

RULE 11. Pleadings and Motions before Plea and Trial: Defenses and Objections

(A) Pleadings and motions. Pleadings in traffic cases shall be the complaint, the pleas of not guilty, guilty, and no contest. Defenses and objections shall be raised before plea and trial by motion to dismiss or to grant appropriate relief.

(B) Motions before plea and trial. Any defense, objection, or request which is capable of determination without the trial of the general issue may be raised before plea or trial by motion.

(1) The following defenses and objections must be raised before plea:

(a) Defenses and objections based on defects in the institution of the prosecution;

(b) Defenses and objections based on defects in the complaint other than failure to show jurisdiction in the court or to charge an offense, which objections shall be noticed by the court at any time during the pendency of the proceeding.

(2) The following motions and requests must be made before trial:

(a) Motions to suppress evidence, including but not limited to identification testimony, on the ground that it was illegally obtained;

(b) Requests and motions for discovery under Criminal Rule 16;

(c) Motions for severance of charges or defendants under Criminal Rule 14.

(C) Motion date. Pre-plea motions shall be made before or at arraignment.

All pretrial motions, except as provided in Criminal Rule 16(F), shall be made within thirty-five days after arraignment or seven days before trial, whichever is earlier. The court, in the interest of justice, may extend the time for making pre-plea or pretrial motions.

(D) Disclosure of evidence by prosecuting attorney. At the arraignment, or as soon thereafter as is practicable, the defendant may, in order to raise objections prior to trial under subsection (B)(2), request notice of the prosecuting attorney's intention to use evidence in chief at trial, which evidence the defendant is entitled to discover under Criminal Rule 16.

(E) Ruling on motion. A motion made before trial, other than a motion for change of venue, shall be timely determined before trial. Where factual issues are involved in determining a motion, the court shall state its essential findings on the record.

(F) Effect of failure to raise defenses or objections. Failure by the defendant to raise defenses or objections or to make motions and requests which must be made prior to plea, trial, or at the time set by the court pursuant to subdivision (C), or prior to any extension thereof made by the court, shall constitute waiver thereof, but the court for good cause shown may grant relief from the waiver.

(G) Effect of plea of no contest. The plea of no contest does not preclude a defendant from asserting upon appeal that the trial court prejudicially erred in ruling on a pretrial motion, including a pretrial motion to suppress evidence.

(H) Effect of determination. If the court grants a motion to dismiss based on a defect in the

institution of the prosecution or in the complaint, the court shall dismiss the case unless the prosecuting attorney can, pursuant to Criminal Rule 7(D), amend the complaint.

(I) State's right of appeal. The state may take an appeal in traffic cases pursuant to Criminal Rule 12(K).

[Effective: January 1, 1975; amended effective February 1, 2008.]

Commentary (February 1, 2008)

The February 1, 2008 amendment to division (I) corrects an inaccurate reference in the previous version of the rule to Criminal Rule 12(J). The previous division (I) expressly limited the state's right of appeal to two types of cases under Traffic Rule 13(B)(1) & (3). Such a limitation precluded the state from seeking review of adverse rulings on evidentiary matters in all first and second offense OVI cases and, arguably third OVI case in municipal court. The amendment, in applying the Criminal Rule 12(K) standard, promotes uniformity in addressing the state's right of appeal in all traffic cases.