

VOIR DIRE: CONFESSIONS AND OTHER INCRIMINATING STATEMENTS

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I. References.

- For procedural issues involving suppression motions, see [Motion to Suppress Procedure](#) (herein, Motion to Suppress) in this Benchbook.
- For an analysis of legal issues involving confessions and other incriminating statements, see:
 - ROBERT L. FARB, ARREST, SEARCH, AND INVESTIGATION IN NORTH CAROLINA 529-57 (4th ed. 2011) (herein, ASI) and its current supplement; and
 - [The Law of Interrogation in North Carolina](#) (herein, Law of Interrogation) in this Benchbook.

II. Legal Issues.

The legal issues set out below are complex and cannot be readily reduced to a few paragraphs, so consult the cited references.

- A. **Was the Statement Voluntarily Given?** See ASI, 533-34; Law of Interrogation, 1-2.
- B. **Were *Miranda* or Juvenile Statutory Warnings Required, and, If So, Were There Proper Warnings and Waiver of Rights?** See ASI, 534-49; Law of Interrogation, 3-5.
- C. **Did Officers Violate the Defendant's Assertion of the Right to Remain Silent or Right to Counsel by Later Interrogation?** See ASI, 542-49; Law of Interrogation, 4-5.
- D. **Was the Defendant's Sixth Amendment Right to Counsel Violated in Obtaining a Statement?** See ASI, 550-57; Law of Interrogation, 5-6.
- E. **Was the Defendant Unconstitutionally Seized (Arrest or Investigative Stop) in Violation of the Fourth Amendment and Is a Resulting Statement By the Defendant Inadmissible?** See ASI, 530.
- F. **Were Defendant's Statutory Rights Violated That May Require Exclusion of a Statement under the Statutory Exclusionary Rule in G.S. 15A-974?** See ASI, 531-33; Law of Interrogation, 1, 6-7.
- G. **Does Suppression of Statement Bar Admission of That Statement for Impeachment or Admission of a Later Statement or Evidence Seized As a**

Result of Statement? See ASI, 637-40, 654, 664; Law of Interrogation, 2, 4, 6; Motion to Suppress, 8.

III. Voir Dire Hearing. A voir dire hearing will be required when a defendant makes a motion to suppress a confession or other incriminating statement, unless there are grounds to summarily deny or grant the motion under G.S. 15A-977. See Motion to Suppress for a discussion of issues when a defendant files a suppression motion: contents and timing of the motion; summary grant or denial of the motion; the suppression hearing; the timing and contents of a ruling on the motion; and a renewal of the motion.

IV. Findings of Fact.

A. Generally. All findings of fact must be supported by a preponderance of the evidence. Include as many facts as relevant to the case and be sure those facts support the conclusions of law.

B. Findings to Include in Every Case. Assuming they are supported by the evidence, the trial court's order should include the following findings of fact:

- *The defendant was personally present in open court with [his] [her] counsel.*
- *The evidentiary hearing was held in the absence of the jury.*
- *The trial court had an opportunity to see and observe each witness and to determine what weight and credibility to give to each witness's testimony.*

C. Specific Findings As Appropriate to Suppression Motion. Precede findings with language such as: "*From the credible evidence, the Court finds the following facts by at least the preponderance of evidence.*"

- Where the defendant was arrested.
- When the defendant was arrested.
- With what offense was the defendant charged.
- Place of interrogation.
- Was the interrogation electronically recorded (see G.S. 15A-211).
- Was the recording audio only or both audio and video.
- Did the recording include the entirety of the interrogation.
- Of what constitutional or statutory rights (if a juvenile, see G.S. 7B-2101), if any, the defendant was advised, and by whom.
- When was the defendant advised of these rights.
- What response, in language or conduct, was made by the defendant indicating the advisement of rights was understood and the rights were waived.
- Length of interrogation.
- Who interrogated the defendant and in what language.
- Age of the defendant, and the language used and understood by the defendant.
- Educational background of the defendant.
- Physical condition of the defendant at the time of interrogation.
- State of sobriety (alcohol or drugs).

- Mental condition of the defendant at time of interrogation (e.g., confused, coherent, complaining, understanding).
- Reasonableness of the defendant's answers in relation to questions.
- Any promises, offers of reward, or inducement to the defendant by law enforcement officers to make a statement, or absence of these factors.
- Any threats, suggested violence, or show of violence by law enforcement officers to persuade or induce the defendant to make a statement, or absence of these factors.
- Any indication by the defendant that he or she desired to stop talking and when, if so, the indication was made.
- Any request by the defendant for a lawyer and, if so, when request was made.
- (If juvenile) Any request by the defendant for a parent, guardian, or custodian to be present during questioning.
- Any express statement of the defendant that he or she did not want a lawyer present.
- Any express statement that the defendant understood his or her rights.
- Any written waiver signed by the defendant, introduced into evidence as State's Exhibit _____.
- Any oral waiver by the defendant.
- Any statements obtained by law enforcement officers when the defendant had a Sixth Amendment right to counsel. [See II.D. in this outline.]
- Any statements obtained by law enforcement officers after the defendant had been arrested without probable cause or had been subject to an investigative stop without reasonable suspicion. [See II.E. in this outline.]
- Any statements obtained by law enforcement officers after the defendant's statutory rights had been substantially violated. [See II.F. in this outline.]

V. Conclusions of Law. What follows is sample language for a trial court order finding that evidence of statements are admissible. However, the language should be modified as appropriate if the trial court order finds that the evidence is inadmissible.

Upon the foregoing findings of fact, the court concludes as a matter of law that:

1. None of the defendant's constitutional rights, either federal or state, were violated by [his] [her] arrest, detention, interrogation, or statements;

2. [If issue raised by suppression motion]

[Alternate 1] The defendant's statutory rights were not substantially violated by [his] [her] arrest, detention, interrogation, or statements;

[Alternate 2] The defendant's statutory right[s] [describe right or rights] [was] [were] substantially violated, but exclusion of the defendant's statements is not required under G.S. 15A-974(a)(2).

3. No promises, offers of reward, or inducements for the defendant to make a statement were made.

4. No threat, suggested violence, or show of violence were made to persuade the defendant to make a statement.

5. The statement(s) made by the defendant to _____ on _____, 20__, [was] [were] made freely, voluntarily, and understandingly.

6. *The defendant fully understood [his] [her] constitutional right to remain silent and [his] [her] constitutional right to counsel and all other rights;*

7. *The defendant freely, knowingly, intelligently, and voluntarily waived each of those rights and thereafter made the statement(s) to the above-mentioned officers.*

Note: In some cases, the trial court may allow some statements to be admitted and other statement to not to be admitted. Modify the conclusions of law as appropriate.

VI. Order. A sample form for the trial court's order is provided below:

It is now therefore ordered that the defendant's objection to the admission of the statement(s) is [overruled] [sustained], and the defendant's motion to suppress is [denied] [granted].

Note: Modify the order in cases in which some statements are allowed to be admitted and others are not allowed to be admitted.