

NORTH CAROLINA
_____ COUNTY

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

STATE OF NORTH CAROLINA

vs.

**MOTION TO SUPPRESS
(REFUSAL)**

_____,
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 the defendant did not willfully refuse or refuse to take the breath test and that he provided samples to the intoxilyzer machine and all evidence related to that refusal should not be admitted in court.
2. That the defendant was not allowed thirty minutes to contact an attorney or secure a witness and thus all evidence of said refusal should be suppressed.
3. That there was not probable cause to arrest the defendant and thus all evidence gathered after the arrest including any evidence of any refusal should not be admitted in any Court or hearing.
4. That the defendant was not properly provided a copy of his rights both orally and in writing prior to the administration of the breath test and thus his refusal was neither willful or intentional and should not be used as evidence against him in Court.
5. That the Department of Motor Vehicles has determined that the defendant did not willfully refuse and under our Brower et. seq. all evidence of said refusal should not be admitted in court.
6. That the defendant was continuing to attempt to take the intoxilyzer test but was denied sufficient time to provide a sample by the officer thus all evidence of a refusal willful or otherwise should be suppressed.
7. That the defendant was incapable of providing a sufficient sample to the intoxilyzer due to physical or other reasons and thus did not willfully refuse to provide a sample and thus

all evidence of said refusal should be suppressed.

8. That the defendant was injured and was incapable of providing a sufficient sample to the intoxilyzer and thus all evidence of said refusal should be suppressed.
9. 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.
10. 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.
11. 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.
12. 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 _____, 20_____.

Marcus E. Hill
Attorney for Defendant
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