

NORTH CAROLINA
_____ COUNTY

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

STATE OF NORTH CAROLINA

vs.

**MOTION TO SUPPRESS
(ACCIDENT)**

_____,
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 probable cause to believe or evidence beyond a reasonable doubt to believe that the defendant was the driver of the vehicle and that under Trexler, the defendant's admission of driving is not enough to prove that he was driving and that there is not sufficient cooperation of that statement that has been introduced as evidence in this case. Thus the court should dismiss the charges due to the lack of proof of an element of the charge.
2. That the defendant did not admit driving and thus there is no substantial evidence of driving and thus there is neither probable cause to believe or proof beyond a reasonable doubt that the defendant was the driver of the vehicle.
3. That there was no evidence properly introduced at trial as to time of driving and thus the State does not have probable cause to believe nor is there proof beyond a reasonable doubt that the defendant was impaired at a relevant time after driving under the per se prong of the statute or under the actually impaired prong.
4. That the defendant's alcohol level was under the legal limit and that the defendant was not actually impaired at the time of driving and thus all evidence gathered after the driving is irrelevant, immaterial, and prejudicial and should be suppressed.
5. That under Cook the Courts have ruled that the proper inquiry is whether the defendant is

impaired at the time of the driving. It is irrelevant, immaterial, and prejudicial to introduce evidence as to the defendant's state at the time he was charged.

6. That the defendant may have consumed alcohol or some other impairing substance after the driving and thus blood test or other chemical or sobriety tests should not be allowed into evidence to show that the defendant was impaired at the time the defendant had the accident or was driving.
7. That all of the defendant's behavior after the accident could well have been attributed to the effects of a concussion and should not be attributed to being under the influence of an impairing substance, and thus the court should suppress all sobriety tests and observations of the officer or consider them irrelevant, immaterial, and prejudicial and otherwise reasonably explained.
8. That the defendant's performance of the portable breath test was not done in a proper manner as is described by the regulations of the Department of Health and Human Services the North Carolina General Statute and thus the results of said test or the refusal of said test or whether the test was positive or negative should not be considered in the jury's decision as to whether the defendant was guilty of impaired driving or in determining whether there was probable cause to arrest the defendant.
9. That the defendant's air bag deployed in the accident and the dust from said air bag exploded into the closed confines of the defendant's vehicle. The defendant inhaled said dust and then exhaled it later into the intoxilyzer 5000/intoximeter thus contaminating the results of said test, making them irrelevant, immaterial, and prejudicial.
10. That the circumstances of the accident are such that the collision was not caused by the defendant or was not avoidable by the defendant and thus the defendant's driving should not be considered in the Court's evaluation of whether the defendant was impaired.
11. That the statements of witnesses not in Court to the officer should not be used as

evidence against the defendant.

12. That the officer's analysis of the scene of the accident including skid marks, debris, damage to vehicles, and other analysis should not be admitted as the officer has no expertise in accident reconstruction and what he or she knows is based on hearsay and incomplete data.
13. 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.
14. 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.
15. 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:

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
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