More About Those Weird DWI Motions Procedures

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You represent a defendant charged with DWI. You move to suppress evidence in district court. The district court enters a preliminary determination in your favor. The State appeals. The superior court disagrees with the district court and remands the case with instructions to deny your motion. Your client pleads guilty. You appeal to superior court. You want the court of appeals to consider the merits of your motion. What should you do to preserve that right?

Here's what you *shouldn't* do. Permit your client to enter a guilty plea and attempt to appeal pursuant to G.S. 15A-979(b).

State v. Hutton**, ___ N.C. App. ___ (November 17, 2015).** The court of appeals in *State v. Hutton* held that the defendant had no right to seek review of the ruling on his motion to suppress in an impaired driving case when the district court did not enter a final judgment pursuant to G.S. 20-38.6(f). The defendant in *Hutton* moved to suppress evidence in district court. The district court judge preliminarily indicated that he intended to grant the motion. The State appealed. The superior court reversed the preliminary determination below and remanded the case with instructions to deny the motion to suppress. The district court, however, never entered a final ruling on the motion to suppress. The defendant nevertheless pled guilty and subsequently appealed to superior court for trial de novo. He again pled guilty in superior court and entered notice of appeal to the court of appeals.

The court of appeals held that the defendant had no right to appeal the ruling on his motion to suppress because the district court did not enter a final judgment pursuant to G.S. 20-38.6(f) denying the motion. The court explained that there is no right to appeal from a superior court's order pursuant to G.S. 20-38.7(a) remanding an implied-consent case for a final ruling on a motion; thus, there was no "order finally denying a motion to suppress" from which a defendant could appeal. The court further declined to grant the defendant's petition for certiorari review.

So what *should* you do? The *Hutton* court identifies the lack of a final ruling in district court on the defendant's motion to suppress as the barrier to the defendant's appeal of right. The court's opinion thus indicates that the defendant would have had a right to appeal had the district court entered a final ruling on the motion. But because there was no final order entered by the district court, the court didn't actually hold that to be true. My advice to an attorney who wants to ensure the right to appellate review of a ruling on a motion to suppress or dismiss in an implied consent case would be to first ensure the the district court enters a final ruling on the motion following the remand from superior court and to then move again for the desired relief in superior court.

Hutton does not clear up the uncertainty about how a superior court should react to such a motion. May a superior court enter a ruling that differs from the earlier ruling? Is it collaterally estopped from considering the issues at all? My advice to a superior court judge confronted with such a motion is similarly cautious. Until the appellate courts say otherwise, I think a superior court should entertain the motion without regard to the prior interlocutory ruling.

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