

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
09 CRS 000000

STATE OF NORTH CAROLINA,)
)
vs.)
)
JOHN Q. DOE,)
)
)
)
Defendant.)

**MOTION TO
SUPPRESS EVIDENCE**

NOW COMES the Defendant, *John Q. Doe*, by and through the undersigned counsel, Maitri “Mike” Klinkosum, Assistant Public Defender, pursuant to N.C.Gen.Stat. § 15A-974, Article I, §§ 19 and 23 of the North Carolina Constitution, and the Fourth, Fifth, Sixth and Fourteenth Amendments to the United States Constitution, and hereby moves this Honorable Court to suppress any and all evidence seized from the Defendant pursuant to an illegal detention, search, and seizure of the Defendant.

THE DEFENDANT further moves to suppress any and all evidence of any kind or character and wherever situated that was obtained as the fruit of the aforesaid illegal search and seizure of the Defendant. As grounds for the foregoing Motion, the Defendant would show unto the Court as follows:

1. The Defendant is an indigent charged with one count of Possession of Cocaine. The Defendant is accused of having committed said act on or about July 23, 2009 in Wake County, North Carolina.
2. Upon information and belief, the State will attempt to present evidence that on July 23, 2009, Officer A of the Garner Police Department, along with Detectives X, Y, and Z, of the Fuquay Varina Police Department, were involved in a stop and detention of the Defendant while the Defendant was a passenger in a vehicle driven by another individual.
3. Upon information and belief, the Officer A conducted a stop of the vehicle, in which the Defendant was a passenger. While Officer A conducted said stop, Detectives X, Y, and Z, all of the Fuquay Varina Police Department observed the stop from an undercover vehicle, which was parked in the same parking lot as the vehicle in question.
4. Upon information and belief, Officer A had been contacted by Detective X, who had been watching the driver of the vehicle in question.

5. Upon information and belief, Detective X, or another law enforcement officer, made a request of Officer A to stop the aforementioned vehicle after Detective X saw the driver of the vehicle “empty tobacco out of a cigar on to the ground.”
6. Upon information and belief, Officer A’s stop of said vehicle was based upon the fact the driver made an “abrupt right hand turn in to the parking lot of the Garner EMS Station.”
7. Upon information and belief, after stopping said vehicle, Officer A noticed a “large amount of tobacco on the center console of the vehicle.” Based upon this alleged fact, Officer A ordered the driver to step out of the vehicle.
8. Allegedly, while asking the driver to get out of the vehicle, Officer A “noticed the [Defendant] place his hand in his right pants pocket.” Detective Z then opened the passenger door of the vehicle and ordered the Defendant to get out of the vehicle.
9. Upon information and belief, when the Defendant exited the vehicle, he tried to walk away from Detective Z at the same time that Detective Z told the Defendant to place his hands on the vehicle.
10. Upon information and belief, as the Defendant was trying to walk around Detective Z, Detective Z “grabbed Mr. Doe’s wrist and placed him on the ground and cuffed him.”
11. Upon information and belief, the Defendant was searched and an alleged baggie of cocaine was found in the Defendant’s right pants pocket.
12. Upon information and belief, at the time the Defendant was attempting to walk away from the scene of the stop, he had not committed any criminal offense and law enforcement had no reasonable suspicion to stop and/or detain the Defendant. Further, law enforcement had no probable cause to conduct a warrantless search of the Defendant.
13. The detention and search of the Defendant was conducted without probable cause and/or reasonable suspicion and was executed in violation of the Fourth Amendment to the United States Constitution and the parallel provisions of the North Carolina Constitution.
14. The search and seizure of the evidence in this case was conducted without a search warrant and was executed in violation of the Fourth Amendment to the United States Constitution, the parallel provisions of the North Carolina Constitution, and the statutory laws of the State of North Carolina.

15. For the foregoing reasons, the evidence obtained pursuant to the stop, search, and seizure of the Defendant was obtained in violation of the Defendant's rights guaranteed by the Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments to the Constitution of the United States, the parallel provisions of the Constitution of the State of North Carolina, and N.C.Gen.Stat. § 15A-974.

WHEREFORE, the Defendant respectfully prays that an Order be entered suppressing any and all evidence obtained as a result of the aforesaid unconstitutional conduct by the Raleigh Police Department.

This the 4th day of January 2010.

By: _____
Maitri "Mike" Klinkosum
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IN THE GENERAL COURT OF JUSTICE
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STATE OF NORTH CAROLINA,
vs.
JOHN Q. DOE,
Defendant.

)
)
) **AFFIDAVIT IN SUPPORT OF**
) **MOTION TO SUPPRESS**
) **EVIDENCE**
)
)

The undersigned, being first duly sworn, deposes and says the following:

1. That he is an attorney duly licensed and authorized to practice law in the State of North Carolina and that he is an Assistant Public Defender in the Office of the Public Defender for the 10th Judicial District.
2. That, upon information and belief, the State will attempt to present evidence that on July 23, 2009, Officer A of the Garner Police Department, along with Detectives X, Y, and Z, of the Fuquay Varina Police Department, were involved in a stop and detention of the Defendant while the Defendant was a passenger in a vehicle driven by another individual.
3. That, upon information and belief, the Officer A conducted a stop of the vehicle, in which the Defendant was a passenger. While Officer A conducted said stop, Detectives X, Y, and Z, all of the Fuquay Varina Police Department observed the stop from an undercover vehicle, which was parked in the same parking lot as the vehicle in question.
4. That, upon information and belief, Officer A had been contacted by Detective X, who had been watching the driver of the vehicle in question.
5. That, upon information and belief, Detective X, or another law enforcement officer, made a request of Officer A to stop the aforementioned vehicle after Detective X saw the driver of the vehicle "empty tobacco out of a cigar on to the ground."
6. That, upon information and belief, Officer A's stop of said vehicle was based upon the fact the driver made an "abrupt right hand turn in to the parking lot of the Garner EMS Station."

7. That, upon information and belief, after stopping said vehicle, Officer A noticed a "large amount of tobacco on the center console of the vehicle." Based upon this alleged fact, Officer A ordered the driver to step out of the vehicle.
8. That, allegedly, while asking the driver to get out of the vehicle, Officer A "noticed the [Defendant] place his hand in his right pants pocket." Detective Z then opened the passenger door of the vehicle and ordered the Defendant to get out of the vehicle.
9. That, upon information and belief, when the Defendant exited the vehicle, he tried to walk away from Detective Z at the same time that Detective Z told the Defendant to place his hands on the vehicle.
10. That, upon information and belief, as the Defendant was trying to walk around Detective Z, Detective Z "grabbed Mr. Doe's wrist and placed him on the ground and cuffed him."
11. That, upon information and belief, the Defendant was searched and an alleged baggie of cocaine was found in the Defendant's right pants pocket.
12. That upon information and belief, at the time the Defendant was attempting to walk away from the scene of the stop, he had not committed any criminal offense and law enforcement had no reasonable suspicion to stop and/or detain the Defendant. Further, at law enforcement had no probable cause to conduct a warrantless search of the Defendant.
13. That the detention and search of the Defendant was conducted without probable cause and/or reasonable suspicion and was executed in violation of the Fourth Amendment to the United States Constitution and the parallel provisions of the North Carolina Constitution.

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I, _____, hereby certify that Maitri "Mike" Klinkosum, Assistant Public Defender, personally appeared before me this the 4th day of January 2010 and acknowledged and signed the above Affidavit.

SWORN and SUBSCRIBED to before me this

the _____ day of January 2010.

Notary Public

My Commission expires: _____

Certificate of Service

This shall certify that a copy of the foregoing *Motion to Suppress Evidence* and the accompanying *Affidavit in Support of Motion to Suppress* were this day served upon the District Attorney by the following method:

- _____ depositing a copy hereof in a postpaid wrapper in a post office or official depository under the exclusive care, custody, and control of the United States Postal Service, properly addressed to Office of the District Attorney;
- X by personally serving the Office of the District Attorney via hand delivery (*Assistant District Attorney J. Patrick Latour*);
- _____ by transmitting a copy via facsimile transmittal to the Office of the District Attorney; and/or
- _____ by depositing a copy in the box for the Office of the District Attorney maintained by the Clerk of Superior Court.

This the 4th day of January 2010.

By: _____
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