LEGAL DEFENSE TRUST TRAINING BULLETIN

MICHAEL P. STONE, GENERAL COUNSEL

6215 River Crest Drive, Suite A, Riverside, CA 92507
Phone (951) 653-0130 Fax (951) 656-0854

Vol. VIII, Issue No. 1 April 2005

"SEARCH AND SEIZURE" PAROLE TERM DOESN'T NECESSARILY MEAN WHAT IT STATES

Ninth Circuit Holds That Even Parolees Subject to "Search and Seizure" have Fourth Amendment Rights

by Michael P. Stone

We are all accustomed to encountering parolees and probationers who, as a term and condition of their supervised freedom, are subject to "search and seizure."

What this really means is that the parolee's or probationer's person, property and residence may be searched at any time by a parole agent or probation officer, or by a peace officer, without a warrant. We are also accustomed to believing that such a term and condition of supervised release vitiates any requirement that police (or parole or probation) secure a warrant prior to a search or otherwise worry about the Fourth Amendment. We may conclude that a parolee or probationer who is subject to "search and seizure" has no Fourth Amended protections.

But a recent Ninth Circuit case, *Moreno v. Baca*, ___ F.3d __, 2005 WL517851 (9TH Cir., March 7, 2005), shows the error in assuming that the Fourth Amendment does not protect parolees and probationers, even those with "search conditions" attached to their freedom.

The opinion holds that officers must have, at a minimum, a "reasonable suspicion" of criminal activity and that the parolee or probationer is involved in that activity. Without at least that, the detention of a probationer or parolee is an unlawful seizure at the outset; and the subsequent discovery that the person is on parole or probation and subject to "search and seizure", does not transform an unlawful seizure into a lawful detention.

Deputies spotted Moreno in a "high crime" area walking at night. He was "startled" and "nervous" when the deputies approached. He was detained and searched. Then it was determined that he was on parole, subject to "search and seizure", and that he had an outstanding warrant. The deputies also claimed he tossed a baggie of rock cocaine when they approached. He was acquitted of possessing

the cocaine, and sued under 42 *USC* §1983, claiming that the initial detention and search violated the Fourth Amendment.

The Court found that the deputies did not have a reasonable suspicion necessary to justify their detention and search of Moreno – mere "nervousness" coupled with presence in a high crime area was insufficient to warrant the detention. Moreno disputed that he dropped or tossed any contraband. The subsequent discovery of the parole condition and warrant, unknown to the deputies at the outset of their detention of Moreno, could not justify the stop at its inception, because these facts were discovered after the stop.

So, the rule of this case is simply stated: Even though a parolee or probationer is subject to "search and seizure" without a warrant as a condition of his/her supervised release, any detention of that person must initially be justified by a reasonable suspicion that the person is involved in some kind of criminal activity. Subsequently-learned facts will not turn an unlawful detention into a reasonable one. Rather, the focus is on what the officers know or perceive at the time of the initial stop.

Stay Safe!
SUB TITLE