

NORTH CAROLINA
_____ COUNTY

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
FILE NO.

STATE OF NORTH CAROLINA

vs.

**MOTION TO SUPPRESS
(BREATH)**

_____,
Defendant.

NOW COMES the Defendant, by and through his attorney, Marcus E. Hill, and moves for suppression of various evidence gathered after the stop and or arrest of the defendant for driving while impaired. The defendant argues as follows:

1. That there was not reasonable and articulable suspicion or probable cause to stop the defendant's vehicle and thus all the information gathered after the stop of the defendant's vehicle should be suppressed.
2. That there was not probable cause to arrest the defendant and therefore all of the information gathered after the arrest of the defendant should be suppressed.
3. That the defendant was held unreasonably after the stop of the defendant prior to his arrest, and so his arrest was unlawful and all information gathered after the arrest should be suppressed.
4. That after the stop of the defendant the officer transformed the investigative detention of the defendant into an arrest without probable cause and so all information gathered after that arrest should be suppressed.
5. That the defendant was not provided a copy of his breath test result which is required by the North Carolina General Statutes and so those results should not be entered into evidence or used against the defendant.
6. That the defendant was not read his Miranda rights after his arrest and so all statements made by the defendant should be suppressed.
7. That the defendant was not read his intoxilyzer/intoximeter rights as required by the North Carolina General Statutes and thus the intoxilyzer/intoximeter results should not be entered into evidence or used against the defendant.
8. That the defendant was not arrested prior to being required by the officer to submit to an intoxilyzer/intoximeter test and thus the results of that test should be suppressed.
9. That the intoxilyzer 5000/intoximeter was not properly maintained and thus that result should be suppressed.

10. That the procedures outlined in the North Carolina General Statutes and the regulations promulgated by the Department of Health and Human Services were not followed in the use of the intoxilyzer/i or in the use of the portable breath testing device and thus those results should not be considered by the court or by the officer in his decision to arrest or charge the defendant with driving while impaired.
11. That a portable breath test was performed, but the regulations were not adhered to and thus that result should not be considered reliable and should not be considered by the officer in his determination of probable cause to arrest or by the court in this case.
12. That the HGN test was not administered as is required by the National Highway Traffic Safety Association manual and the North Carolina version thereof and thus any results of that test should not be considered by the officer or the court in determining probable cause or the impairment of the defendant or the defendant's alcohol level.
13. That the HGN has only been tested and standardized to reveal the defendant's BAC and is in no manner a test that can be used to measure the defendant's actual impairment and so should be excluded from evidence.
14. That statements by the defendant were a result of questioning by the officer after the defendant's detention and thus should be suppressed because the defendant was not advised of his Miranda rights as is required by the U.S. Constitution.
15. That the field sobriety tests were improperly administered; the procedures in the National Highway Traffic Safety Association manual and the North Carolina version thereof were not followed and thus the results of those tests are unreliable and should not be considered by the officer or the court in any determinations in this case.
16. That the defendant was more than fifty pounds overweight and/or more than sixty-five years old and so the results of the field sobriety coordination tests should not be attributed to impairment or to a blood or breath alcohol level as the National Highway Traffic Safety Association has determined that a person with those physical limitations should not be given coordination tests.
17. That the field sobriety tests were administered in an improper place and that affected the defendant's balance and coordination in a way not related to impairment and so the results of those tests should not be used against the defendant by the officer or the court in determining impairment or probable cause to arrest and thus should not be entered into evidence or used against the defendant.
18. That the officer did not demonstrate the field sobriety tests as is required by the National Highway Traffic Safety Association manual and the North Carolina version thereof and

so the defendant's performance on those tests should not be entered into evidence or used against the defendant.

19. That the stop of the defendant was pretextual and was based on the defendant's race, color, creed, national origin, religion, or other non-criminal factors, and thus all information gathered after that stop should be suppressed.
20. That the officer was not properly certified and licensed to give various tests to the defendant and thus those tests and the results of those tests should not be considered in the trial of the defendant.
21. That the officer was not properly within his territorial jurisdiction or the extensions thereof and thus the arrest of the defendant is null and void.
22. That the officer used a videotaping device during the arrest and processing of the defendant, but that videotaping device which upon information and belief contains Brady material was not provided to the defendant despite the defendant's request for the same, and thus the case against the defendant should be dismissed.
23. That the defendant has not been provided notice of any aggravating or grossly aggravating factors prior to trial as is required by Apprendi, and thus the court should not consider any aggravating or grossly aggravating factors in sentencing the defendant.
24. That the aggravating or grossly aggravating factors submitted by the State were not proven beyond a reasonable doubt to a moral certainty and should not be considered by the court in sentencing of the defendant.
25. That statements by the defendant were compelled in violation of his fifth amendment rights and thus should not be admitted into evidence in the trial of the defendant.
26. That the defendant was denied a witness at various stages in the investigation of his case and was denied the right to gather information on his own behalf at the only time when that evidence would have been available and thus all evidence gathered by the State against the defendant should be suppressed.
27. That the defendant was not allowed to contact an attorney despite his request to do so and thus all evidence gathered against the defendant after that request should be suppressed.
28. Under State v. Hill, et. seq., the defendant was denied release outside the proscriptions of the North Carolina General Statutes and thus all evidence gathered by the State after the arrest of the defendant should be suppressed.
29. That the defendant was denied the opportunity to make phone calls in the breath test room and denied the opportunity to have a witness in the breath test room and thus the breath test should not be used as evidence against the defendant.

30. That the defendant asked in the way he was best able to ask to be allowed a pre arrest intoxilyzer test under N.C.G.S. § 20-16.2 (i) and was not afforded that test though it was required by statute and was easily available to the officer.
31. That the breath test of the defendant was not taken at a relevant time after driving and thus is not relevant and should not be admitted in the trial against the defendant.
32. That the defendant has not been allowed to preview Brady materials in his case despite his request to do so and thus the case against the defendant should be dismissed for violation of Brady.
33. That the defendant's breath sample was contaminated by other substances or by alcohol in his mouth and so is unreliable and should not be considered in this case.
34. That the defendant drank alcohol after the driving but before the breath test and thus the alcohol found in his breath sample was not alcohol that was in his body while the defendant was driving and thus the breath sample is not a reliable indicator of his alcohol level while he was driving and should not be entered as a evidence against the defendant.
35. The defendant moves that the Court suppress any certificate affidavit , forensic laboratory report or anything resembling the foregoing in any way under the ruling of the United States Supreme Court in Melendez-Diaz , unless the analyst, the person who prepared the report, and person who wrote the report are available to testify at trial.
36. The defendant moves that the Court suppress any evidence unless the State presents each person involved in the chain of custody, and that the witnesses testify to that chain of custody and as to the handling of the sample.
37. The defendant moves that the Court suppress any analysis or the report thereof unless the court rules that the handling of said sample and the chain of custody is proven to the State's standards and is without gaps and the sample was tested by a method and with devices approved by the National Laboratory Standards.
38. That all evidence gathered after the arrest of the defendant be suppressed under Arizona v. Gant, as the officer seized items after a custodial search of the vehicle performed after the arrest of the defendant who was outside of his car; There was no casual relationship between the crime the defendant is charged with and any illegal items that were found after the search; no warrant was issued for the search, and there was no evidence that the defendant had a weapon or anything that could have endangered the officer.

WHEREFORE, THE DEFENDANT PRAYS THAT THE COURT:

1. Suppress evidence gathered by the State.
2. Dismiss the charges against the defendant.
3. For such other and further relief as is just and proper.

This the __ day of _____, 2008.

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