

IN THE STATE COURT OF FULTON COUNTY
STATE OF GEORGIA

STATE OF GEORGIA,

v.

Defendant.

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Case No. _____

**BENCH BRIEF IN SUPPORT OF THE DEFENDANT’S MOTION TO EXCLUDE
ALLEGED INCRIMINATORY STATEMENTS AND ACTS**

The Defendant in the above-styled case, by and through the undersigned counsel, and respectfully moves this Honorable Court to exclude from evidence all statements and acts performed 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:

Officer Nathaniel Allen of the Milton Police Department stopped the Defendant for speeding at approximately 8:10 p.m. After speaking with the Defendant, Officer Allen returned to his patrol car and completed a citation for speeding. Officer Allen then returned to the Defendant’s car and had him sign the citation for speeding. After the Defendant signed the speeding citation, Officer Allen began to engage the Defendant in a conversation about whether the Defendant had consumed alcohol that evening. The Defendant acknowledged that he had drank a glass of wine and Officer Allen asked him to exit his car.

At the rear of the Defendant’s vehicle, Officer Allen informed the Defendant that he was going to “do it the quick way” and “make sure [he was] under the legal limit.” A reasonable person in the Defendant’s position would not have believed that the detention

was going to be temporary when the officer proceeded with further testing after the initial preliminary breath test. “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 would have believed that their detention was temporary after the officer obviously suggested that the Defendant was, in fact, over the legal limit on the preliminary breath test.

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” when the officer proceeded with further testing after the “quick way” - a preliminary breath test. 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 Allen proceed with further testing after the preliminary breath test, which the officer said was the quick way to make sure he was under the legal limit. Having made this statement to the Defendant, Officer Allen 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 Allen subsequent to the administration of the initial preliminary breath test result.

Respectfully submitted, this __ day of September, 2012.

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CERTIFICATE OF SERVICE

This is to certify that I have this day _____-delivered a true and accurate copy of the foregoing brief to Ms. _____ Henderson, Assistant Solicitor, Fulton County.

This ____ day of September, 2012.

By: _____
D. BENJAMIN SESSIONS
State Bar No. 141280