

Legal Advisor

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TEN TIPS TO GETTING YOUR FELONY CASES FILED

by Michael Cusick, Felony Intake Director



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Most officers expect that most, if not all, of the felony arrest cases that they make will result in criminal charges being filed. While that is generally the case, there are some borderline cases that could go either way, depending on the quality of the investigation and the thoroughness of the reports. This article will identify ten areas in which the actions taken by the investigating officer may make the difference between a case being filed or no billed.

1. The interview of the defendant can often make or break a case. Obtaining a statement from the defendant is useful for three reasons: First, admissions from the defendant may establish some or all of the elements of the offense. Second, if the defendant is lying, at least the statement locks the defendant into a

given set of facts which can be used against him in the prosecution. Finally, the defendant's statement may establish that the defendant is actually not guilty of a crime. Any officer conducting a criminal investigation needs to pursue justice which sometimes means establishing that a crime did not occur or that the defendant is not the person who committed the crime. Even in cases in which the officer thinks the case is strong, admissions from the defendant make the case even stronger. If a court later suppresses physical evidence in a case, a seemingly strong case that might have been dropped otherwise, may still be prosecuted because of the confession.

2. Always identify in your report why you made contact with the defendant. We were not at the scene. A simple sentence

TEN TIPS TO GETTING YOUR FELONY CASES FILED

...Continued from Page 1...

or two outlining how and why you made contact with the defendant will normally cover the legality of the contact. For instance, you saw the defendant behind a closed business at three in the morning, or you came in contact with the defendant because he matched a BOLO for a robbery suspect.



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We are left with two options: First, we can continue the case and request a supplement satisfying the requirements of F.S. 901.151. Second, if time does not permit the continuance, we are forced to no bill the case since a legal basis for the search has not been established. This dilemma may be avoided if the officer lays out in the report the facts that satisfy the requirements of

the statute.

3. When doing a search, always try to obtain consent. You may think you are on solid legal grounds for the search, but a judge may decide otherwise later. If you obtained consent, it doesn't matter if the judge later finds you didn't have probable cause or a reasonable suspicion.
4. There is no "officer safety" catch-all that allows an officer to pat down anyone with whom the officer has contact. The law relating to pat downs is spelled out in Florida Statute 901.151. Initially, in order to detain a suspect, you must have facts that, "*reasonably indicate that such person has committed, is committing, or is about to commit a violation of the criminal laws of this state or the criminal ordinances of any municipality or county.*" Then, in order to conduct a pat down, the officer must have, "*probable cause to believe that any person whom the officer has temporarily detained, or is about to detain temporarily, is armed with a dangerous weapon and therefore offers a threat to the safety of the officer or any other person.*" Very often we see a narrative in a report leading up to the seizure of contraband which merely states: "During a search for officer safety..."

5. In stolen motor vehicle cases, the officer must establish that the defendant knew that the vehicle was stolen. Do not assume that since the defendant was driving the vehicle the defendant must have known it was stolen. We cannot obtain convictions based upon assumptions. There are three common ways of showing guilty knowledge. First, the driver is known to the victim and the victim can state that the driver did not have permission to take the vehicle. Second, the steering column is damaged and the vehicle has been "hot-wired." Third, the defendant admits to stealing the motor vehicle or driving it knowing that it was stolen. Simple questions of the driver regarding where he obtained the vehicle and how long he has had the vehicle may elicit the facts to show guilty knowledge. Try to verify or disprove the defendant's story. Question his statements and point out contradictions and inconsistencies. While flight may be helpful, defendants are known to flee for other reasons such as a suspended license or an outstanding warrant.
6. Drug cases require establishing knowledge and control of the contraband. The typical problem

TEN TIPS TO GETTING YOUR FELONY CASES FILED

...Continued from Page 2...

case involves a motor vehicle occupied by one or more individuals in which the drugs are not in plain view. We look to the officer's report to document facts connecting the defendant to the drugs. A statement from another occupant of the vehicle usually is not helpful since it is a self-serving statement meant to eliminate suspicion that the drugs belong to the suspect giving the statement. Often admissions from the defendant are key to establishing both knowledge and control.

7. One way to obtain admissions in a multi-occupant vehicle drug case is to place two defendants together in a patrol car with a tape recorder running. A defendant does not have an expectation of privacy to any conversations that occur in your patrol car. In addition, you do not have to inform the defendants that they are being recorded. If an admission is made as to knowledge and control of the drugs, such statements can be used against the admitting defendant.
8. Traffic stops should not be based upon a cracked windshield or a broken tail light. The Florida Supreme Court in Hilton v. State, 961 So. 2d 284 (Fla.2007), ruled that a stop based upon a cracked windshield is not permissible unless the damage to the windshield is in such an unsafe condition that it poses a danger to persons or property. Further, the Second District Court of Appeal, in Zarba v. State, 32 Fla. L. Weekly D2745 (Fla. App. 2 Dist), ruled that a single non-working rear brake light on a vehicle equipped with three brake lights does not constitute a violation of the law. There are usually other bases for stopping a vehicle, so why rely on one that rests on shaky legal

ground?

9. Whenever possible, tape the interview of the defendant. Taped admissions from the defendant eliminate the defense attorney's attempt to claim that you made up or misunderstood the statements made by the defendant. You do not have to tell the defendant that you are taping the conversation. Pursuant to your criminal investigation, you are permitted to tape an interview of the defendant without the defendant's knowledge or consent. Quite often, when you tell a defendant that you are going to record the interview, the defendant clams up. There appears to be a mistaken belief among the criminal element that if a confession is not recorded it cannot be used in court. Don't give the defendant an opportunity to refuse a taped interview. Tape the conversation without the defendant's knowledge.
10. If you have a consensual encounter with a suspect. Make sure that everything that you do occurs with the consent of the suspect. Do not instruct the suspect to do something. Phrase everything in the form of a question. Make it clear to the suspect that he or she is not under arrest and is free to go. The courts consider the consent withdrawn if, at any point, the suspect objects to the search either verbally or physically.

In conclusion, avoid the pitfalls I have described and take time to write a thorough and complete report. We have never filed a no bill because a report was too long. We have no billed many cases, however, in which the report failed to cover the elements of the crime or failed to explain the legal basis for the officer's actions.



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A GUIDE TO TAPED STATEMENTS

BY LORENA DIAZ, INVESTIGATOR

Increasingly, it has become more difficult than ever to locate victims and witnesses in felony and homicide cases. As you are aware, it may take as long as a year or more before a case goes to trial, especially homicide cases. In that year or more, those victims and witnesses may move out of the county or even out of Florida. When that happens, we rely on your reports for indicators as to where we might locate these people. For this reason, it is imperative that you, the investigating officer or case filing agent, obtain as much information as possible during the course of your initial investigation. One of the most logical times (and place) to obtain this information is during your taped interviews. Here are some tips on information to obtain before, during and after these interviews.

Before you begin your interview, you should take a moment to confirm the person's identity by asking for a driver license or some other form of identification. This way, you can ensure that the person you are interviewing is who he or she says they are. You should also instruct the victim or witness to speak loudly and clearly during the interview. For example, ask them to respond "yes" or "no" to your questions instead of nodding or shaking their head. Instruct them to wait for you to complete your questions before they answer and not to talk over you. This will make it easier for whomever is transcribing the statement to hear the questions and the responses and less "inaudibles" throughout the transcription.

During the interview, you should begin by covering the basic information such as the date, time, your name, the location of the interview, your agency case number, the name of the person you are interviewing and the name of other persons present. Make sure to swear in your victim or witness. Instead of writing everything down in a separate notebook, cover all your bases on tape by asking these individuals at the beginning of the interview for their name, address, home and cell phone numbers, date of birth, Social Security number, driver license number, place of employment and work telephone number. Also, asking the name, address and phone number of a **stable** relative ensures that we have someone who can get in touch with this person a year or more later. If your case involves two or more defendants, please make sure that the witness specifies what each defendant said and did. In describing the event, do not allow the witness to use "they said" or "they did". (See the "Taped Statement Guide" included as an attachment to this month's issue of the Legal Advisor.)

After the interview, make a mental note of everything you covered and what **you should have covered** during the statement. If you find that you forgot to mention something important, go back on tape and cover those areas.

By following these steps, you will be sure to have all the information you need to complete your reports and file your case. It will also be on record for future use in the event that a victim or witness relocates before the case goes to trial.