

Advanced Motions to Suppress

February 2025

Jeff Welty



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1. Sufficiency of the Motion and Affidavit

- G.S. 15A-977(a): “A motion to suppress evidence in superior court made before trial must be in writing . . . must state the grounds upon which it is made . . . [and] must be accompanied by an affidavit containing facts supporting the motion.”
- G.S. 15A-977(c): You “may summarily deny” motions that do not meet these requirements

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1. Sufficiency of the **Motion** and Affidavit

NOW COMES THE DEFENDANT, by and through undersigned counsel, and moves the Court for the following motion set forth below:

1. The state shall be ordered to suppress any seizures, arrest, detentions, and wire taps of Trevor Forte based on information provided by Michael Oliver.

1. Sufficiency of the Motion and **Affidavit**

The undersigned, first duly sworn, states:

1. I represent Defendant in this criminal action.
2. That upon information and belief and after discussion with the above captioned defendant, review of discovery provided by the State including officer reports and documents produced in connection with this case, review of video evidence provided in discovery, the undersigned attorney has reason to believe that all alleged in the attached Motion to Suppress is accurate and alleged in good faith.
3. Further the Affiant sayeth naught.

2. Timing Rules

- **Background rules**
 - G.S. 15A-975(a): a defendant must move to suppress prior to trial unless he or she “did not have reasonable opportunity to make the motion before trial”
 - G.S. 15A-976: a defendant may move to suppress any time prior to trial
- Local rules, criminal case docketing plans, or case-specific scheduling orders may require earlier filing

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2. Timing Rules

- **Special rules for certain evidence**
 - Applies to defendants' statements, warrantless searches, and warrant searches where the defendant was not present
 - G.S. 15A-976: "If the State gives notice not later than 20 working days before trial of its intention to use [such] evidence . . . the defendant may move to suppress the evidence only if its motion is made not later than 10 working days following receipt of the notice from the State."
 - G.S. 15A-975: If the State doesn't give notice, the defendant may move to suppress anytime, including during trial

3. Discretion and Summary/Procedural Denials

- G.S. 15A-977(c): You may summarily deny" motions that don't allege a legal basis or that aren't supported by an appropriate affidavit
- The timing rules are couched in language that is more mandatory, but my impression is that judges sometimes elect to consider untimely motions
- When would you choose to summarily deny, or not?

4. Who Goes First?

- Once a motion to suppress, in proper form, has been filed, it is the State's burden to provide that the evidence in question should not be suppressed.
- Because the burden is on the State, the State should present its evidence first.

5. When the Defendant Testifies

- Scope of testimony and cross at the suppression hearing
 - N.C. R. Evid. 104(d): "The accused does not, by testifying upon a preliminary matter, subject himself to cross-examination as to other issues in the case."
- Use of suppression hearing testimony at trial
 - State may not use it in its case in chief but may use it to impeach the defendant if he testifies. State v. Bracey, 303 N.C. 112 (1981).

6. Timing of Your Ruling

- You are not required to rule at the conclusion of the hearing
- But there are good reasons to rule sooner rather than later
 - Avoids any potential out-of-session/out-of-county issues
 - Allows the State to appeal if you grant the motion
 - Allows the parties to incorporate the effect of the ruling in decisions about plea negotiations and trial strategy
- It is OK to rule at the conclusion of the hearing and enter a more detailed order later

7. Content of Your Ruling

- G.S. 15A-977(f): “The judge must set forth in the record his findings of facts and conclusions of law.”
- Express findings of fact are not required unless there is a material conflict in the evidence
- Conclusions of law are always required
- A written order is never required, but is the “better practice”

8. Renewal of Motions to Suppress

- G.S. 15A-975(c): “If, after a pretrial determination and denial of the motion, the judge is satisfied, upon a showing by the defendant, that additional pertinent facts have been discovered by the defendant which he could not have discovered with reasonable diligence before the determination of the motion, he may permit the defendant to renew the motion before the trial or, if not possible because of the time of discovery of alleged new facts, during trial.”

Department Name

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