

Get it in writing. How many times have we heard that? It's good advice, sometimes it's even the law.

CPL 710.70(2) provides that "An order finally denying a motion to suppress evidence may be reviewed upon an appeal from an ensuing judgment of conviction notwithstanding the fact that such judgment is entered upon a plea of guilty." The word used is "order", while the Legislature elsewhere in the same article freely used the word "determination" (e.g. 710.40[3] "When the motion is made before trial, the trial may not be commenced until determination of the motion.").

Because the statute provides only that an "order" is appealable, the Appellate Division, Fourth Department has ruled that the "defendant forfeited the right to our review .. inasmuch as he pleaded guilty before the court determined whether suppression was warranted." (*People v Nunez*, 73 AD3d 1469). And in case you were hoping that the court's use of "determined" might help in cases where the judge rules against you, but does not issue an order finally deciding the issue against you, stop hoping. The case concludes with "Although a defendant convicted upon a plea of guilty may seek review of 'an order finally denying a motion to suppress evidence' (CPL 710.70[2]) upon an appeal from a judgment of conviction, **no such order** was issued in this case." As if *Nunez* was unclear, see also *People v Dwyer*, 73 AD3d 1467; *People v Releford*, 73 AD3d 1437; *People v Ellis*, 73 AD3d 1433, like *Nunez* all decided by the Appellate Division, Fourth Department on May 7, 2010.

This is something you can expect to see many, many times over the coming years. If there is any possibility of filing a notice of appeal from a plea following the denial of any suppression motion, you need to have the resulting decision reduced to writing, or the issue is forfeited by the plea of guilty. Get it in writing is good advice, even if what you get in writing is bad news.