

Practical Points & Issues Regarding Suppression Motions

Superior Court Pre-Trial Evidence Suppression Motions Pursuant to 15A-975

An affidavit of one with knowledge is required. Only a minimal fact basis is necessary and an affidavit of the lawyer based on facts supplied by the State's discovery will suffice but a brief fact affidavit from the client is also ok. Keep it to a bare minimum so as to not provide the DA with any additional statements of your client. 15A-977(a)

In Superior Court all motions should be written, although in certain circumstances an oral motion will suffice. Generally this is only when newly raised and discovered evidence comes up during a trial. 15A-977(a)

The statutes allow a motion to suppress to be made at any time before trial, unless the DA has given notice of an intent to use certain evidence at least 20 working days before the trial date. (15A-975) (If the DA gives such notice then the defense has only 10 working days to file a suppression motion). However, some statutory case management plans call for motions, including suppression motions, to be filed by an earlier setting than simply before the trial date. (7A-49.4) You need to be careful not to fall into this trap. If you do fall into this trap do not simply concede. File the motion anyway, ask to be heard, and be sure to place the words ineffective assistance of counsel in the record. A trial judge can decide to hear a suppression motion even if it is not timely filed under the case management plan..

Once a judge has ruled upon a suppression motion, that decision is not reviewable by another trial judge at a later stage in the trial division level. State v. Woolridge, 357 N.C. 544; 592 S.E.2d 191; 2003 N.C. LEXIS 1259. However, if a judge has initially denied a suppression motion and new evidence is discovered which was not previously available, that trial judge may reconsider the denial of the motion.

If the State, at least twenty working days before the trial date, gives notice of an intent to use:

Evidence of a Statement of the Defendant, or
Evidence of a search made without a search warrant, or
Evidence of a search made with a search warrant but without the defendant being present

Then the defendant must file a motion to suppress within ten working days of receiving the notice of the State.

A suppression motion must state the grounds on which the evidence should be suppressed. Don't be stingy. Cite all possible sources so as to preserve your issues.

Generally suppression is required for constitutional reasons under the 4th, 5th, & 6th Amendments to the US Constitution as made applicable to the states by the 14th Amendment and under Article I, sections 19, 20 & 23 of the North Carolina Constitution.

Always try to include at least a parallel basis under the NC Constitution to give the courts something to hang on to if for some reason the judge is on your side. (For example NC does not recognize the Federal Good Faith Search Warrant exception)

Occasionally suppression motions may even be made on First Amendment grounds dealing with delegating police powers to religious institutions. See State v. Pendleton (declaring Campbell University Police Force unconstitutional) and State v. Jordan (declaring Pfeiffer University Police Force unconstitutional).

Suppression Motion Hearing Procedures

Assuming you have timely filed a motion to suppress which both adequately states a grounds for suppression and is supported by an adequate affidavit, then the court must hold a hearing on the motion and take evidence.

At the hearing the State bears the burden of persuasion under a preponderance of the evidence standard to show that the evidence in question was lawfully obtained unless the search is pursuant to a warrant.

A search made pursuant to a search warrant is presumed to be valid if made within the parameters of the warrant. The defendant bears the burden of demonstrating that the information provided to the magistrate in support of the warrant application is inadequate to support a finding of probable cause necessary to issue a search warrant. The standard is would a reasonable and prudent person believe it to be more likely than not that the described contraband will be found at the premises to be searched at the likely time of execution of the search warrant.

Except for search warrants, the State must put on evidence that the evidence sought to be used was lawfully obtained. At the hearing defense counsel should attempt to create a clear record of the facts or lack of facts establishing the officer's probable cause. 15A-977(f) requires the judge to set forth in the record, at the conclusion of the hearing, his findings of fact and conclusions of law. An appellate court is bound by the findings of fact if they are not objected to by the defendant. If they are objected to specifically, then an appellate court is bound by those findings of fact that are adequately supported in the record. If the judge fails to make findings of fact and conclusions of law and no party requests the court to do so, then the record is presumed to support the judge's ruling.

An issue of fact as determined by the trial judge is binding upon the Court of Appeals if it is supported by competent evidence in the record. According to the N.C. Supreme Court "Where no exceptions have been taken to the findings of fact, such findings are presumed to be supported by competent evidence and are binding on appeal." Schloss v. Jamison, 258 N.C. 271, 275, 128 S.E.2d 590, 593 (1962); State v. Perry, 316 N.C. 87, 107, 340 S.E.2d 450, 462 (1986). See also, State v. Mahaley, 332 N.C. 583, 423 S.E.2d 58 (1992)(Findings of fact are conclusive and binding on reviewing court if supported by substantial evidence). In the absence of any specific findings of fact made by the trial court and without any specific request for the trial court to make findings of fact from the appellant, the Court of Appeals must presume that the trial court

found on proper evidence, sufficient facts to support its judgment. Estrada v. Burnham, 316 N.C. 318, 341 S.E.2d 538 (1986)(When trial court is not required to find facts and make conclusions of law and does not do so, it is presumed that the trial court on proper evidence found facts to support its judgment). Seibold v. City of Kinston, 268 N.C. 615, 151 S.E.2d 654 (1966)(Where trial judge who was authorized to hear and determine without resort to jury the pleas in bar of governmental immunity in action against city and county did not make any findings of fact and there was no request in record that he do so, it was presumed that he found facts on proper evidence sufficient to support judgment.) Henley Paper Co. v. McAllister, 253 N.C. 529, 117 S.E.2d 431 (1960)(Where trial judge, not having been requested to do so, did not record findings of fact and conclusions of law, it would be duty of reviewing court to affirm his decision if such decision found support on any legal ground.) Filmar Racing, Inc. v. Stewart, 141 N.C. App. 668, 541 S.E.2d 733 (2001)(Absent a request by a party, a trial court is not required to make findings of fact when ruling on a motion, but rather, on appeal it is presumed that the trial court found facts sufficient to support its ruling, and if these presumed factual findings are supported by competent evidence, they are conclusive on appeal.) Corbin Russwin, Inc. v. Alexander's Hardware, Inc., ____ N.C. App. ____, 556 S.E.2d 592 (December 18, 2001)(When the trial court does not make findings of fact, an appellate court presumes that there were sufficient facts to support the judgment, and the appellate court then determines whether there is competent evidence to support the presumed findings of fact.) Sherwood v. Sherwood, 29 N.C. App. 112, 223 S.E.2d 509 (1976)(It is presumed, when court is not required to find facts and make conclusions of law and does not do so, that court on proper evidence found facts to support its judgment.)

At the conclusion of any suppression hearing, particularly one in which the defense has lost, counsel should request that the court make findings of fact and conclusions of law if the court has not done so and then counsel should be certain to specifically object to any findings of fact that are not adequately supported by the evidence and unfavorable to your position.

If after losing a suppression hearing you intend to plead, be sure to preserve your right to appellate review of the denial of your suppression motion by clearly informing the court prior to entry of the plea that you intend to appeal the denial of the suppression motion. The best practice is to include this notice in the plea transcript itself. Failure to inform the court prior to entry of the plea waives the right to review under NC case law, although the statute seems to say it is ok. It's not. From State v. Anderson an unpublished opinion of the COA from 2003: "When a defendant intends to appeal from the denial of a **suppression** motion . . . , he must give notice of his intention to the prosecutor and to the court before **plea** negotiations are finalized; otherwise, he will waive the appeal of right[.]" State v. Tew, 326 N.C. 732, 735, 392 S.E.2d 603, 605 (1990) (citing State v. Reynolds, 298 N.C. 380, 259 S.E.2d 843 (1979), cert. denied, 446 U.S. 941, 64 L. Ed. 2d 795, 100 S. Ct. 2164 (1980)).

Suppression of prior convictions at sentencing

15A-980 allows counsel to move for exclusion of prior criminal convictions of your client on the grounds that he was denied counsel for the prior conviction. This is called

suppression under the statute. The burden of persuasion is on the defendant to prove by a preponderance of the evidence that he was denied counsel either explicitly or through a failure to advise. A merely silent record will not support this contention but a silent record and one without counsel showing in the file, as well as testimony from your client that he did not have counsel and did not waive counsel, will usually do the trick.