

DWI Hearings

James Drennan
UNC School of Government
March, 2007

DWI motions in my district

1. Are all heard pretrial
2. Are never heard pretrial
3. Mostly are heard pretrial
4. Are sometimes heard pretrial

Motions In Implied Consent Trials

- Heard only at pretrial, unless
 - Motion to dismiss at close of evidence
 - Based on “facts not previously known”, discovered “during the course of the trial”
 - Role of discovery
- If heard during trial, state must be given reasonable time to prepare for motion

A reasonable time to prepare is

1. Until the end of the day
2. One day
3. Officers next court date
4. A week
5. As long as the state wants
6. Depends on the case,

Summary Decision

- Does not require written findings
- May occur
 - If motion not filed pretrial and no exception applies
 - If state concedes that evidence in question won't be used

Orders and Findings

1. I do
2. I do and use a form
3. Winning party does
4. Who knows?

Orders and Findings

- Required in all motions unless summarily disposed of
- Findings of fact and conclusions of law must be in writing
- Testimony must be under oath
- Must make preliminary ruling on motion

Rulings for the State

- Must be in writing and set out findings of fact and conclusions
- Must indicate “preliminary indication” of court’s decision
- Apparently then may enter final ruling
- May not be appealed by defendant, but apparently may be renewed in superior court on de novo appeal

Ruling for Defense

- Must be in writing and set out findings of fact and conclusions
- Must indicate “preliminary indication” of court’s decision
- May not enter final ruling at that point, but must enter preliminary written ruling
- Must give state opportunity to decide whether to appeal
 - No time limit specified

Ruling for Defense

- If motion heard during trial, trial must be continued until the appeal in superior court is heard
- On appeal, superior court reviews matter on the record, unless there is a “dispute about the findings of fact”
 - If there is a dispute, matter heard de novo

Case Management Nightmare

1. Motion heard during trial
2. State gets continuance to prepare
3. Ruling for defense
4. Order prepared
5. State takes time to decide to appeal and does
6. Dispute about findings, so de novo rehearing of evidence in the motion

Case Management Scenario

7. Superior court rules for state, remands
8. District court trial resumes, defendant is convicted
 1. *Who hears rest of trial if original judge unavailable?*
9. Defendant appeals for trial de novo
10. Defendant reasserts motion to suppress
11. Defendant tried in superior court

Case Management Nightmare

1. Defendant makes pretrial motion
2. Ruling for state
3. Defendant tried and convicted
4. Defendant appeals
5. Defendant reasserts motion in superior court
6. Ruling for defendant
7. Defendant tried and acquitted

Possible Motions

- To suppress intoxylizer results
- To suppress all evidence based on illegal stop or illegal arrest
- To return vehicle seized based on failure to have speedy trial
- To activate sentences based on impairment in jail

Facts, facts. You want facts—you can't handle facts –or can you?

- “Just the Facts, Ma'am”. Sergeant Joe Friday
- Facts are generally over esteemed. For most practical purposes, a thing is what men think it is. When they judged the earth flat, it was flat. As long as men thought slavery tolerable, tolerable it was. We live down here among shadows, shadows among shadows. John Updike

Purpose of Findings of Fact

- It is not enough that there may be evidence in the record sufficient to support findings which could have been made. *The trial court must itself determine what pertinent facts are actually established by the evidence before it*, and it is not for an appellate court to determine de novo the weight and credibility to be given to evidence disclosed by the record on appeal. *Knutton v. Cofield*, 273 N.C. 355, 160 S.E.2d 29 (1968) (emphasis added)

Findings of Fact—General Law

- Factfinder must make findings of fact in ultimate facts only.
- *"It is of the highest importance in the art of detection to be able to recognize out of a number of facts which are incidental and which are vital.... I would call your attention to the curious incident of the dog in the night-time." "The dog did nothing in the night-time." "That was the curious incident." Sir Arthur Conan Doyle*
- Ultimate facts are final facts necessary to establish a cause of action or defense.
- Evidentiary facts are subsidiary facts required to prove ultimate facts.
 - Often included in orders to provide context to the ultimate facts

Guidelines for Findings

- **Limit facts to those necessary for outcome of case; KNOW WHAT THE ISSUES ARE**
 - **Must be accurate, as a matter of fairness**
 - Findings given great deference
 - **Must be selective**
 - Not all evidence is material to resolution of issues
- **Findings should normally be in sequence; tell the story**
- **Findings should be written in clear, simple, declarative sentences**

Conclusion of Law

- A single statement
- With legal significance
- Supported by the facts previously found
- Articulating the law applicable on an issue or element necessary to determine a disputed principle of law
- Used along with other conclusions of law to determine the rights of the parties
