



# Practical Suppression Issues on Appeal

MICHAEL GROSS AND NATHAN MOREY

1



## Suppression Hearings

- ▶ Article 28.01
- ▶ Defendant must be given 10 days notice of pretrial hearing
- ▶ Motion must be filed 7 days before hearing, but trial court may excuse for good cause

2

# Suppression Hearings

- ▶ Article 28.01 does not contain any express pleading requirements
- ▶ But, vaguely or broadly worded motions can result in a forfeited claim on appeal
  - ▶ *Swain v. State*, 181 S.W.3d 359, 365 (Tex. Crim. App. 2005)
  - ▶ *Resendez v. State*, 306 S.W.3d 308, 316 (Tex. Crim. App. 2009)
- ▶ Do these forfeiture cases amount to pleading requirements?

3

# Suppression Hearings

- ▶ If the prosecution is confronted with a vague, boilerplate motion to suppress, they should ask the defendant to clarify:
  - ▶ What's the alleged illegal conduct?
  - ▶ What's the law that was violated?
  - ▶ What's the evidence sought to be suppressed?

4

# Suppression Hearings

- ▶ Article 44.02
- ▶ If the defendant does a plea bargain, then he/she must preserve any appellate issues by written motion filed before trial
- ▶ But, if the defendant does an open plea or a contested trial, then 44.02 does not place any limitations on how a suppression issue is preserved
  - ▶ Rule 33.1 always applies

5

# Standing

- ▶ A defendant must have standing to bring a motion to suppress under both the federal and statutory exclusionary rule
- ▶ There is no "automatic standing," *United States v. Salvucci*, 448 U.S. 83, 95 (1980)
  - ▶ Nevertheless, prosecutors should not challenge standing when doing so runs contrary to the facts of their case
- ▶ Standing may be raised for the first time on appeal.
  - ▶ *State v. Klima*, 934 S.W.2d 109, 111 (Tex. Crim. App. 1996)

6

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

Title search: Practical Suppression Issues on Appeal

Also available as part of the eCourse

[2023 Robert O. Dawson eConference on Criminal Appeals](#)

First appeared as part of the conference materials for the  
2023 Robert O. Dawson Conference on Criminal Appeals session  
"Practical Suppression Issues on Appeal"