

Rule 41. Search, Seizure, and Confession

(a) - (d) [No Change]

(e) Motion for Return of Property and to Suppress Evidence. A person aggrieved by an unlawful search and seizure may move the district court for the county where the property was seized for the return of the property and to suppress for use as evidence anything so obtained on the ground that:

- (1) The property was illegally seized without warrant; or
- (2) The warrant is insufficient on its face; or
- (3) The property seized is not that described in the warrant; or
- (4) There was not probable cause for believing the existence of the grounds on which the warrant was issued; or
- (5) The warrant was illegally executed.

The judge shall receive evidence on any issue of fact necessary to the decision of the motion. If the motion is granted the property shall be restored unless otherwise subject to lawful detention and it shall not be admissible in evidence at any hearing or trial. The motion to suppress evidence may also be made in the court where the trial is to be had. The motion shall be made and heard before trial unless opportunity therefor did not exist or the defendant was not aware of the grounds for the motion, but the court, in its discretion, may entertain the motion at the trial. An aggrieved person shall be deemed to have waived any reason to suppress evidence not timely raised in accordance with this rule, and any such reason shall not be raised or considered on appeal.

(f) [No Change]

(g) Suppression of Confession or Admission. A defendant aggrieved by an alleged involuntary confession or admission made by him, may make a motion under this Rule to suppress said confession or admission. The motion shall be made and heard before trial unless opportunity therefor did not exist or defendant was not aware of the grounds for the motion, but the court, in its discretion, may entertain the motion at the trial. The judge shall receive evidence on any issue of fact necessary to the decision of the motion. A defendant shall be deemed to have waived any reason to suppress an involuntary confession or admission not timely raised in accordance with this rule, and any such reason shall not be raised or considered on appeal.

(h) [No Change]

COMMITTEE COMMENT

For purposes of this rule, the term “electronic signature” has the same meaning as used in C.R.S. § 16-1-106(4)(c).

This rule is intended to facilitate the issuance of warrants by eliminating the need to physically carry the supporting affidavit to the judge.