13.3 Motions Practice in District Court

The preceding two sections have focused on the timing and procedural requirements for pretrial motions in superior court. While some of those requirements apply in district court, motions practice is not as formal.

A. Misdemeanors

Timing. Motions practice in misdemeanor cases is governed by G.S. 15A-953, "Motions practice in district court." The statute provides as follows:

- Motions in district court ordinarily should be made at arraignment (usually at the outset of trial) or during trial, as appropriate. *But cf. infra* § 13.4C, Motion to Recuse Trial Judge (discussing possible time limits on motion to recuse trial judge).
- A written motion may be made before trial.
- With the consent of all parties and the court, a motion may be heard in district court before trial.

Implied-consent offenses, such as impaired driving, have different procedures and deadlines for motions. *See* "Implied-consent offenses," below, in this subsection A.

Procedure. If filed before trial, "[t]he in-writing, service, and filing requirements for motions not made in court apply to motions in the district court as well as in the superior court." *See* Official Commentary to G.S. 15A-951. If made at trial, the motion need not be in writing. *See* G.S. 15A-951(a)(1) (motion made during hearing or trial need not be in writing). However, even when made at trial, your motion may be more persuasive if it is in writing.

Court's ruling on motion. The district court is generally not required to make findings of fact to support a ruling on a pretrial motion (except for court orders on capacity to proceed, juvenile delinquency cases, and certain motions in implied-consent offenses, discussed below). *See State v. Ward*, 127 N.C. App. 115 (1997) (district court is not court of record; thus, State's failure to request findings of fact and conclusions of law does not preclude its appeal from district court dismissal of charges).

Trial de novo. G.S. 15A-953 states that, on appeal to superior court, motions are subject to G.S. 15A-952, which provides, among other things, that certain motions must be made by arraignment if you request arraignment within 21 days of indictment; and must be made within 21 days of indictment if arraignment is not requested. *See supra* § 13.1C,

Motions before Arraignment. Because there is no indictment in misdemeanor appeals, it is not clear how or even whether these timing requirements apply to motions in such cases. *See State v. Vereen*, 177 N.C. App. 233 (2006) (defendant was entitled to arraignment on trial de novo in superior court and had right not to be tried in the same week as arraignment despite defendant's failure to request arraignment; 21-day time limit in which to file written request for arraignment did not apply because defendant had not been indicted). Your local criminal case docketing plan may determine the best way to proceed.

G.S. 15A-953 also provides that no motion in superior court is prejudiced by a ruling in district court or by the failure to raise an issue in district court (except as provided in G.S. 15A-135, which bars a motion to dismiss for improper venue in superior court if defense counsel stipulated to or expressly waived venue in district court). Thus, either side may ordinarily relitigate a motion if the case is appealed to superior court for a trial de novo, and litigation of the motion in superior court for trial de novo is likely required in order to preserve the issue for appellate review. *See* N.C. R. APP. P. 10(a)(1).

Suppression motions. Motions to suppress made in district court, other than motions to suppress in implied-consent offenses (discussed below), are governed by G.S. 15A-973, "Motions to suppress evidence in district court." This statute provides that motions to suppress in misdemeanor cases generally should be made during trial. Counsel may want to reserve a district court motion to suppress in a misdemeanor case until after the first witness has been sworn and jeopardy has attached. However, with the consent of all parties and the court, a suppression motion may be heard before trial.

A defendant who wishes to have evidence suppressed on de novo appeal from a misdemeanor conviction must file a suppression motion before trial in superior court if, as in most cases, the defendant knows of the evidence based on the proceedings in district court. *See State v. Simmons*, 59 N.C. App. 287 (1982). The exceptions set forth in G.S. 15A-975(b) do not apply to misdemeanor appeals—that is, the State is not required to give notice of its intent to introduce the evidence when a misdemeanor is appealed for trial de novo in superior court. *See* G.S. 15A-975(c); *State v. Golden*, 96 N.C. App. 249 (1989) (notice requirements do not apply to misdemeanor appeals). For a further discussion of timing and other requirements for suppression motions in superior court, *see infra* § 14.6A, Timing of Motion (2d ed. 2013).

Implied-consent offenses. Offenses involving impaired driving and certain other alcohol-related offenses are considered implied-consent offenses. *See* G.S. 20-16.2(a1). The North Carolina General Assembly has enacted procedures for motions practice that are specific to implied-consent offenses committed on or after December 1, 2006.

Generally, in cases involving implied-consent offenses, the defendant must move to suppress or dismiss the charges before trial even where the matter is in district court. *See* G.S. 20-38.6(a). The court may summarily deny a motion to suppress made during trial where the defendant knows all facts material to the motion before trial and fails to make the motion before trial. *See* G.S. 20-38.6(d). However, where the defendant discovers

facts during the course of the trial that were not known before trial, he or she may move to suppress or dismiss during the course of the trial. The State is barred from appealing when the district court judge grants a motion to suppress *during* trial, which may give the State a greater incentive to provide pretrial discovery, thereby triggering the requirement that the defendant file motions to suppress or dismiss pretrial. The defendant also may move to dismiss for insufficiency of the evidence at the close of the State's case and at the close of all the evidence. *See* G.S. 20-38.6(a).

While G.S. 20-38.6 does not specify that pretrial motions be in writing, the safer practice is to assume that the general requirements for pretrial motions in superior and district court apply. In other words, pretrial motions should be in writing, filed with the court, and served on the State; and suppression motions should be accompanied by a supporting affidavit. *See* "Procedure," above, in this subsection A., and *infra* § 14.6C, Contents of Motion (2d ed. 2013) (discussing suppression motions). In addition, making the motion in advance in writing will demonstrate to the court that the State was on notice of the motion and that the court should proceed with hearing it. Otherwise, the court may decide to continue the matter to allow the State "reasonable time to procure witnesses or evidence and to conduct research required to defend against the motion," as authorized by G.S. 20-38.6(b).

Following the hearing, the judge must make written findings of fact and conclusions of law and preliminarily indicate whether the motion should be granted or denied. *See* G.S. 20-38.6(f). Where the judge indicates that the motion should be granted, no final order may be entered until the State has either appealed to superior court or indicated that it does not intend to do so. *Id*. (The defendant may not appeal a district court's denial of a pretrial motion to suppress or dismiss; rather, following a conviction in district court, the defendant may appeal to superior court for a trial de novo. *See* G.S. 20-38.7(b).)

For further analysis of the statutory provisions governing motions to suppress and motions to dismiss in implied-consent cases, including appeals by the State following the preliminary granting of a suppression or dismissal motion in district court, see Shea Riggsbee Denning, *Motions Procedures in Implied Consent Cases after State v. Fowler and State v. Palmer,* ADMINISTRATION OF JUSTICE BULLETIN No. 2009/06 (UNC School of Government, Dec. 2009); John K. Fanney, *Pretrial Motions and Hot Topics in DWI Cases* (North Carolina Public Defender Attorney and Investigator Conference, Spring 2008).

B. Motions in Felony Cases

The district court has jurisdiction over felony cases during the time between arrest and indictment. Certain motions, listed below, may be filed in district court during that time.

- Motion to dismiss on the ground that the pleadings fail to state a charge within the superior court's jurisdiction. *See* G.S. 15A-604; *see also State v. Cronauer*, 65 N.C. App. 449 (1983) (court notes district court's authority—and obligation—to dismiss warrant in felony extradition case on showing that it fails to sufficiently allege a

crime; court relies on G.S. 15A-954(a)(10), which authorizes dismissal if pleading fails to charge offense).

- Motion to set conditions of pretrial release. *See* G.S. 15A-531 through G.S. 15A-543.
- Motion seeking an evaluation of the defendant's capacity to proceed. *See supra* § 2.5A, Moving for Examination (2d ed. 2013).
- Motion seeking funds for experts. *See supra* § 5.5B, Who Hears the Motion.
- Motion seeking records in the possession of third parties. *See supra* § 4.6A, Evidence in Possession of Third Parties (2d ed. 2013).
- Motion to preserve evidence. *See supra* § 4.2C, Preserving Evidence for Discovery (2d ed. 2013).

Evidentiary motions for which recordation is desirable should be heard before a superior court judge. Some cases suggest that the superior court has jurisdiction to hear motions in felony cases even before indictment and transfer. *See State v. Jackson*, 77 N.C. App. 491, 496–97 (1985) (relying on G.S. 7A-271).