



# LEGAL ADVISOR

OFFICE OF THE STATE ATTORNEY  
TENTH JUDICIAL CIRCUIT

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June 2010

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By: Jay Wagner

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**Hardee County**

124 South 9th Avenue  
Wauchula, FL 33837  
Phone: (863)-773-6613  
Fax: (863)-773-0115

**Highlands County**

411 South Eucalyptus  
Sebring, FL 33870  
Phone: (863)-402-6549  
Fax: (863)-402-6563

**Polk County**

P.O. Box 9000, Drawer SA  
Bartow, FL 33831-9000  
Phone: (863)-534-4800  
Fax: (863)-534-4945

**Child Support Enforcement**

215 N. Floral Avenue  
Bartow, FL 33831  
Phone: (863)-519-4749  
Fax: (863)-519-4759

**Lakeland Office**

930 E. Parker Street, Suite 238  
Lakeland, FL 33801  
Phone: (863)-802-6240  
Fax: (863)-802-6233

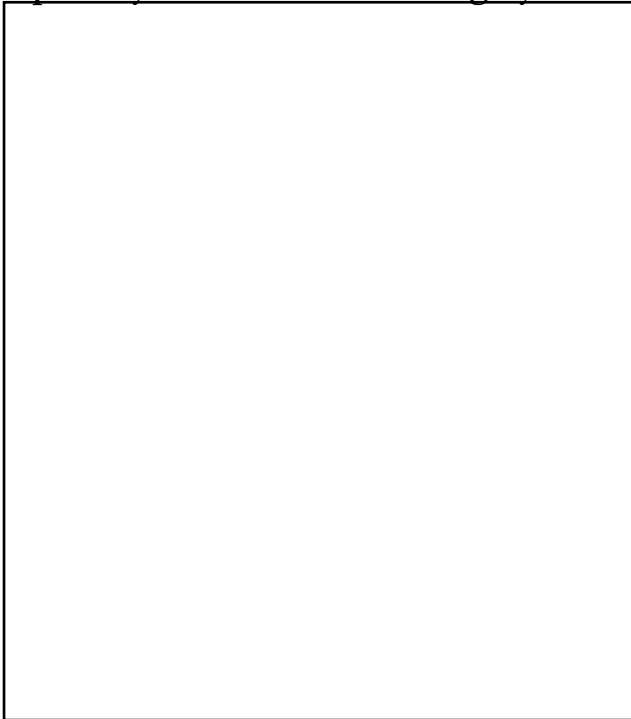
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# PROSECUTING CASES WITH FORGED OR COUNTERFEITED DOCUMENTS

By: Jay Wagner, Felony Intake

The patrol officer or deputy is the gateway by which many cases enter the Criminal Justice System. That being said, it is essential that the responding officer or deputy collect and assemble as much evidence as possible while the parties involved are present. This is especially true in fraud and forgery cases.



The typical case for the patrol officer or deputy involves responding to a pharmacy, bank, or check cashing business in response to a reported fraudulent prescription or check. As with any other call for service, you should be formulating in your mind how you are going to approach the call upon arrival. As Biff Lagan, a long-time fraud investigator, once put it, you should be looking to: "Put a body with a document." In other words, you need to be asking yourself what person would the prosecutor be relying upon in order to introduce the fraudulent prescription or check as evidence. In the case of a prescription, that obviously would be the physician whose name appears on the prescription pad being used or whose

name was used on a called-in prescription. In the case of a check, it would be the account holder. Obviously, these people are not usually going to be present when you arrive at the scene of the call. Therefore, it is extremely important that you verify in some way that the prescription or check is in fact fraudulent, be it by telephone, having another officer confirm with the victim that the document is fraudulent, etc. Sometimes the victim is an individual. On other occasions it is a company or corporation. If it is a company or corporation, you will need to find the person within that business who can testify that the document is fraudulent. Having verified that the document is fraudulent, make sure you obtain enough information from that point of contact so that you (or the assigned investigator) can re-contact that person for a sworn statement or affidavit, as that person is a material (necessary) witness.

A second material witness will be the person who interacted with the suspect at the time of the transaction. This typically is a pharmacist, pharmacy technician, bank teller, store cashier, or a clerk at a check-cashing establishment. If an arrest is made at the scene, a sworn, taped statement from the witness is usually better as it provides more detail as to what the person may have said upon leaving the document or returning to pick it up when it is fresh in that witness' mind, and there may be some other information that the witness is aware of which an affidavit typically does not cover (such as familiarity with the suspect). If the witness cannot provide much detail but can verify that he or she handled the transaction, a teller affidavit in that instance will usually suffice.

## PROSECUTING CASES WITH FORGED OR COUNTERFEITED DOCUMENTS

Having addressed the testimonial evidence in this type of case, do not forget there may be additional physical evidence that would assist the prosecution. Many of the previously mentioned businesses have video surveillance. Try to obtain a copy of that surveillance immediately. This is not always possible as some businesses maintain video surveillance off-site, so arrangements may need to be made with the manager or loss prevention personnel to assist you in obtaining that evidence as soon as possible.



*Assistant State Attorney Jay Wagner works in the Felony Intake division. Prior to working at the S.A.O., Jay was a deputy for the PCSO and the Orlando Police Department.*

It is also important to question the defendant with regard to the document. Quite often the defendant's statement helps to convict the defendant. We sometimes see that the officer does not bother questioning the suspect, assuming that there is sufficient evidence to convict. From my experience, there is never too much evidence in a case. Sometimes the existence of a confession or some admissions may make the difference between a plea and a trial.

Finally, do not forget that each and every piece of documentary evidence should be copied and included in your felony packet. Doing so ensures that the Felony Intake attorney evaluating your case has a clear picture of what the physical evidence looks like and whether that evidence appears sufficient to result in a conviction at a jury trial. Additionally, each document contains essential information that has to be included in the charging document itself when the prosecutor files formal charges.

The above guidelines are, of course, meant for the typical case. Each case is different and the circumstances you find yourself involved in may be more complex or may differ significantly from the above example. Each agency has an assigned Felony Intake attorney available to it to answer questions that may arise during the course of an investigation and your agency should have a list of contact numbers for that person as well as other Assistant State Attorneys available for advice. You should utilize that resource when necessary as it is the best way to ensure that a case is prosecutable.

### Coming Next Month:

Warrantless Searches of  
Probationers  
By: Gary Allen



<http://www.sao10.com>

**Bartow Phone Numbers:**

SWITCHBOARD	534-4800
MISDEMEANOR INTAKE	534-4927
MISDEMEANOR	534-4926
DOMESTIC VIOLENCE	534-4882
VICTIM ASSISTANCE	534-4987
FELONY INTAKE	534-4987
FELONY	534-4964
INVESTIGATIONS	534-4804
VIOLATION OF PROBATION	534-4803
CHILD ABUSE	534-4857
HOMICIDE DIVISION	534-4959
ON CALL PHONE	860-8243
WORTHLESS CHECKS	534-4874
JUVENILE DIVISION	534-4905
FAX-MALROOM	534-4945
WITNESS MANAGEMENT	534-4021
MISDEMEANOR/TRAFFIC	534-4020
WITNESS MANAGEMENT	534-4020
FELONY	534-4020

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## FROM THE COURTS...

### IN FLEEING CASE, PATROL CAR NEEDS TO BE DESCRIBED IN DETAIL.

The defendant was charged with fleeing to elude an officer in a patrol vehicle with agency insignia and other jurisdictional markings prominently displayed on the vehicle and with light and siren activated. At his trial, the officer involved testified that he was driving a marked patrol car with lights on top and that he was wearing the same uniform he was wearing at the trial. He said that in order to try to stop the defendant, he engaged his exterior lights and activated his siren. The defendant was convicted as charged. On appeal, the First District reversed, holding that the state failed to prove that agency insignia and other jurisdictional insignia were prominently displayed on the officer's patrol car. *Slack v. State*, 35 FLW D152 (Fla. 1st DCA Jan. 12, 2010).

### PRE-CHARGE LINEUPS DO NOT REQUIRE COUNSEL.

The defendant was charged with first-degree murder and filed a motion to suppress photographic and live lineups. The facts on which the motion was based were that when the police did the lineups of the defendant, who had not yet been charged, they did not offer him assistance of counsel. The trial court denied the motion, and the defendant was subsequently convicted as charged. On appeal, the Florida Supreme Court affirmed, holding that the defendant was not entitled to the assistance of counsel in relation to the lineups because he was not charged with the murder at the time they were conducted.

*McLean v. State*, 35 FLW S108 (Fla. Feb. 11, 2010).

### KNIFE WAS MORE THAN COMMON POCKET KNIFE.

The defendant, a juvenile, was charged with battery on a school employee, a third-degree felony. At his trial, the evidence established that he threw a stapler at another student. However, his aim was poor, and the stapler hit a school employee. Using the transferred intent doctrine, the Court found the defendant guilty as charged. On appeal, the Fifth District reversed and reduced the conviction to simple battery, holding that the transferred intent doctrine is inapplicable to enhance the severity of a crime against an unintended victim. *S.G. v.*

*State*, 35 FLW D483 (Fla. 5th DCA Feb. 26, 2010).