

## Motions Practice in District Court

By Dawn Baxton and Rebekka Olsen  
Office of the Public Defender  
Durham, North Carolina

### HOW

- **Bench Trial:** Object at the point where the state's witness is beginning to testify about evidence obtained after the illegal stop/search, and ask to conduct a voir dire.
- **Jury Trial:** Object at the point when the state's witness is about to testify about what he/or she did after the stop, and request to be heard outside the presence of the jury.

### WHAT

- Voir Dire is a technique used for the purpose of excluding evidence that counsel believes was obtained illegally, or to exclude testimony of a witness that counsel believes is inadmissible under the rules of evidence.

### PROCEDURE

- **The objecting party will ask questions of the witness first: The form of the questions asked is the same as if you were cross examining the witness (i.e. closed end questions).**
- **The questions asked should be designed to show the basis of your argument for why the evidence sought to be introduced is inadmissible.**

### WHEN

Voir Dire is used at trial to exclude evidence:

- Obtained as a result of an illegal stop, illegal search, or seizure,
- To prohibit a witness from testifying about matters not based on personal knowledge or observation, and or
- To prohibit expert witnesses from testifying to matters outside of their field of expertise.

### PROCEDURE CONTINUED

- **After you have asked all of your questions, the defending party, is given the opportunity to ask questions.**
- **After both parties have questioned the witness, the moving party make his/her argument to the Judge as to why the evidence/testimony sought to be introduced should be excluded.**

## PROCEDURE CONTINUED

- **The defending party make his/her argument as to why the evidence should be admitted.**
- **After hearing all arguments, the judge makes a ruling.**

## SCENARIO

- Police receive a call that a white car with 2 males was seen driving thru Peyton Place firing a rifle at approximately 8:00 p.m. At 10:00 p.m. Officer Terrell stops a white Mazda containing 4 males ( 2 black, one white, one hispanic), riding thru Peyton Place. The officer has testified that he stopped the car because he believed the gentlemen in the car were the individuals involved in the shooting reported earlier. Inside the car the officer sees a 9 mm handgun and marijuana on the floor board of the back passenger seats. Upon seeing these items, all four males are arrested and charged with Going Armed to the Terror of the People and Possession of less than ½ ounce of marijuana.

## IF MOTION GRANTED:

- **STAY ON GUARD.....**Object at all times where it appears that the district attorney is trying to circumvent the courts ruling/
- Purpose: The purpose of asking the questions again is that the witness may contradict his/her previous answer given during voir dire. A contradiction of prior testimony may give you a basis to renew your motion to suppress, or to argue prior inconsistent statement to the judge as to why he/she should find your client not guilty.
- **(Note: Once the witness starts testifying to matters that was the basis of your voir dire, object again to preserve the record)**

## Pretrial DWI Motions: To Suppress or Not to Suppress

- What are you trying to keep out?
  - Stop
  - Arrest
  - Knoll
  - FST's
  - PBT
  - Intoxilyzer Readings
  - Blood Draws

## IF MOTION DENIED

- During your cross examination of the witness, ask the questions asked during your voir dire again.
- Purpose: The purpose of asking the questions again is to paint the picture for the jury that the witness is unqualified, biased, or did something wrong. These are points that can be argued during closing argument as to why the witness' testimony should not be believed.

## Pretrial DWI Motions: To Suppress or Not to Suppress

### § 20-38.6. Motions and district court procedure.

- (a) The defendant may move to suppress evidence or dismiss charges only prior to trial, except the defendant may move to dismiss the charges for insufficient evidence at the close of the State's evidence and at the close of all of the evidence without prior notice. If, during the course of the trial, the defendant discovers facts not previously known, a motion to suppress or dismiss may be made during the trial.

**Pretrial DWI Motions: To Suppress or Not to Suppress**

- (b) Upon a motion to suppress or dismiss the charges, other than at the close of the State's evidence or at the close of all the evidence, the State shall be granted reasonable time to procure witnesses or evidence and to conduct research required to defend against the motion.

**Pretrial DWI Motions: To Suppress or Not to Suppress**

- (e) If the motion is not determined summarily, the judge shall make the determination after a hearing and finding of facts. Testimony at the hearing shall be under oath.

**Pretrial DWI Motions: To Suppress or Not to Suppress**

- (c) The judge shall summarily grant the motion to suppress evidence if the State stipulates that the evidence sought to be suppressed will not be offered in evidence in any criminal action or proceeding against the defendant.

**Pretrial DWI Motions: To Suppress or Not to Suppress**

- (f) The judge shall set forth in writing the findings of fact and conclusions of law and preliminarily indicate whether the motion should be granted or denied. If the judge preliminarily indicates the motion should be granted, the judge shall not enter a final judgment on the motion until after the State has appealed to superior court or has indicated it does not intend to appeal. (2006-253, s. 5.)

**Pretrial DWI Motions: To Suppress or Not to Suppress**

- (d) The judge may summarily deny the motion to suppress evidence if the defendant failed to make the motion pretrial when all material facts were known to the defendant.

**Pretrial DWI Motions: To Suppress or Not to Suppress**

- § 20-38.7. Appeal to superior court.**
- (a) The State may appeal to superior court any district court preliminary determination granting a motion to suppress or dismiss. If there is a dispute about the findings of fact, the superior court shall not be bound by the findings of the district court but shall determine the matter de novo. Any further appeal shall be governed by Article 90 of Chapter 15A of the General Statutes.

## Pretrial DWI Motions: To Suppress or Not to Suppress

- (b) The defendant may not appeal a denial of a pretrial motion to suppress or to dismiss but may appeal upon conviction as provided by law.

## Pretrial DWI Motions: To Suppress or Not to Suppress

### Guiding Principles

Based upon the statutory provisions and the interpretations in Fowler and Palmer, several general principles can be stated to apply to district court rulings on motions to suppress and dismiss in implied consent cases.

- 1. If the district court issues a preliminary determination concluding that a pretrial motion to suppress evidence or to dismiss charges should be denied, it may enter final judgment denying the motion. The defendant may not appeal the denial of a pretrial motion to suppress or to dismiss, but a defendant who is convicted in district court may appeal to superior court for trial de novo. G.S. 7A-290; 20-38.7(b).

## Pretrial DWI Motions: To Suppress or Not to Suppress

- (c) Notwithstanding the provisions of G.S. 15A-1431, for any implied-consent offense that is first tried in district court and that is appealed to superior court by the defendant for a trial de novo as a result of a conviction, the sentence imposed by the district court is vacated upon giving notice of appeal. The case shall only be remanded back to district court with the consent of the prosecutor and the superior court. When an appeal is withdrawn or a case is remanded back to district court, the district court shall hold a new sentencing hearing and shall consider any new convictions.

## Pretrial DWI Motions: To Suppress or Not to Suppress

- 2. If the district court issues a preliminary determination concluding that a pretrial motion to suppress evidence or to dismiss charges should be granted, the state may appeal to superior court.
  - The Palmer court did not decide whether the state must file a notice of appeal in writing rather than simply announcing its appeal in open court. The court did, however, evaluate the sufficiency of the state's notice of appeal by referring to G.S. 15A-1432(b). Given that G.S. 15A-1432(b) requires that appeals filed under that subsection be made by written notice, it seems likely that a court confronting the issue would conclude that the state must file its appeal by written motion.
  - The state must appeal within a reasonable time.

## Pretrial DWI Motions: To Suppress or Not to Suppress

- (d) Following a new sentencing hearing in district court pursuant to subsection (c) of this section, a defendant has a right of appeal to the superior court only if:
  - (1) The sentence is based upon additional facts considered by the district court that were not considered in the previously vacated sentence, and
  - (2) The defendant would be entitled to a jury determination of those facts pursuant to G.S. 20-179.A defendant who has a right of appeal under this subsection, gives notice of appeal, and subsequently withdraws the appeal shall have the sentence imposed by the district court reinstated by the district court as a final judgment that is not subject to further appeal. (2006-253, s. 5; 2007-493, s. 9; 2008-187, s. 10.)

## Pretrial DWI Motions: To Suppress or Not to Suppress

- 3. If the state appeals from a district court's preliminary determination of a motion to suppress or dismiss, the appropriate action for a superior court is to determine the merits of the motion and remand for entry of a final judgment by the district court.
  - If the findings of fact are disputed, the superior court determines the matter de novo.
  - If there is no dispute, the district court's findings of fact are binding on the superior court and are presumed to be supported by competent evidence.

**Pretrial DWI Motions: To Suppress or Not to Suppress**

- 4. If the superior court affirms a district court's preliminary determination that a defendant's motion to suppress or dismiss should be granted and enters an order remanding the case to district court for entry of final judgment, the state may not appeal from the superior court's remand order.

**Pretrial DWI Motions: To Suppress or Not to Suppress**

- 7. If the superior court affirms a district court's final judgment dismissing charges, the state may appeal to the appellate division. G.S. 15A-1432(e).

**Pretrial DWI Motions: To Suppress or Not to Suppress**

- 5. The state may appeal to superior court a district court's final judgment dismissing charges if the appeal does not violate the Double Jeopardy Clause. G.S. 15A-1432(a).

**Pretrial DWI Motions: To Suppress or Not to Suppress**

- 8. The state may not appeal a district court's entry of a final order suppressing evidence but pursuant to Rule 19 of the General Rules of Practice may file in superior court a petition for writ of certiorari.

**Pretrial DWI Motions: To Suppress or Not to Suppress**

- 6. If the superior court reverses a district court's dismissal of charges it must reinstate the charges and remand the matter to district court. The defendant may appeal this order to the appellate division. G.S. 15A-1432(d).

**Pretrial DWI Motions: To Suppress or Not to Suppress**

- 9. If the superior court reverses a district court's preliminary determination granting a motion to suppress or motion to dismiss, the defendant may not appeal from that ruling. A defendant who is convicted in district court may appeal to superior court for trial de novo. G.S. 7A-290.

## Pretrial DWI Motions: To Suppress or Not to Suppress

- 10. A district court must enter a final judgment, rather than a preliminary determination, on a motion to suppress or to dismiss arose after jeopardy has attached in district court (which occurs when the first witness is sworn).
  - The State may not appeal from the district court's final judgment granting a motion to suppress but may appeal a final judgment granting a motion to dismiss pursuant to G.S. 15A-1432(a)(1) when the appeal is not barred by double jeopardy.
  - Thus, the state may have an incentive to voluntarily provide discovery to avoid mid-trial motion to suppress evidence or to dismiss charges based upon the defendant's discovery during trial "of facts not previously known."