

1 **5-212. Motion to suppress.**

2 A. **Property.** A person aggrieved by a search and seizure may move for the return of
3 the property and to suppress its use as evidence.

4 B. **Suppression of other evidence.** A person aggrieved by a confession, admission or
5 other evidence may move to suppress such evidence.

6 C. **Time for filing.** A motion to suppress shall be filed no less than sixty (60) days
7 prior to trial, unless, upon good cause shown, the trial court waives the time requirement. Any
8 motion to suppress filed prior to trial shall be decided prior to trial to preserve the state's right to
9 appeal any order suppressing evidence.

10 D. **Hearing.** The court shall receive evidence on any issue of fact necessary to the
11 decision of the motion. If a motion pursuant to Paragraph A of this rule is granted, the property
12 shall be returned, unless otherwise subject to lawful detention.

13 [As amended by Supreme Court Order No. 13-8300-016, effective for all cases pending or filed
14 on or after December 31, 2013.]

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16 **Committee commentary.** — For the general rule governing motions, *see* Rule 5-
17 601 NMRA.

18 The aggrieved person under Paragraphs A and B of this rule is the person who has standing
19 to raise the issue. *See State v. Nemrod*, 1973-NMCA-059, 85 N.M. 118, 509 P.2d 885 [~~(Ct. App.~~
20 ~~1973)~~], and *State v. Torres*, 1970-NMCA-017, 81 N.M. 521, 469 P.2d 166 [~~(Ct. App. 1970)~~].

21 The motion under Paragraph B of this rule is used to suppress or exclude evidence obtained
22 in violation of any constitutional rights, not only that obtained by an unlawful search and

1 seizure. *See e.g., State v. Harrison*, 1970-NMCA-025, 81 N.M. 324, 466 P.2d 890 [~~Ct. App.~~
2 ~~1970~~] (motion to exclude lineup identification).

3 Paragraph B was amended in 2012 in response to *City of Santa Fe v. Marquez*, 2012-
4 NMSC-031, 285 P.3d 637. Marquez held prospectively “that Rule 5-212(C) requires that motions
5 to suppress be filed before trial and that the district court must adjudicate suppression issues before
6 trial, absent good cause.” *Id.* ¶ 28. If a suppression issue is untimely raised, the trial judge may
7 order a continuance in order to ascertain whether there is good cause for the late filing. Examples
8 of good cause may include, but are not limited to, failure of the prosecution to disclose evidence
9 relevant to the motion to suppress to the defense prior to trial, failure of either party to provide
10 discovery, or the discovery of allegedly [~~suppressable~~] suppressible evidence during the course of
11 the trial. If good cause is shown, the judge may excuse the late filing and hold a hearing [~~pursuant~~
12 ~~to~~] under Paragraph D. Absent good cause shown, the judge may deny the motion for failure to
13 comply with the rule. If the motion to suppress is granted, the court may declare a mistrial.

14 If a defendant raises a motion before trial, the court should endeavor to resolve such motion
15 at least five (5) days prior to trial in order to permit the parties to negotiate resolution via plea
16 consistent with Rule 5-304 NMRA.

17 At a hearing on a motion to suppress, the Rules of Evidence, except for the rules on
18 privileges, do not apply. *See* [~~Paragraph A of Rule 11-104~~] Rule 11-104(A) NMRA and
19 [~~Subparagraph (1) of Paragraph D of Rule 11-1101~~] Rule 11-1101(D)(1) NMRA. For example,
20 hearsay evidence is admissible. *United States v. Matlock*, 415 U.S. 164[~~, 94 Sup. Ct. 988, 39 L.~~
21 ~~Ed. 2d 242~~] (1974).

1 [As amended by Supreme Court Order No. 13-8300-016, effective for all cases pending or filed
2 on or after December 31, 2013; as amended by Supreme Court Order No. S-1-RCR-2023-00037,
3 effective for all cases filed on or after December 31, 2024.]