

NORTH CAROLINA
_____ COUNTY

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

STATE OF NORTH CAROLINA

vs.

MOTION TO SUPPRESS
(KNOLL)

_____,
Defendant.

NOW COMES the Defendant, by and through his attorney, Marcus E. Hill, and respectfully moves the court to suppress the evidence garnered after the stop of the defendant in the above-captioned case on the grounds that he was unlawfully detained in the County Jail upon his arrest for Driving While Impaired under circumstances that deprived him of his rights to due process and to a fair trial and of other rights secured him by the United States Constitution, the Constitution of North Carolina, and the law of this state. The deprivation of these rights irreparably harmed the preparation of the defense and has subjected the defendant to an unconstitutional loss of his liberty. In support of said Motion, the defendant alleges and says as follows:

1. That the defendant was arrested and charged with Driving While Impaired.
2. That the defendant was issued a intoxilyzer breathalyzer test, and then was brought before a magistrate for his initial appearance as is required by N.C.G.S. §15A-511.
3. That the magistrate failed to advise the defendant of his constitutional and statutory right to communicate with counsel and friends.
4. That the magistrate made no written findings of any facts that would have allowed the magistrate to hold the defendant in custody.
5. That the magistrate made no finding that the defendant was dangerous to himself or others or to property, nor did the magistrate find that the defendant presented a substantial risk of flight.

6. That the magistrate made no inquiry of the defendant regarding the factors listed in N.C.G.S. §15A-534(c) which he is required to consider in determining the appropriate conditions of release.

7. That the magistrate failed to explain to the defendant that he could call a taxi or could sign his name and leave as is required by N.C.G.S. §15A-534 unless the magistrate makes written findings that N.C.G.S. 15A-534(b) allows him to hold the defendant.

8. That N.C.G.S. §15A-534(c) requires that the magistrate must take factors in that paragraph into account, and that the magistrate's failure to take those factors into account substantially prejudiced the defendant's defense, and that the circumstances described demonstrate that the actions of the agents for the state have resulted in a deprivation of constitutional and statutory rights including, but not limited to, the following:

a. His right to due process and to a fair trial as guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution;

b. His right to obtain witnesses in his behalf and to have effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution;

c. His right to equal protection of the laws as guaranteed by the Fourteenth Amendment to the United States Constitution;

d. His right not to be deprived of liberty without due process of law as guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution;

e. His right not to be deprived of his liberty except by the law of the land, and his right to the equal protection of the laws as guaranteed by Section 19 of Article I of the Constitution of North Carolina;

f. His right to be advised concerning communication with counsel and friends and to have reasonable opportunity to so communicate as required by

N.C.G.S. §15A-501;

g. His right to be informed by the magistrate concerning communication with counsel and friends and the general circumstances under which he may secure release as required by N.C.G.S. §15A-511(b).

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.

WHEREFORE, THE DEFENDANT PRAYS THAT THE COURT:

Suppress all the evidence gathered by the State after the stop of the defendant.

This the _____ day of _____, 20_____.

Marcus E. Hill
Attorney for Defendant
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