

# FAST ACCESS TO FLORIDA CRIMINAL CITATIONS

When the judge asks you for a citation, or tomorrow's motion still has to be researched, Kurt Erlenbach's *Florida Criminal Cases Notebook* is your best source.

From the most basic points of law to the most esoteric, Erlenbach's *Notebook* puts nearly the entire body of Florida criminal law at your fingertips. For many projects, your research will start and end with the *Notebook* because its coverage is so complete.

## Comprehensive

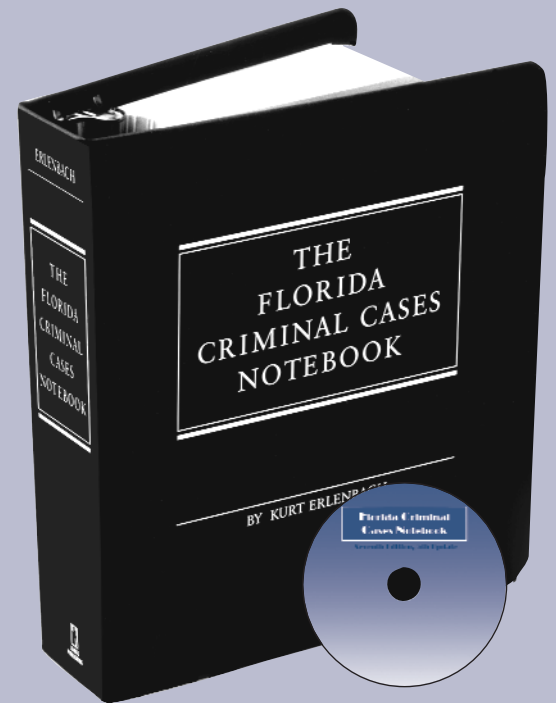
- Over 8,000 of the most important criminal cases.
- The book's index, with over 3,300 entries, is the most complete guide to Florida criminal law available.
- 1,300 letter-sized pages in a single-volume looseleaf.

## Quick access

- The case summaries are concise, with two or three sentences devoted to each holding.
- When it is important to know if a case's facts are analogous to yours, as in search and seizure, the facts underlying the holding are emphasized.
- The section topics emphasize the subjects that arise most frequently in trial.
- Within each topic, the cases are organized by court and the newest cases come first.
- Separate points within each case are highlighted in a separate paragraph. Conflicting or supporting cases from other jurisdictions are cited.
- Because each annotation is assigned a separate index number, the index takes you directly to the desired citation instead of just the page.

## Authoritative

- The summaries have been painstakingly compiled since 1987 by Kurt Erlenbach, one of Florida's most respected criminal attorneys.
- Used by judges, prosecutors, and defense attorneys, the *Notebook* is one of the most widely-used trial aids available to the criminal practitioner.



*The free CD-ROM contains the full text of the book in a searchable database.*

- Over 8,000 case summaries and annotations.
- Every key criminal case since 1987.
- 150 substantive categories.
- Special emphasis on sentencing, evidence, and search and seizure.
- Broad coverage of frequently arising trial topics.
- Detailed notes with expanded factual background.
- Updated twice annually.
- Comprehensive index and table of contents.

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## VENUE

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# FLORIDA CRIMINAL CASES NOTEBOOK

## 67 Evidence: tapes, photos, etc

Topics covered: The admissibility of tape recordings, videotapes, photographs, and videos.  
See also: Section 159: Telecommunications and wiretaps.

### Florida Supreme Court

[2258] The court properly admits inflammatory photos of the deceased victims, even work of emergency room doctors. The photos are admissible to show the nature of the injuries.  
*Schoenwetter v. S.*, 931 So.2d 857 (Fla. 2006), 31 F.L.W. S261 (4/27/06)

[2259] In determining whether the trial court erred in admitting photos, the appellate court will not reverse absent an abuse of discretion standard.  
*Floyd v. S.*, 913 So.2d 564 (Fla. 2005), 30 F.L.W. S689 (10/12/2005)

[2260] A single photo of a victim at the crime scene that accurately depicts the victim when found is properly admitted.  
Autopsy photos that show the location of the victim's wounds are admissible to the jury.  
*Douglas v. S.*, 878 So.2d 1246 (Fla. 2004), 29 F.L.W. S219 (5/11/04)

[2261] (See *McCoy v. S.*, 852 So.2d 396 (Fla. 2003), 28 F.L.W. S652 (8/21/2003))  
The application of the *Martinez* rules regarding the proper procedures for admission of photographs is not sufficiently audible.)

[2262] (See *Harris v. S.*, 843 So.2d 856 (Fla. 2003), 28 F.L.W. S273 (3/27/2003))  
inflammatory photos.)

[2263] Photographs are admissible to the extent that they fairly and accurately depict the crime scene and are not unduly prejudicial. Photos that show the nature of a murder victim that the photos show the victim's buttocks and pelvic area do not render the photos inadmissible.  
*Anderson v. S.*, 841 So.2d 390 (Fla. 2003), 28 F.L.W. S51 (1/13/04)

[2264] The test for admitting photos is relevance, not necessity. When a photo is so gruesome as to create undue prejudice. Admission of gruesome photos and will not be reversed absent an abuse of discretion. where a witness's testimony to show cause of death, it is properly admitted.  
*Philmore v. S.*, 820 So.2d 919 (Fla. 2002), 27 F.L.W. S530 (5/13/02)

[2265] The court errs in admitting gruesome autopsy photos when the medical testimony to explain the cause of death and the bodies were severely burned. The gruesome nature of the photos outweighed their marginal relevance.  
(See this case, *Lewis, J.*, dissenting, for a discussion of when the admission of photos is proper.)  
*Hertz v. S.*, 803 So.2d 629 (Fla. 2001), 26 F.L.W. S725 (11/11/01)  
See also *Looney v. S.*, 803 So.2d 656, 26 F.L.W. S733 (Fla. 11/11/01)

Find conflicting or supporting cases from other jurisdictions

## 115 Sentencing: death penalty: jury overrides

Topics covered: Court overrides of jury recommendations for life in favor of imposing the death penalty; resentencings following overrides.

### Florida Supreme Court

[4356] (See *Marshall v. Crosby*, 911 So.2d 1129 (Fla. 2005), 30 F.L.W. S399 (5/26/2005)) for discussion of the application of *Ring* and *Apprendi* to jury override death penalties imposed prior to the issuance of those opinions, and for the ruling that, because the U.S. Supreme Court has ruled Florida's jury override procedure to be proper, it is up to the U.S. Supreme Court to determine that *Apprendi* and *Ring* are a sufficient change in the law to require a change. See also extensive concurring and dissenting opinions from *Anstead, J.*, *Pariante, J.*, and *Lewis, J.* for alternative views on the application to *Ring* to jury override cases.)

[4357] *Ring* does not apply retroactively in post-conviction proceedings. Thus, a jury override in a case final before *Ring* is lawful and will not be reversed.  
*Washington v. S.*, 907 So.2d 512 (Fla. 2005), 30 F.L.W. S345 (5/12/2005)

[4358] (See *Weaver v. S.*, 889 So.2d 178 (Fla. 2004), 29 F.L.W. S801 (12/16/2004)) for the reversal of a death penalty based on the court's override of a life recommendation, and a discussion of the proper way to evaluate a jury's life recommendation when considering an override.)

[4359] (See *Garcia v. S.*, 816 So.2d 554 (Fla. 2002), 27 F.L.W. S335 (4/18/2002)) (*Pariante, J.*, concurring) for discussion of the effect of an improper jury override in a case reversed for a new trial on guilt phase issues.)

(See *Mills v. S.*, 786 So.2d 547 (Fla. 2001), 26 F.L.W. S275 (4/25/2001)) (*Anstead, J.*, concurring), for extensive discussion of the injustice that occurs when the court approves a death sentence under circumstances

Essential cases are noted with bullets

## 102 Search and seizure: inventory searches

Topics covered: Warrantless searches conducted pursuant to standard police procedure for conducting inventories of vehicles, etc.

### United States Supreme Court

[5297] FHP trooper stopped defendant and arrested him for DUI. In inventorying the car prior to impounding, trooper opened closed containers finding marijuana. Held: The unrestricted inventory search allowed under FHP rules resulted in a generalized rummaging for incriminating evidence. The policies or practices governing inventory searches must be designed so as to develop an inventory, not to permit a rummaging for evidence.

Closed containers in an inventory can be opened pursuant to appropriate policies depending on the nature and characteristics of the particular container. Absent such a policy, the opening of closed containers in an inventory is not permissible.

• *Florida v. Wells*, 109 L.Ed. 2d 1 (1990) approving *S. v. Wells*, 539 So.2d 464 (Fla. 1989)

[5298] When police lawfully can inventory defendant's vehicle, police may open closed containers in vehicle as part of inventory so long as such openings are part of standard police procedure and are not done in an attempt to gather evidence against defendant.

If police are acting in bad faith or for the sole purpose of investigation, instead of in their standard caretaking function, then search may be improper. So long as scope of search is limited by regulation or practice, inventory of closed containers is appropriate.

• *Colorado v. Bertine*, 93 L.Ed. 2d 739 (1987)

### District Courts of Appeal

[3860] An inventory search must be conducted pursuant to standardized criteria. When the state argues that a vehicle was searched following impoundment, the state must present the department's standardized procedures for performing the search, and must show that the police followed those procedures.  
*Beezley v. S.*, 863 So.2d 386 (2d DCA 2003), 29 F.L.W. D14 (12/19/2003)

[3861] A reliable CI provided information that defendant would be at a specific location with cocaine in a brown cigar tube. The officer saw defendant at that location, and when they approached they saw him try to hide a brown object. A subsequent search located cocaine in a brown cigar tube. The officers then searched defendant's car in an inventory search, and found drugs and drug paraphernalia. Held: The inventory search was unlawful.

The validity of an inventory search depends on its purpose. If the impoundment is a pretext for an exploratory search of the car, it is not a lawful inventory. Where defendant's car was lawfully parked when he was arrested, and there was no hazard to the public, the fact that the sheriff's department routinely impounds cars from all persons arrested does not make the inventory lawful.  
*Williams v. S.*, 903 So.2d 974 (4th DCA 2005), 30 F.L.W. D1157 (5/4/2005)

[3862] It is improper to seize an inventory car owned by a person arrested at a motel. Impoundment is not proper when the defendant is arrested for a minor offense when the vehicle is not a traffic hazard.  
*Leary v. S.*, 880 So.2d 776 (5th DCA 2004), 29 F.L.W. D1526 (6/25/2004)

Separate points within each case are broken out and highlighted

## Author biography

Kurt Erlenbach practices criminal defense and family law in Titusville. He is a former assistant state attorney for the 18th Judicial District and a current member of the Florida Association of Criminal Defense Attorneys. He is the author of the *Florida Criminal Cases Notebook*, *Weekly Criminal Law Report*, *Florida Family Law Notebook*, and various articles on child abuse prosecution.



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