

**LITIGATING MOTIONS TO SUPPRESS
AND
PRESERVING SUPPRESSION ISSUES FOR APPEAL**

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1. Drafting proper pleadings and affidavits
2. Preserving suppression issues at trial
3. Appeals from suppression rulings
4. New issues: exclusionary rule and good-faith exception

I. Drafting Proper Pleadings and Affidavits

§ 15A-977(a): A motion to suppress must...

- Be in writing
- Be served on the State
- State the grounds upon which it is made
- Be accompanied by affidavit containing facts supporting motion
 - Personal knowledge or upon information and belief

§ 15A-977(c): Motion is subject to summary denial if...

- Motion does not allege a legal basis for suppression
- Affidavit does not support the grounds alleged

The undersigned hereto first being duly sworn, deposes and states as follows:

1. That I have read the entire contents of the foregoing Motion to Suppress, and that the same is true to my own knowledge and belief.

1) My name is Dan Blau. I am an attorney actively engaged in the practice of criminal law for the past ten years.

2) I have reviewed the discovery provided by the State with my client and, based upon those specific facts, and as alleged in this Motion to Suppress, it is the opinion of the undersigned that the relief requested should be granted.

3) That this affidavit is being filed pursuant to NCGS 15A-977.

1. I am duly licensed and authorized to practice law in the State of North Carolina and am the attorney for the above-named Defendant in the above-captioned case.

2. I have received and thoroughly reviewed all discovery disclosed thus far by the State. Included in the discovery are documents that set forth the procedural history of the investigation of the crimes alleged in this matter.

3. Based on the facts as they are set forth in the discovery by the state, and personal factual and legal research, there is a good faith basis to believe that evidence was obtained in violation the laws of the State of North Carolina as well as the United States Constitution, and that suppression is required as set forth in Defendant's motion.

2. Preserving Suppression Issues at Trial

N.C. Rule of Appellate Procedure 10(a):

- To preserve an issue for appellate review, a party must present a timely request, objection, or motion stating the specific grounds for the ruling the party desired the court to make.

Motion must be renewed at trial!

- A pretrial motion to suppress is a type of motion *in limine*.
- Rulings on motions *in limine* are preliminary in nature and subject to change at trial, depending on the evidence offered.
- Thus, a motion *in limine* is insufficient to preserve for appeal the question of the admissibility of evidence if the defendant fails to further object to that evidence at the time it is offered at trial.

State v. Hayes, 350 N.C. 79 (1999)
State v. Golphin, 352 N.C. 364 (2000)

Motion must be renewed each time!

- A motion *in limine* is insufficient to preserve for appeal the question of the admissibility of evidence if the defendant fails to further object to that evidence at the time it is offered at trial.

State v. Golphin, 352 N.C. 364 (2000)

- Where evidence is admitted over objection and the same evidence has been previously admitted or is later admitted without objection, the benefit of the objection is lost.

State v. Alford, 339 N.C. (1995)

3. Appeals from Suppression Rulings

General Appeal Rules

- N.C. Rule of Appellate Procedure 4(a):
 - Oral notice of appeal at trial following entry of judgment; or
 - Written notice of appeal within 14 days
- N.C. Rule of Appellate Procedure 4(b):
 - Written notice must:
 - Specify the appealing party
 - Designate the judgment or order being appealed
 - Designate the court to which the appeal is taken

1 release. I will recommend that he be assessed and be given
2 any substance abuse treatment as the professionals inside
3 the prison system determine is necessary, but I'm not going
4 to impose any monetary judgment because of the active
5 sentence. Anything further from either side?

6 MR. GREER: No, Your Honor.

7 MR. [REDACTED]: Is this a block where he can do an
8 ASR?

9 THE COURT: No, it is not, because it is a C. You
10 need to enter your notice of appeal at this time?

11 MR. [REDACTED]: Yes.

12 THE COURT: I will go ahead and appoint the
13 appellate defender.

14 (Judge excuses jury at 4:37 PM.)

15 (Recess at 4:39 PM.)

STATE OF NORTH CAROLINA
COUNTY OF CABARRUS

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IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO(S): 22CR363845-120, 23CR000478-120,
23CR000479-120

FILED

DATE: December 10, 2024

TIME: 7:58:21 AM

CABARRUS COUNTY

STATE OF NORTH CAROLINA

CLERK OF SUPERIOR COURT
BY: A)Thomas

VS.

) NOTICE OF APPEAL TO THE
) NORTH CAROLINA COURT OF APPEALS
)
)

DEFENDANT

The above captioned cases were tried in Superior Court on 12/2/2024-12/6/2024.

The Defendant hereby enters notice of appeal to the North Carolina Court of Appeals.

This that 9th day of December, 2024.

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STATE OF NORTH CAROLINA
COUNTY OF CABARRUS

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO(S): 22CR363845-120, 23CR000478-120,
23CR000479-120

STATE OF NORTH CAROLINA

VS.

)
)
) AMENDED
) NOTICE OF APPEAL TO THE
) NORTH CAROLINA COURT OF APPEALS
)
)

DEFENDANT

The above captioned cases were tried in Superior Court on 12/2/2024-12/6/2024.
The judgment entered after a finding of guilty by a jury was 19-32 months active on each charge to run consecutive.
The Defendant hereby enters notice of appeal to the North Carolina Court of Appeals.
This judgment was entered on December 6, 2024 by the Honorable Michael Duncan.

This that 10th day of December, 2024.

Appeals after Guilty Pleas

§ 15A-979(b): An order denying a motion to suppress evidence may be reviewed upon an appeal from a judgment of conviction, including a judgment entered upon a plea of guilty.

-- BUT --

The defendant must notify the prosecutor and the court of his intention to appeal before plea negotiations are finalized, or he waives his right to appeal and the appeal will be dismissed.

State v. Reynolds, 298 N.C. 380 (1979)

STATE VERSUS

File No.

19CRS

Name Of Defendant

20. Have you agreed to plead ☒ guilty ☐ guilty pursuant to *Alford* ☐ no contest as part of a plea arrangement? (If so, review the terms of the plea arrangement as listed in No. 21 below with the defendant.)

(20) yes

21. The prosecutor, your lawyer and you have informed the Court that these are all the terms and conditions of your plea:

PLEA ARRANGEMENT

Mr. [REDACTED] will plead guilty to the lesser included charges of Attempted Trafficking in Heroin by Possession (14-28 grams) and Attempted Trafficking in Heroin by Transportation (14-28 grams).

He will receive two consecutive sentences of 27-45 months imprisonment each (Class E, PRL V, mitigated).

All contraband will be destroyed and all property seized will be forfeited.

Defendant reserves the right to appeal this judgement pursuant to NCGS 15A-979(6).

☒ The State dismisses the charge(s) set out on Page Two, Side Two, of this transcript.

☐ The defendant stipulates to restitution to the party(ies) in the amounts set out on "Restitution Worksheet, Notice And Order (Initial Sentencing)" (AOC-CR-611).

22. Is the plea arrangement as set forth within this transcript and as I have just described it to you correct as being your full plea arrangement?

(22) yes

ORAL NOTICE OF APPEAL



Defendant gives notice of appeal.

Defendant gives notice of appeal from the judgment.



Defendant gives notice of appeal of the order denying his motion to suppress.

Defendant gives notice of appeal of the order denying his motion to suppress and the judgment.



WRITTEN NOTICE OF APPEAL



Defendant gives notice of appeal.

Defendant gives notice of appeal to the North Carolina Court of Appeals from the 15 August 2025 judgment entered by the Honorable Judge Smith in Wake County Superior Court in this case.



Defendant gives notice of appeal to the North Carolina Court of Appeals from the 15 June 2025 order denying his motion to suppress entered by the Honorable Judge Smith in Wake County Superior Court in this case.

Defendant gives notice of appeal to the North Carolina Court of Appeals from the 15 June 2025 order denying his motion to suppress and the 15 August 2025 sentence entered by the Honorable Judge Smith in Wake County Superior Court in this case.



State's Appeals

§ 15A-979(c): State may appeal adverse ruling on motion to suppress prior to trial if the prosecutor certifies to the judge that:

- The appeal is not taken for the purpose of delay
- The evidence is essential to the case

Additional Rules:

- Without certification, State has no statutory right to appeal.
- Notice of appeal does not have to include certification.
- Certification must be filed before the record is docketed in the appellate division, and cannot be filed after the appeal is docketed.

- State v. Turner, 305 N.C. 356 (1982)
- State v. Blandin, 60 N.C.App. 271 (1983)
- State v. Dobson, 51 N.C.App. 445 (1981)

4. New Issues: Exclusionary Rule and Good-Faith Exception

Application of Exclusionary Rule

State v. Julius, 385 N.C. 331 (2023):

- If a defendant shows a *federal* 4th Amendment violation, court should not reflexively suppress evidence, because suppression is not mandated by the Federal Constitution.
- Suppression should be the last resort, not the first impulse.
- The exclusionary rule deters deliberate, reckless, or grossly negligent conduct, or recurring/systemic negligence. It should only be where it results in appreciable deterrence and the benefits of deterrence outweigh the costs.
- FN: “Defendant did not argue that the search violated the North Carolina Constitution.”

Application of Exclusionary Rule

- Argue proactively; if trial court does not address it, your winning suppression order will be reversed.
- Include exclusion findings/conclusions in your proposed order.
- Additional arguments:
 - Preservation of the integrity of the judicial branch.
 - Ensuring the systematic, in-depth training of police forces.
 - NCC Article I, Section 18 directs our courts to provide every person with a remedy for injury. There are no other feasible civil/criminal remedies.

Application of Exclusionary Rule

AND...

Raise a parallel claim under Article I, Section 20 of the
North Carolina Constitution!

Good-Faith Exception

U.S. v. Leon, 468 U.S. 897 (1984): If officers act in reasonable reliance on a search warrant issued by a neutral and detached magistrate, and the warrant is later found to be unsupported by PC, the Government may still use the evidence.

State v. Carter, 322 N.C. 709 (1988):

- “Our state constitution requires the exclusion of evidence obtained by unreasonable search and seizure.”
- There is no good-faith exception under Article I, Section 20.

§ 15A-974: Evidence must be suppressed if its exclusion is required by the state or federal constitutions, or if it is obtained through a substantial violation of Chapter 15A.

Good-Faith Exception

N.C. Sess. Law 2011-6:

- § 15A-974 amended to add good-faith exception to 15A violations.
- Asked NC Supreme Court to overrule Carter.

State v. Rogers, No. 377PA22 (17 Oct. 2025):

- Carter is expressly overruled; good-faith exception exists under Article I, Section 20.
- Carter's holding that an exclusionary rule arises out of Article I, Section 20 is “dubious,” but that question is not before the court.
- Court assumed, without deciding, that the exclusionary rule still exists, but leaves that issue for a future case.

Exclusion & Good-Faith Exception Recap

Federal Claims under the Fourth Amendment:

- Exclusionary rule is not automatic. Argue proactively for it to apply.
- Good-faith exception exists. State must assert the exception.

State Claims under Article I, Section 20:

- Exclusionary rule automatically applies upon violation (for now).
- Good-faith exception exists. State must assert the exception.

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