

September 25, 2017

The Honorable Michael C. O'Malley
Cuyahoga County Prosecuting Attorney
1200 Ontario Street
Cleveland, Ohio 44113

SYLLABUS:

2017-031

1. Pursuant to R.C. 2951.08(A)(4), during a period of community control, a peace officer may arrest a person without a warrant for violating the condition of a community control sanction that prohibits the person from contacting or communicating with another person, when the peace officer does not observe the contact or communication, or when the peace officer observes the contact or communication but the alleged victim consents to the contact or communication, provided that the peace officer has reasonable ground to believe that the person has violated or is violating the condition of the person's community control sanction.
2. "Reasonable ground," as that term is used in R.C. 2951.08(A)(4), constitutes "probable cause" and may be found based upon a peace officer's own observation of the violation of a condition of a community control sanction or based upon any other information received by a peace officer, including any other reasonably trustworthy information given to the officer by the alleged victim or a witness.



September 25, 2017

OPINION NO. 2017-031

The Honorable Michael C. O'Malley
Cuyahoga County Prosecuting Attorney
1200 Ontario Street
Cleveland, Ohio 44113

Dear Prosecutor O'Malley:

You have requested an opinion about a peace officer's authority to arrest a person without a warrant for violating a condition of a community control sanction. Specifically, you ask whether a peace officer may detain and arrest a person without a warrant for violating a court's order prohibiting the person from contacting or communicating with another person, when the peace officer does not observe the contact or communication, or when the peace officer observes the contact or communication but the alleged victim consents to the contact or communication. You further ask whether "reasonable ground" in R.C. 2951.08(A)(4) requires less than the "probable cause" necessary to arrest a person without a warrant.

Community Control Sanctions Generally

For the purpose of R.C. Chapter 2951, a "community control sanction" is defined according to the definition provided in R.C. 2929.01. R.C. 2951.01(B). R.C. 2929.01(E) defines a "community control sanction" as:

a sanction¹ that is not a prison term² and that is described in [R.C. 2929.15, R.C. 2929.16, R.C. 2929.17, or R.C. 2929.18] or a sanction that is not a jail term³ and that

¹ As used in R.C. Chapter 2929, "sanction" is defined as "any penalty imposed upon an offender who is convicted of or pleads guilty to an offense, as punishment for the offense." R.C. 2929.01(DD).

² "Prison term" is defined, for the purpose of R.C. Chapter 2929, as either: "[a] stated prison term [or a] term in a prison shortened by, or with the approval of, the sentencing court pursuant to [R.C. 2929.143, R.C. 2929.20, R.C. 2967.26, R.C. 5120.031, R.C. 5120.032, or R.C. 5120.073]." R.C. 2929.01(BB). A "prison" is "a residential facility used for the confinement of convicted felony offenders that is under the control of the department of rehabilitation and correction but does not include a violation sanction center operated under authority of [R.C. 2967.141]." R.C. 2929.01(AA).

is described in [R.C. 2929.26, R.C. 2929.27, or R.C. 2929.28]. “Community control sanction” includes probation if the sentence involved was imposed for a felony that was committed prior to July 1, 1996, or if the sentence involved was imposed for a misdemeanor that was committed prior to January 1, 2004. (Footnotes added.)

R.C. 2929.15 (community control sanctions), R.C. 2929.16 (community residential sanctions⁴), R.C. 2929.17 (nonresidential sanctions⁵), and R.C. 2929.18 (financial sanctions⁶) set forth community control sanctions that a sentencing court may impose as a sentence for a felony offense. Similarly, R.C. 2929.26 (community residential sanctions⁷), R.C. 2929.27 (nonresidential sanctions⁸), and R.C.

³ As used in R.C. Chapter 2929, “jail term” is defined as “the term in a jail that a sentencing court imposes or is authorized to impose pursuant to [R.C. 2929.24 or R.C. 2929.25] or pursuant to any other provision of the Revised Code that authorizes a term in a jail for a misdemeanor conviction.” R.C. 2929.01(S). As used in R.C. Chapter 2929, the term “jail” includes “a jail, workhouse, minimum security jail, or other residential facility used for the confinement of alleged or convicted offenders that is operated by a political subdivision or a combination of political subdivisions of this state.” R.C. 2929.01(R).

⁴ The following are examples of community residential sanctions that may be imposed for a felony: a term in a community-based correctional facility, R.C. 2929.16(A)(1); a term in a halfway house, R.C. 2929.16(A)(4); and a term in an alternative residential facility, R.C. 2929.16(A)(5). Additional examples are set forth in R.C. 2929.16(A)(1) through (A)(5).

⁵ The following are examples of nonresidential sanctions that may be imposed for a felony: day reporting, R.C. 2929.17(A); community service, R.C. 2929.17(C); a drug treatment program, R.C. 2929.17(D); intensive probation supervision, R.C. 2929.17(E); a curfew, R.C. 2929.17(I); and a requirement that a person obtain education or training, R.C. 2929.17(K). Additional examples are set forth in R.C. 2929.17(A) through (N).

⁶ Examples of financial sanctions that may be imposed pursuant to R.C. 2929.18 (felony financial sanctions) include restitution, various fines, and reimbursement for costs. R.C. 2929.18(A).

⁷ Examples of community residential sanctions that may be imposed for a misdemeanor, other than a minor misdemeanor, include: a term in a halfway house or community-based correctional facility and a term in a community alternative sentencing center or district community alternative sentencing center. R.C. 2929.26(A).

⁸ Examples of nonresidential sanctions that may be imposed for a misdemeanor, other than a minor misdemeanor, include: day reporting, R.C. 2929.27(A)(1); community service, R.C. 2929.27(A)(3); intensive probation supervision, R.C. 2929.27(A)(5); basic probation supervision, R.C. 2929.27(A)(6); drug and alcohol use monitoring, R.C. 2929.27(A)(8); and a requirement that the offender obtain employment, R.C. 2929.27(A)(10). Additional examples are set forth in R.C. 2929.27(A)(1) through (A)(14).

2929.28 (financial sanctions⁹) set forth community control sanctions that a sentencing court may impose as a sentence for a misdemeanor offense.

In addition to the community control sanctions set forth in R.C. 2929.16-17 and R.C. 2929.26-.28, a sentencing court may impose other conditions upon the offender, including an order prohibiting the offender from communicating with or contacting another person. *See* R.C. 2929.15(A)(1) (“[t]he court may impose any other conditions of release under a community control sanction that the court considers appropriate”); R.C. 2929.25(C)(2) (“[i]n the interests of doing justice, rehabilitating the offender, and ensuring the offender’s good behavior, the court may impose additional requirements on the offender. The offender’s compliance with the additional requirements also shall be a condition of the community control sanction imposed upon the offender”); R.C. 2951.08(A)(4) (an offender may be arrested without a warrant by a peace officer for violating a condition of the offender’s community control sanction that “prohibits the person from contacting or communicating with any specified individual”).

Arrest for Violating a Condition of a Community Control Sanction

R.C. 2951.08(A) provides, in pertinent part:

During a period of community control, any peace officer¹⁰ may arrest the person under a community control sanction without a warrant if the peace officer has reasonable ground to believe that the person has violated or is violating any of the following that is a condition of the person’s community control sanction:

- (1) A condition that prohibits ownership, possession, or use of a firearm, deadly weapon, ammunition, or dangerous ordnance;
- (2) A condition that prohibits the person from being within a specified structure or geographic area;
- (3) A condition that confines the person to a residence, facility, or other structure;
- (4) A condition that prohibits the person from contacting or communicating with any specified individual;
- (5) A condition that prohibits the person from associating with a specified individual;
- (6) A condition as provided in [R.C. 2929.25(A)(1)(a)] or in [R.C. 2929.15(A)(1)] or [R.C. 2929.27(A)(8)] that requires that the person not ingest or be injected with a drug of abuse and submit to random drug testing and requires that the

⁹ Examples of financial sanctions that may be imposed for a misdemeanor are set forth in R.C. 2929.28(A)(1) through (A)(3), and include restitution, various fines, and reimbursement of costs.

¹⁰ R.C. Chapter 2951 adopts the definition of “peace officer” set forth in R.C. 2935.01. R.C. 2951.01(J).

results of the drug test indicate that the person did not ingest or was not injected with a drug of abuse.

R.C. 2951.08 does not limit a law enforcement officer's authority to arrest without a warrant under R.C. 2935.03. R.C. 2951.08(C).

You ask whether a peace officer may arrest a person, pursuant to R.C. 2951.08(A)(4), for violating a condition of a community control sanction that prohibits the person from contacting or communicating with a specified person under two circumstances. The first circumstance occurs when a peace officer does not see the violation occur, but is told of the violation either by the alleged victim or another witness. The second circumstance occurs when a peace officer observes the person communicating with the specified person in violation of the condition of the community control sanction, but the alleged victim indicates that he consented to the contact. A peace officer's authority to arrest a person under R.C. 2951.08(A)(4) in either of those circumstances hinges upon whether the peace officer has "reasonable ground to believe that the person has violated or is violating" the condition of the community control sanction.

R.C. 2951.08 does not provide any guidance as to the meaning of the term "reasonable ground." In the absence of a statutory definition, we look to the ordinary meaning of the term. R.C. 1.42. *Black's Law Dictionary* does not separately define "reasonable ground." Instead, under the term "reasonable grounds" is a reference to the definition of "probable cause." *Black's Law Dictionary* 1457 (10th ed. 2014). "Probable cause" is defined as "[a] reasonable ground to suspect that a person has committed or is committing a crime or that a place contains specific items connected with a crime." *Id.* at 1395. "Probable cause" is also called "reasonable grounds." *Id.*

Ohio courts have defined "probable cause" as "'a reasonable ground of suspicion that is supported by facts and circumstances, which are sufficiently strong to warrant a prudent person in believing that an accused person had committed or was committing an offense.'" *City of Athens v. Burkhardt*, 4th Dist. No. 16CA8, 2016-Ohio-7534, at ¶ 9 (quoting *State v. Jones*, 4th Dist. No. 03CA61, 2004-Ohio-7280, at ¶ 40); *see also State v. Trainer*, 2d Dist. No. 2014-CA-83, 2015-Ohio-2792, at ¶ 10 ("[t]he substance of all the definitions of probable cause is a reasonable ground for belief of guilt" (internal quotations omitted)). "'Probable cause exists where 'the facts and circumstances within their (the officers') knowledge and of which they had reasonably trustworthy information (are) sufficient in themselves to warrant a man of reasonable caution in the belief that' an offense has been or is being committed.'" *State v. Trainer* at ¶ 10 (quoting *Brinegar v. U.S.*, 338 U.S. 160, 175-76, 69 S.Ct. 1302 (1949)). Stated another way, "[t]he test for probable cause to justify an arrest is 'whether at that moment the facts and circumstances within [the officers'] knowledge and of which they had reasonably trustworthy information were sufficient to warrant a prudent man in believing that the [arrestee] had committed or was committing an offense.'" *State v. Reed*, 5th Dist. No. 16CA50, 2017-Ohio-2644, at ¶ 28 (quoting *Beck v. Ohio*, 379 U.S. 89, 91, 85 S.Ct. 223 (1964)).

Insofar as the meaning of "probable cause" includes the concept of "reasonable ground," we conclude that "reasonable ground" in R.C. 2951.08(A) denotes "probable cause." Thus, applying that meaning to R.C. 2951.08(A)(4), a peace officer may arrest a person under a community control

sanction without a warrant for violating a condition of the community control sanction that prohibits the person from contacting or communicating with another person when the peace officer has probable cause to believe that the person is violating the condition of the community control sanction.¹¹

The General Assembly has used the term “reasonable ground” as a standard for a law enforcement officer to make an arrest in several other sections of the Revised Code. *See, e.g.*, R.C. 2301.31(A) (arrest of parolees without a warrant); R.C. 2935.03(B) (arrest without a warrant); R.C. 2935.04 (arrest by any person); R.C. 2941.46 (arrest for violation of conditional pardon or parole); R.C. 4506.23 (duties of peace officer as to alcohol or controlled substance violations). R.C. 2935.03 provides helpful guidance as to the meaning of “reasonable ground” and the circumstances that constitute a “reasonable ground” for belief. Pursuant to R.C. 2935.03(B)(1), “[w]hen there is *reasonable ground* to believe that ... the offense of violating a protection order ... has been committed[,]” the peace officer may arrest and detain without a warrant “any person who the peace officer has reasonable cause to believe is guilty of the violation.”¹² (Emphasis added.) R.C. 2935.03(B)(3)(a) explains when a peace officer has reasonable grounds to believe that the offense of violating a protection order has been committed and reasonable cause to believe that a person is guilty of committing that offense. Pursuant to R.C. 2935.03(B)(3)(a), a peace officer has reasonable ground to believe the offense has been committed and reasonable cause to believe that a person is guilty of committing that offense when any of the following occurs:

¹¹ It is important to distinguish “reasonable ground” and “probable cause” from “reasonable suspicion.” “Reasonable suspicion” is not easily defined, but has been described as “something more than an inchoate or unparticularized suspicion or “hunch,” but less than the level of suspicion required for probable cause.” *State v. Shepherd*, 122 Ohio App. 3d 358, 364, 701 N.E.2d 778 (Montgomery County 1997) (quoting *State v. Osborne*, No. CA 15151, 1995 Ohio App. LEXIS 5452, at *11 (Montgomery County Dec. 13, 1995)).

¹² R.C. 2935.03(B)(1) also authorizes a peace officer to arrest a person for committing any of the following offenses:

an offense of violence, the offense of criminal child enticement as defined in [R.C. 2905.05], the offense of public indecency as defined in [R.C. 2907.09], the offense of domestic violence as defined in [R.C. 2919.25], ..., the offense of menacing by stalking as defined in [R.C. 2903.211], the offense of aggravated trespass as defined in [R.C. 2911.211], a theft offense as defined in [R.C. 2913.01], or a felony drug abuse offense as defined in [R.C. 2925.01].

We have focused upon the offense of violating a protection order in R.C. 2935.03(B) because the facts leading to an arrest for that offense are similar to those that may lead to an arrest for violating a condition of a community control sanction that prohibits a person from contacting or communicating with another person.

(i) A person executes a written statement alleging that the person in question has committed ... the offense of violating a protection order against the person who executes the statement or against a child of the person who executes the statement.

(ii) No written statement of the type described in division (B)(3)(a)(i) of this section is executed, but the peace officer, based upon the peace officer's own knowledge and observation of the facts and circumstances of ... the alleged incident of the offense of violating a protection order or based upon any other information, including, but not limited to, any reasonably trustworthy information given to the peace officer by the alleged victim of the alleged incident of the offense or any witness of the alleged incident of the offense, concludes that there are reasonable grounds to believe that ... the offense of violating a protection order has been committed and reasonable cause to believe that the person in question is guilty of committing the offense.

(iii) No written statement of the type described in division (B)(3)(a)(i) of this section is executed, but the peace officer witnessed the person in question commit ... the offense of violating a protection order.

Therefore, a peace officer has reasonable ground to believe that a person has committed the offense of violating a protection order based upon a written statement, the peace officer's own knowledge and observation of the facts and circumstances, any other information, including any other reasonably trustworthy information given to the officer from the alleged victim or a witness, or the peace officer's personal observation of the commission of the offense. *Id.*

Even though the explanation of reasonable ground in R.C. 2935.03(B)(3)(a) is provided in the context of, *inter alia*, the offense of violating a protection order, we discern no reason why the same occurrences may not also constitute reasonable grounds for making an arrest without a warrant for the violation of a condition of a community control sanction that prohibits a person from contacting or communicating with another person. *See generally* R.C. 1.49(D) (“[i]f a statute is ambiguous, the court, in determining the intention of the legislature, may consider among other matters ... [t]he common law or former statutory provisions, including laws upon the same or similar subjects”); *Carter v. Div. of Water*, 146 Ohio St. 203, 209, 65 N.E.2d 63 (1946) (“[i]t is proper in the construction of statutes to examine other statutory provisions of a kindred character, particularly in respect to the meaning of language employed in the definition of terms”). It is significant that the General Assembly uses the phrase “reasonable ground to believe” in R.C. 2951.08(A), rather than the phrase “found violating,” which is used in R.C. 2935.03(A)(1).¹³ The phrase “found violating” in R.C.

¹³ R.C. 2935.03(A)(1) states:

A sheriff, deputy sheriff, marshal, deputy marshal, municipal police officer, township constable, police officer of a township or joint police district, member of a police force employed by a metropolitan housing authority ..., member of a police force employed by a regional transit authority ..., state university law enforcement

2935.03(A)(1) has been construed to mean that a person may be arrested without a warrant for a misdemeanor offense only when the peace officer, through his own observations, forms a reasonable basis for believing that a misdemeanor has been committed. *State v. Kirkland*, 2d Dist. No. 26272, 2015-Ohio-1978, at ¶ 21 (“[t]he word ‘found’ in R.C. 2935.03(A) means that the officer must actually see the offense being committed or, from surrounding circumstances, including admissions from the defendant, be able to reasonably conclude that an offense has been committed”); *State v. Reymann*, 55 Ohio App. 3d 222, 563 N.E.2d 749 (Summit County 1989) (syllabus, paragraph 1) (“[a] warrantless arrest for a misdemeanor is invalid where the arresting officer lacks a reasonable basis for believing, through his own personal observation of the act constituting the offense or the admission of the arrestee, that an offense has been committed”).

In contrast, “reasonable ground to believe” does not require a peace officer’s personal observation of facts and circumstances and may be based upon information that the peace officer gathers from other reasonably trustworthy sources. *See State v. Reed* at ¶ 29-30 (reasonable ground and probable cause for a warrantless arrest under R.C. 2935.03(B)(1) may be based upon information relayed to a peace officer from another officer or law enforcement agency); *State v. Chan*, No. 98AP-1271, 1999 Ohio App. LEXIS 3022, at *16 (Franklin County June 30, 1999) (“[i]n addition to the authority to arrest those ‘found violating’ a law in the officer’s presence, R.C. 2935.03(B) confers authority upon officers to make warrantless arrests for certain enumerated misdemeanors committed outside their presence”); *see also State v. Todd*, 2d Dist. No. 23921, 2011-Ohio-1740, at ¶ 39 (contrasting “found violating” in R.C. 2935.03(A)(1) with language of R.C. 2935.03(B)). That a “reasonable ground to believe” may be based upon information gathered by a peace officer from sources other than his personal observations is evident from the General Assembly’s use of the phrase “reasonable ground” in R.C. 2935.03(B)(1) and explanation of occurrences that constitute “reasonable grounds” in R.C. 2935.03(B)(3)(a). As addressed above, a peace officer may find reasonable grounds to believe an offense has been committed based upon, *inter alia*, “any other information, including ... any reasonably trustworthy information given to the peace officer by the alleged victim ... or any witness[.]” R.C. 2935.03(B)(3)(a)(ii).

officer ..., veterans’ home police officer ..., special police officer employed by a port authority ..., or a special police officer employed by a municipal corporation at a municipal airport, or other municipal air navigation facility ... *shall arrest and detain*, until a warrant can be obtained, *a person found violating*, within the limits of the political subdivision, metropolitan housing authority housing project, regional transit authority facilities or areas of a municipal corporation that have been agreed to by a regional transit authority and a municipal corporation located within its territorial jurisdiction, college, university, veterans’ home ..., port authority, or municipal airport or other municipal air navigation facility, in which the peace officer is appointed, employed, or elected, *a law of this state, an ordinance of a municipal corporation, or a resolution of a township*. (Emphasis added.)

Just as R.C. 2935.03(B)(1) does not require a warrantless arrest for certain offenses to be based upon a peace officer's personal observation of facts and circumstances, R.C. 2951.08(A) does not require an arrest for a violation of a condition of a community control sanction to be based upon a peace officer's personal observation of the violation of the condition or personal observation of other facts and circumstances of the violation of the condition. Therefore, we conclude that a peace officer may find a reasonable ground to believe that a violation of a condition of a community control sanction under R.C. 2951.08(A)(4) has occurred when the peace officer observes the person subject to the community control sanction engaging in the proscribed contact or communication, or when the peace officer does not observe the contact or communication, but receives reasonably trustworthy information from a witness or the victim leading the peace officer to reasonably believe that the person violated a condition of his community control sanction.

Whether the alleged victim consents to the contact or communication does not preclude an arrest under R.C. 2951.08(A)(4) when the peace officer otherwise has reasonable ground to believe that the person is violating or has violated a condition of a community control sanction.¹⁴ In a similar context, the Ohio Supreme Court has stated that whether the protected party under a protection order initiates or consents to contact is irrelevant to a determination of whether the respondent is culpable for a violation of the protection order. *State v. Lucas*, 100 Ohio St. 3d 1, 2003-Ohio-4778, 795 N.E.2d 642, at ¶ 27. The court noted that the protection order statutes contemplate that the parties may have contact with each other in violation of the protection order, but does not provide for any penalty against the protected party. *Id.* at ¶¶ 24-28. The court construed the absence of a penalty against a protected party as the General Assembly making "an invitation by the petitioner for the respondent to violate the terms of a protection order irrelevant to a respondent's guilt." *Id.* at ¶ 39. The court further reasoned that "[p]rotection orders are about the behavior of the respondent and nothing else. How or why a respondent finds himself at the petitioner's doorstep is irrelevant." *Id.*

Although the court in *Lucas* did not interpret a violation of a condition of a community control sanction under R.C. 2951.08(A)(4), the court's reasoning about the nature of a protection order is applicable to the nature of a condition of a community control sanction that prohibits a person from contacting or communicating with another person. The intended consequence of both orders is to prohibit behavior by the person who is subject to the order. The conduct sought to be prohibited by the condition of a community control sanction that prohibits contact is that of the person under community control, not the behavior of the person protected by the condition of the community

¹⁴ The language used by the court in establishing a condition of a community control sanction that prohibits a person from contacting or communicating with another person is determinative of whether the person under community control has committed a violation of a condition of that sanction. If the court's order permits contact or communication that the specified person consents to, then the person subject to the court's order does not violate the condition of the community control sanction if the contact or communication occurs in accordance with the terms of the order. For the purpose of this opinion, however, we presume that the condition of the community control sanction does not include an exception for contact or communication to which the specified person consents.

control sanction. Accordingly, we conclude that a peace officer is not precluded from arresting a person under R.C. 2951.08(A)(4) when the alleged victim consents to the contact or communication, so long as the peace officer otherwise has reasonable ground to believe that the person is violating or has violated the condition of a community control sanction.

Conclusions

Based upon the foregoing, it is my opinion, and you are hereby advised that:

1. Pursuant to R.C. 2951.08(A)(4), during a period of community control, a peace officer may arrest a person without a warrant for violating the condition of a community control sanction that prohibits the person from contacting or communicating with another person, when the peace officer does not observe the contact or communication, or when the peace officer observes the contact or communication but the alleged victim consents to the contact or communication, provided that the peace officer has reasonable ground to believe that the person has violated or is violating the condition of the person's community control sanction.
2. "Reasonable ground," as that term is used in R.C. 2951.08(A)(4), constitutes "probable cause" and may be found based upon a peace officer's own observation of the violation of a condition of a community control sanction or based upon any other information received by a peace officer, including any other reasonably trustworthy information given to the officer by the alleged victim or a witness.

Very respectfully yours,

A handwritten signature in blue ink that reads "Michael Dewine". The signature is written in a cursive, flowing style.

MICHAEL DEWINE
Ohio Attorney General