

IN THE COUNTY COURT OF THE SIXTEENTH JUDICIAL CIRCUIT  
IN AND FOR MONROE COUNTY, FLORIDA

JUDGE RUTH BECKER  
CRIMINAL DIVISION

**STANDING ORDER REGARDING PRETRIAL MOTIONS**  
**IN CRIMINAL CASES**

In all criminal cases that come on for trial before Judge Ruth Becker, this court hereby orders all counsel to abide by the following parameters for filing pretrial motions, absent any order to the contrary by this court:

**1) RULE 3.190, MOTIONS MUST BE IN WRITING.**

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. Fla.R.Crim.P., specifically, 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).*

Additionally, 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. Fla.R.Crim.P., 3.190(g)(2). A generalized statement that the defendant is seeking to suppress all evidence that is fruit of the poisonous tree is insufficient. State v. Jackson 513 So. 2d 797 (Fla. 4<sup>th</sup> DCA 1987; State v. Breland 421 So.2d 761 (Fla DCA 1982); and State v. Pezzella, 397 so. 2d 103 (Fla. 3<sup>rd</sup> DCA 1981).

All pretrial motions (e.g., motions to dismiss, motions to sever counts, motions to sever defendants, motions to suppress) must be in writing, filed with the clerk, served on opposing counsel and set for hearing at least 14 days prior to announcing ready trial. *Ore tenus* motions made on the eve of trial, or during trial, will not be considered unless good cause is shown.

## 2) TIMELINESS OF MOTIONS

All motions must be filed and set for a hearing at least 14 days prior to announcing ready for trial (Pretrial Conference). 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 *pretrial conference*. Sometimes counsel will wait until the last minute to file pretrial motions in old cases that have been continued numerous times. The Court may not grant additional continuances in cases that have been pending for more than 365 days. Fla.R.Crim.P., specifically, 3.190(b) provides:

Time for Filing — The motion to suppress shall be *made before trial* unless opportunity therefore 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 trial.

As the court explained in *Powell v. State*, 717 So.2d 1050, (Fla. 5<sup>th</sup> DCA 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." Similarly, Rule 3.190(h) 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.*" *Savoi v. State*, 422 So.2d 308 (Fla. 1982)

See also, *Clark v. State*, 985 So.2d 637, 639 (Fla. 4<sup>th</sup> 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) 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. 4<sup>th</sup> 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 wait 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 pretrial, 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.*


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 so here. The failure to timely raise objections will be deemed a waiver of objections.

#### 4) HEARING TIME AND COORDINATION WITH OPPOSING COUNSEL

**Counsel must also make a good faith effort to coordinate the scheduling of evidentiary motions, to ensure that witnesses are available for the hearing.** Please do not include the Judicial Assistant in any e-mail correspondences between the parties regarding this issue.

**DONE AND ORDERED** in Chambers at Marathon, Monroe County, Florida this 17 day of October, 2018.

  
RUTH BECKER  
COUNTY JUDGE

Copies furnished to:  
Dennis Ward Office of the State Attorney  
Robert Lockwood, Office of the Public Defender  
Monroe County Bar Association  
Monroe County Division of Criminal Defense Lawyers