§ 710.60 Motion to suppress evidence; procedure.

1. A motion to suppress evidence made before trial must be in writing and upon reasonable notice to the people and with opportunity to be heard. The motion papers must state the ground or grounds of the motion and must contain sworn allegations of fact, whether of the defendant or of another person or persons, supporting such grounds. Such allegations may be based upon personal knowledge of the deponent or upon information and belief, provided that in the latter event the sources of such information and the grounds of such belief are stated. The people may file with the court, and in such case must serve a copy thereof upon the defendant or his counsel, an answer denying or admitting any or all of the allegations of the moving papers.

2. The court must summarily grant the motion if:

(a) The motion papers comply with the requirements of subdivision one and the people concede the truth of allegations of fact therein which support the motion; or

(b) The people stipulate that the evidence sought to be suppressed will not be offered in evidence in any criminal action or proceeding against the defendant.

3. The court may summarily deny the motion if:

(a) The motion papers do not allege a ground constituting legal basis for the motion; or

(b) The sworn allegations of fact do not as a matter of law support the ground alleged; except that this paragraph does not apply where the motion is based upon the ground specified in subdivision three or six of section 710.20.

4. If the court does not determine the motion pursuant to subdivisions two or three, it must conduct a hearing and make findings of fact essential to the determination thereof. All persons giving factual information at such hearing must testify under oath, except that unsworn evidence pursuant to subdivision two of section 60.20 of this chapter may also be received. Upon such hearing, hearsay evidence is admissible to establish any material fact.

5. A motion to suppress evidence made during trial may be in writing and may be litigated and determined on the basis of motion papers as provided in subdivisions one through four, or it may, instead, be made orally in open court. In the latter event, the court must, where necessary, also conduct a hearing as provided in subdivision four, out of the presence of the jury if any, and make findings of fact essential to the determination of the motion.

6. Regardless of whether a hearing was conducted, the court, upon determining the motion, must set forth on the record its findings of fact, its conclusions of law and the reasons for its determination.