

**IN THE STATE COURT OF BIBB COUNTY  
STATE OF GEORGIA**

|                   |   |                |
|-------------------|---|----------------|
| STATE OF GEORGIA, | : |                |
|                   | : |                |
| v.                | : |                |
|                   | : | Case No. ----- |
| -----,            | : |                |
|                   | : |                |
| <i>Defendant.</i> | : |                |

**NOTICE REGARDING PARTICULARIZATION OF MOTIONS**

For the purposes of particularizing these motions and placing the State on notice regarding what witnesses to subpoena for the hearing, the Defendant incorporates in each of the Defendant's motions the witnesses identified in the State's accusation/indictment and the State's discovery responses provided to the Defendant. With regard to the factual allegations that provide the basis for the Defendant's motions to suppress, the Defendant incorporates each of the allegations contained in the State's accusation/indictment.

If the State has any question as to the witnesses needed to be subpoenaed for the Defendant's motions hearing, the undersigned will work to identify those witnesses for the State if the State will make a request to the Defendant's attorney at least 72 hours prior to the scheduled hearing.

Motions to suppress are authorized by O.C.G.A. § 17-5-30, which provides:

(a) A defendant aggrieved by an unlawful search and seizure may move the court for the return of property, the possession of which is not otherwise unlawful, and to suppress as evidence anything so obtained on the grounds that:

(1) The search and seizure without a warrant was illegal; or

(2) The search and seizure with a warrant was illegal because the warrant is insufficient on its face, there was not probable cause for the issuance of the warrant, or the warrant was illegally executed.

**(b) The motion shall be in writing and state facts showing that the search and seizure were unlawful. The judge shall receive evidence out of the presence of the jury on any issue of fact necessary to determine the motion; and the burden of proving that the search and seizure were lawful shall be on the state.** If the motion is granted the property shall be restored, unless otherwise subject to lawful detention, and it shall not be admissible in evidence against the movant in any trial.

(c) The motion shall be made only before a court with jurisdiction to try the offense. If a criminal accusation is filed or if an indictment or special presentment is returned by a grand jury, the motion shall be made only before the court in which the accusation, indictment, or special presentment is filed and pending.

*Dean v. State*, 246 Ga. App. 263, 540 S.E.2d 246 (2000), directly addresses the requirements of particularity of O.C.G.A. 17-5-30. In *Dean*, the defendants motion(s) to suppress included the following:

Each motion alleged that on or about the date set forth in the accusation, Dean was approached, questioned, unlawfully detained, and arrested by (unnamed) law enforcement officers; that these actions were taken without probable cause and without specific and articulable facts reasonably warranting an investigatory stop under *Terry v. Ohio*; that incident to each stop he was frisked and a small bag allegedly containing marijuana was taken from the front pocket of his jacket; and that each frisk was conducted without his consent or probable cause.

*Id.* at 263 (citations omitted).

The trial court in *Dean* relied upon *Rouse v. State*, 241 Ga. App. 167, 567 S.E.2d 360 (1999), in dismissing the defendant's motion(s) to suppress based upon a lack particularization.

**Reversing the trial court's dismissal of the motions, the Court of Appeals held:**

In cases involving warrantless searches, the factual showing required by OCGA § 17-5-30 need not be made in great detail, because in such cases 'many of the necessary allegations are negative facts (e.g., the search was conducted without a warrant, the movant did not consent to the search) and conclusions based upon mixed questions of law and negative fact (e.g., the officer lacked probable cause to arrest or search).' [Cit.] In such cases, **motions to suppress are held sufficient if they 'put the state on notice as to the type of search involved (without warrant vs. with warrant), which witness to bring to the hearing on the motion, and the legal issues to be resolved at that hearing.'**

*Id.*, quoting, *Young v. State*, 225 Ga. App 208-209, 483 S.E.2d 636 (1997) (emphasis added).

*Dean* is also helpful in addressing the sufficiency of a motion where we cannot identify the names of all of the officers that participated in the stop and investigation of our clients. In *Dean*, the defendant's motion did not identify the officers that participated in his arrest. Nonetheless, the Court held that the state was put on sufficient notice as to which officers were required to satisfy its burden of proof:

Did the suppression motions put the State on notice as to the witnesses whose testimony was required? For essentially two reasons, we conclude that they did. To begin with, the transcript of the hearing on the motions shows that the State did bring law enforcement officers to testify. **“Moreover, the State did not argue at the hearing that deficiencies in the motions left it unable to ascertain the identity of needed witnesses.”** Therefore, failure of the motions to identify the officers conducting the stops and frisks, and to more fully detail the attendant facts, was not fatal to the sufficiency of the motions.

*Id.*, citing *Lavelle v. State*, 250 Ga. 224, 226, 297 S.E.2d 234 (1982); *State v. Barnett*, 233 Ga.App. 496(1), 504 S.E.2d 531 (1998); see also, *Hill v. State*, 222 Ga. App. 839, 476 S.E.2d 634 (1996).

Relying upon *Dean* for the proposition that motions to suppress need not identify the officers involved in the case can be harrowing experience. Look to *State v. Goodman*, 220 Ga. App. 169, 469 S.E.2d 327 (1996), for a clear statement as to what is a sufficiently particularized motion to suppress. Motions to suppress which include the following information garnered express approval from the Court of Appeals:

1. the date of the stop,
2. the identity of the person stopped,
3. the identity of the officer who made the stop,
4. the law enforcement organization with which he was affiliated,
5. the nature of the stop (e.g., traffic stop),
6. the offenses with which Goodman was charged, and
7. the conclusion that no such violations occurred which would justify the stop.

*Id.*

Respectfully Submitted, this 11th day of March, 2022.

/s/D. Benjamin Sessions  
D. Benjamin Sessions  
State Bar No. 141280  
Attorney for Defendant

3155 Roswell Rd., Ste. 220  
Atlanta, Georgia 30305  
Tel: (470) 225-7710  
Fax: (470) 745-0734

### **CERTIFICATE OF SERVICE**

I hereby certify that I have served a true and accurate copy of the foregoing pleading upon the prosecuting attorney in this case by depositing same in the U.S. Mail with adequate postage affixed thereon to ensure delivery of same.

Respectfully Submitted, this 11th day of March, 2022.

/s/D. Benjamin Sessions  
D. Benjamin Sessions  
State Bar No. 141280  
Attorney for Defendant

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**MOTION FOR DISCOVERY AND NOTICE TO PRODUCE**

COMES NOW, Defendant in the above-styled case, by and through his/her counsel of record, and files this Motion for Discovery Materials and Notice to Produce. This motion is made pursuant to the authority of *Brady v. Maryland*, 373 U.S. 83 (1963); *Giles v. Maryland*, 386 U.S. 66 (1967), and subsequent cases. Defendant moves this to require the State through the Solicitor to produce for Defendant's inspection, any and all evidence exculpatory in nature within the meaning of the foregoing cases, including but not limited to:

**NOTICE TO PROSECUTOR: You are hereby requested not only to furnish the materials requested below which are in your present possession, but also to ask the investigating police Officer(s) if any of the requested materials exist (especially audio or video tapes). See, *Kyles v. Whitley*, 514 U.S. 419 (1995), holding "that the individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the government's behalf, including the police."**

- (1) all affidavits, sworn statements, recordings, or other evidence offered in support of the issuance of a search warrant for the Defendant's blood in this case;
- (2) all search warrants issued in connection with this case;
- (3) any statements made by any witness regarding this matter which may be favorable to Defendant's defense;
- (4) any written reports, documents, or other physical evidence that may tend to be favorable to Defendant;
- (5) the results of any chemical tests, scientific tests, analyses or experiments performed by the arresting Officer, other Officers, the State Crime Lab, the Department of Public Safety, or the manufacturer of the chemical testing machine, for this case or any other purpose, which may tend to show in any way the evidence of unreliability of said testing machine or of the operator thereof, the innocence of Defendant, or other evidence favorable to Defendant's case;

- (6) all tape recordings, whether audio or video, which show Defendant's physical condition at or about the time of arrest or detention, and would arguably tend to show innocence or lack of intoxication, or which would tend to show the extent of Defendant's ability to speak and respond to questions and directions by the police Officers involved in this case; and if any such tape recordings are allegedly unavailable due to malfunctioning equipment or faulty tape(s), Defendant demands that the State produce repair or replacement orders, or other evidence supporting their unavailability;
- (7) all booking slips, prisoner intake forms or other processing sheets used to obtain or record information about Defendant, including any photographs taken of Defendant;
- (8) any information regarding Defendant's request to take an additional or independent test, including any advice or notification by the Officer concerning the right to have such tests made, with specific mention of when, where and by whom such notice was given;
- (9) any other evidence of any kind or character discovered by, known by, or available to the prosecution or any State law enforcement agency or official that might be favorable to Defendant as to issues of guilt or innocence or punishment.

Defendant cannot safely go to trial, nor can Defendant's counsel adequately prepare for trial, without production of this evidence within a reasonable time prior to trial or any pre-trial hearings in this case; in the absence of such production, Defendant will be denied due process of law.

WHEREFORE, Defendant prays:

That the State be required to produce for Defendant said evidence within a reasonable time prior to trial or any pre-trial hearing; that the Court conduct an **in camera** inspection of all such evidence, and of the State's entire file, and that Defendant's counsel be permitted to see, copy and reproduce all such evidence determined by the Court to be favorable to Defendant as to guilt or innocence, punishment, or to be useful by Defendant in cross-examining or impeaching any of the State's witnesses against Defendant; that an exact copy be made of each and every such item not made available to Defendant, and that the same be sealed and included in the record of this case in order to insure proper review of the Court's denial of Defendant's requests for lawful disclosure.

Respectfully Submitted, this 11th day of March, 2022.

/s/D. Benjamin Sessions  
D. Benjamin Sessions  
State Bar No. 141280  
Attorney for Defendant

3155 Roswell Rd., Ste. 220  
Atlanta, Georgia 30305  
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/s/D. Benjamin Sessions  
D. Benjamin Sessions  
State Bar No. 141280  
Attorney for Defendant

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**DEMAND FOR FULL INFORMATION ABOUT DEFENDANT'S STATE-  
ADMINISTERED CHEMICAL TEST**

COMES NOW, the above-named Defendant and hereby requests and demands that the information identified below be provided no later than ten (10) days prior to any motion hearing or trial:

1) Copies of the machine-printed results of any tests of Defendant's state-administered chemical test;

2) A copy of all data collected to establish that the test performed on the above-referenced sample(s) meets the requirements of precision and accuracy by the Georgia Bureau of Investigations.<sup>1</sup>

3) All of the data from all of the records for all of the files that are printed, produced, or downloaded from headspace sampler and gas chromatograph employed in the analysis of the above-referenced test for the time period six months prior to the Defendant's test through the period six months after the performance of the Defendant's test. This request includes, but is not limited to: subject files, maintenance files, diagnostic files, calibration files, operational error files, quick tests and instrument files. NOTE: File names may not be exactly as requested but the intent of this item is to receive all printed, transferred, and downloaded files. Any data fields, records or files that are not provided must be clearly identified.

4) A copy of all chromatograms produced for each sample tested in the run with the above-referenced test.

5) The complete instrument history file for the headspace sampler and gas chromatograph employed in the analysis of the above-referenced test. This request includes, but is not limited to, maintenance, repairs or calibrations conducted by the manufacturer or other service center; and any computer data collected and transferred, via modem or other means, to the Georgia Bureau of Investigations or other monitoring agency for diagnostic and or troubleshooting purposes.

6) The inlet maintenance schedule for the gas chromatograph employed in the analysis

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<sup>1</sup> As used herein, the term "Georgia Bureau of Investigations" shall include any division, department, or other agency established, maintained, or supervised under the authority of the Georgia Bureau of Investigations.

of the above-referenced sample(s). This request includes the schedule for maintenance of the septum, liners, gold seal, and the spit vent trap.

7) The department's guidelines for the parameters in the set-up of the gas chromatograph employed in the test of the above-referenced sample.

8) The raw data of all quality control tests performed during the analysis of the above-referenced sample(s).

9) Quality control data (e.g., Levi-Jennings charts) for the previous six months.

10) The raw data of analytical tests performed on the specimens themselves.

11) Calibration data for any weight and measuring device used in the analysis (i.e., pipettors and scales).

12) Sample work list for all samples analyzed.

13) All saved, downloaded, and printed files referencing the set-up parameters of the inlet on the gas chromatograph employed in the test of the above-referenced sample.

14) All documentation produced, submitted, and received in connection with the GBI's application to attain American Society of Crime Laboratory (ASCLD) certification and re-certification. This request includes, but is not limited to, reviews produced ASCLD agents or inspectors of GBI lab.

15) The ASCLD manual in the possession of the Department.

16) The curriculum vitae of the forensic toxicologist(s) that performed the above-referenced test.

17) The Department's hiring guidelines for the position of "forensic toxicologist."

18) The personnel file of the forensic toxicologist(s) that performed the above-referenced test. The request includes, but is not limited to, all performance reviews, reprimands, and all other documents relating to evaluation of the toxicologist's job performance.

19) The curriculum vita of the lab director and supervisor at the time that the above-referenced test was performed.

20) The standard operating procedure for the performance of the test on the above-referenced sample(s).

Defendant seeks production of the requested information under the authority of O.C.G.A. § 40-6-392(a)(4), see, Price v. State, 269 Ga. 222 (1998), and, to the extent that any of the requested information constitutes a scientific report, under the authority of O.C.G.A. §17-16-23.

DEFENDANT HEREBY MOVES THE COURT TO ORDER PRODUCTION OF THE DOCUMENTS AND FULL INFORMATION REQUESTED ABOVE. IF THE REQUESTED INFORMATION IS NOT PROVIDED TEN (10) DAYS BEFORE TRIAL, OR ANY HEARING CONTESTING THE ADMISSIBILITY OF DEFENDANT'S TEST RESULTS, DEFENDANT WILL SEEK EXCLUSION OF THE TEST RESULTS THEMSELVES. See, Birdsall v. State, 254 Ga. App. 555 (2002).

Respectfully Submitted, this 11th day of March, 2022.

/s/D. Benjamin Sessions  
D. Benjamin Sessions  
State Bar No. 141280  
Attorney for Defendant

3155 Roswell Rd., Ste. 220  
Atlanta, Georgia 30305  
Tel: (470) 225-7710  
Fax: (470) 745-0734

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/s/D. Benjamin Sessions  
D. Benjamin Sessions  
State Bar No. 141280  
Attorney for Defendant

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**MOTION IN LIMINE TO EXCLUDE STATE-ADMINISTERED TEST RESULTS ON  
STATUTORY GROUNDS**

COMES NOW, Defendant in the above-styled case and moves this Court in limine to exclude from evidence the results of the state-administered chemical test that was administered to Defendant in connection with the charge of driving under the influence of alcohol contained in the above-styled accusation. The Defendant submitted to the state-administered test of his/her state-administered chemical in connection with his/her arrest in this case. The results of the state-administered chemical test that was administered upon the Defendant should be excluded from evidence based upon the following grounds and reasons:

- (1) The state cannot show that the request for Defendant's state-administered chemical test was preceded by a valid DUI arrest supported by probable cause;
- (2) The state cannot show that the Defendant actually consented to the submission of his/her state-administered chemical sample;
- (3) The state cannot show that Defendant was properly and timely advised of implied consent rights as required under O.C.G.A. § 40-6-392(a)(4), *see, Perano v. State*, 250 Ga. 704 (1984);
- (4) The state cannot show that Defendant was given a reasonable opportunity to have an additional test performed by a person of Defendant's own choosing, as required by O.C.G.A. § 40-6-392(a)(3);
- (5) The state cannot show that Defendant's state-administered chemical test was performed, or the machine inspected, according to the methods approved by the Division of Forensic Sciences of the Georgia Bureau of Investigation ("DFS") as required by O.C.G.A. § 40-6-392(a)(1)(A);
- (6) The state cannot show that Defendant's state-administered chemical test was performed on a machine operating with all its electronic and operating components attached and in good working order by an individual possessing valid permit issued by the DFS for this purpose as required by O.C.G.A. § 40-6-392(a)(1)(A);

- (7) The state cannot show that Defendant's state-administered chemical test was administered as soon as possible as required by O.C.G.A. § 40-5-67.1(a);
- (8) The state cannot show that DFS has approved "requirements for properly operating and maintaining" the testing instruments used in this case. O.C.G.A. § 40-6-392(a)(1)(A), as amended;
- (9) Defendant was misled into submitting to testing by an improperly read implied consent notice which changed the substance of the implied consent warning. *Maurer v. State*, 240 Ga. App. 145 (1999).

WHEREFORE, Defendant moves the Court to suppress the results of any state-administered chemical test obtained in connection with the charges in the above-styled accusation from use as evidence in the trial of the above-styled case or any other legal proceeding.

Respectfully Submitted, this 11th day of March, 2022.

/s/D. Benjamin Sessions  
D. Benjamin Sessions  
State Bar No. 141280  
Attorney for Defendant

3155 Roswell Rd., Ste. 220  
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State Bar No. 141280  
Attorney for Defendant

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**MOTION IN LIMINE TO EXCLUDE DEFENDANT’S ALLEGED  
INCRIMINATORY STATEMENTS AND ACTS**

Comes Now, Defendant and moves this Court to exclude from evidence any and all statements, acts or responses allegedly made by Defendant, which statements, acts or responses are incriminating as to guilt or impeachment, including Defendant’s acts in response to instructions from the arresting Officer to perform “field sobriety tests.” On Tpr. Lemons of the Department of Public Safety and other officers not known to the Defendant detained the Defendant and proceeded to interrogate him/her and search his/her person and property without a warrant of any kind. In support of this motion, the Defendant shows the Court as follows:

- (1) At the time of the aforesaid statements, acts, or responses, Defendant was in “custody” and was not advised of his rights against self-incrimination under the Georgia Constitution;
- (2) Without a search warrant, the arresting Officer required Defendant to perform a series of unusual maneuvers and acts, enabling the Officer to obtain evidence which was not detectible through simple observation, and in which Defendant has a reasonable expectation of privacy, all in violation of Article I, Section I, Paragraph XIII, of the Georgia Constitution.

WHEREFORE, Defendant prays that the Court exclude from the trial of this case the evidence obtained illegally as set forth above.

Respectfully Submitted, this 11th day of March, 2022.

/s/D. Benjamin Sessions  
D. Benjamin Sessions  
State Bar No. 141280  
Attorney for Defendant

3155 Roswell Rd., Ste. 220  
Atlanta, Georgia 30305  
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/s/D. Benjamin Sessions

D. Benjamin Sessions

State Bar No. 141280

Attorney for Defendant

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| <i>Defendant.</i> | : |                |

**MOTION TO SUPPRESS EVIDENCE AND STATEMENTS  
OBTAINED UNLAWFULLY BY POLICE**

Comes Now, the above-named Defendant, by and through counsel and hereby files within Motion to Suppress, showing this Honorable Court the following:

-1-

On Tpr. Lemons of the Department of Public Safety and other officers not known to the Defendant detained the Defendant and proceeded to interrogate him and search his person and property without a warrant of any kind.

-2-

As a result of the aforesaid warrantless acts by police, Defendant was arrested and is now charged in the above styled action with the misdemeanor offenses, including driving under the influence of alcohol.

-3-

With regard to the warrantless stop of the vehicle and the detention and search of Defendant's person and property by police at the above time and place, Defendant shows as follows:

(a) The police stopped and detained the Defendant without probate cause, without consent and without reasonable and articulable suspicion that the vehicle was engaged in or about to be engaged in criminal activity or was otherwise subject to seizure.

(b) The police detained Defendant without probable cause, without consent and without reasonable and articulable suspicion that the Defendant was engaged in or about to be engaged in criminal activity.

(c) The police detained Defendant beyond the time necessary and for purposes unrelated to the initial stop, and such prolonged detention was without probable cause, without consent and without reasonable articulable suspicion of criminal activity.

(d) The police searched the Defendant's person and property without probable cause, without consent, without lawful arrest, without exigent circumstances and without authority under any other recognized exception to the warrant requirement embodied in the State and Federal Constitutions.

(e) The police interrogated Defendant while he was unlawfully detained, handcuffed and held in police custody and without giving the required Miranda warnings to Defendant prior to such interrogation.

-4-

For the foregoing reasons, the warrantless stop, detention, search and interrogation by police at the above time and place was unreasonable and violated the Defendant's rights under the Fourth, Fifth and Sixth Amendments to the United States Constitution, Article I, Section I, Paragraph XIII, XIV and XVI of the Georgia Constitution, and the provisions of O.C.G.A. § 17-5-30.

Consequently, any and all evidence gathered, observed, and seized by police as a result of such unlawful actions should be suppressed by the Court, and no testimony, statements, conclusions or other references concerning such matters should be allowed or considered as evidence in the trial of this case.

WHEREFORE, the Defendant prays as follows:

(a) That the Court hold evidentiary hearings on this motion outside the presence of the injury and as otherwise deemed appropriate; and,

(b) That the Court allow Defendant to submit written briefs and argument in support of this motion subsequent to any hearing;

(c) That the Court grant the within motion to suppress and prohibit the State from offering evidence concerning any observation of the Defendant made during the illegal stop and detention, any observation of the Defendant made during the Defendant's performance of field sobriety tests, the Defendant's alleged refusal to submit to any field sobriety test/evaluation and/or preliminary breath test, any alleged positive result indicated by a portable breath test machine which the Defendant submitted to during the illegal stop and detention, and the results of state-administered chemical test which the Defendant submitted to, as well as any statement obtained by police in violation of the Defendant's Constitutional and statutory rights enumerated above; and,

(d) That the Court grant Defendant such other and further relief deemed just and proper in this case.

Respectfully Submitted, this 11th day of March, 2022.

/s/D. Benjamin Sessions  
D. Benjamin Sessions

State Bar No. 141280  
Attorney for Defendant

3155 Roswell Rd., Ste. 220  
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Attorney for Defendant

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Case No. -----

**DEFENDANT'S DEMAND FOR STATUTORY DISCOVERY  
PURSUANT TO TITLE 17, CHAPTER 16, ARTICLE 2  
OF THE OFFICIAL CODE OF GEORGIA**

COMES NOW, the Defendant, by and through the undersigned counsel, and files this Demand for Statutory Discovery Pursuant to Title 17, Chapter 16, Article 2 of the Official Code of Georgia. Defendant respectfully demands production of each of the items he is entitled to pursuant to Title 17, Chapter 16, Article 2 of the Official Code of Georgia, and shows this Honorable Court that the following items should be produced in response to this request:

- (a) a copy of the accusation, as required by O.C.G.A. § 17-16-21);
- (b) a list of the witnesses on whose testimony the charge(s) against the Defendant is/are founded, as required by O.C.G.A. § 17-16-21;
- (c) oral and written statements of the Defendant, as required by O.C.G.A. § 17-16-22; and
- (d) all written scientific reports, as required by O.C.G.A. § 17-16-23.

Wherefore, the Defendant prays that the State be required to produce each of the above-referenced items in the time required by law. In the event that the State fails to provide the Defendant each of the above-referenced items in the time required by law, the Defendant requests that this Court exclude said items and witnesses from evidence in the trial of this case.

Respectfully Submitted, this 11th day of March, 2022.

/s/D. Benjamin Sessions  
D. Benjamin Sessions  
State Bar No. 141280  
Attorney for Defendant

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**GENERAL AND SPECIAL DEMURRERS**

Comes Now, the above-named Defendant, by and through the undersigned counsel, and generally demurrers to the accusatory documents and challenges each count thereof. None of the accusatory allegations sufficiently identifies a crime and each count totally fails to inform the defendant of the specific alleged improper conduct that is alleged to have been committed.

Further, the Defendant specially demurrers to each count of the accusation based upon defective form and demands that the defects be removed to allow the document to be perfect in form.

Respectfully Submitted, this 11th day of March, 2022.

/s/D. Benjamin Sessions  
D. Benjamin Sessions  
State Bar No. 141280  
Attorney for Defendant

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/s/D. Benjamin Sessions  
D. Benjamin Sessions

State Bar No. 141280  
Attorney for Defendant