

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION

UNITED STATES OF AMERICA, :
 :
vs. : Case No. _____
 :
_____. L. _____, JR., :
 :
Defendant. :

MOTION FOR THE PRODUCTION AND DISCLOSURE OF
DOCUMENTARY EVIDENCE REGARDING THE BREATH ALCOHOL
SIMULATOR USED IN THE CALIBRATION CHECK OF THE
INTOXILYZER BREATH TEST MACHINE

COMES NOW, Defendant in the above-styled case, by and through his counsel of record, and files this Motion for the Production and Disclosure of Documentary Evidence Regarding the Breath Alcohol Simulator Used In the Calibration Check of the Intoxilyzer Breath Test Machine. In support of this motion, the Defendant respectfully shows this Honorable Court the following:

This motion is made pursuant to O.C.G.A. §§ 40-6-392 (a) (4), 24-10-26, 17-16-23, Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed 2d 215 (1963), Giles v. Maryland, 386 U.S. 66, 87 S.Ct. 793, 17 L.Ed2d 737 (1967), Giglio v. United States, 405 U.S. 150, 92 S.Ct. 763, 31 L.Ed.2d 104 (1972), Moore v. Illinois, 408 U.S. 786, 92 S.Ct. 2562, 33 L.Ed.2d 706 (1972), Kyles v. Whitley, 514 U.S. 419, 115 S.Ct. 1555, 131 L.Ed.2d 490 (1995) and subsequent cases. The pre-trial information sought by the Defendant is critical to the defense in this DUI case, particularly as to the alleged “breath alcohol concentration number” possibly being placed before the the trier of fact.

This motion seeks information required to be retained by the Georgia Bureau of Investigation according to the Division of Forensic Sciences Implied Consent Operations Manual, Equipment Inspections protocol (IC OPS 5, Dated: 8/12/2011, Rev. 2). See, Exhibit A, attached hereto.

The Government is hereby requested to furnish the materials requested below which are in its present possession and to also inquire of law enforcement agencies, specifically the Division of Forensic Sciences of the Georgia Bureau of Investigation, if any of the requested materials exist. 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.”

Defendant moves to require the Government 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:

- (1) Documentation of the breath alcohol simulator serial number used in the attempt to validate the calibration of Serial No.: _____ during the calendar year 2012;
- (2) Each and every certificate of inspection issued for the breath alcohol simulator used in an attempt to validate the calibration of Serial No.: _____ during the calendar year 2012;
- (3) All electronic records of inspections for simulators used in an attempt to validate the calibration of Serial No.: _____ during the calendar year 2012;

- (4) All records of adjustments for simulators used in an attempt to validate the calibration of Serial No.: _____ during the calendar year 2012:
- (5) All records of removal from service for simulators used in an attempt to validate the calibration of Serial No.: _____ during the calendar year 2012; and
- (6) All documentation and records of repairs performed upon simulator used in an attempt to validate the calibration of Serial No.: _____ during the calendar year 2012.

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 respectfully prays that:

- (1) the Government be required to produce for the Defendant said evidence within a reasonable time prior to trial or any pre-trial hearing; and
- (2) 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 disclosure.

The requested information regarding the Intoxilyzer 5000, Serial Number 68-012376, is exculpatory in nature or will potentially lead to exculpatory material for use in Defendant's defense of the DUI charge in this case. Constitutional due process rights and constitutional confrontation of evidence rights mandate the

The undersigned hereby certifies that a true and accurate copy of the foregoing Motion for the Production and Disclosure of Documentary Evidence Regarding the Breath Alcohol Simulator Used In the Calibration Check of the

Intoxilyzer Breath Test Machine has been served upon the U.S. Attorney's Office, by depositing same in the U.S. First Class Mail with adequate postage affixed thereon to ensure delivery to: The Office of the U.S. Attorney's Office, 1246 First Avenue, SunTrust Building, 3rd Floor, Columbus, Georgia 31901. The undersigned has also verified that Mr. _____ V. Olson, Assistant United States Attorney, is on the electronic mailing list for this case and will be served with notice of this filing through the CM/ECF system.

This 2nd day of January, 2013.

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