

Subject: Re: substantially similar memo, please print and fax to Marcus
From: bailey farrin (baileyfarrin@gmail.com)
To: marcusehill@gmail.com; anhester78@yahoo.com; klcrittenton@yahoo.com;
Date: Monday, June 3, 2013 3:35 PM

this is it, I think.

On Thu, Aug 9, 2012 at 2:21 PM, bailey farrin <baileyfarrin@gmail.com> wrote:

Issue: Is a prior Tennessee conviction for violation of Tennessee Statute 55-10-401, Driving under the influence of intoxicant, drug or drug producing stimulant prohibited Alcohol concentration in blood or breath substantially similar to a conviction for driving while impaired in North Carolina?

Answer; Such a Tennessee conviction is not substantially similar to a North Carolina conviction.

Defendant was convicted for violating Tennessee's statute for driving under the influence in _____.
Defendant has been charged with violating North Carolina's driving while impaired statute.

Defendant argues that Tennessee's offense of driving under the influence is not "substantially similar" to North Carolina's offense of driving while under the influence of an impairing substance. N.C. Gen.Stat. § 20-138.1

N.C. Gen.Stat. § 20-179(c) (1993) states in part:

The judge must impose the Level Two punishment under subsection (h) of this section if the judge determines that only one of the grossly aggravating factors applies. The grossly aggravating factors are:

(1) A prior conviction for an offense involving impaired driving if:

a. The conviction occurred within seven years before the date of the offense for which the defendant is being sentenced;
or

b. The conviction occurs after the date of the offense for which the defendant is presently being sentenced, but prior to or contemporaneously with the present sentencing.

The statute lists other factors which the trial court may consider as grossly aggravating factors, but the case before us concerns only the factor listed above.

N.C. Gen.Stat. § 20-4.01(24a)(d) (1993) provides that an offense involving impaired driving includes An offense committed in another jurisdiction which prohibits substantially similar conduct prohibited by the offenses in this subsection.

N.C.G.S. § 20-138.1. Impaired driving statute provides “(a) Offense. -- A person commits the offense of impaired driving if he drives any vehicle upon any highway, any street, or any public vehicular area within this State: (1) While under the influence of an impairing substance; or (2) After having consumed sufficient alcohol that he has, at any relevant time after the driving, an alcohol concentration of 0.08 or more. The results of a chemical analysis shall be deemed sufficient evidence to prove a person’s alcohol concentration; or (3) With any amount of a Schedule I controlled substance, as listed in G.S. 90-89, or its metabolites in his blood or urine.”

Tennessee statute 55-10-401 provides, “Driving under the influence of intoxicant, drug or drug producing stimulant prohibited Alcohol concentration in blood or breath. (a) It is unlawful for any person to drive or to be in physical control of any automobile or other motor driven vehicle on any of the public roads and highways of the state, or on any streets or alleys, or while on the premises of any shopping center, trailer park or any apartment house complex, or any other premises that is generally frequented by the public at large, while:(1) Under the influence of any intoxicant, marijuana, narcotic drug, or drug producing stimulating effects on the central nervous system; or(2) The alcohol concentration in the person’s blood or breath is eight-hundredths of one percent (.08 %) or more. (b) For the purpose of this section, “drug producing stimulating effects on the central nervous system” includes the salts of barbituric acid, also known as malonyl urea, or any compound, derivatives, or mixtures thereof that may be used for producing hypnotic or somnifacient effects, and includes amphetamine, desoxyephedrine or compounds or mixtures thereof, including all derivatives of phenoethylamine or any of the salts thereof, except preparations intended for use in the nose and unfit for internal use.

Tennessee’s statute language is different from North Carolina’s in the following ways:

North Carolina, “drives ”

Tennessee “to drive or to be in physical control”.

North Carolina, “any vehicle“.

Tennessee “any automobile or other motor driven vehicle.”

North Carolina, ‘upon any highway, any street, or any public vehicular area within this State,”

Tennessee, “on any of the public roads and highways of the state, or on any streets or alleys, or while on the premises of any shopping center, trailer park or any apartment house complex, or any other premises that is generally frequented by the public at large.”

North Carolina, ‘While under the influence of an impairing substance,”

Tennessee, "Under the influence of any intoxicant, marijuana, narcotic drug, or drug producing stimulating effects on the central nervous system."

North Carolina, "After having consumed sufficient alcohol that he has, at any relevant time after the driving, an alcohol concentration of 0.08 or more. The results of a chemical analysis shall be deemed sufficient evidence to prove a person's alcohol concentration."

Tennessee, "Under the influence of any intoxicant, marijuana, narcotic drug, or drug producing stimulating effects on the central nervous system."

North Carolina, "After having consumed sufficient alcohol that he has, at any relevant time after the driving, an alcohol concentration of 0.08 or more. The results of a chemical analysis shall be deemed sufficient evidence to prove a person's alcohol concentration."

Tennessee, "The alcohol concentration in the person's blood or breath is eight-hundredths of one percent (.08 %)."

North Carolina, "With any amount of a Schedule I controlled substance, as listed in G.S. 90-89, or its metabolites in his blood or urine."

Tennessee, "For the purpose of this section, "drug producing stimulating effects on the central nervous system" includes the salts of barbituric acid, also known as malonyl urea, or any compound, derivatives, or mixtures thereof that may be used for producing hypnotic or somnifacient effects, and includes amphetamine, desoxyephedrine or compounds or mixtures thereof, including all derivatives of phenylethylamine or any of the salts thereof, except preparations intended for use in the nose and unfit for internal use."