Quiz: Motions in Implied Consent Cases

1. True or False. Before entering a final judgment granting a motion to suppress or dismiss in an implied consent case, a district court must enter a written preliminary determination.

2. The state may appeal to superior court a district court's preliminary determination granting a motion to suppress or dismiss, but must appeal

    A. by announcing its intention in open court the day the district court announces its preliminary determination
    B. within 10 days of the filing of the district court's written preliminary determination
    C. within a reasonable time after the district court enters its written preliminary determination

3. If the state appeals from a district court's preliminary determination of a motion to suppress or dismiss, the appropriate action for superior court is to

    A. determine the merits of the motion and remand for entry of the appropriate order by the district court
    B. enter a final order ruling on the motion
    C. refuse to consider the appeal

4. True or False. In an appeal of a pretrial preliminary determination, the superior court determines the "matter" *de novo* if the findings of fact are disputed.

5. True or False. If the superior court affirms a district court's determination granting a motion to suppress or dismiss and enters an order remanding the case to district court for entry of a final judgment, the state may NOT appeal the superior court's order to the court of appeals.

6. True or False. The state may appeal to superior court a district court's entry of a final judgment dismissing charges if the appeal does not violate the Double Jeopardy Clause.

7. True or False. A defendant may appeal a superior court order reversing a district court's preliminary determination in the defendant's favor.

8. True or False. The state may appeal to superior court a district court's entry of a final judgment granting a motion to suppress.

9. True or False. A district court may enter a final judgment on a motion to suppress or dismiss raised during trial without first affording the state an opportunity to appeal to superior court a preliminary determination of the matter.

10. True or False. A district court may properly rule on a motion to dismiss for insufficient evidence before the state has an opportunity to present its case in chief.

Motions in Implied Consent Cases: Questions for the Audience

A. Does the DA in your district provide discovery in implied consent cases?
    1. Yes
    2. No

B. If not, is there some other procedure by which a defendant may gain access to evidence/witnesses before trial?
    1. Yes, it consists of talking to the officer at the first court date
    2. Yes, it consists of talking to the officer at the first court date along and/or some other procedure(s)
    3. No

C. Do you have local rules governing the filing of pre-trial motions in implied consent cases?
    1. Yes
    2. No

D. When do you require that pre-trial motions be raised?
    1. When the case is called for trial
    2. At some earlier time

E. In what percentage of the implied consent cases you hear are pretrial motions raised?
    1. Less than 1 percent of cases
    2. In 1 to 10 percent of cases
    3. In 10 to 25 percent of cases
    4. In 25 to 50 percent of cases
    5. In more than 50 percent of cases

F. Has the motions practice changed for cases governed by the new procedures?
    1. Yes, more motions are raised
    2. Yes, fewer motions are raised
    3. I have not seen a change in the number of motions

G. Who prepares your written preliminary determinations/final judgment?
    1. The party whose motion is granted
    2. I do
    3. One of my two full-time law clerks

H. What percentage of your preliminary determinations does the state appeal?
    1. Less than 10 percent
    2. 10 to 25 percent
    3. 25 to 50 percent
    4. More than 50 percent
    5. All of them

I. Do you specify in the preliminary determination how much time the state has to appeal?
    1. Yes
    2. No

J. If you do specify a time for appeal, how much time do you typically afford the state?
    1. Less than 10 days
    2. 10 days
    3. More than 10 days
    4. It varies greatly depending upon the case.

K. Do you announce your preliminary determination at the hearing?
    1. Yes, I always announce my decision in open court at the hearing.
    2. I sometimes announce my decision at the hearing and sometimes take the matter under advisement.
    3. I never announce my decision at the hearing and always take the matter under advisement.

L. How soon after the hearing do you typically issue your written preliminary determination?
    1. Within the week
    2. Within the month
    3. Within two months
    4. Later than two months

M. If you deny the defendant's motion, do you rehear evidence in the trial that you heard in the motions hearing?
    1. No, so long as the parties consent to the incorporation of such evidence in the trial.
    2. No, and I don't ask for consent.
    3. Yes, I rehear the evidence.

N. Does the judge who entered the preliminary determination typically preside over the trial of the matter?
    1. Yes
    2. Yes, but only if the preliminary determination is not appealed by the state
    3. Yes, but only if the preliminary determination is affirmed by the superior court
    4. No, there is no effort in my district to ensure that the judge who considered the pretrial motions presides over the trial

Statutory References: Motions Procedures in Implied Consent Cases

§ 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.

(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.

(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.

(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.

(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.

(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.)

§ 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.

(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.

(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.

(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.)

§ 15A‑1432. Appeals by State from district court judge.

(a) Unless the rule against double jeopardy prohibits further prosecution, the State may appeal from the district court judge to the superior court:

(1) When there has been a decision or judgment dismissing criminal charges as to one or more counts.

(2) Upon the granting of a motion for a new trial on the ground of newly discovered or newly available evidence but only on questions of law.

(b) When the State appeals pursuant to subsection (a) the appeal is by written motion specifying the basis of the appeal made within 10 days after the entry of the judgment in the district court. The motion must be filed with the clerk and a copy served upon the defendant.

(c) The motion may be heard by any judge of superior court having authority for the trial of criminal cases in the district. The State and the defendant are entitled to file briefs and are entitled to adequate time for their preparation, consonant with the expeditious handling of the appeal.

(d) If the superior court finds that a judgment, ruling, or order dismissing criminal charges in the district court was in error, it must reinstate the charges and remand the matter to district court for further proceedings. The defendant may appeal this order to the appellate division as in the case of other orders of the superior court, including by an interlocutory appeal if the defendant, or his attorney, certifies to the superior court judge who entered the order that the appeal is not taken for the purpose of delay and if the judge finds the cause is appropriately justiciable in the appellate division as an interlocutory matter.

(e) If the superior court finds that the order of the district court was correct, it must enter an order affirming the judgment of the district court. The State may appeal the order of the superior court to the appellate division upon certificate by the district attorney to the judge who affirmed the judgment that the appeal is not taken for the purpose of delay. (1977, c. 711, s. 1; 1987, c. 398.)