

NORTH CAROLINA  
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE  
DISTRICT COURT DIVISION

File No. \_\_\_\_\_

STATE OF NORTH CAROLINA, )  
 )  
 v )  
 )  
 DEFENDANT NAME, )  
 Defendant. )

DWI PRE-TRIAL MOTIONS  
N.C.G.S. §20-38.6

NOW COMES the Defendant, pursuant to N.C.G.S. §20-38.6, by and through counsel, John K. Fanny, and moves the Court to dismiss the above-captioned matter or suppress certain evidence at Trial on the following grounds:

( ) 1. Reasonable suspicion

The Defendant moves the Court to suppress all evidence against him/her beyond the automobile stop or any investigative detention in this matter and therefore moves for a dismissal of the charges on the grounds that his/her Fourth Amendment rights against unreasonable searches and seizures were violated because the officer lacked reasonable and articulable suspicion to stop him. Furthermore, the defendant requests a hearing on this matter.

( ) 2. Probable Cause

The Defendant moves the Court to suppress all evidence against him/her beyond the arrest in this matter and therefore moves for a dismissal of the charges against him/her. The basis of this motion is the lack of probable cause to arrest. The defendant requests a hearing on this matter.

( ) 3. Knoll

The Defendant moves the Court for a dismissal of the charges against him/her on the grounds that his rights articulated in State vs. Knoll were violated in this case. The defendant requests a hearing on this matter.

( ) 4. Ferguson

The Defendant moves the Court for a dismissal of the charges against him/her on the grounds that his/her rights articulated in State vs. Ferguson were violated in this case. The defendant requests a hearing on this matter.

( ) 5. Myers

The Defendant moves the Court for a dismissal of the charges against him/her on the grounds that his/her rights articulated in State vs. Myers were violated in this case. The defendant requests a hearing on this matter.

( ) 6. Defendant's Statements

The Defendant moves the Court to suppress any and all statements made by the defendant on the grounds that the rights secured to him/her under the North Carolina and United States Constitutions against self-incrimination would be violated if any of the defendant's statements were admitted. The defendant requests a hearing on this matter.

( ) 7. The Defendant moves the Court to suppress the evidence of any items obtained from a search of the defendant's person, vehicle, home or any other place in which the defendant could argue he/she has an expectation of privacy. The grounds for this motion fall under the defendant's Fourth Amendment Rights against unreasonable searches and seizures. The defendant requests a hearing on this matter.

( ) 8. The Defendant reserves the right to move for suppression of evidence or dismissal of the charge(s) at the trial of this on any grounds that have not been addressed in a pre-trial hearing, even in the event that the defendant has not specifically requested a hearing on that matter. To deny the defendant the right to move and be heard on such motions at trial simply because he/she has failed to specifically request a hearing on such where there is no right to discovery is patently unfair and unconstitutional in that it denies the Defendant the rights secured to him/her under the 6<sup>th</sup> Amendment to the Constitution as well as his/her due process rights. To the extent that N.C.G.S. §20-38.6 contemplates such a result, the defendant alleges that N.C.G.S. §20-38.6, in particular N.C.G.S. §20-38.6 (d) is unconstitutional.

( ) 9. Violation of N.C.G.S. §20-38.4 and other conditions of pre-trial release. The Defendant moves for a dismissal of the charges pursuant to a violation of N.C.G.S. §20-38.4 and the magistrate's failure to follow mandatory release provisions pursuant to this statute, 15A of the North Carolina General Statutes and the United States and North Carolina Constitutions.

( ) 10. Denial of right to chemical analysis before arrest or charge in violation of N.C.G.S. §20-16.2 (i). The Defendant moves for a dismissal or suppression of the breath test results on the basis of being denied the right to a chemical analysis before arrest or being charged with any offense in violation of N.C.G.S. §20-16.2(i).

( ) 11. The Defendant moves to exclude any and all references to any alleged refusal to submit to a chemical analysis of his breath and/or blood. A hearing was conducted before the North Carolina Department of Motor Vehicle wherein it was concluded that the Defendant would not be penalized with a loss of license for an alleged willful refusal. The State is now estopped from introducing evidence of any alleged willful refusal and arguing any inference of a refusal to the trier of fact in this case.

( ) 12. Roadblock The Defendant objects to the stopping of his vehicle and/or seizure of his person at a road block. The Defendant further contends that the road block was neither designed nor operated within acceptable standards as set out under U.S. Constitution, The N. C. State Constitution and/or any and all applicable case law regarding road blocks or check points.

( ) 13. Insufficient Advisement of Implied Consent Rights The Defendant moves for suppression of any and all results of a chemical analysis. The implied consent rights form provided by the State to this defendant does not adequately inform the defendant of all of his implied consent rights and are misleading in their statements regarding the consequence of refusing to be tested. Therefore, the waiver of these rights is neither knowingly or voluntary. Further, the submission to a chemical analysis in this case was done under duress and/or coercion.

Respectfully submitted this the \_\_\_\_\_ day of \_\_\_\_\_, 2010.

FANNEY & JACKSON, P.C.

BY: \_\_\_\_\_  
John K. Fanney  
N.C. State Bar No.  
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CERTIFICATE OF SERVICE

This is to certify that the foregoing DWI Pre-Trial Motions was this day served by hand delivery on \_\_\_\_\_ of the Wake County District Attorney's Office, Wake County Courthouse, Raleigh, North Carolina.

This the \_\_\_\_ day of \_\_\_\_\_, 2010.

FANNEY & JACKSON, P.C.

By: \_\_\_\_\_  
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