



SUPPRESSION: TIPS & STRATEGIES

NC OJD

WHY FILE A SUPPRESSION MOTION?

Strong suppression issue: Good law and/or good facts

Unusual or new issue, equitable issues (know your judge!)

Discovery: direct and cross examination may raise additional questions or answer existing questions. Ability to question uncooperative witnesses.

Obtain sworn testimony for impeachment purposes

WHY FILE A SUPPRESSION MOTION?

Preservation of appellate issues

No other legal defense

Provides view of case for both client and prosecution

Builds trust with client

Any evidence if “its exclusion is required by the U.S. Constitution or North Carolina Constitution” or

Any evidence obtained as a result of a substantial violation of the provisions of the Criminal Procedure Act or Chapter 15A or

Any in custody admission or confession made by a youth under the age of 16 in the absence of the youth’s parent, guardian, custodian, or attorney pursuant to NCGS 7B-2101

WHAT CAN BE SUPPRESSED?

WHAT CAN BE SUPPRESSED

- Any kind of identification:
 - Eyewitness Identification Act
 - Unduly suggestive procedures, 5th & 6th Amendment
 - Reliability issues
 - Due Process & confrontation clause
- Statements of your Client
 - In custody interrogations, Miranda violations
 - 15A-211: failure to record interrogation shall be considered in motion to suppress
 - Third party can not waive client's rights
 - Requests for attorney must be clear, unambiguous

WHAT CAN BE SUPPRESSED

- Physical Evidence
 - Stops without reasonable articulable suspicion, probable cause, or involving a substantial violation of statute or caselaw
 - Searches without probable cause or consent (or exceeds the scope of consent)
 - Searches pursuant to a warrant that is invalid on its face or based on false information
 - Searches pursuant to a warrant but the search goes beyond the scope of the warrant
 - Searches obtained via means that constitute “outrageous police misconduct” that “shocks the conscience” (e.g., strip searches)

Arrest, Search, and Investigation in North Carolina

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 **UNC** | SCHOOL OF
GOVERNMENT

FOR
ADDITIONAL
INFORMATION
ON GROUNDS
TO SUPPRESS

REQUIREMENTS

Superior Court

- 15A-977
- Before court, in writing, affidavit attached
- 10 days following receipt of the State's notice to use evidence being suppressed
- 15A-975
- Orally in trial if there was lack of notice or newly discovered evidence

Juvenile Court

- 7B-2408.5
- Before adjudication: must be in writing, w/affidavit
- During adjudication: orally, or in writing/w/affidavit
- 15A-974 applies

COURT SHALL CONSIDER THE FOLLOWING (15A-974):



The importance of the particular interest violated;



The extent of the deviation from lawful conduct;



The extent to which the violation was willful;



The extent to which exclusion will tend to deter future violations of this Chapter.



BURDEN

- It's your motion. Who presents first?
 - Burden of production is on the defendant/juvenile to show motion is timely, has an affidavit and complies with statute.
 - Burden of proof is on the State to show evidence is admissible by preponderance of the evidence.

SHOULD YOUR CLIENT TESTIFY?

7B-2405: The court shall protect the juvenile's right against self-incrimination

Testimony at a suppression hearing cannot be used by the prosecution in its case-in-chief. However, it may be used for impeachment and considered at sentencing

STRATEGIES

1

Know your judge and/or local customs and rules. Some may have a preference for written motions, viewing oral motions as unfair surprise or inefficient use of time

2

Subpoena any witness you believe is necessary. Do NOT depend on the ADA to have witnesses present.

3

Prepare your client and the client's family. Explain what you are seeking to suppress and any limitations on the hearing. Manage expectations.

4

Have copies of any caselaw or statutes you intend to argue ready to enter into the record or provide to the judge and ADA.

STRATEGIES



Speak to the potential witnesses and review warrants carefully



Consider drafting your own memorandum of law



Subpoena any necessary audio or video evidence



If there is a scheduling order that limits your time, state that for the record along with any facts or rulings that could result in an IAC claim



Obtain a ruling with findings of fact and conclusions of law

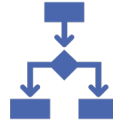
PRESERVE THE RECORD FOR APPEAL



If your motion is denied, object to the introduction of evidence at adjudication/trial



Continue to object each time



Renew the objection before and after adjudication/trial



State your intentions to give notice of appeal to the prosecutor **before any plea is final**



Include appeal of the suppression issue in any transcript of admission

RESOURCES

- NC Office of the Juvenile Defender: <https://www.ncjuveniledefender.org/materials-for-defenders/trial-motions-and-forms-index>
- NC Indigent Defense Services: <https://www.ncids.org/get-help/motions-bank>
- NC Prosecutors' Resource Online: <https://ncpro.sog.unc.edu/>
- UNC School of Government Defender Manuals: <https://defendermanuals.sog.unc.edu/>
- NC Office of the Appellate Defender: <https://ncappellatedefender.org/>



QUESTIONS?

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