

RULE 581. SUPPRESSION OF EVIDENCE.

(A) The defendant's attorney, or the defendant if unrepresented, may make a motion to the court to suppress any evidence alleged to have been obtained in violation of the defendant's rights.

(B) Unless the opportunity did not previously exist, or the interests of justice otherwise require, such motion shall be made only after a case has been returned to court and shall be contained in the omnibus pretrial motion set forth in Rule 578. If timely motion is not made hereunder, the issue of suppression of such evidence shall be deemed to be waived.

(C) Such motion shall be made to the court of the county in which the prosecution is pending.

(D) The motion shall state specifically and with particularity the evidence sought to be suppressed, the grounds for suppression, and the facts and events in support thereof.

(E) A hearing shall be scheduled in accordance with Rule 577 (Procedures Following Filing of Motion). A hearing may be either prior to or at trial, and shall afford the attorney for the Commonwealth a reasonable opportunity for investigation. The judge shall enter such interim order as may be appropriate in the interests of justice and the expeditious disposition of criminal cases.

(F) The hearing, either before or at trial, ordinarily shall be held in open court. The hearing shall be held outside the presence of the jury. In all cases, the court may make such order concerning publicity of the proceedings as it deems appropriate under Rules 110 and 111.

(G) A record shall be made of all evidence adduced at the hearing.

(H) The Commonwealth shall have the burden of going forward with the evidence and of establishing that the challenged evidence was not obtained in violation of the defendant's rights. The defendant may testify at such hearing, and if the defendant does testify, the defendant does not thereby waive the right to remain silent during trial.

(I) At the conclusion of the hearing, the judge shall enter on the record a statement of findings of fact and conclusions of law as to whether the evidence was obtained in violation of the defendant's rights, or in violation of these rules or any statute, and shall make an order granting or denying the relief sought.

(J) If the court determines that the evidence shall not be suppressed, such determination shall be final, conclusive, and binding at trial, except upon a showing of evidence which was theretofore unavailable, but nothing herein shall prevent a defendant from opposing such evidence at trial upon any ground except its suppressibility.

COMMENT: The rule is designed to provide one single procedure for the suppression of evidence alleged to have been obtained in violation of the defendant's rights. The first revision of this rule extended its coverage to violation of the fourth, fifth, and sixth amendments of the Constitution of the United States; such as those proscribed by *Mapp v. Ohio*, 367 U.S. 643, **81 S.Ct. 1684** (1961); *Escobedo v. Illinois*, 378 U.S. 478, **84 S.Ct. 1758** (1964); *Jackson v. Denno*, 378 U.S. 368, **84 S.Ct. 1774** (1964); *Miranda v. Arizona*, 384 U.S. 436, **86 S.Ct. 1602** (1966); *United States v. Wade*, 388 U.S. 218, **87 S.Ct. 1926** (1967); and *Gilbert v. California*, 388 U.S. 263, **87 S.Ct.1951** (1967). Later Pennsylvania cases such as *Commonwealth v. Futch*, **447 Pa. 389**, 290 A.2d 417 ([Pa.] 1972), sanctioned the use of Rule 581 to test certain violations of Pennsylvania Rules of Criminal Procedure; however, *Commonwealth v. Murphy*, **459 Pa. 297**, 328 A.2d 842 ([Pa.] 1974), questioned whether the rule in its earlier form permitted such a challenge. The rule was therefore further revised in 1977 to permit use of the suppression motion to test admissibility of evidence where the issue is the method by which the evidence was obtained. The rule merely provides a vehicle by which the court may determine the issues involved and sets the time at which the application is to be made. The rule and the 1977 revision do not purport to define or expand the basis on which suppression may be had. There is no longer a multi-county provision for suppression hearings because it is the opinion of the Committee that the prosecution county is the most interested forum for determining the admissibility of challenged evidence. In addition, the order of the judge determining admissibility is to be final and binding at trial, absent newly discovered and hitherto undiscoverable evidence.

It should be noted that failure to file the motion within the appropriate time limit constitutes a waiver of the right to

suppress. However, once the motion is timely filed, the hearing may be held at any time prior to or at trial.

All motions to suppress must comply with the provisions of Rule 575 (Motions and Answers) and Rule 576 (Filing and Service by Parties).

In all cases, the burden of production is now upon the Commonwealth. See *Commonwealth ex rel. Butler v. Rundle*, **429 Pa. 141**, 239 A.2d 426 ([Pa.] 1968). The burden of persuasion is there as well. See *Miranda v. Arizona*, 384 U.S. 436, 479, **86 S.Ct. 1602, 1630** (1966). See also, *Commonwealth ex rel. Butler v. Rundle, supra.*, which establishes a preponderance of the evidence as the standard of proof.

With regard to the recording and transcribing of the evidence adduced at the hearing, see Rule 115.

Formerly, the law provided that a suppression hearing would be held *in camera* on motion of the defendant. Recently, however, developments in the law have established minimum constitutional requirements that are to be met before a court may order any criminal proceeding closed.

The law on closure of criminal proceedings is still developing. The 1985 amendments, therefore, are intended to remove the possibility that the rule will be mistaken to imply that the defendant has an absolute right to closure of a suppression hearing. It is intended that a suppression hearing will be held in open court unless the court orders all or part of the hearing closed in accordance with the existing case law. See, e.g., *United States v. Criden*, 675 F.2d 550 (3d Cir. 1982); *Commonwealth v. Hayes*, **489 Pa. 419**, 414 A.2d 318 ([Pa.] 1980); *Commonwealth v. Buehl*, **316 Pa.Super. 215**, 462 A.2d 1316 ([Pa. Super.] 1983), in which the courts recognized the public's general constitutional right to access to criminal proceedings, which right is to be balanced with the defendant's constitutional right to a fair trial. With regard to a court ordering part of a criminal proceeding closed, see *Commonwealth v. Contakos*, **499 Pa. 340**, 453 A.2d 578 ([Pa.] 1982), in which a new trial was

ordered because the public had been excluded from a portion of the trial although the press was present.

In all cases it is the continuing duty of the trial court to guard against public disclosure of prejudicial matters by invoking Rules 110 and 111.

In *Commonwealth v. Millner*, 585 Pa. 237, 888 A.2d 680 (2005), the Court reiterated the importance of a specific and contemporaneous announcement of findings of fact and conclusions of law at the conclusion of the suppression hearing.

Paragraph (J) does not change the Massachusetts or "humane" rule (whereby a defendant may raise the issue of voluntariness of a confession to the jury following denial of a motion to suppress) which is followed in the Commonwealth.

NOTE: Rule 323 adopted March 15, 1965, effective September 15, 1965; amended November 25, 1968, effective February 3, 1969. The 1968 amendment suspended, amended, and consolidated former Rules 323, 324, 2000 and 2001 of the Pennsylvania Rules of Criminal Procedure. This was done in accordance with Section 1 of the Act of July 11, 1957, P.L. 819, 17 P.S. § 2084. Paragraph (f) amended March 18, 1972, effective immediately; amended June 29, 1977 and November 22, 1977, effective as to cases in which the indictment or information is filed on or after January 1, 1978; paragraphs (f) and (g) and *Comment* amended September 23, 1985, effective January 1, 1986; effective date extended to July 1, 1986; renumbered Rule 581 and amended March 1, 2000, effective April 1, 2001; amended March 3, 2004, effective July 1, 2004 [.] ***Comment* revised November 2, 2007, effective February 1, 2008.**

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COMMITTEE EXPLANATORY REPORTS:

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1478 (March 18, 2000).

Final Report explaining the March 2, 2004 amendments to paragraphs (A) and (E) and the revision to the Comment adding the reference to Rules 575 and 576 published with the Court's Order at 34 Pa.B. 1547 (March 20, 2004).

Final Report explaining the November 2, 2007 revisions to the Comment regarding the requirement for the judge to make findings of fact and conclusions of law at the conclusion of the suppression hearing published with the Court's Order at 37 Pa.B. (, 2007).