

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

STATE OF GEORGIA,

v.

Defendant.

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Case No. _____

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

Comes Now, the Defendant in the above-styled case, by and through the undersigned counsel, and moves this Honorable Court to exclude from evidence all statements made by the Defendant in response to questioning after the Defendant was “in custody.” In furtherance of this motion, the Defendant respectfully shows the Court the following:

At approximately 10:54:05 a.m., Officer Ingrid Benitez of the Duluth Police Department arrived at the scene of an accident which had occurred at the intersection of Pleasant Hill Road and May Road. When Officer Benitez exited her patrol car, she almost immediately spoke with the Defendant and asked her if she was okay. The Defendant responded that she was okay, and Officer Benitez proceeded to speak with a passenger of the other vehicle involved in this accident. After speaking with the passenger of the other vehicle in this accident, Officer Benitez returned to the Defendant and began questioning her. The following statements were taken from the video recording of Officer’s Benitez’ questioning of the Defendant:

10:55:15	Officer:	Are you okay:
	Defendant:	I am okay. I’m just a little shaken up right now.
10:55:20	Officer:	Have you taken any medications? Are you under

the influence of any medications at all?
Defendant: No.

The Defendant then proceeded to explain to Officer Benitez how the accident occurred. The Defendant informed Officer Benitez that she was trying to make a turn and that she hit the other vehicle. After the Defendant explained to Officer Benitez how the accident occurred, Officer Benitez resumed questioning the Defendant regarding her consumption of medication:

10:56:00	Officer:	Have you had anything to drink? Do you have any medical problems? Diabetes? Any medications?
10:56:10	Defendant:	I take Prozac.
10:56:15	Officer:	When was the last time you took Prozac?
	Defendant:	This morning.
	Officer:	What time did you take Prozac?
	Defendant:	Around 8.
	Officer:	How many did you take?
	Defendant:	2.
	Officer:	How many are you supposed to take?
	Defendant:	2.
10:56:50-57	Officer:	The reason why I ask is because how you are speaking to me...how you are behaving... I believe you are under the influence...of Prozac.

Subsequent to Officer Benitez informing the Defendant that she believed that the Defendant was “under the influence,” Officer Benitez continued to question the Defendant. Specifically, Officer Benitez continued to question the Defendant regarding her consumption of Prozac. In response to this questioning, the Defendant made allegedly incriminating statements.

After Officer Benitez informed the Defendant that she believe that she believed the Defendant was under the influence, a reasonable person in the Defendant’s position would not have believed that the detention would have been temporary. “In deciding whether the suspect was in custody, the proper inquiry is whether the individual was

formally arrested or restrained to a degree associated with a formal arrest, not whether the police had probable cause to arrest.” **State v. Picot**, 255 Ga. App. 513, 515, 565 S.E.2d 865 (2002). “The test of ‘in custody’ is whether a reasonable person in the suspect’s position would have thought the detention would not be temporary.” **Price v. State**, 269 Ga. 222, 225, 498 S.E.2d 262 (1998). A trial court deciding whether to admit evidence must apply this *objective* test: “it is the reasonable belief of an ordinary person under such circumstances, and not the subjective belief or intent of the officer, that determines whether an arrest has been effected.” **Harmon v. State**, 253 Ga.App. 140, 141-142(1), 558 S.E.2d 733 (2001). No reasonable person in the position of the Defendant, who had just been involved in a severe accident, would have believed that their detention was temporary after an officer informed the suspect of the officer’s belief that they were under the influence.

Price v. State, 269 Ga. 222, 225, 498 S.E.2d 262 (1998), is instructive in determining whether the Defendant in this case was “in custody” after Officer Benitez expressed to the Defendant her belief that the Defendant was “under the influence.” In **Price v. State**, the investigating officer informed the defendant that she had a suspended license and the officer told the defendant that she had a strong impression that she was intoxicated. The arresting officer also told the defendant that he would take the defendant to jail for DUI regardless of whether she performed the field evaluations. The **Price** court held that after the defendant was informed that she was going to jail, a reasonable person in the defendant’s position would have believed that the detention was not temporary. Accordingly, the defendant should have been provided **Miranda** warnings by the officer, and the failure of the officer to provide the defendant **Miranda** warnings

prior to the administration of field sobriety tests resulted in that evidence being inadmissible. *Id.*

As was the case in ***Price***, the Defendant in this case was in custody after Officer Benitez informed the Defendant of her belief that the Defendant was “under the influence.” Having made this statement to the Defendant, Officer Benitez should have issued ***Miranda*** warnings to the Defendant prior to any further questioning of the Defendant.

Pursuant to Article 1, § 1, ¶ XIV of the Georgia Constitution, Article 1, § 1, ¶ XVI of the Georgia Constitution, the Fifth Amendment of the United States Constitution, and O.C.G.A. § 24-9-20, the Defendant requests that this Honorable Court exclude from the trial of this case any and all allegedly incriminatory statements made by the Defendant in response to questioning by Officer Benitez subsequent to the officer’s statement to the Defendant that she believed that the Defendant was “under the influence.”

Respectfully submitted, this ____ day of February, 2010.

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<i>Defendant.</i>	:	

CERTIFICATE OF SERVICE

This is to certify that I have this day served upon opposing counsel in the above-styled case a true and accurate copy of the foregoing Supplemented and Particularized Motion in Limine to Exclude Defendant's Alleged Incriminatory Statements by depositing it in the United States mail with adequate postage affixed thereon and addressed as follows:

Ms. _____ O. Fawole
Office of the Solicitor General
State Court of Gwinnett County
75 Langley Drive
Lawrenceville, Georgia 30045

This ____ day of February, 2010.

D. Benjamin Sessions
Georgia Bar No. 141280
Attorney for Defendant

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