

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
FILE NO. 2007CR079400

STATE OF NORTH CAROLINA

vs.

RAUL DE LA CRUZ FLORES

MOTION TO SUPPRESS

COMES NOW, Defendant, RAUL DE LA CRUZ FLORES, by and through his undersigned counsel and submits Defendant's Motion to Suppress and in support thereof states as follows:

EVIDENCE TO BE SUPPRESSED

1. Any tests of coordination, sobriety, alcohol or drug level, including chemical tests and Field Sobriety Exercises;
2. Any statements taken from or made by the Defendant;
3. Any observations and opinions of the police officer(s) who stopped, arrested or tested the Defendant regarding his sobriety and alcohol/drug level;
4. Any physical evidence obtained by the police.

BACKGROUND FACTS

On November 11, 2007, Defendant, RAUL DE LA CRUZ FLORES, was stopped on Capital Boulevard, nearest the intersection of Club Villa Drive, while displaying an expired registration plate on his vehicle by officer D.L. Hess of the Wake Forest Police Department.

When approached by officer D.L. Hess, Officer Hess noted that the defendant had two opened 12oz. cans of Bud Light in the front passenger area of the vehicle. Officer Hess immediately observed the broken English of Defendant. Officer Hess unequivocally states that the Defendant was not able to understand any of his pre-exit interview requests. Nevertheless, Officer Hess requested

that the Defendant exit the vehicle and proceeded to administer the standardized field sobriety exercises, **in English**. Based on the results of the roadside sobriety exercises, the Defendant was arrested without warrant for a violation of N.C. Gen. Stat. 20-138.1.

Defendant submits that the State bears the burden of proof to justify the warrantless seizure and to show why the above evidence should not be suppressed for the following reasons:

1. The failure to administer the field sobriety tests in Spanish to the Defendant, a Spanish speaking person, constitutes both a violation of Defendant's equal protection rights and demonstrates a lack of strict compliance with the NHTSA field sobriety tests.
2. The failure to give Defendant the implied consent warnings in Spanish violates Defendant's equal protection rights under the Fourteenth Amendment of the United States Constitution.
3. The failure to give administer both the field sobriety exercises and the implied consent warnings in a language that he could understand constitutes a violation of his civil rights under Title VI of the 1964 Civil Rights Act.
4. There was no probable cause to arrest Defendant without a warrant.

MEMORANDUM IN SUPPORT

Officer Hess disregarded the Defendant's inability to speak fluent English when he administered the roadside sobriety exercises to the Defendant. This transgression constitutes a lack of equal protection as guaranteed by the Fourteenth Amendment of the United States Constitution. The inability of the Defendant to speak fluent English was clear to Officer Hess upon his initial contact with the Defendant. Due to the language barrier, Officer Hess notes that the Defendant did not understand the divided attention exercises during the pre-exit interview. Nevertheless, Officer

Hess required the Defendant to get out of his vehicle and perform roadside sobriety exercises which the Officer administered in English. Officer Hess' failure to either give the instructions in Spanish or request an interpreter demonstrates a lack of compliance with the NHTSA field sobriety testing procedures.

If the State intends to introduce evidence of Defendant's performance on field sobriety exercises, or for them to serve as evidence of probable cause for the arrest, the tests or exercisers must have been administered with compliance to the standardized testing procedures as set forth by the NHTSA. Compliance with the field sobriety testing protocol is crucial as it is well established that even minor deviations from the procedures can severely bias the results.

As part of the pre-exit interview and pre-arrest screening, officers are required to gauge how well the suspect is able to listen to and respond to instructions which always include complex divided attention requests. *See NHTSA MANUAL(2006), Standardized Administrative Procedures, Sections VI and VII.* There is no evidence that the Defendant substantially understood the English instructions given to him by Officer Hess and that the Defendant could comply. Conducting a test in English to a Spanish-speaking Defendant departs from the established methods and procedures for a scientific indicia of intoxication. Therefore, the officers' results from field sobriety tests administered in English to a Spanish-speaking person are inherently unreliable.

In addition with this not being in compliance with NHTSA standards, it is also a violation of the defendants Civil Rights under Title 6 of the 1964 Civil Rights Act. Title 6 states that discrimination based on National origin and limited English proficiency is prohibited in programs, including police departments, receiving federal financial assistance.

Defendant was not properly advised of his implied consent warnings by the Chemical Analyst

S. Scherbehov.¹ According to the Chemical Analyst Affidavit, Analyst Scherbehov orally advised the Defendant and gave the Defendant notice in writing of the rights specified in N.C. Gen. Stat. 20-16.2(a). Once again, no translator was provided for the Defendant and both the oral and written rights were provided to the Defendant in English only. The failure of the Chemical Analyst to advise the Defendant of his rights in Spanish constitutes a violation of Defendant's equal protection rights under the 14th Amendment of the United States Constitution as well as violates Defendant's civil rights pursuant to Title VI of the 1964 Civil Rights Act.

Although there are no cases on point in the State of North Carolina, sister Courts have found that the failure of an officer or analyst to use reasonable means to procure a translator is grounds for the suppression of evidence obtained. *See Wisconsin v. Begicevic*, 2004 WI App 57. It is important for the Court to note, that in *Begicevic*, the Court held that the police were required to use reasonable means to find a German or Bosnian translator. With the abundance of Spanish speaking individuals currently in the United States, and more specifically in the Wake County area, there is simply no excuse for the failure to provide a Spanish translator to a suspect. It is an even more egregious violation considering the fact that Title VI of the 1964 Civil Rights Act mandates that the police department have a program for providing such services to individuals of "limited English proficiency."

Wherefore, Defendant, RAUL DE LA CRUZ FLORES, respectfully requests this Honorable Court grant Defendant's motion in its entirety and for such other and further relief as this Court deems just and proper.

¹The undersigned is unable to read the copy of the Charging Officer Affidavit and Chemical Analyst Affidavit and therefore, the spelling of the Chemical Analysts name is the best guess of the undersigned based on reviewing both affidavits.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was delivered via hand delivery to the District Attorney on this 7th day of April, 2008.



Respectfully submitted,



Michael A. Dye, Esq.
NC Bar No.: 34983
19 W. Hargett St.
Suite 214
Raleigh, NC 27601
Phone: (919)469-0793
Fax: (919)469-0792

ARREST REPORT

Inst. Number: _____

Agency Name Wake Forest Police Department			ORI NC 0920700		Date/Time of Arrest Mo: 11 Date: 11 Year: 2007 0056 Hrs.			OCA 07220188			
<input checked="" type="checkbox"/> Taken <input checked="" type="checkbox"/> Prints <input checked="" type="checkbox"/> Photos	Fingerprint Card Check Digit #(CKN) VF2908A		Arrest Tract Zone 1		Residence Tract Zone 4			Arrest Number 0732000734			
Name (Last, First, Middle) Flores, Raul, De La Cruz				D.O.B. 10/28/1986	Age 21	Race H	Sex M	Place of Birth		Country of Citizenship	
Current Address 4905 N. New Hope Rd. Apt A3 Raleigh, NC 27604				Phone		Occupation Unemployed			<input type="checkbox"/> Resident <input type="checkbox"/> Unknown <input checked="" type="checkbox"/> Non-Resident		
Employer's Name Unemployed				Address				Phone			
Also Known As (Alias Names)				Hgt. 506	Wgt. 130	Hair Black	Eyes Brown	Skin Tone Medium	Consumed Drug/Alcohol <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unk.		
Scars, Marks, Tatoos				Social Security #		OLN and State		Misc. # and Type			
Nearest Relative Name None given				Address				Phone			
If Armed, Type of Weapon N/A			<input checked="" type="checkbox"/> On-View <input type="checkbox"/> Criminal Summons <input type="checkbox"/> Order for Arrest <input checked="" type="checkbox"/> Citation <input type="checkbox"/> Warrant			Place of Arrest Capital Blvd at NC 98 Bypass					
Charge # 1 DWI		<input type="checkbox"/> Fel <input checked="" type="checkbox"/> Misd	Counts 01	DCI Code	Offense Jurisdiction (If not arresting agency)			Statute # 20-138.1	Warr. Date Mo: 11 Date: 11 Yr: 2007		
Charge # 2		<input type="checkbox"/> Fel <input type="checkbox"/> Misd	Counts	DCI Code	Offense Jurisdiction (If not arresting agency)			Statute #	Warr. Date Mo: Date: Yr:		
Charge # 3		<input type="checkbox"/> Fel <input type="checkbox"/> Misd	Counts	DCI Code	Offense Jurisdiction (If not arresting agency)			Statute #	Warr. Date Mo: Date: Yr:		
VYR 1999	Make Ford	Model Explorer	Style 4 Door	Color Blue	Lic/Lis VYA-1773		Vin 1FMZU34X6WZB24147				
Vehicle	1. <input type="checkbox"/> Left at Scene <input type="checkbox"/> Secured <input type="checkbox"/> Unsecured 2. <input type="checkbox"/> Released to other at owner's request 3. <input type="checkbox"/> Impounded <input checked="" type="checkbox"/> Place of Storage			Date/Time _____ Hrs _____		Name of Other Ernie Lee's Towing Inventory on File? <input type="checkbox"/>					
Date/Time Confined		Place Confined			Committing Magistrate						
Type Bond <input checked="" type="checkbox"/> Written Promise <input type="checkbox"/> Unsecured <input type="checkbox"/> Secured <input type="checkbox"/> No Bond <input type="checkbox"/> Other			Amount Bond	Trial Date 12/07/2007	Court of Disposition		City Raleigh				
Assisting Officer Name/ID Number Sgt. Danforth/ 458, J. Chitwood/ 634				Released By: Name/Dept/ID				Date/Time Released			
L - Lost S - Stolen R - Recovered D - Damaged Z - Seized B - Burned C - Counterfeit/Forged F - Found (Check "OJ" column if recovered for other jurisdiction)											
DCI	Status	Quantity	Type Measure	Suspected Type	Check up to 3 types of activity for each						
					Possess	Buy	Sale	Mfg.	Importing	Operating	
Name: Complainant <input checked="" type="checkbox"/> Victim <input type="checkbox"/> D.L. Hess				Address: Wake Forest Police Department				Phone: 556-9111			
The defendant was arrested pursuant to a traffic stop. The defendant had a BAC of .15%.											
Arresting Officer/ID # D.L. Hess/ 516				Date/Time Submitted Mo: 11 Date: 11 Yr: 2007 0700 Hrs.			Arresting Officer Signature 				
Case Status: <input type="checkbox"/> Further Inv. <input type="checkbox"/> Inactive <input checked="" type="checkbox"/> Closed			Case Disposition: <input checked="" type="checkbox"/> Cleared By Arrest / No Supplement <input type="checkbox"/> Needed Arrest/No Investigation				Supervisor Signature 				

C8228534-2

07220188

In The General Court Of Justice District Court Division

STATE OF NORTH CAROLINA Wake County

NOTE: (If DWI, use AOC-CR-342 (active) or AOC-CR-310 (probation). If active sentence to DOC, use AOC-CR-602. If supervised probation, use AOC-CR-604.)

MAGISTRATE'S ORDER - MISDEMEANOR ONLY

Signature Of Magistrate/Deputy/Assistant/CSC

Date

COURT USE ONLY

Attorney For Defendant At Time Of Trial Or Plea

District Attorney

PRIOR CONVICTIONS: No./Level: 0 I (0) II (1-4) III (5+)

PLEA: guilty/resp. no contest; guilty/resp. no contest; not guilty/resp.; not guilty/resp. VERDICT/FINDING: guilty/resp.; guilty/resp.; not guilty/resp.

JUDGMENT: The defendant appeared in open court and freely, voluntarily and understandingly entered the above plea, on the above verdict/finding, it is ORDERED that the defendant: pay costs and a fine/penalty of \$...; longer shorter period of probation than specified in G.S. 15A-1343.2(d), is necessary; Execution of sentence is suspended and the defendant is placed on unsupervised probation for months, subject to the regular conditions of probation and the following: (1) pay costs and a fine/penalty of \$...; (2) not operate a motor vehicle until properly licensed by DMV; (3) complete hours of community service within days and pay the fee; (4) Other:

It is ORDERED that this: Judgment is continued upon payment of costs; case be consolidated for judgment with sentence is to run at the expiration of the sentence in; COMMITMENT: it is ORDERED that the Clerk deliver two certified copies of this Judgment and Commitment to the sheriff and that the sheriff cause the defendant to be retained in custody to serve the sentence imposed or until the defendant shall have complied with the conditions of release pending appeal; The defendant in open court, gives notice of appeal to the Superior Court.

Signature Of District Court Judge; Date; I certify that this Judgment is a true copy.

Form containing: File No., NORTH CAROLINA UNIFORM CITATION, Defendant Is To Appear In District Court, Date Of Week, Month, Day, Year, Time, AM/PM, THE STATE OF NORTH CAROLINA VS., Name Of Defendant, Address, City, State, Zip, Drivers License No., State, CDL, Class, Race, Sex, Date Of Birth, Age, Social Security No., Of Defendant, Telephone No., Vehicle License No., State, Vehicle Type, Trailer Type, CMV, Haz. Mat., Make, Year, Name And Telephone No. Of Defendant's Employer, Date Of Arrest & Check Digit No. (As Shown On Fingerprint Card), ACKNOWLEDGMENT/NONRESIDENT PERSONAL RECOGNIZANCE FOR APPEARANCE, Date, Signature Of Defendant, DEPARTMENTAL USE ONLY, Officer, No., Troop, District, SHP Code, N.C. Patrol, Area, Wea., Vis., Traffic, Accident, Speed, Police/Sheriff, On Highway/No./Street, Injury Or Serious Injury, Passenger(s) Under 16, In Vicinity/City Of, At/Near Intersection, Wit., Chemical Analyst, AC, Refused.

Form containing: The undersigned officer has probable cause to believe that on or about Sunday, 10/17/2007, (a) (p) m., the 11 day of November, 2007, in the named county, the named defendant did unlawfully and willfully operate a (motor) vehicle on a (street or highway) (public vehicular area). 1. At a speed of MPH in a MPH zone. G.S. 20-141. 77. work zone. G.S. 20-141(j)(2). 88. school zone. G.S. 20-141.1. 2. In forward motion without having the provided seat belt properly fastened about the defendant's body. G.S. 20-135.2A. 3. By transporting a passenger of less than 16 years of age without having the passenger in a (weight appropriate child passenger restraint system) (seat belt). G.S. 20-137.1. 4. By transporting a child of less than five years of age and less than 40 pounds in weight without the child being secured in the rear seat, when the vehicle was equipped with an active passenger-side front air bag and the vehicle had a rear seat. G.S. 20-137.1(a). 5. While subject to an impairing substance. G.S. 20-138.1. 6. Without being licensed as a driver by the Division of Motor Vehicles of North Carolina. G.S. 20-7(a). 7. While the defendant's drivers license was revoked. G.S. 20-20. 8. While displaying an expired registration plate on the vehicle knowing the same to be expired. G.S. 20-111(2). 9. Without displaying thereon a current approved inspection certificate, such vehicle requiring registration in North Carolina. G.S. 20-183.8. Month Expired. 10. By failing to see before (starting) (stopping) (turning from a direct line) that such movement could be made in safety. G.S. 20-154. 11. By failing to stop at a duly erected (stop sign) (flashing red light). G.S. 20-158(b)(1), (b)(3). 12. By entering an intersection while a stop light was emitting a steady red light for traffic in defendant's direction of travel. G.S. 20-158(b)(2). 13. Without having in full force and effect the financial responsibility required by G.S. 20-313. The defendant was the owner of the motor vehicle that was (registered) (required to be registered) in this State. G.S. 20-313. 14. (Possess an open container of) (Consume) an alcoholic beverage in the passenger area of a motor vehicle. G.S. 20-138.7(a1). [NOTE: Strike "operate a (motor) vehicle" and "(public vehicular area)" above.] 15. Without decreasing speed as necessary to avoid colliding with a (vehicle) (person). G.S. 20-141(m). 16. 17. And on or about the date and time shown above in the named county, the named defendant did unlawfully and willfully operate a (motor) vehicle on a (street or highway) (public vehicular area). Possess an open container of an alcoholic beverage in the passenger area of a motor vehicle. G.S. 20-138.7(a1)

C8228534-2

07220138

In The General Court Of Justice District Court Division

STATE OF NORTH CAROLINA L. Wake County

DOC

MAGISTRATE/DEPUTY/ASSISTANT/CSC

MAGISTRATE'S ORDER - MISDEMEANOR ONLY

COURT USE ONLY

DISTRICT ATTORNEY

APPOINTED/RETAINED/WAIVED

NOTE: (If DWI, use AOC-CR-342 (active) or AOC-CR-310 (probation)). If active sentence to DOC, use AOC-CR-602. If supervised probation, use AOC-CR-604.

The named defendant has been arrested without a warrant and I, Magistrate/Deputy/Assistant/CSC, probable cause for the defendant's detention on the stated charges. This Magistrate's Order is issued upon information furnished under oath by the named officer. A copy of this Order has been delivered to the defendant.

PLEA: guilty/resp. no contest. guilty/resp. no contest. not guilty/resp. not guilty/resp.

JUDGMENT: The defendant appeared in open court and freely, voluntarily and understandingly entered the above plea; on the above verdict/finding, it is **ORDERED** that the defendant: pay costs and a fine/penalty of \$ _____ days in custody of the sheriff. Pretrial credit _____ days served. The Court finds that a longer shorter period of probation than specified in G.S. 15A-1343.2(d), is necessary. Execution of sentence is suspended and the defendant is placed on unsupervised probation for _____ months, subject to the regular conditions of probation and the following: (1) pay costs and a fine/penalty of \$ _____; (2) not operate a motor vehicle until properly licensed by DMV; (3) complete _____ hours of community service within _____ days and pay the fee; (4) Other: _____

It is **ORDERED** that this: Judgment is continued upon payment of costs. case be consolidated for judgment with _____ sentence is to run at the expiration of the sentence in _____

COMMITMENT: It is **ORDERED** that the Clerk deliver two certified copies of this Judgment and Commitment to the sheriff and that the sheriff cause the defendant to be retained in custody to serve the sentence imposed or until the defendant shall have complied with the conditions of release pending appeal.

The defendant in open court, gives notice of appeal to the Superior Court. The current pretrial release order is modified as follows: _____

Signature Of District Court Judge _____ **Date** _____

Signature Of Deputy/Assistant/CSC _____ **Date** _____

Signature Of Attorney _____ **Date** _____

Signature Of District Court Judge _____ **Date** _____

Signature Of Deputy/Assistant/CSC _____ **Date** _____

File No. _____

NORTH CAROLINA UNIFORM CITATION

Defendant Is To Appear In District Court

Wake Forest N.C.

Date Of Week	Month	Day	Year	Time	AM/PM
Friday	11	7	2007	900	AM

D.L. D.C.I. Other No. Of Charges 2

THE STATE OF NORTH CAROLINA VS.

Name Of Defendant: Raul Leiva Cruz Flores

Address: 4808 N. New Hope Rd Apt A3

City: Raleigh State: NC Zip: 27604

Drivers License No. _____ State _____ CDL _____ Class _____

Race: H Sex: M Date Of Birth: 10/28/1986 Age: 21

Social Security No. Of Defendant _____ Telephone No. _____

Vehicle License No. VYA 1772 State: NC

Vehicle Type: SUV Trailer Type: _____ CMV: _____ Haz. Mat.: _____ Make: Ford Year: 99

Name And Telephone No. Of Defendant's Employer _____

Date Of Arrest & Check Digit No. (As Shown On Fingerprint Card) _____

ACKNOWLEDGMENT/NONRESIDENT PERSONAL RECOGNIZANCE FOR APPEARANCE

I acknowledge receipt of this Citation and I promise to appear in the named court at the time and place designated herein to answer the charge(s). I understand that my failure to appear or to dispose of this Citation by other acceptable legal means, such as waiver, will result in my operator's license issued by my state of residence being suspended until I have done so. Also, I may go before a magistrate and make bail in lieu of my personal recognizance

Date: 11/11/2007 Signature Of Defendant: Copy Delivered

DEPARTMENTAL USE ONLY

Officer	No.	Troop	District
<u>D.L. Hess</u>	<u>516</u>	<u>D</u>	<u>1</u>

SHP Code: N.C. Patrol Wake Forest Police/Sheriff

Area	Wea.	Vis.	Traffic	Accident	Speed
<u>R</u>	<u>A</u>	<u>C</u>	<u>L</u>	<u>NO</u>	<u>P60</u>

On Highway, No./Street: Capital Blvd Injury Or Serious Injury Passenger(s) Under 16

In Vicinity/City Of: Wake Forest At/Near Intersection: Club Villa Dr.

Wit. Chemical Analyst AC Refused

The undersigned officer has probable cause to believe that on or about Sunday, 11/11/2007 (a) (p) m., the _____ day of November, 2007, in the named county, the named defendant did unlawfully and willfully operate a (motor) vehicle on a (street or highway) (**public vehicular area**).

1. At a speed of _____ MPH in a _____ MPH zone. G.S. 20-141.77. work zone. G.S. 20-141(j2). school zone. G.S. 20-141.1.

2. In forward motion without having the provided seat belt properly fastened about the defendant's body. G.S. 20-135.2A.

3. By transporting a passenger of less than 16 years of age without having the passenger in a (weight appropriate child passenger restraint system) (seat belt). G.S. 20-137.1.

4. By transporting a child of less than five years of age and less than 40 pounds in weight without the child being secured in the rear seat, when the vehicle was equipped with an active passenger-side front air bag and the vehicle had a rear seat. G.S. 20-137.1(a1).

5. While subject to an impairing substance. G.S. 20-138.1.

6. Without being licensed as a driver by the Division of Motor Vehicles of North Carolina. G.S. 20-7(a).

7. While the defendant's drivers license was revoked. G.S. 20-20.

8. While displaying an expired registration plate on the vehicle knowing the same to be expired. G.S. 20-111(2).

9. Without displaying thereon a current approved inspection certificate, such vehicle requiring registration in North Carolina. G.S. 20-183.8. Month Expired _____

10. By failing to see before (starting) (stopping) (turning from a direct line) that such movement could be made in safety. G.S. 20-154.

11. By failing to stop at a duly erected (stop sign) (flashing red light). G.S. 20-158(b)(1), (b)(3).

12. By entering an intersection while a stop light was emitting a steady red light for traffic in defendant's direction of travel. G.S. 20-158(b)(2).

13. Without having in full force and effect the financial responsibility required by G.S. 20-313. The defendant was the owner of the motor vehicle that was (registered) (required to be registered) in this State. G.S. 20-313.

14. (Possess an open container of) (Consume) an alcoholic beverage in the passenger area of a motor vehicle. G.S. 20-138.7(a1). **[NOTE: Strike "operate a (motor) vehicle" and "(public vehicular area)" above.]**

15. Without decreasing speed as necessary to avoid colliding with a (vehicle) (person). G.S. 20-141(m).

16. _____

17. And on or about the date and time shown above in the named county, the named defendant did unlawfully and willfully operate a (motor) vehicle on a (street or highway) (**public vehicular area**).

Possess an open container of an alcoholic beverage in the passenger area of a motor vehicle.
G.S. 20-138.7(a1)

Date: 11/11/2007 Signature Of Officer: DR

NOTE TO OFFICER: The officer should review and follow the instructions on Side Two of this form.

File No.

STATE OF NORTH CAROLINA

In The General Court Of Justice
District Court Division

Wake County

IN THE MATTER OF:

AFFIDAVIT AND REVOCATION REPORT OF

Name: Raul De La Cruz Flores
 Address: 4902 N. NEW HOPE RD Apt A3
 City: Raleigh State: NC Zip: 27604
 Race: H Sex: M Date Of Birth: 10/28/1976 Drivers License No.: _____ State: _____ Citation No.: C 2228033-4

CHARGING OFFICER
 CHEMICAL ANALYST
 The charged offense is impaired supervision or instruction under G.S. 20-12.1. Accordingly, substitute "supervisor/instructor" wherever "driver" appears below. G.S. 20-16.2, 20-16.5, 20-17.8, 20-19(c3), 20-139.1

The undersigned being first duly sworn says:

- 1. I am a law enforcement officer. On the 11 day of NOVEMBER, 2007, at 1256 (a.)(p)m., I had reasonable grounds to believe the above named person, hereinafter referred to as driver, operated a vehicle (commercial motor vehicle) in the above named county upon Capital Blvd (Give Street, Highway, Or Public Vehicular Area) while committing an implied-consent offense in that exceeded over the center line, exceeded posted speed limit and failed to adequately perform standardized field sobriety tests.
(List Sufficient Facts To Establish Probable Cause)
- 2. The driver has a drivers license restriction: alcohol concentration. ignition interlock. conditional restoration (Restr: *9).
- 3. The driver violated a drivers license restriction by: refusing to be transported for testing. not having an operable ignition interlock on the vehicle being driven. failing to personally activate the ignition interlock on the vehicle being driven. the driver's alcohol concentration.
- 4. I charged the driver with the implied-consent offense of: G.S. 20-138.1; Other Offense _____; and the driver has one or more pending offenses in the following count(ies) _____ for which the drivers license had been or is revoked under G.S. 20-16.5.
- 5. After charging the driver, I took the driver before S. Scherke how, a chemical analyst authorized to administer a test of the driver's breath.
- 6. I am a chemical analyst and possess a current permit issued by the Department of Health and Human Services authorizing me to conduct chemical analyses of the breath utilizing the Intoxilyzer, Model 5000.
- 7. I informed the driver, orally and also gave notice in writing of the rights specified in G.S. 20-16.2(a). I completed informing the driver of the rights as indicated on the attached DHHS 3908. DHHS 4003.
- 8. I began observing the driver for the purpose of complying with the observation period requirements for a breath analysis in accordance with the methods approved by the Department of Health and Human Services at _____ (a.)(p)m. on the _____ day of _____.
- 9. On the 11 day of NOVEMBER, 2007 at 1200 (a.)(p)m., I a law enforcement officer in my presence requested the driver to submit to a chemical analysis of his/her breath or blood or urine. For blood or urine, I directed the taking of a blood or urine sample by a person qualified under G.S. 20-139.1.
- 10. The driver was unconscious or otherwise incapable of refusal and therefore the notification of rights and request to submit to a chemical analysis were not made. I directed the taking of a blood sample by a person qualified under G.S. 20-139.1.
- 11. The driver submitted to a chemical analysis of his/her breath. I administered the chemical analysis to the driver in accordance with the methods approved by the Department of Health and Human Services using an Intoxilyzer, Model 5000, an automated instrument, and it printed the results of the driver's chemical analysis on the attached test record, DHHS 3908, which is made part of this Affidavit. The most recent preventive maintenance was performed on this Intoxilyzer on the _____ day of _____, _____, as shown on the preventive maintenance record. I provided the driver with a copy of the attached test record before any trial or proceeding in which the results of the chemical analysis may be used.
- 12. The chemical analysis of the driver's breath indicated an alcohol concentration of 0.16 or more.
- 13. A sample of the driver's blood or urine was collected for a chemical analysis as indicated on the attached DHHS 4003.
- 14. The driver willfully refused to submit to a chemical analysis as indicated on the attached DHHS 3908. DHHS 4003. The willful refusal occurred in an implied-consent offense involving death or critical injury to another person.

SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME		Signature Of Chemical Analyst/Charging Officer <u>[Signature]</u>	DHHS Permit No.
Date <u>11-11-07</u>	Signature Of Official Authorized To Administer Oaths <u>[Signature]</u>	Print Name Of Chemical Analyst/Charging Officer <u>D.L. HCC</u>	
<input checked="" type="checkbox"/> Magistrate	<input type="checkbox"/> Deputy CSC	<input type="checkbox"/> Assistant CSC	<input type="checkbox"/> CSC
<input type="checkbox"/> Notary	Date My Commission Expires	County Where Notarized	Agency Name <u>Wake Forest Police Department</u>

CCBI
INTOXILYZER - ALCOHOL ANALYZER
NC MODEL 5000 SN 68-011921
11/11/2007 COUNTY 910

CITATION NO=C8228533-4
SUB NAME=FLORES, RAUL, D
SUB DOB =10/28/1986 SEX =MALE
DRIV LIC=XX-UNKNOWN
OFF NAME=HESS, D, L
TYPE OF AGENCY=PD
AGENCY=WAKE FOREST
ANA NAME=SCHERBEKOW, S, P
PERMIT NUMBER=26233D CODE=NA

TEST	AC	TIME
AIR BLANK	.00	02:00 AM <i>Request</i>
CALCHK #032 OF 125	.07	02:00 AM
AIR BLANK	.00	02:01 AM
SUBJECT TEST	.15	02:01 AM
AIR BLANK	.00	02:01 AM
SUBJECT TEST	.15	02:02 AM
AIR BLANK	.00	02:02 AM

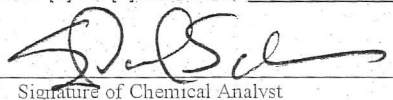
REPORTED A. C. .15

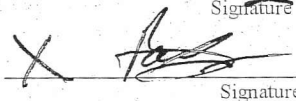
**RIGHTS OF PERSON REQUESTED TO SUBMIT TO A
CHEMICAL ANALYSIS TO DETERMINE ALCOHOL
CONCENTRATION UNDER G.S. 20-16.2(a)**

1. You have been charged with an implied-consent offense. Under the implied-consent law, you can refuse any test, but your drivers license will be revoked for one year and could be revoked for a longer period of time under certain circumstances; and an officer can compel you to be tested under other laws.
2. The test results, or the fact of your refusal, will be admissible in evidence at trial.
3. Your driving privilege will be revoked immediately for at least 30 days if you refuse any test or the test result is 0.08 or more, 0.04 or more if you were driving a commercial vehicle, or 0.01 or more if you are under the age of 21.
4. After you are released, you may seek your own test in addition to this test.
5. You may call an attorney for advice and select a witness to view the testing procedures remaining after the witness arrives, but the testing may not be delayed for these purposes longer than 30 minutes from the time you are notified of these rights. You must take the test at the end of 30 minutes even if you have not contacted an attorney or your witness has not arrived.

Time 0142 a.m. p.m. Date 11-11-07

Did defendant call an attorney and/or witness? No Yes Time a.m. p.m.


Signature of Chemical Analyst


Signature of Person Charged

DISTRIBUTION OF COPIES:
1ST - COURT/AFFIDAVIT COPY 3RD - DEFENDANT'S COPY
2ND - IF REFUSAL DMV COPY 4TH - ANALYST/OFFICER'S COPY

NOTE TO OFFICER: The officer should review and follow the instructions on Side Two of this form.

File No.

STATE OF NORTH CAROLINA

In The General Court Of Justice
District Court Division

Wake County

IN THE MATTER OF:

AFFIDAVIT AND REVOCATION REPORT OF

Name: Renee De La Cruz Flores

Address: 4905 N. New Hope Rd Apt. A3

City: Raleigh State: NC Zip: 27604

Race: w Sex: m Date Of Birth: 10-23-86 Drivers License No.: -----

CHARGING OFFICER

CHEMICAL ANALYST

The charged offense is impaired supervision or instruction under G.S. 20-12.1. Accordingly, substitute "supervisor/instructor" wherever "driver" appears below.

G.S. 20-16.2, 20-16.5, 20-17.8, 20-19(c3), 20-139.1

State: XX Citation No.: C 82285384

The undersigned being first duly sworn says:

1. I am a law enforcement officer. On the _____ day of _____, _____, at _____ (a.)(p.)m., I had reasonable grounds to believe the above named person, hereinafter referred to as driver, operated a vehicle (commercial motor vehicle) in the above named county upon _____ (Give Street, Highway, Or Public Vehicular Area) while committing an implied-consent offense in that _____

(List Sufficient Facts To Establish Probable Cause)

- 2. The driver has a drivers license restriction: alcohol concentration. ignition interlock. conditional restoration (Restr: *9).
- 3. The driver violated a drivers license restriction by: refusing to be transported for testing. not having an operable ignition interlock on the vehicle being driven. failing to personally activate the ignition interlock on the vehicle being driven. the driver's alcohol concentration.
- 4. I charged the driver with the implied-consent offense of: G.S. 20-138.1; Other Offense _____; and the driver has one or more pending offenses in the following count(ies) _____ for which the drivers license had been or is revoked under G.S. 20-16.5.
- 5. After charging the driver, I took the driver before _____, a chemical analyst authorized to administer a test of the driver's breath.
- 6. I am a chemical analyst and possess a current permit issued by the Department of Health and Human Services authorizing me to conduct chemical analyses of the breath utilizing the Intoxilyzer, Model 5000.
- 7. I informed the driver, orally and also gave notice in writing of the rights specified in G.S. 20-16.2(a). I completed informing the driver of the rights as indicated on the attached DHHS 3908. DHHS 4003.
- 8. I began observing the driver for the purpose of complying with the observation period requirements for a breath analysis in accordance with the methods approved by the Department of Health and Human Services at 0112 (a.)(p.)m. on the 11th day of Nov, 2007.
- 9. On the 11th day of Nov, 2007 at 2:00 (a.)(p.)m., I a law enforcement officer in my presence requested the driver to submit to a chemical analysis of his/her breath or blood or urine. For blood or urine, I directed the taking of a blood or urine sample by a person qualified under G.S. 20-139.1.
- 10. The driver was unconscious or otherwise incapable of refusal and therefore the notification of rights and request to submit to a chemical analysis were not made. I directed the taking of a blood sample by a person qualified under G.S. 20-139.1.
- 11. The driver submitted to a chemical analysis of his/her breath. I administered the chemical analysis to the driver in accordance with the methods approved by the Department of Health and Human Services using an Intoxilyzer, Model 5000, an automated instrument, and it printed the results of the driver's chemical analysis on the attached test record, DHHS 3908, which is made part of this Affidavit. The most recent preventive maintenance was performed on this Intoxilyzer on the 2nd day of Dec, 2007, as shown on the preventive maintenance record. I provided the driver with a copy of the attached test record before any trial or proceeding in which the results of the chemical analysis may be used.
- 12. The chemical analysis of the driver's breath indicated an alcohol concentration of 0.16 or more.
- 13. A sample of the driver's blood or urine was collected for a chemical analysis as indicated on the attached DHHS 4003.
- 14. The driver willfully refused to submit to a chemical analysis as indicated on the attached DHHS 3908. DHHS 4003. The willful refusal occurred in an implied-consent offense involving death or critical injury to another person.

SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME

Signature Of Chemical Analyst/Charging-Officer: [Signature] DHHS Permit No.: 20233-D

Print Name Of Chemical Analyst/Charging-Officer: S.P. Swarbelow

Agency Name: LCSE

Date: 11/11/07 Signature Of Official Authorized To Administer Oaths: [Signature]

Magistrate Deputy CSC Assistant CSC CSC

Notary Date My Commission Expires: 7-15-2012 County Where Notarized: Wake

SEAL

TYPE CASE: DUI

COMPLAINT #: 07220188

PLACE: CCBI

DATE: 11/11/2007

TIME: 12:02:16

YOUR RIGHTS

Before we ask you any questions, you must understand your rights.

You have the right to remain silent and not make any statement.

Anything you say can and will be used against you in court.

You have the right to talk to a lawyer for advice before we ask you any questions and to have him or anyone else with you during questioning.

If you cannot afford a lawyer, one will be appointed for you by the court, before questioning if you wish.

If you decide to answer questions now without a lawyer present, you will still have the right to stop answering at any time. You also have the right to stop answering at any time until you talk to a lawyer.

WAIVER OF RIGHTS

I am willing to make a statement and answer questions. I do not want a lawyer at this time. I understand and know what I am doing. No promises or threats have been made to me and no pressure or coercion of any kind has been used against me by anyone. I have read or had read to me this statement of my rights and the above waiver of rights and I understand what my rights are.

Signed: Refused 0217 [Signature]

Witness _____

Witness _____

Witness _____

Name: Raul De La Cruz Flores
 DOB: 10/28/1986
 Approx. Wt.: 145 Gender: M F
 Minors in Vehicle: Yes No
 Blood / Breath Results: 0.15 / 0.16
 Vehicle Crash: Yes No Injuries: Yes No
 Arrest Date: 11/11/2007 Time: 1256 am pm

Report (DWIR)

Department of Health and Human Services, Forensic Tests for Alcohol Branch

Officer No.: 516
 e No.: 07210188
 DRE Officer: _____
 City / County: Wake Forest
 Street / Highway: Capital Blvd
 Area No.: _____

Phase I
Initial Observations: What drew your attention to the vehicle (wide turns, weaving, violations of law, etc.). Unusual driver's actions, blank stare, etc.
 Observation of Stop: Describe vehicle maneuvers during the stop, delays in stopping, unusual manner of parking, etc.:

Phase II
General Observation: Observation of driver, condition of clothing, attitude, speech, ability to follow instruction, etc.:
 Breath: Describe the odor of alcohol on driver's breath:
 Statements: Any statement made by the driver from time of stop to arrest:
 Observation Prior to Arrest: Describe any difficulty with motor skills, retrieving drivers license, getting out of vehicle, walking, standing, etc.:
 Odors: Describe any significant odors other than alcohol:

See Officer Notes

Phase III
 Psychophysical Tests Time: _____ am pm
 Location Performed: _____

Horizontal Gaze Nystagmus (HGN)		Walk and Turn Test		Walk and Turn Test
<input type="checkbox"/> Glasses	<input type="checkbox"/> Contact Lenses	Instruction Stage		
Remove Glasses <input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Hard <input type="checkbox"/> Soft	<input type="checkbox"/> Cannot Keep Balance <input type="checkbox"/> Starts Too Soon		
Tracking Equal?	<input type="checkbox"/> Yes <input type="checkbox"/> No	First 9 Steps	Second 9 steps	
Able to Follow Stimulus?	<input type="checkbox"/> Yes <input type="checkbox"/> No	Stops Walking		
	Left Eye Right Eye	Misses Heel to Toe		
Lack of Smooth Pursuit		Steps Off Line		
Maximum Deviation		Uses Arms To Balance		
Onset Prior 45°		Actual Steps Taken		
Vertical Nystagmus?	<input type="checkbox"/> Yes <input type="checkbox"/> No	Improper Turn (Describe):		
Explain:		Cannot Do Test (Explain):		

One Leg Stand	Finger to Nose Test	Romberg Balance
Sways While Balancing: <input type="checkbox"/> L <input type="checkbox"/> R Uses Arms for Balance: <input type="checkbox"/> L <input type="checkbox"/> R Hopping: <input type="checkbox"/> L <input type="checkbox"/> R Puts Foot Down: <input type="checkbox"/> L <input type="checkbox"/> R Type of Footwear: _____	Draw Lines Spots Touched 	
		Internal Clock Estimated as 30 Seconds

Alcohol Screening Test Device (If test result is 0.08 or greater, wait 5 minutes and administer an additional test)

Make / Model	Serial #
Time: _____ <input type="checkbox"/> am <input type="checkbox"/> pm Result: 0.	Time: _____ <input type="checkbox"/> am <input type="checkbox"/> pm Result: 0.

Driving While Impaired

Officer D.L. Hess

Defendant: Raul De La Curz Flores

Date of Offense: 11/11/2007

Time of Offense: 0056

Case Number: 07220188

Citation Number: C 8228533-4

Refusal: Yes No (If no, .15 % BAC)

Phase One

Vehicle Observation

I observed the defendant's vehicle travelling South on Capital Boulevard at Club Villa Drive. The registration light was not operating and the vehicle was travelling at 60 mph in a posted 55 mph. As I began to follow the vehicle I observed it weaving with in its travel lane and crossed the center line three times within a half mile distance. The vehicles speed fluctuated from 45 mph to 60 mph in a posted 55 mph zone.

Phase Two

Driver Observation

The driver had a strong odor of alcohol emitting from his person. I observed two open containers of alcohol (Bud Light 12 oz cans) in plain view in the center console. The driver's speak was slurred and he spoke broken English. I attempted to have him conduct several pre-exit interview test but he could not understand my requests. I had him exit the vehicle to conduct standardized field sobriety tests. The results are listed below:

Horizontal Gaze Nystagmus:

Lack of smooth pursuit: Both eyes

On set of nystagmus prior to 45 degrees: Both eyes

On set of mystamus at maximum devotion: Both eyes

Total: 6 clues

Walk and Turn.

Failed to keep balance: Yes No

Started too soon: Yes No

Stopped walking: Yes No