

Criminal Procedure in a Felony Case

Faculty - Craig Rose, Esq.

I. I get a call to represent a felony criminal defendant-

A. Where do I begin?

B. What do I do?

C. Best questions to ask-Federal vs State charges?

(1) Did call come from family member? Or defendant?

(2) What is Charge?

(3) Does Defendant have prior charges? convictions? If so, how important?

(4) Has the defendant had probable cause to detain hearing? i.e., Initial appearance/ bond

(5) Why are these questions important?

(6) The truth about felony cases-not all felony cases are equal-FIND YOUR COMFORT ZONE

(7) Violent felony charge versus non- violent charge

(8) Making agreement with client-get in writing-retainers, hourly ,what representation

entails

(9) Notice of Appearance- if retained right away where/when to file, if retained after bond or post indictment where and when to file

(10) Has preliminary hearing to detain/initial appearance already taken place

(11) If so, what was bond set at?

II. Jail visitation if client in jail

A. Can I go see defendant at any time ...24/7? YES

(1) Local jails vs Penitentiary regarding visitation; other differences- jail vs prison

(2) tip for penitentiary visit-call ahead

(3) How could I get call from defendant in prison? New charge? PCR ?what's PCR?

B. What's status of defendant? Are their holds? Old fines, community service, probation and other reasons your client may not be able to bond out

C. Getting a police report-what to look for in a police report –Search and Seizure

(1) was there a warrant involved? If so, what's important information to look for?

(a) Generally-to look for in a warrant: was the warrant proper based

on probable cause, precise on its face, issued and signed by a neutral detached magistrate or was agent of the government relying on good faith? Properly executed? Was it executed without unreasonable delay? Person or place searched and seized within scope of warrant

(b) Was the search within the warrantless search exception?

-incident to lawful arrest, automobile search (consent and no consent-administrative search), plain view, consent, stop and frisk (City/ State you practice in important here), hot pursuit

D. Preliminary hearing to determine probable cause to prosecute

(1) putting on the hearing, lowering bond, waiving preliminary hearing

E. Bond hearing-if separate from preliminary...ore tenus motions, filed motions

III. Extended Jail stay with no indictment

A. what is a Habeas Corpus motion?

(1) Process to file a Habeas Corpus motion

(a) letting Prosecutor know-use your discretion

(b) Motion for Habeas Corpus; Who is defendant?

(c) set hearing in felony court in your jurisdiction

B. when is Habeas Corpus motion appropriate

IV. Out on Bond Defendant -Now what?

(1) What is the defendant's responsibility while out on bond?

V. Grand Jury Presentment and Probable Cause

A. What is grand jury presentment?

(1) No judge, no defense attorney-just Prosecutors and Grand Jury jurors

(2) Probable Cause Standard

(3) No bill finding means no indictment at least for now

(4) Indictment-Formal criminal charges by the government

(5) Does my state use Grand Jury or Criminal Information-important to know

(6) Criminal Information-formal criminal charge made without grand jury

indictment

VI. No bill?

A. Odds say no-prepare for worst

(1). No bill means Grand Jury didn't find probable cause ;no indictment

(a) statistically speaking -if it goes to Grand Jury its getting indicted

VII. Indictment AND Arraignment

- A. what's a waiver of indictment? Are they used? RARELY
- B. Arraignment-in person and waiver-examples of both
- C. trial date-now what?
- D. Plea negotiations –how they generally work with the prosecutor
 - (1) what's an open plea? Caveats..... Do I use sometimes? Habitual offender in open plea
- E. Trial prep-look at local rules and rules of evidence first

VIII. Constitutional rights of defendant whether I am hired or not

- A. 4th, 5th, and 6th Amendment
 - (1) 4th Amendment- prohibition against unreasonable search and seizures and the exclusionary rule
 - (2) 5th Amendment- prohibition against compulsory self-incrimination and prohibition against double jeopardy
 - (3) 6th Amendment-right to speedy trial, public trial, trial by jury ,confront witnesses, compulsory process for obtaining witnesses ,assistance of counsel
- B. Assistance of Counsel-Right to Counsel
 - (1) YES- custodial police interrogation
 - post indictment interrogation
 - preliminary hearing to determine probable cause to prosecute
 - arraignment(answering the indictment)
 - post charge line-up
 - guilty pleas,
 - misdemeanors in some cases
 - felony trial
 - sentencing hearings
 - appeals as a matter of right
 - (2) NO- at pretrial-taking of blood samples-if client consents no right to counsel
 - taking of handwriting or voice recording
 - preliminary hearing to determine probable cause to detain-initial appearance
 - photo identification or pre-charge investigative lineups
 - after trial-discretionary appeals ,post -conviction proceedings
 - parole and probation revocation

