O.A. 2-7-96

IN THE SUPREME COURT OF FLORIDA

CASE NO. **86,284**

JUAN SOCA,

Petitioner,

-vs-

THE STATE OF FLORIDA,

Respondent.

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ON PETITION FOR DISCRETIONARY REVIEW
CONFLICT JURISDICTION

BRIEF OF RESPONDENT ON THE MERITS

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INTRODUCTION

The Petitioner, Juan Soca, was the Defendant in the trial court and the Appellant in the Third District Court of Appeal. The Respondent the State of Florida, was the prosecution in the trial court and the Appellee in the District Court. The parties will be referred to as the Defendant and the State. The symbol "R" will designate the record on appeal; the symbol "T" will designate the transcript proceedings; the symbol "SR" will designate the supplemental record; and the symbol "A" will designate the Appendix to this brief.

STATEMENT OF THE CASE AND FACTS

The Defendant was charged with trafficking in 400 grams or more of cocaine. (R. KW93-1231-CF 4). This charge was also the basis of probation violations in two prior cases. (R. KW91-1714-CF 4, R. KW91-2053-CF 76). The Defendant pled not guilty and requested, on the substantive case, a jury trial.

Prior to trial, Defendant filed a Motion to Suppress which alleged that: (1) the search by the probation officer was unlawful because it was not based on reasonable grounds to believe that the Defendant was violating his probation; (2) that if reasonable cause existed the search was unlawful because it was conducted by the police and not the probation officer; and (3) even if the search was a lawful probation search, the evidence was inadmissible in the trial of the substantive offense because the search was not supported by probable cause. (R. KW93-1231-CF 14-20, 28-51, 63-69). Pursuant thereto, a pretrial hearing was held on the motion to suppress. (R. KW93-1231-CF 1-82).

Lisa Kaminski, is a supervisor for the Department of Corrections and supervised the Defendant's probation officer. (TR. 6-27). In that capacity, she received information from Investigator Meyers that he had reasonable grounds to believe that the Defendant was dealing in cocaine and that a substantial amount of cocaine was located in Defendant's residence. This information came from a confidential informant and a controlled buy. Kaminski informed Meyer that she would look into it and advise him of what action, if any, would be taken. Kaminski reviewed Defendant's files and it established that the Defendant's most recent urinalyses tested positive for cocaine.

At this point, Kaminski decided that there was reasonable grounds to believe that Defendant was dealing cocaine. She then instructed Defendant's probation officer, Mr. Quad, to search Defendant's residence and also instructed him, in accordance with standard operating procedure, to take a law enforcement officer with him. This is done for safety precautions. (T. 28-29). The search authorized is one which permits a search anywhere the items sought could be reasonably located. (T. 40).

Whitney Papy is an investigator with the Monroe County State Attorney's Office. In that capacity he was investigating the Defendant's participation in the sale of cocaine. He was involved in a controlled buy with a confidential informant, a female and the Defendant. After a records check, Papy ascertained that Defendant was on probation and thereafter the Department of Corrections was contacted and told of the Defendant's possible involvement in the sale of cocaine. (T. 4-9). Papy, on his request, was the law enforcement officer who accompanied Quad when the search was made, but Papy did not participate in the search at all. He stood outside the residence while the search occurred. (T. 11-12, 20).

Based on the foregoing testimony, the trial court found that reasonable grounds existed for the probation search; that it was conducted by the Department of Corrections and not the police and that since the evidence was lawfully secured from the probation search, it was admissible in the substantive case. (SR. 1-9).

The Defendant then went to trial on the substantive charge. After being convicted he pled guilty to the two probation violations.

In the Third District, Defendant conceded the lawfulness of the probation

search, but contended that the cocaine was inadmissible at his trial on the substantive charge because the cocaine was not seized pursuant to a probable cause warrant or an exception thereto. (A. 4). The Third District disagreed finding that under Griffin v. Wisconsin, 485 U.S. 868 (1987), Florida's probation system was one which allowed searches based on a reasonable ground to believe that the probationer was violating his probation. Therefore, the Third District held that if cocaine was lawfully seized under the Fourth Amendment as a probation search then it was admissible against the Defendant at this substantive trial. (A. 4-6).

The Third District then found that the facts gave the probation officer reasonable grounds to search the Defendant's residence. The facts included the following: (1) the probation officer had received detailed information from a confidential informant that the Defendant was dealing in cocaine; (2) the confidential informant made a controlled purchased of cocaine while in the Defendant's presence and this was independantly confirmed by the investigator; (3) the informant later informed authorities that the Defendant had just received a large amount of cocaine from Miami; and, (4) the probation officer was aware that the Defendant had recently had a urinalysis test which was positive for cocaine. (A. 6). The Third District then found that this was a valid probation search and, based on the foregoing facts, the search was conducted solely by the probation officer. (A. 2, 6).

Petitioner then filed for discretionary review which was granted.

POINT INVOLVED ON APPEAL

WHETHER EVIDENCE THAT IS SEIZED PURSUANT TO A PROBATION SEARCH WHICH WAS BASED ON REASONABLE GROUNDS TO BELIEVE THAT THE DEFENDANT HAS VIOLATED HIS PROBATION IS ADMISSABLE AGAINST THE DEFENDANT AT HIS TRIAL ON THE SUBSTANTIVE CHARGE.

SUMMARY OF THE ARGUMENT

The Defendant was on probation from two previous criminal convictions. His probation officer secured information which provided reasonable grounds to believe that a search of his residence would reveal evidence of a material violation of his probation. Based on said reasonable grounds his residence was searched and cocaine was discovered.

The Defendant conceded that the less than probable cause search was a lawful probation search and thus, the cocaine was properly admitted at the probation violation hearing. However, the Defendant contended that the cocaine was not admissible against him on the substantive charge of possession of cocaine because it was secured without a warrant or an exception thereto. The trial court denied the motion to suppress.

The Third District affirmed the trial court and held that where a non probable cause probation search is lawful under the Fourth Amendment the evidence seized therefrom is admissible in both the probation violation hearing and the trial on the substantive charge. This holding is correct and is not in conflict with any prior decision of this Court since the prior decision relied upon by Defendant was effectively overruled by the amendment to Article I, Section 12 of the Florida Constitution. The decision was overruled because at the time of the amendment the United States Supreme Court had already held that evidence lawfully secured through a less than probable cause administrative search was admissible at the substantive trial.

ARGUMENT

EVIDENCE THAT IS SEIZED PURSUANT TO A PROBATION SEARCH WHICH WAS BASED ON REASONABLE GROUNDS TO BELIEVE THAT THE DEFENDANT VIOLATED HIS PROBATION IS ADMISSIBLE AGAINST THE DEFENDANT AT HIS TRIAL ON THE SUBSTANTIVE CHARGE.

In the instant case, the evidence was secured against the Defendant through a valid probation search, which is a search supported by a reasonable ground to believe that the probationer is violating his probation, but is not supported by a probable cause based warrant. The evidence secured by the probation search, which consisted of cocaine, was then used against the Defendant in his trial on the substantive possession of cocaine charge.

The Defendant contends that this holding is erroneous and is in conflict with this Court's opinion in Grubbs v. State, 373 So. 2d 905 (Fla. 1979) which held that evidence lawfully seized pursuant to a probation search is only admissible in the probation violation hearing and is inadmissible at the trial on the substantive charge. He contends that the Third District was bound by Grubbs and its holding otherwise violates this Court's holding concerning following precedent of Hoffman v. Jones, 280 So. 2d 431 (Fla. 1977). He further contends that the subsequent amendment to Article I, Section 12 of the Florida Constitution which provided that said section is to be construed in conformity with the Fourth Amendment to the United States Constitution as interpreted by the United States Supreme Court does not bar such a result because the United States Supreme Court has not yet ruled on the matter.

Therefore he contends, this Court is free to construe this issue in any manner it sees fit regardless of what the United States Supreme Court may choose to do in the future.

The fallacy with Defendant's position is that the United States Supreme Court has already held that once evidence is lawfully secured pursuant to the Fourth Amendment, the evidence can be used against the individual in any proceeding regardless of the type of proceeding. Gouled v. United States, 255 U.S. 298, 312, 41 S. Ct. 261, 65 L. Ed. 647 (1921). This is so because the main purpose of excluding evidence seized in violation of the Fourth Amendment is to substantially deter future unlawful police conduct and where evidence seized is not in violation of the Fourth Amendment there is no deterrent effect when such evidence is excluded. United States v. Janis, 428 U.S. 433, 96 S. Ct. 3021, 49 L. Ed. 2d 1046 (1976).

In Abel v. United States, 362 U.S. 217, 80 S. Ct. 83, 4 L. Ed. 2d 668, (1960) the United States Supreme Court was faced with the same contention in a different setting as posited herein. In Abel, the Defendant was arrested pursuant to an INS deportation warrant. The warrant was an administrative one, issued by the New York Director of INS on the grounds that a prima facie case of deportability was established. During the search incident to the administrative warrant, evidence of Defendant's participation in espionage was uncovered and seized. The Supreme Court was presented with the question of whether the evidence of espionage which was secured pursuant to a concededly valid administrative warrant which required less than probable cause for its issuance, was admissible against the Defendant at his trial for

espionage. The Supreme Court held that such evidence was admissible since the evidence of espionage was seized as a consequence of wholly lawful conduct. This being so, the Supreme Court saw no rational basis for excluding the relevant espionage items from Defendant's trial. The Supreme Court found that since no illegal search or seizure occurred, no wrong doing police conduct would be condemned and the Court would not be lending its aid to lawless government action since none occurred. The Supreme Court further held that if there is a showing that the less than probable cause search was undertaken in bad faith to avoid the probable cause requirement, then, and only then, would the evidence be inadmissible in the criminal trial.

The State submits that Abel controls herein since in both cases evidence was lawfully secured pursuant to searches authorized on a less than probable cause requirement. In each case there was no police misconduct and therefore no reason to exclude the evidence in the substantive trials. As such, the Third District's decision in the instant case does not conflict with Grubbs since Grubbs was overruled by the amendment to Article I, Section 12 of the Florida Constitution and the United States Supreme Court decision in Abel. Further, since Grubbs was no longer valid law after the amendment to Article I, Section 12 the Third District's decision does not conflict with Hoffman. Accordingly, Defendant's request for this Court to revisit the prospective application of Article I, Sec. 12, Florida Constitution is inappropriate because the issue is not before the Court.

The real issue before this Court is whether in Florida probation supervision is a "special need" situation thereby permitting a search of the probationer or his residence

based on a standard that is less than probable cause but is reasonable under the circumstances. The State submits herein, as it did in the Third District, that probation supervision is a "special need" situation and therefore all that is required to make such a search lawful is that the probation officer have reasonable grounds to believe that a search would reveal evidence of a material violation of probation. Further, since the evidence established that the search was supported by reasonable grounds to believe the Defendant violated his probation and since the search was done by the probation officer, the cocaine was lawfully seized. Therefore, the cocaine was properly admitted in both the Defendant's probation violation hearing and his trial on the charge of possession of cocaine.

Both parties agree that the Fourth Amendment to the United States Constitution applies to probation revocation hearings. The Defendant contends, however, that evidence seized pursuant to a constitutionally authorized probation search is not admissible against the Defendant at his trial on the substantive charge. The Defendant's contention is based on a misunderstanding of the current state of the law as well as reliance on outdated precedent and as such is meritless.

In Griffin v. Wisconsin, 483 U.S. 868, 107 S. Ct. 3164, 97 L. Ed. 2d 709 (1987), the Supreme Court recognized that a probationer's home is protected by the Fourth Amendment's requirement that searches be "reasonable". The Court likened a State's operation of a probation system to its operation of a school, New Jersey v. T.L.O., 469 U.S. 325, 105 S. Ct. 733, 83 L. Ed. 2d 720 (1985), a government office, O'Conner v. Ortega, 480 U.S. 709, 107 S. Ct. 1492, 94 L. Ed. 2d 714 (1987), or its

supervision of a regulated industry, Camara v. Municipal Court, 387 U.S. 523, 87 S. Ct. 1727, 18 L. Ed. 2d 930 (1967) and therefore a probation system presents "special needs" beyond law enforcement that justifies departure from the usual warrant and probable cause requirements.

The Court found, citing to Morrissey v. Brewer, 408 U.S. 471, 92 S. Ct. 2593, 33 L. Ed. 2d 2584 (1972), that probationers do not enjoy the absolute liberty which every citizen is entitled, but only conditional liberty properly dependent on the observance of special probation conditions. The goals of probation require and justify the exercise of supervision to assure that the probation conditions are observed. This supervision, the Court held, is the "special need" of the State which permits a degree of impingement upon privacy that would be unconstitutional if applied to the public at large.

The Court then held that the "special needs" beyond normal law enforcement of a state probation system to supervise probationers and to protect the community makes the warrant requirement for the search of a probationer's home impracticable, and this makes it reasonable to dispense with the requirement of a warrant to conduct the search. Requiring a warrant is impracticable because: (1) a warrant requirement interferes to an appreciable degree with the probation system by setting up a magistrate rather than the probation officer as the judge of how close a supervision the probationer requires; (2) the delay inherent in obtaining a warrant makes it more difficult for probation officials to respond quickly to evidence of misconduct and would reduce the deterrent effect that the possibility of expeditious searches would create;

(3) although a probation officer is not an impartial magistrate, neither is the police officer who normally conducts searches against the ordinary citizen; and (4) a probation officer, while charged with protecting the public interest, is also supposed to have in mind the welfare of the probationer.

The Court, compared this situation to administrative searches that do not have to have warrants issued by courts, and held that it is reasonable under the Fourth Amendment to allow a probation officer to decide, without a warrant, if a probationer's home is to be searched. A probation officer can search without warrant if reasonable grounds exist to believe the probationer is violating the law and if the determination of reasonable grounds is supported by objective factors. Reasonable grounds supported by objective standards justifies the replacement of probable cause because: (1) the probation regime would be unduly disrupted by a probable cause requirement, since a probable cause requirement reduces the deterrent effect of the supervisory arrangement, and the relationship between the probationer and the probation officer is on ongoing supervisory one rather than an entirely adversarial one; (2) it is both unrealistic and destructive of the whole object of the continuing probation relationship to insist upon the same degree of demonstrable reliability of particular items of supporting data, and upon the same degree of certainty of violation, as is required in other contexts; and (3) it is reasonable to permit information provided by a police officer, regardless of whether on the basis of first hand knowledge, to support a probation search, and it is sufficient if the information indicates only the likelihood of facts justifying the search, since it is the very assumption of probation that the

probationer is in need of the rehabilitation and is more likely than the ordinary citizen to violate the law.

Based on the foregoing analysis, the Supreme Court held that Wisconsin's regulation which permits probation searches where there is reasonable grounds to believe that contraband is located in the probationer's home was reasonable under the Fourth Amendment. This holding was based on the fact that probation searches should be supportable by a lesser quantum of concrete evidence justifying suspicion than would be required to establish probable cause and that the Wisconsin Supreme Court's definition of reasonable grounds was sufficiently definite to provide for objective review.

Although the Supreme Court did not rule that any search of a probationer's home by a probation officer satisfies the Fourth Amendment as long as the information possessed by the officer satisfies a federal reasonable grounds standard. The Court did rule that a state regulation that allowed a warrantless probation search is lawful as long as the regulation itself satisfies the Fourth Amendment reasonable requirement. Therefore, Griffin controls any interpretation this Court will give this State's regulations governing warrantless probation searches. Soca v. State, 656 So. 2d 536, 539 (Fla. 3d DCA 1995).

In a decision that predated Griffin, the Florida Supreme Court in Grubbs v. State, 373 So. 2d 905 (Fla. 1979) reached the same conclusion as the United States Supreme Court did in Griffin. In Grubbs, the Florida Supreme Court recognized that an individual does not absolutely forfeit his Fourth Amendment rights simply because

of his status as a probationer. However, this right, based on the probationer's status, is qualified.

In determining the scope of a probationer's Fourth Amendment rights, this Court looked at Chapter 948, Florida Statutes (1977), which provided that a Defendant placed on probation shall be under the "supervision and control" of the Department of Offender Rehabilitation. This statute, the Court concluded, includes the duty of the probation supervisor to properly supervise the probationer to ensure compliance with the probation order. It also expressly authorizes arrest without a warrant based on reasonable ground to believe the probationer violated his probation.

This Court held, just like the United States Supreme Court in Griffin subsequently held, that the"special needs" of its probation system to supervise probationers and to protect the community makes the warrant requirement for the search of probationer's home impracticable, and thus makes it reasonable to dispense with the requirement of a warrant to conduct the search.

> [3] It is our opinion that an individual convicted of a criminal offense who is placed on probation should be subject to certain reasonable restrictions on his living in an open society. By his or her conviction, the probationer has already demonstrated a need for supervised control. Probation in certain circumstances is desirable for several reasons. It maximizes the probationer's usefulness in society while still vindicating the authority of the law in protecting the public. Though probation conditions may at time severely restrict a probationer in comparison with an ordinary citizen, they are not nearly as restrictive as imprisonment. Probation

> conditions must be reasonably related to the offense and should provide the standard of conduct essential to the probationer's rehabilitation in addition to the protection of the public.
>
> [4] Protection of the public is an important and proper consideration by the trial judge when determining whether probation or confinement should be imposed. If proper conditions related to the purpose of probation cannot be imposed by the trial judge or if unreasonable limitations and restrictions are placed on probation supervisors, the use of probation may substantially decline. The sentencing judge must be free to impose conditions of probation that are reasonably related to the offense and the rehabilitation of the offender, and the probation supervisor must be allowed the necessary authority to properly supervise the probationer. The 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. However, granting such general authority to law enforcement officials is not permissible under the search and seizure provisions of the Florida or United States Constitutions.

Grubbs v. State, supra 373 So. 2d at 909 (emphasis added).

Although Grubbs does not define the regulatory framework which establishes Florida's probation system as a "special needs" system which permits to a less than probable cause search, the Third District found said framework with Florida statutes, administrative regulations, state case law and the conditions of probation. Soca v. State, 656 So. 2d at 539-541.

[4] First, we find Florida Statutes Section 948.061(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. 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 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); Jesse 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.

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.

(footnotes omitted).

As established hereinbefore, a warrantless probation search is constitutional if it is reasonable. It is reasonable when there is reasonable grounds to believe that the probationer has contraband in his home. If reasonable grounds exist the search comports with the Fourth Amendment and thus all evidence seized therefrom is admissible against the Defendant at his probation revocation hearing. It is also admissible against the Defendant at his trial on the substantive charge because the evidence was lawfully obtained. State v. Dodd, 419 So. 2d 333 (Fla. 1982); New York v. Burger, 482 U.S. 691, 107 S. Ct. 2636, 96 L. Ed. 2d 601 (1989). United States v. Abel, supra.

In Dodd, this Court reiterated that the exclusionary rule applies to probation revocation proceedings. In so doing this Court cited to Ray v. State, 307 So. 2d 995 (Fla. 4th DCA 1980) cert denied, 394 So. 2d 1153 (Fla. 1981) for the principle of law that the test for admissibility of evidence derived from search or seizure is not whether evidence is being offered in a probation revocation proceeding or a criminal trial but rather whether the evidence was properly or reasonably obtained under the circumstances. Id. at 335.

In Burger, the United States Supreme Court upheld a warrantless search of a junkyard since if fell within the exception to the warrant requirement for administrative searches of pervasively regulated industries. The Court then held that a proper administrative search is not rendered unconstitutional as violative of the Fourth Amendment's even though the ultimate purpose of the statute pursuant to which the search is conducted is the same at that of the State's penal laws. The Court then held that "[t]he discovery of evidence of crimes in the course of an otherwise proper administrative inspection does not render that search illegal or the administrative scheme suspect." 482 U.S. at 716. Based on the foregoing holding, the Court reversed and instructed the New York Court of Appeals to reinstate Burger's penal convictions that were supported by evidence seized during a lawful warrantless administrative search.

The State submits that Burger controls the instant case. Burger, dealt with an administrative search. The United States Supreme Court in Griffin has determined that probation searches are substantially similar to administrative searches in that the "special needs" associated with both searches allowed warrantless searches. Therefore, Burger's holding that evidence of crimes seized pursuant to a lawful administrative search is admissible at the Defendant's trial for the substantive crimes, is the rule of law for probation searches in Florida.

Based on the foregoing law, the State submits that the warrantless probation search was reasonable under the circumstances. The circumstances included information from law enforcement that Defendant was dealing in cocaine and that

Defendant had just failed a urinalyses test. Clearly, this was sufficient to give the probation supervisor reasonable ground to believe the Defendant was violating the law by possessing contraband and as such the search was lawful. Since under the circumstances the search was lawful, the evidence seized therefrom is admissable against the Defendant in any proceeding and the trial court was correct is so holding.

The Defendant, after conceding in the Third District the lawfulness of the search for the purposes of the probation revocation hearing, now claims that the probation search itself was unlawful because it was at the direction of law enforcement in order to avoid the probable cause requirement. Soca v. State, 656 So. 2d at 539. Assuming arguendo, that this claim is properly before this Court, the facts do not support relief.

Defendant relies on the parole search cases which hold that a parole search may not be used as a subterfuge for a criminal investigation. A parole officer must not act as a "stalking horse" for the police. A parole officer is not a "stalking horse" if he rather than the police, initiates the search in the performance of his duties as a parole officer. When on the other hand a parole officer conducts a parole search on prior request of and in concert with law enforcement officers, the search is no longer considered a parole search. United States v. Richardson, 849 F. 2d 439 (9th Cir. 1988).

In the instant case, the probation officer, although receiving information from law enforcement, conducted the search on his own in order to ensure that the Defendant was not in violation of his probation. Therefore, he was not acting as a

"stalking horse" and the search was a lawful probation search. United States v. Jarrad, 745 F. 2d 1451 (9th Cir. 1985).

CONCLUSION

Based on the foregoing points and authorities, the decision below is not in express and direct conflict with any decisions of this Court or of the District Courts of Appeal and therefore this Court should affirm the Third District Court of Appeals' decision herein.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **BRIEF OF RESPONDENT ON THE MERITS** was mailed to **BRUCE ROSENTHAL,** Attorney for Petitioner, 1320 N.W. 14th Street, Miami, Florida 33125 on this 10th day of January, 1996.

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mls/

IN THE SUPREME COURT OF FLORIDA

CASE NO. 86,284

JUAN SOCA,

Petitioner,

vs.

THE STATE OF FLORIDA,

Respondent.

______________________________/

APPENDIX

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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.

bationer 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.