

# Chapter 14

## Suppression Motions

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A motion to suppress illegally obtained evidence is one of the most effective weapons in a criminal defense lawyer’s arsenal. Failing to file a motion to suppress when there are grounds to do so may constitute ineffective assistance of counsel. *See State v. Gerald*, \_\_\_ N.C. App. \_\_\_, 742 S.E.2d 280 (2013) (counsel was ineffective by failing move to suppress evidence obtained by a “patently unconstitutional seizure”), *temp. stay allowed*, \_\_\_ N.C. \_\_\_, 742 S.E.2d 194 (2013); *State v. Canty*, \_\_\_ N.C. App. \_\_\_, 736 S.E.2d 532 (2012). There are multiple reasons to file a suppression motion. In addition to suppressing evidence that is harmful to your client, you may be able to:

- obtain detailed information at the suppression hearing from officers or other witnesses who might not otherwise be willing to talk to you;
- obtain impeachment material for use at trial in the form of sworn testimony of witnesses;
- provide your client and the prosecutor an opportunity to hear the evidence and get a more realistic view of the case; and
- earn your client’s trust by demonstrating zealous advocacy.

Section 14.1 discusses basic types of evidence subject to exclusion and grounds for exclusion. Sections 14.2 through 14.5 discuss in greater detail those categories of evidence. Section 14.6 discusses general procedures governing suppression motions, including content and timing requirements and the scope of the right to an evidentiary hearing. Section 14.7 covers appeals from suppression motions.

It is beyond the scope of this chapter to review exhaustively the law on all constitutional (or statutory) violations that may result in the suppression of evidence. A fuller discussion of the law on these issues may be found in WAYNE R. LAFAYE ET AL., CRIMINAL PROCEDURE (3d ed. 2007) (hereinafter LAFAYE, CRIMINAL PROCEDURE) (a multi-volume set discussing Fifth and Sixth Amendment issues, among other things); WAYNE R. LAFAYE, SEARCH AND SEIZURE: A TREATISE ON THE FOURTH AMENDMENT (5th ed. 2012) (hereinafter LAFAYE, SEARCH AND SEIZURE) (a

multi-volume set); and ROBERT L. FARB, *ARREST, SEARCH, AND INVESTIGATION IN NORTH CAROLINA* (UNC School of Government, 4th ed. 2011) (hereinafter FARB).

This chapter also does not review other constitutional and evidentiary grounds for challenging the admission of evidence, as when the State offers testimonial out-of-court statements in violation of the Confrontation Clause or opinion testimony about the identity of a controlled substance without a confirmatory lab test. While such grounds may warrant exclusion of evidence, by motion in limine before trial or objection during trial, they do not involve the suppression of illegally obtained evidence in the sense discussed in this chapter.

For discussion of issues involved with warrantless stops and searches, including reasonable suspicion to stop, grounds to frisk, and numerous other issues in that context, see *infra* Ch. 15, *Stops and Warrantless Searches*.