

Tenth Circuit

Legal Advisor

Jerry Hill, State Attorney



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HELP DUMP DEPOSITIONS....

Recently the Florida Department of Law Enforcement undertook an effort to urge the Florida Supreme Court and the Florida Legislature to do away with the depositions in criminal cases. This is an effort I heartily support.

Each of you knows better than the public at large the high cost of depositions. Just think of how many times you have had to take hours away from work or from your day off to sit and wait to be deposed. Statewide, the estimates are that depositions cost law enforcement 750,000 man hours a year. Moreover, we are all aware of times when defense attorneys have unfairly used depositions to make witnesses look bad by pointing out minor inconsistencies in testimony. Often these inconsistencies are irrelevant to the real issues in the case.

One little-known fact is that in the nation as a whole, depositions are the exception and not the rule. Indeed, most states and the federal government do not allow depositions except to preserve testimony. Fortunately, bills are being introduced in the legislature this year to put Florida in the majority and repeal the rules allowing depositions. However, the success of these bills is not assured, and the criminal defense bar is already lobbying hard to prevent their passage.

Accordingly, I would urge each of you to contact your legislative delegation and let them know how law enforcement feels about depositions in criminal cases.

Thank you for your support in this important matter. Keep up the good work.

What makes a founded suspicion

An anonymous informant called police and told them that two weeks earlier she had seen bails of marijuana being unloaded from a truck parked in a garage of a home in her neighborhood.

She also reported that many vehicles came and left at night including the night she called.

The police set up a surveillance of the house and observed a truck being driven out of the garage, a car backing into the garage and someone shutting the garage door.

Another car then drove up with its headlights off and also backed into the garage.

Later the two cars drove away.

The officers watching the house

had other officers stop one of the cars.

When they did so the driver consented to a search and they found several bails of marijuana.

Shortly thereafter they stopped the other car and found bails of marijuana in it also. Both drivers were charged.

The trial court denied a motion to suppress, finding that the stops were based on a well-founded suspicion of criminal activity.

The defendants pled no contest and appealed.

The Third District affirmed.

Pickersgill v. State 12 FLW 2757
(Fla. 3d DCA Dec. 8, 1987).

More latitude in arrest and impoundment searches

The defendant was charged with drug related offenses and filed a motion to suppress.

The evidence at the hearing showed that he was driving his car at a high speed.

He skidded off the road and into a ditch where he was arrested, handcuffed, and placed into a police cruiser.

The arresting officer then called a tow truck to impound the car without giving him an opportunity to arrange for an alternative disposition.

About ten minutes later the officer searched the car and found drugs and paraphernalia.

The trial judge granted the

motion to suppress, finding that the search was an impound inventory search and that the defendant had not been apprised of reasonable alternatives to impoundment.

On appeal, the Second District reversed, holding that the search was a proper search incident to an arrest.

The Court also held that even if the search had not been a proper incident search, it was a valid inventory search because under recent United States Supreme Court cases an officer no longer need ask a defendant if he has reasonable alternative to impoundment.

State v. Williams, 12 FLW 2902 (Fla. 2d DCA Dec. 16, 1987).

Visitor's status during a warrant search

The defendant was charged with possession of marijuana and filed a motion to suppress.

Evidence at the hearing on the motion established that they were
(See "Search" next page)

"Search"

visiting a home when officers executed a search warrant there authorizing the search of the premises and the curtailage thereof.

They were arrested after contraband was found in various places in the house and marijuana was found in a van owned by them which was parked on the premises.

The trial court denied the motion to suppress and the defendants entered pleas of no contest reserving their right to appeal.

On appeal, the First District reversed, holding that the search warrant did not cover the defendants or their vehicle.

Miller v. State, 12 FLW 2912 (Fla. 1st DCA Dec. 18, 1987).

Investigative Procedures

By Mike Cusick

Almost six months have passed since the start of the new felony intake system.

I want to take time this month to review some of the rules of this system to answer some of the common questions that we get.

These rules apply to charges filed on all adults involving a felony and any misdemeanors filed with the felony.

It does not apply to juveniles or to adults charged with murder in the first degree, trafficking in controlled substances, worthless

check charges, complicated arson cases (handled by David Bergdoll) or sex offenses involving child victims.

1. All police reports (local and non-local) must be sworn to. The filing agent is responsible for obtaining reports from other agencies.
2. Taped sworn statements must be taken from all eye witnesses.
3. Typed affidavits must be submitted from all other witnesses (no handwritten affidavits will be accepted).

4. Two copies of all documentation except the witness list must be submitted on each arrest and non-arrest case.

5. A witness list and evidence list must be submitted with every case.

6. The witness list must include the names of all civilian and law enforcement witnesses.

7. A lab transmittal sheet showing the FDLE lab number must be submitted on all drug cases.

8. A Case Filing Checklist must be attached to the top of each non-arrest case when it is filed.

9. Non-arrest cases should not be submitted until the investigation is complete.

10. On arrest cases, the completed investigation should not be submitted until the Request for Information is received.

11. A copy of the Request for

Information form should be retained by the case filing officer. That way, if supplemental reports need to be sent in, a copy of the Request for Information form can be used to route the documents to the right person.

12. In the same way, if a First Draft form is received back, a copy of that form can be used to send additional reports to us.

13. In case a Request for Information or First Draft form is not available, this month we shall be sending all agencies a supplemental report routing form which can be used. In February, we will start returning felony reports and affidavits which do not have one of the appropriate forms attached.

14. We will be sending out fill-in-the-blanks affidavit forms this month which can be used for burglary and theft victims when they are not eye witnesses to the actual crime.

**10th Judicial Circuit
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Jerry Hill.....Publisher
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6. The witness list must include the names of all civilian and law enforcement witnesses.

7. A lab completed sheet showing the WDE lab number must be submitted on all drug cases.

8. A Case Filing Checklist must be attached to the top of each document case which is filed.

9. Document cases should not be submitted until the investigation is complete.

10. On most cases, the completed investigation should not be submitted until the Report for Investigation is received.

11. A copy of the Report for