

## **Alabama Rules of Criminal Procedure**

### **Rule 15. Preparation for trial; pleadings and motions.**

*Rule 15.6. Motion for pre-trial determination of admissibility of evidence.*

(a) UNLAWFUL SEARCH. A defendant aggrieved by an allegedly unlawful search or seizure may move the court to suppress for use as evidence anything so obtained.

(b) ADMISSIBILITY OF EVIDENCE. Upon motion of either party or upon its own motion, the court may order that the question of the admissibility of any specified evidence be submitted for pre-trial determination as if a motion to suppress had been filed by the party opposed to the introduction of the evidence.

(c) HEARING ON MOTION. The judge shall receive evidence on any issue of fact necessary to the determination of the motion.

(d) EFFECT OF GRANTING MOTION. If the motion is granted, any suppressed property that was seized shall be restored to its owner or last possessor, unless otherwise subject to lawful detention, and shall not be admissible in evidence at any further stage of the proceedings.

(e) ORDERS IN LIMINE. For good cause shown, the court may order that any party, witness, or attorney refrain from asking certain questions, giving certain answers, or in any manner directly or indirectly referring to or alluding to any otherwise inadmissible fact, matter, or circumstance during the course of trial in the presence of jurors or the venire.

### **Committee Comments**

Ordinarily, a motion to suppress may be used only to test the admissibility of evidence alleged to have been illegally seized. Section (a) deals with this kind of motion.

The admissibility of evidence such as confessions and line-up identifications in prior practice generally could not be determined by the traditional motion to suppress, and these questions were argued at trial out of the presence of the jury. Section (b) provides a method of dealing with such matters before trial. Section (b) allows, but does not require, the court to order a question of admissibility to be submitted for pretrial determination. In making its determination, the court shall proceed as if a motion to suppress the evidence had been filed by the party opposed to the introduction of the evidence.

Section (b) allows a party to ask the court to require the other party to challenge his evidence before trial or else waive the right to have the evidence excluded at trial. Thus, the state can petition the court for an order submitting the question of the admissibility of a line-up identification for pre-trial determination. If the court in its discretion grants the order and defense counsel fails to challenge the line-up identification, he cannot later make such a challenge at trial.

This rule should result in an increased efficiency in the conduct of criminal trials. It gives the state a means of determining at a pre-trial level the admissibility of evidence.

Section (e) preserves the court's power on motion in limine to prevent parties, witnesses, or attorneys from bringing before the jury, by indirection or otherwise, any inadmissible fact, matter, or circumstance. Although such motions generally are made before trial, there is no reason why, when appropriate, they could not as well be made after commencement of the trial.