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

CRIMINAL DIVISION

ORDER REGARDING PRETRIAL MOTIONS (Rev. 01/19)

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

1. All Motions must be in writing.

Florida Rules of Criminal Procedure 3.190(a), 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 or an *ore tenus* motion to continue.

2. <u>All Pretrial Motions</u> Must be Filed and Set for Hearing at least 14 Days prior to Trial.

<u>All pretrial motions</u>, including motions to suppress or sever must be filed and set for hearing prior to announcing ready for trial, and in no event less than 14 days before ***trial***. *** If the case has been pending for more than ***365 days***, then the motions must be filed and set for hearing at least 14 days prior to the next ***docket sounding***. Sometimes counsel will wait until the last minute

to file pretrial motions in old cases that have been continued more than a dozen times. The court may not grant additional continuances in cases that have been pending for more than 365 days.*** Accord, Rules for Judicial Administration 2.085(e)(All judges should apply a firm continuance policy. Continuances should be few (and) good cause required.).

Moreover, Fla. R. Crim. P. 3.190(g)(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.

Similarly, Rule 3.153 (a) provides:

> Timeliness; Waiver. --A defendant's motion for severance of multiple offenses or defendants charged in a single indictment or information shall be made before trial unless opportunity therefor did not exist or the defendant was not aware of the grounds for such a motion, but the court in its discretion may entertain such a motion at the trial. The right to file such a motion is waived if it is not timely made.

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).
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> 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); *Modeste v. State*, 28 So. 3d 179, 182 (Fla. 4th DCA 2010) (defendant must move to sever charges before trial or the right to severance is deemed waived). The failure to timely file will be deemed a waiver of the suppression or severance 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). *State v. Christmas*, 133 So. 3d 1093 (Fla. 4th DCA 2014)(Too frequently practitioners imprudently utilize the catch-all phrase: "Other grounds to be argued ore tenus." The use of these words in the context of a Rule 3.190 motion to suppress is meaningless because it is the antithesis of the specificity required by the rule and serves no useful purpose).

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*, *Ross v. State*, 779 So. 2d 300, 301 (Fla. 2nd DCA 1999)(Ross filed a seven page motion which ....requested 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 facts[1] 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). If the motion cites no case law, case citations that you intend to rely on must be provided at least five (5) days prior to the scheduled hearing.

4. 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 ... ***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 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.***

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[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.)

* * *

> 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 objections will be deemed a waiver of the objections.

5. Hearings on Motions lasting more than 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. The motion may be deemed waived if unilaterally cancelled.

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 Fort Pierce, St. Lucie County, Florida this 15th day of January 2019.

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CHARLES A. SCHWAB
CIRCUIT JUDGE

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