

NORTH CAROLINA
_____ COUNTY

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

STATE OF NORTH CAROLINA

vs.

**MOTION TO EXCLUDE INTOXILYZER
RESULTS BASED ON REQUEST FOR
PRE ARREST TEST UNDER 20-16.2(i)**

_____,
Defendant.

NOW COMES the Defendant, by and through his attorney, Marcus E. Hill, and moves the Court under N.C.G.S. 20-16.2(i) to suppress all evidence gathered by the police officer after the Defendant made a request for a pre arrest test. In support of said motion, the Defendant argues as follows:

1. 20-16.2 (i) says: Right to Chemical Analysis before Arrest or Charge.-A person stopped or questioned by a law-enforcement officer who is investigating whether the person may have committed an implied-consent offense may request the administration of a chemical analysis before any arrest or other charge is made for the offense. Upon this request, the officer shall afford the person the opportunity to have a chemical analysis of his or her breath, if available, in accordance with the procedures required by G.S. 20-139.1(b).

The request constitutes the person's consent to be transported by the law-enforcement officer to the place where the chemical analysis is to be administered. Before the chemical analysis is made, the person shall confirm the request in writing and shall be notified:

- (1) That the test result will be admissible in evidence and may be used against the person in any implied-consent offense that may arise;
- (2) That the person's license will be revoked for at least 30 days if:
 - A. The test reveals an alcohol concentration of 0.08 or more; or
 - B. The person was driving a commercial motor

vehicle and the test results reveal an alcohol concentration of 0.04 or more.

C. The person is under 21 years of age and the test reveals any alcohol concentration.

(3) That if the person fails to comply fully with the test procedures, the officer may charge the person with any offense for which the officer has probable cause, and if the person is charged with an implied-consent offense, the person's refusal to submit to the testing required as a result of that charge would result in revocation of the person's driving license. The results of the chemical analysis are admissible in evidence in any proceeding in which they are relevant.

2. Here the Defendant properly, though not artfully, asked for a pre arrest test. That request was ignored.

WHEREFORE, THE DEFENDANT PRAYS THAT THE COURT:

1. That the Court exclude all evidence gathered after the Defendant's pre arrest test request.
2. That the Court dismiss the Driving While Impaired charge.
3. That the Court exclude all testimony regarding field sobriety tests, and any other evidence gathered after the defendant's request for a pre-arrest intoxilyzer test.
4. For any further relief that the Court considers just and reasonable.

This the _____ day of _____, 20_____.

Marcus E. Hill
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