

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
08 CRS 0000

STATE OF NORTH CAROLINA, )

vs. )

JOHN Q. DOE, )

Defendant. )

)  
) **MOTION TO SUPPRESS**  
) **EVIDENCE OF OUT-OF-COURT**  
) **IDENTIFICATION &**  
) **IDENTIFICATION TESTIMONY**

---

**NOW COMES** the Defendant, *John Q. Doe*, by and through the undersigned counsel, Maitri “Mike” Klinkosum, Assistant Public Defender, and hereby moves this Honorable Court, pursuant to Chapter 15A of the North Carolina General Statutes, 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 evidence related to any “show-up” identification procedure involving the Defendant conducted in connection with the above-referenced matter, as well as any in-court identification of the Defendant. In support of the foregoing Motion, the Defendant would show unto the Court as follows:

1. The Defendant is charged with Robbery with a Dangerous Weapon and Possession of a Firearm by a Convicted Felon. The Defendant is accused of committing the aforementioned acts on or about May 22<sup>nd</sup>, 2008, at or around 2517 Melvid Court, in Raleigh, NC.
2. Upon information and belief, the State will attempt to present evidence that the robbery with a dangerous weapon was committed upon an individual named EC, and that Mr. C identified the Defendant and as the perpetrators of the armed robbery after viewing the Defendant pursuant to a “show-up.”
3. On or about May 22, 2008, the Defendant was detained, seized, and taken from his residence at 625 Grantland Drive in Raleigh, NC after by officers of the Raleigh Police Department.
4. Upon information and belief, the officers of the Raleigh Police Department seized the Defendant and removed him from his residence based upon their suspicion that the Defendant had been involved in the alleged armed robbery of EC.

5. According to the report of Officer M. (#2638), on May 22, 2008, Officer M received information from Officer B. (#2977) that the suspect connected with the alleged armed robbery “might be John Q. Doe.” Said information had been derived from the questioning of a juvenile that Officer B had stopped on or near 1910 Poole Road in Raleigh, NC.
6. Officer S and B then obtained information from the juvenile that the John Q. Doe lived at 625 Grantland Drive.
7. Officer S and Officer WB (#2412A) went to 625 Grantland Drive and obtained entry into the residence. After entering the residence, Officer S detained the Defendant in his (Officer S’s) vehicle.
8. After detaining the Defendant, Officers of the Raleigh Police Department then made Defendant the subject of a show-up by bringing the alleged victim to 625 Grantland Drive and having him identify Defendant as the alleged perpetrator of the alleged armed robbery.
9. The practice of using “show-ups” has been criticized by the Supreme Courts of both the United States and North Carolina as being inherently suggestive, as the witness likely assumes that the police had identified a person whom they suspected may be the guilty party. *See State v. Oliver*, 302 N.C. 28, 274 S.E.2d 183 (1981).
10. When a single suspect is presented to a crime victim or witness, it creates a situation “pregnant with prejudice. The message is clear: the police suspect *this* man.” *Biggers v. Tennessee*, 390 U.S. 404, 407, 88 S.Ct. 979, 981 (1968) (Douglas, J., dissenting from *per curiam* affirmance by an equally divided court).
11. The Supreme Court has discouraged the use of a single photograph show-up, for instance, for pretrial identification finding that this is often unduly suggestive. *Manson v. Brathwaite*, 432 U.S. 98, 117, 97 S.Ct. 2243, 2254 (1977). Similarly, in *United States v. Johnson*, 114 F.3d 435 (4<sup>th</sup> Cir. 1997), the Fourth Circuit Court of Appeals determined that a photographic show-up, in which an eyewitness only viewed one photograph for identification purposes, constituted an unduly suggestive procedure. *Id.* at 442.
12. The suppression of show-up identification procedure utilized in this case is required by both the State and Federal Constitutions. *United States v. Wade*, 388 U.S. 218, 87 S.Ct. 1926 (1967); *Gilbert v. California*, 388 U.S. 263, 87 S.Ct. 1951 (1967); *Stovall v. Denno*, 388 U.S. 293, 87 S.Ct. 1967 (1967); *Kirby v. Illinois*, 406 U.S. 682, 92 S.Ct. 1877 (1972); Chapter 15A of the North Carolina General Statutes.

13. The pre-trial identification procedure(s) in this matter were such that they were impermissibly suggestive and resulted in a strong probability of misidentification. *Manson v. Braithwaite*, 432 U.S. 98 (1977); *Neil v. Biggers*, 409 U.S. 188 (1972); *State v. Harris*, 308 N.C. 159, 301 S.E.2d 91 (1983).
14. The pre-trial identification procedure(s) was/were impermissibly suggestive and conducive to irreparable mistake and misidentification as to deny the Defendant due process of law.
15. The impermissibly suggestive nature of the pre-trial identification procedure was such that it gives rise to a substantial likelihood of irreparable misidentification in Court, thus denying the Defendant due process of law.
16. Further, any in-court identification is, in and of itself, a suggestive identification procedure.
17. The suppression of any in-court identification is required by the same constitutional and statutory provisions previously cited.

**WHEREFORE**, the Defendant respectfully prays unto this Honorable Court for an Order suppressing the above-described evidence or, alternatively, that an evidentiary hearing be set on this Motion and that an order issue thereafter suppressing the above-described evidence.

This the 10<sup>th</sup> day of October 2008.

By: \_\_\_\_\_  
*Maitri "Mike" Klinkosum*  
Assistant Capital Defender  
Attorney for the Defendant  
227 Fayetteville St. Mall, Ste. 500  
Raleigh, NC 27601  
Telephone: (919) 715-1514  
Facsimile: (919) 715-1510  
Email: [mklinkosum@yahoo.com](mailto:mklinkosum@yahoo.com)

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
08 CRS 00000

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 10<sup>th</sup> Judicial District
2. That he received the appointment to represent the Defendant in the above-entitled action on May 27, 2008.
3. That upon information and belief, the State will attempt to present evidence that the robbery with a dangerous weapon was committed upon an individual named EC, and that Mr. C identified the Defendant and as the perpetrators of the armed robbery after viewing the Defendant pursuant to a "show-up."
4. That the discovery in these matters reveals that on or about May 22, 2008, the Defendant was detained, seized, and taken from his residence at 625 Grantland Drive in Raleigh, NC after by officers of the Raleigh Police Departement.
5. That the discovery in these matters reveals that officers of the Raleigh Police Department seized the Defendant and removed him from his residence based upon their suspicion that the Defendant had been involved in the alleged armed robbery of EC.
6. That the report of Officer S (#2638), on May 22, 2008, Officer S received information from Officer B (#2977) that the suspect connected with the alleged armed robbery "might be John Q Doe." Said information had been derived from the questioning of a juvenile that Officer B had stopped on or near 1910 Poole Road in Raleigh, NC.

7. The discovery in these matters indicates that Officer S and B then obtained information from the juvenile that the Defendant lived at 625 Grantland Drive.
8. The discovery in these matters indicates that Officer S and Officer WB (#2412A) went to 625 Grantland Drive and obtained entry into the residence. After entering the residence, Officer S detained the Defendant in his (Officer S's) vehicle.
9. After detaining Defendant, Officers of the Raleigh Police Department then made Defendant the subject of a show-up by bringing the alleged victim to 625 Grantland Drive and having him identify Defendant as the alleged perpetrator of the alleged armed robbery.
10. The practice of using "show-ups" has been criticized by the Supreme Courts of both the United States and North Carolina as being inherently suggestive, as the witness likely assumes that the police had identified a person whom they suspected may be the guilty party. *See State v. Oliver*, 302 N.C. 28, 274 S.E.2d 183 (1981).
11. That, upon information and belief, the pre-trial identification procedure(s) was/were impermissibly suggestive and conducive to irreparable mistake and misidentification as to deny the Defendant due process of law.
12. The impermissibly suggestive nature of the pre-trial identification procedure was such that it gives rise to a substantial likelihood of irreparable misidentification in Court, thus denying the Defendant due process of law.
13. Further, any in-court identification is, in and of itself, a suggestive identification procedure.
14. The suppression of any in-court identification is required by the same constitutional and statutory provisions previously cited.
15. Further, any in-court identification is, in and of itself, a suggestive identification procedure.
16. The undersigned makes this affidavit after a review of discovery provided to undersigned by the prosecution thus far in this matter.

This the 10<sup>th</sup> day of October 2008.

---

**Maitri "Mike" Klinkosum**  
Assistant Public Defender  
Attorney for Defendant  
Office of the Public Defender – 10<sup>th</sup> District  
227 Fayetteville Street Mall, Ste. 500  
Raleigh, NC 27601  
Telephone: (919) 715-1514  
Facsimile: (919) 715-1510  
Email: mklinkosum@yahoo.com

I, \_\_\_\_\_, hereby certify that Maitri "Mike" Klinkosum, Assistant Public Defender, personally appeared before me this the *10<sup>th</sup> day of October 2008* and acknowledged and signed the above Affidavit.

**SWORN and SUBSCRIBED** to before me this  
the *10<sup>th</sup> day of October 2008*.

---

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* 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 Colleen Janssen*);
- \_\_\_\_\_ 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 10<sup>th</sup> day of October 2008.

By: \_\_\_\_\_  
*Maitri "Mike" Klinkosum*  
Assistant Public Defender  
Attorney for the Defendant  
227 Fayetteville St. Mall, Suite 500  
Raleigh, NC 27601  
Telephone: (919) 715-1514  
Facsimile: (919) 715-1510  
Email: mklinkosum@yahoo.com