

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

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

**SUPPLEMENTED MOTION PURSUANT TO *BRADY v. MARYLAND*
FOR THE PRODUCTION OF INTOXILYZER REVIEW DATA AND
REPORTS**

COMES NOW, the Defendant in the above-styled case, by and through his counsel of record, and moves this Honorable Court to require the Government to produce data in the possession of the Government agents that have reviewed Intoxilyzer source code. In support of this motion, the Defendant respectfully shows this Honorable Court the following:

This motion is made pursuant to *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 this Honorable Court.

The Defendant moves this Honorable Court to require the Government to produce all reports and data - final and preliminary – regarding the source code review of the Intoxilyzer conducted by the Georgia Tech Research Institute (also known as “GTRI”).

Mr. Andrew _____ of GTRI testified on August 23, 2013, in the case styled State of Georgia v. Robert Hopek, Gwinnett County State Court, Case No. _____, before the Honorable Randy Rich, to the following:

All I was told and all that was suggested to me without specifics was that there may have been some concerns with the 5000 related to source code and how values were – and how readings from the device were handled.

The Defendant does not know who communicated this information to Mr. _____ and what the specific concerns regarding “handling” within the Intoxilyzer 5000.

The 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, the Defendant respectfully prays that this Honorable

Court require the Government to produce the information, reports, and data identified above or, in the alternative, to conduct an *in camera* review of the information to determine whether the information should be produced to the Defendant.

Respectfully Submitted, this 16th day of September, 2013.

s:/D. Benjamin Sessions

D. Benjamin Sessions

Georgia Bar No. 141280

Attorney for Defendant

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing supplement motion pursuant to Brady v. Maryland for the production of Intoxilyzer review data and reports 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: Capt. Natalie West, 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 Capt. West, 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 pleading has also been served upon Mr. _____, Bryan Cave, LLP, 1201 W. Peachtree St. NW, Atlanta, GA 30305, by depositing same in the U.S. First Class Mail with adequate postage affixed thereon to ensure delivery of this document. The undersigned has also verified that Mr. _____, is on the electronic mailing list for this case and will be served with notice of this filing through the CM/ECF system.

This 16th day of September, 2013.

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

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