

22-3216. Motion to suppress illegally seized evidence. (1) Prior to the trial a defendant aggrieved by an unlawful search and seizure may move for the return of property and to suppress as evidence anything so obtained.

(2) The motion shall be in writing and state facts showing wherein the search and seizure were unlawful. The judge shall receive evidence on any issue of fact necessary to determine the motion and the burden of proving that the search and seizure were lawful shall be on the prosecution. If the motion is granted then at the final conclusion of the case, the court shall order the suppressed evidence restored to the party entitled thereto, unless it is otherwise subject to lawful detention.

(3) The motion shall be made before trial, in the court having jurisdiction to try the case, unless opportunity therefor did not exist or the defendant was not aware of the ground for the motion, but the court in its discretion may entertain the motion at the trial.

(4) A motion to suppress illegally seized evidence may be made before or during a preliminary examination. If the motion is granted the suppressed evidence shall be held subject to further order of the magistrate. If the defendant is bound over for trial, the suppressed evidence shall thereupon become subject to the orders of the district court. If the defendant is not bound over and if no further proceedings are instituted on the particular charge or involving the particular suppressed evidence within ninety (90) days after the granting of the order, then the magistrate shall order the suppressed evidence restored to the party entitled thereto, unless it is otherwise subject to lawful detention.

History: L. 1970, ch. 129, § 22-3216; L. 1971, ch. 114, § 5; July 1.