therefore, the trial court concluded that the search was legal, considering the defendant's probationary status, as well as the other circumstances of the case. The defendant was later convicted by a jury, and sentenced to 15 years imprisonment. He subsequently pled guilty to two counts of violating probation, and was sentenced to one year on each violation, with all sentences to run concurrently. The defendant now appeals, challenging only the trial court's denial of his motion to suppress.

II.

[1, 2] The legality of this search is governed by Article I, Section 12 of the Florida Constitution, which deals with searches and seizures. As amended by the electorate in 1982, Article I, Section 12 requires us to

follow the United States Constitution's Fourth Amendment, as interpreted, in all past and future decisions, by the United States Supreme Court. *See Perez v. State*, 620 So.2d 1256, 1258 (Fla.1993); *Bernie v. State*, 524 So.2d 988, 990–91 (Fla.1988). Article I, Section 12 is to be interpreted in conformity with the Fourth Amendment, and may not be read to provide any greater protections. *See* Art. I, § 12, Fla. Const.; *Jones v. State*, 648 So.2d 669, 674 (Fla.1994); *Perez*, 620 So.2d at 1258; *Bernie*, 524 So.2d at 990–91. "Indeed, an exclusionary rule that was once constitutionally mandated in Florida can now be eliminated by judicial decision of the United States Supreme Court." *Bernie*, 524 So.2d at 991. However, where the United States Supreme Court has not ruled on a particular search and seizure issue, it is appropriate to rely upon previous Florida cases, *see State v. Cross*, 487 So.2d 1056, 1057 (Fla.), *cert. dismissed*, 479 U.S. 805, 107 S.Ct. 248, 93 L.Ed.2d 172 (1986), and cases from other jurisdictions, *see Jones*, 648 So.2d at 674. With this structure in mind, it is necessary to briefly review, in chronological order, the caselaw upon which the State and the defendant rely.

III.

In *Grubbs v. State*, 373 So.2d 905 (Fla. 1979), the Florida Supreme Court found unconstitutional, under the old version of Article I, Section 12, a condition of probation which required the probationer to consent to a warrantless search of his home at any time by any law enforcement officer. *Grubbs*, 373 So.2d at 910. In discussing the issue, the *Grubbs* court distinguished situations where evidence was sought to be used in a probation revocation proceeding from situations where evidence was sought to be used to support a new, independent criminal charge. With respect to probation revocation proceedings, *Grubbs* held that "[t]he search of a probationer's person or residence by a probation supervisor without a warrant is, in our view, a reasonable search and absolutely necessary for the proper supervision of probationers." *Grubbs*, 373 So.2d at 909. However, with respect to new criminal charges, *Grubbs* held that ordinary search and seizure law applied, although a probationer's status could be taken into account in making a probable cause determination. *Grubbs*, 373 So.2d at 910. Thus, the result of *Grubbs* was to allow certain evidence, which would be excluded from a substantive case because it was illegally seized, to be nonetheless admitted in a probation revocation proceeding.

In *State v. Dodd*, 419 So.2d 333 (Fla.1982), the Florida Supreme Court further clarified that under the old version of Article I, Section 12, the exclusionary rule applied equally to probation revocation proceedings as it did to regular prosecutions: "A person's status as a probationer may be taken into consideration in determining whether a search or seizure is unreasonable for constitutional purposes, but in *Grubbs* this Court unequivocally repudiated the notion that the article I, section 12 exclusionary rule may simply be ignored at a probation revocation hearing." *Dodd*, 419 So.2d at 335 (footnote omitted). *Dodd* therefore left intact the holding of *Grubbs* that "a warrantless search of a probationer's person or residence by a probation supervisor is valid to the extent that the evidence discovered is used only in probation violation proceedings." *Grubbs*, 373 So.2d at 907.

Shortly after the decision in *Dodd*, the previously-mentioned amendment to Article I, Section 12 was adopted. The amendment became effective January 4, 1983.

Three years later, the Florida Supreme Court held that *Dodd* was still controlling law in regards to the admissibility of illegally obtained evidence at a probation revocation hearing. *See Cross*, 487 So.2d at 1058. In holding that *Dodd* was still controlling precedent, the Florida Supreme Court pointed out that there was no United States Supreme Court precedent on the issue. *Cross*, 487 So.2d at 1057.

Subsequent to *Cross*, however, the United States Supreme Court issued its decision in *Griffin v. Wisconsin*, 483 U.S. 868, 107 S.Ct. 3164, 97 L.Ed.2d 709 (1987). In *Griffin*, a probationer's home was searched by probation officers (accompanied by police) after a probation officer received information from police that the probationer had contraband in his home. *Griffin*, 483 U.S. at 871, 107 S.Ct.

at 3167. The search was conducted pursuant to a Wisconsin statute which allowed a warrantless search of a probationer's home if there were "reasonable grounds" to believe that contraband was present. *Griffin*, 483 U.S. at 870–71, 107 S.Ct. at 3166–67. A gun was found, the probationer was charged with possession of a gun by a felon, and the probationer moved to suppress the gun. The motion was denied, and the probationer was convicted. *Griffin*, 483 U.S. at 872, 107 S.Ct. at 3167. On review, the United States Supreme Court found that Wisconsin's statutory scheme for the supervision of probationers was constitutional. The Court stated that there had been no constitutional infringement because the search of the probationer's residence was conducted pursuant to a constitutional, statutory system for monitoring probationers. *Griffin*, 483 U.S. at 873, 107 S.Ct. at 3168. The search was approved despite the absence of either probable cause or a warrant. The Court explicitly refrained, however, from holding that *all* probationer searches based upon "reasonable grounds" were valid. *Griffin*, 483 U.S. at 880, 107 S.Ct. at 3172. The validity of the search was tied to the validity of the statutory system for monitoring probationers.

It is from these precedents that both sides construct their arguments.

IV.

The defendant argues that *Griffin* is inapplicable to this case because the United States Supreme Court only approved the search in that case because of Wisconsin's regulatory scheme, and, he further argues, there is no such similar scheme in Florida. Accordingly, the defendant argues that this case is controlled by *Grubbs*, and that the cocaine was only admissible in a probation revocation proceeding, but not in this new, substantive criminal case. In support of this contention, the defendant relies upon the post-*Griffin* case of *Braxton v. State*, 524 So.2d 1141 (Fla. 2d DCA 1988). In *Braxton*, the defendant was on community control when his home was searched without a warrant and a gun was found. Citing *Grubbs*, the Second District held that the gun should have been suppressed because "the product of a warrantless search of a probationer's home is not admissible to prove a new criminal offense." *Braxton*, 524 So.2d at 1141.

The State argues that the search herein was reasonable and should be upheld under *Griffin*, even though Florida does not have as detailed a statutory scheme regulating probation supervision as was upheld in *Griffin*. The State specifically contends that because probation supervision is a "special need" situation, a warrantless search is permissible. The State further contends that the statute which authorizes a warrantless arrest of a probationer (section 948.06) also supports a warrantless search of a probationer under *Griffin*.

V.

The defendant has conceded that the cocaine was admissible for purposes of a probation revocation hearing. Consequently, the only issue is whether the cocaine was admissible on the new criminal charges. Therefore, pursuant to Article I, Section 12 (as amended), we must look to the United States Supreme Court precedents. We agree with the State that the controlling precedent is *Griffin*, and pursuant thereto, we find that the search conducted in this case was constitutional.

[3] In conducting our *Griffin* analysis, we are not limited to consideration of only the statutes and administrative regulations. Rather, we may engage in a broader analysis of all legal authority, including applicable state caselaw and the defendant's probation conditions, which may serve to provide a regulatory framework for a search of a probationer by a probation officer. *See United States v. Giannetta*, 909 F.2d 571 (1st Cir. 1990) (approving a search of a probationer's residence under *Griffin* where there was no regulatory scheme, but only a probation condition authorizing such a search); *United States v. Schoenrock*, 868 F.2d 289 (8th Cir. 1989) (upholding a warrantless search of a probationer's residence under *Griffin* based solely upon a condition of probation).

A.

[4] First, we find Florida Statutes Section 948.06(1) to be pertinent. It states:

> Whenever within the period of probation ... there are *reasonable grounds* to believe that a probationer ... has violated his probation ... in a material respect, any parole or probation supervisor may arrest or request any county or municipal law enforcement officer to arrest such probationer or offender without warrant....

§ 948.06(1), Fla.Stat. (1993) (emphasis added). This statute authorizes a warrantless arrest by a probation officer upon "reasonable grounds." While the statute does not explicitly authorize a warrantless search, it does constitute a legislative endorsement of the "reasonable grounds" standard as a basis for an imposition upon a probationer's privacy. This "reasonable grounds" standard is *identical* to the standard approved as constitutional in *Griffin*. Moreover, Section 948.06(1) constitutes an implicit approval of a search based upon "reasonable grounds" because the Legislature certainly was aware that an arrest by a probation officer would authorize a search of the probationer incident to arrest, *see United States v. Robinson*, 414 U.S. 218, 94 S.Ct. 467, 38 L.Ed.2d 427 (1973), and might justify an inventory search, *see Illinois v. Lafayette*, 462 U.S. 640, 103 S.Ct. 2605, 77 L.Ed.2d 65 (1983), or even a protective sweep of the premises, *see Maryland v. Buie*, 494 U.S. 325, 110 S.Ct. 1093, 108 L.Ed.2d 276 (1990).

Second, Florida Statutes Section 948.03 regulates the terms and conditions of probation, and states, "[t]he court shall determine the terms and conditions of probation ... and may include among them the following, that the probationer ... shall: ... [p]ermit ... [probation] supervisors to visit him at his home or elsewhere." § 948.03(1)(b), Fla. Stat. (1993). This statute is significant in two respects. First, it allows a visit to a probationer's home, which is obviously a necessary predicate to a search of the home, and would allow for the observation of any items in "plain view." In fact, just such a condition was a part of the defendant's probation in this case.[1] Second, the statute contains a grant of authority to sentencing judges to set special terms of probation. In this case, an additional condition of the defendant's probation was that the defendant "submit to urinalysis, breathalyzer or blood test[s] at any time requested by your probation officer." While nothing in the defendant's probation order specifically authorized a search of the defendant's residence, these two conditions—allowing a home visit and authorizing a drug test—provided the defendant's probation officer with an adequate framework within which to conduct the search at issue here, which was a search of the defendant's home for drugs. *Cf. Grubbs*, 373 So.2d at 910 ("We emphasize that the authority of probation supervisors and law enforcement officers to conduct warrantless searches of probationers in accordance with the views set forth in this opinion is not dependent upon a search condition expressly set forth in the order of probation."). Consequently, we find that the parameters derived from Sections 948.06 and 948.03 provided a sufficient regulatory scheme so as to uphold the search in this case under *Griffin*. Additionally, the defendant has not contradicted the probation supervisor's testimony in this case indicating that Department of Corrections "regulations" were followed in conducting the search of the defendant's residence.

Third, *Grubbs* itself adds to the regulatory framework, for *Grubbs* specifically held that, "[t]he search of a probationer's person or residence by a probation supervisor without a warrant is, in our view, a reasonable search and absolutely necessary for the proper supervision of probationers." 373 So.2d at 909. This statement has long-guided probation personnel in the conduct of their duties, and may well be the reason that submission to a residential search was not specifically included in the defendant's conditions of probation. In the immediate wake of *Grubbs*, courts of this state repeatedly approved of a condition of probation which required a probationer to consent to a search by his probation officer at any time, regardless of the justification for the search. *See Elkins v. State*, 388 So.2d 1314 (Fla. 5th DCA 1980) (upholding a condition of probation to the extent it required the

1. Because this condition is specifically enumerated in the statute, we would not consider the absence of such a condition from the defendant's probation order significant with respect to our *Griffin* analysis.

PRES

probationer to subi
residence at any tin
cer); *Smith v. State*,
DCA 1980) (same); .
881 (Fla. 2d DCA 1
condition is permiss
missible for a search
such a condition, wh
has "reasonable gi
search will reveal
violation. Moreover
based upon reasonal
the search are admi
legal proceeding.[2]

Therefore, we find
utes, the conditions
tion, and *Grubbs* its
framework under
search. Consequen
dence was properly
rant by his probati
dence found in the
mitted in a new cri
officer had reason
that the search wo
material violation o

[5] We now ad
search in this case.
probation officer
search the defenda
officer had receiv
from a confidential
dant had been deal
confidential informa
chase of cocaine
presence, and the
independently confi
mant later informe
fendant had just re
cocaine from Miam
officer was aware
recently had a urin
tive for cocaine. T
more than sufficie
officer "reasonable
the search would r
tion of probation.

2. We distinguish
1141 (Fla. 2d DCA
involved a search

probationer to submit to a search of his residence at any time by his probation officer); *Smith v. State*, 383 So.2d 991 (Fla. 5th DCA 1980) (same); *Jessee v. State*, 375 So.2d 881 (Fla. 2d DCA 1979) (same). If such a condition is permissible, then it is also permissible for a search to be conducted, absent such a condition, when the probation officer has "reasonable grounds" to believe the search will reveal evidence of a probation violation. Moreover, when such a search is based upon reasonable grounds, the fruits of the search are admissible in any subsequent legal proceeding.[2]

Therefore, we find that the applicable statutes, the conditions of the defendant's probation, and *Grubbs* itself provided an adequate framework under *Griffin* to validate the search. Consequently, the defendant's residence was properly searched without a warrant by his probation officer, and the evidence found in the search was properly admitted in a new criminal proceeding, if the officer had reasonable grounds to believe that the search would reveal evidence of a material violation of probation.

B.

[5] We now address the legality of the search in this case. Several facts gave the probation officer reasonable grounds to search the defendant's residence. First, the officer had received detailed information from a confidential informant that the defendant had been dealing cocaine. Second, the confidential informant made a controlled purchase of cocaine while in the defendant's presence, and the investigator was able to independently confirm this. Third, the informant later informed authorities that the defendant had just received a large amount of cocaine from Miami. Fourth, the probation officer was aware that the defendant had recently had a urinalysis test which was positive for cocaine. These circumstances were more than sufficient to give the probation officer "reasonable grounds" to believe that the search would reveal evidence of a violation of probation. Therefore, the search was legal, and the cocaine which was discovered during it was properly admitted below.

VI.

In conclusion, we hold that the defendant's motion to suppress was properly denied. The defendant's conviction and sentence are affirmed.

PRESTIGE RENT-A-CAR, INC., etc., Appellant,

v.

ADVANTAGE CAR RENTAL AND SALES, INC. (ACRS), Appellee.

No. 94-2064.

District Court of Appeal of Florida, Fifth District.

June 9, 1995.

In action by lessor for replevin of automobiles leased to lessee, the Circuit Court, Orange County, William C. Gridley, J., issued prejudgment writ upon plaintiff's posting bond of $113,230. Defendant appealed. The District Court of Appeal, W. Sharp, J., held that: (1) New York choice of forum clause did not preclude action in Florida for replevin; (2) dismissal of replevin action in New York did not preclude subsequent replevin action in Florida; (3) any error in issuing writ was harmless; (4) defenses of setoff or credit were insufficient; (5) motion to dissolve writ was supported by sufficient evidence; and (6) bond amount was correct.

Affirmed.

2. We distinguish *Braxton v. State*, 524 So.2d 1141 (Fla. 2d DCA 1988). That case apparently involved a search conducted by officers other than the defendant's community control officer, and the opinion did not engage in a *Griffin* analysis.