

IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT
IN AND FOR OKEECHOBEE COUNTY, FLORIDA

CRIMINAL DIVISION

ORDER REGARDING PRETRIAL MOTIONS

This order applies to all felony cases pending in this division.

1. Motions must be in writing and set for hearing at least 14 days prior to trial.

Generally, *ore tenus* motions are not a good practice. They are contrary to due process rights to have reasonable notice and an opportunity to be heard. For example, in *Ingaglio v. Ennis*, 443 So. 2d 459 (Fla. 4th DCA 1984), the court was confronted with a case where a party “had absolutely no notice of any *ore tenus* motion or hearing thereon...” The court held, that absent extraordinary circumstances, proper notice of a motion should include written notice served a reasonable time before the time specified for the hearing. Similarly, in *Herman v. Herman*, 565 So. 2d 835 (Fla. 3rd DCA 1990), the court explained that generally, “fundamental concepts of due process require a party to file a written pleading and provide appropriate notice to all parties concerned.”

These holdings are reflected in the Florida Rules of Criminal Procedure, specifically, Fla. R. Crim. P. 3.190(a), which provides:

Every pretrial motion and pleading in response to a motion ***shall be in writing*** and signed by the party making the motion or the attorney for the party. This requirement ***may*** be waived by the court for good cause shown. Each motion or other pleading ***shall*** state the ground or grounds on which it is based. A copy ***shall*** be served on the adverse party. A certificate of service ***must*** accompany the filing of any pleading. (emphasis added).

All pretrial motions (e.g., motions to dismiss, motions to sever counts, motion to sever defendants, motions to suppress) must be in writing, filed with the clerk, served on opposing

counsel and set for hearing. *Ore tenus* motions made on the eve of trial, or during trial, will not be considered unless good cause is shown. The exception would be *simple ore tenus* motions in limine dealing with *standard evidentiary issues*.

ALL PRE-TRIAL MOTIONS MUST BE SET FOR HEARING AT LEAST 14 DAYS PRIOR TO TRIAL. DO NOT THINK THAT YOU CAN FILE AN UNTIMELY MOTION TO SUPPRESS, DISMISS OR SEVER ON THE EVE OF TRIAL OR THE DAY OF TRIAL BY SIMPLY CAPTIONING IT AS A “MOTION IN LIMINE”

2. Motions to Suppress Must be Filed and Set for Hearing at least 14 Days prior to Trial.

Motions to suppress must be filed and set for hearing prior to announcing ready for trial, and in no event less than 14 days before trial.

Fla. R. Crim. P. 3.190(4) provides:

Time for Filing. --The motion to suppress *shall be made before trial* unless opportunity therefor did not exist or the defendant was not aware of the grounds for the motion, but the court may entertain the motion or an appropriate objection at the trial.

As the court explained in *Powell v. State*, 717 So. 2d 1050, 1052 (Fla. 5th DCA 1998), *rev. denied* 727 So. 2d 909 (Fla. 1998) :

One of the purposes of pretrial procedure orders is to avoid unnecessary delay of trials, and to permit both the defendant and the state to know before trial what issues and evidence will be allowed or received in evidence at trial. [citation omitted] Similarly, rule 3.190(h)(4) is designed to promote the orderly process of a trial by avoiding the *problems and delay caused when a judge must interrupt the trial, remove the jury from the courtroom and hear arguments and testimony on a motion to suppress that could have easily been disposed of before trial*. *Savoie v. State*, 422 So. 2d 308 (Fla. 1982).

Filing a suppression motion seven days before trial and not attempting to set it for hearing prior to trial causes the same delay and confusion the rule was designed to prevent. Such motions should be heard and disposed of in advance of the trial date

for many reasons, if at all possible. It avoids the delay and confusion at trial mentioned by *Savioe*. It also enables each party to plan the orderly presentation of their case, knowing what evidence or testimony will or will not be admissible. Further, it allows the state an opportunity to appeal the ruling if the motion to suppress is granted. Fla. R. App. P. 9.140(c)(1)(B).

In these two cases, there appears no good reason for defense counsels' failure to comply with the trial court's orders. Nothing has been offered by way of mitigating circumstances. We must conclude defense counsels' actions in these cases were engaged in as a means to delay or obtain a continuance of the trial, and to frustrate witnesses who had been subpoenaed for trial. Under these circumstances, we do not find that the trial court abused its discretion.

See also, Clark v. State, 985 So. 2d 637, 639 (Fla. 4th DCA 2008)(the trial court did not abuse its discretion in refusing to delay trial for an evidentiary hearing on the newly filed motion to suppress). The failure to timely file will be deemed a waiver of the suppression issues.

3. Motions to Suppress Must be Legally Sufficient.

Too many motions to suppress are legally insufficient. They are boilerplate motions containing only vague, conclusory statements of fact and cite no statutory or decisional law (usually just sweeping references to the 4th or 5th amendments).

Florida Rules of Criminal Procedure, Rule 3.190 (h) provides:

(2) Contents of Motion. --Every motion to suppress evidence shall state clearly the particular evidence sought to be suppressed, the reasons for suppression, and a **general statement of the facts on which the motion is based.**

(3) Hearing. --**Before hearing evidence, the court shall determine if the motion is legally sufficient. If it is not, the motion shall be denied.** If the court hears the motion on its merits, the defendant shall present evidence supporting the defendant's position and the state may offer rebuttal evidence.

Fla. R. Crim. P. 3.190 (h)(2) and (3), emphasis added; *See also, Gadson v. State*, 600 So. 2d 1287, 1289 (Fla. 4th DCA 1992).

See, Ross v. State, 779 So. 2d 300, 301 (Fla. 2nd DCA 1999)(Ross filed a seven page motion whichrequested suppression of evidence based upon an ***eighteen paragraph factual***

recitation and the citation of eleven authoritative cases. Defense counsel was unsuccessful before two different judges in obtaining an evidentiary hearing on the motion.). While the court encourages brevity, and does not expect a seven (7) page motion on every suppression issue, the Rule does require something more than bare-bones, boilerplate motions.

It cannot be denied that judicial resources are an extremely limited commodity, which must be rationally apportioned. The court will not set an hour long hearings on motions of uncertain merit. Both the rule and judicial economy require something more before an evidentiary hearing is required. Legally insufficient motion will be denied without prejudice to file a motion which complies with Fla. R. Crim. P. 3.190 (h)(2). A legally sufficient motion must contain a statement of facts¹ as well as *citing all applicable statutory and decisional law* in support of the motion. (Copies of cases and statutes do *not* need to be provided, only the citations).

4. Known Pretrial Objections to Audio or Video Evidence Must be made at least 14 days Before Trial.

The case of *Sparkman v. State*, 902 So. 2d 253, 258 (Fla. 4th DCA 2005) illustrates the problems of waiting until trial to insist on redacting or editing audio or video tapes in the middle of trial while the jury waits outside:

During trial, when the state offered the videotape of Sparkman's statement [defense counsel] objected on the basis that there were "significant portions" of the interview where (1) the detective does most of the talking and is not related to any question and (2) "there are some statements that he makes that are responded to either with silence or not necessarily that the transcriptionist says are uh huh, which is not really an admission." **Defense counsel admitted that the prosecutor had asked him to review the tape and provide his objections pre-trial, but he declined to do so.** The prosecutor had also excised two portions on his own, which as an officer of the court he felt needed to be removed. **The prosecutor explained that defense**

¹ The motion may request that the court take judicial notice of the arrest affidavit, *Campuzano v. State*, 771 So. 2d 1238, 1240 (Fla. 4th DCA 2000)(courts may properly take judicial notice of the contents of the court file in a case on a motion to suppress under Rule 3.190.)

counsel knew that it would take a full day to edit the tape and that the court did not want the jury waiting that long.

* * *

The first issue presented is a purely legal question -- whether Sparkman's objections to Brock's statements had to be made pretrial. ... While it is **always good practice** for counsel to raise known objections pretrial, and **counsel may be compelled to do so by order of the court**, Rule 3.190 does not require Sparkman to object pretrial to raise the instant issue.

While the appellate court held that 3.190 does not require counsel to raise objections prior to trial, they may be ordered to do so by the court, as the court is doing here. The failure to timely raise specific objections will be deemed a waiver of the objections.

5. Hearings on Motions lasting more that 30 minutes May not be Cancelled Without Court Approval.

Too often, the court will set aside valuable court time for a long hearing, only to be told the day of the hearing that the attorney “cancelled” the hearing. This hearing time is then unavailable to other litigants. Hearings in excess of 30 minutes will **not** be canceled unless: (1) a hearing is held to continue the hearing for extraordinary and unforeseen grounds; or (2) the movant waives the relief requested in writing; or (3) a stipulation and order is submitted to the court for signature in advance of the hearing that fully resolves the issue(s), or (4) the case is fully resolved by plea or otherwise, prior to the hearing date.

6. Counsel must also make a good faith effort to coordinate the scheduling of evidentiary motions, to ensure that witnesses are available for the hearing.

DONE AND ORDERED in Okeechobee County, Florida this 5th day of January 2010.

ROBERT BELANGER
CIRCUIT JUDGE

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