

STATE OF GEORGIA, :
 :
 v. :
 : CITATION #. _____
 _____, :
 :
 Defendant. :

COMES NOW, D. Benjamin Sessions (State Bar #141280), and files this Entry of Appearance on behalf of the Defendant in the above-referenced case. Counsel maintains his office at 3155 Roswell Road, Suite 220, Atlanta, Georgia 30305. Counsel's phone number is (470) 225-7710 (ext. 101), and his facsimile number is (678) 348-7165.

3155 Roswell Road, Suite 220
Atlanta, Georgia 30305
Tel: (470) 225-7710
Fax: (678) 348-7165

IN THE PROBATE COURT FOR MONROE COUNTY
STATE OF GEORGIA

STATE OF GEORGIA,	:	:	
		:	
v.		:	
		:	CITATION #. _____
_____	:	:	
		:	
Defendant.		:	

MOTION FOR DISCOVERY AND NOTICE TO PRODUCE

COMES NOW, Defendant in the above-styled case, by and through his counsel of record, and files this his 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) any statements made by any witness regarding this matter which may be favorable to Defendant's defense;
- (2) any written reports, documents, or other physical evidence that may tend to be favorable to Defendant;
- (3) 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 urine 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;

- (4) 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;
- (5) all booking slips, prisoner intake forms or other processing sheets used to obtain or record information about Defendant, including any photographs taken of Defendant;
- (6) 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;
- (7) 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.

D. BENJAMIN SESSIONS,
Bar #141280
Counsel for Defendant

3155 Roswell Road, Suite 220
Atlanta, Georgia 30305
Tel: (470) 225-7710
Fax: (678) 348-7165

STATE OF GEORGIA, :
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 :
Defendant. :

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

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6. All refrigeration logs, reports, or other documents in whatever form, for all refrigerated compartments in which the sample, internal standards, controls, mixtures, standards, and reagents used in or in relation to the analysis in this case were stored or kept at any time.
7. The general laboratory protocol or standard operating procedures manual, by whatever name it is known.
8. The protocol or standard operating procedure, by whatever name it is known, specific to the test used in this case.
9. The protocol or operator's manual for whatever machine and attached or integrated components were used to test the sample in this case. For example, if this test was done by gas chromatography (GC), then this requests the protocol or operator's manual of the GC, the auto sampler, if one was used, the flame ionization detector, if one was used, and the mass spectrometer, if one was used -- all of which would be considered attached or integrated components of the machine used to conduct the test.
10. The protocol for calibration of all flasks, containers, pipettes, or other equipment used in testing the sample at issue in this case.
11. The protocol for the preparation of all solutions, reagents, mixtures, or other substances used as, as part of, or in relation to or as internal standards, controls, mixtures, or standards in the batch in which the sample in this case was run.
12. The quality control protocol for all solutions, reagents, mixtures, or other substances used as, as part of, or in relation to internal standards, controls, mixtures, or standards in the batch in which the sample in this case was run.
13. All records reflecting internal testing or quality control testing of all solutions, reagents, or mixtures used as, as part of, or in relation to internal standards, controls,

mixtures, or standards in the batch in which the sample in this case was run.

14. If any solution used in any sample, internal standard, control, mixture, or standard in the batch in which the sample in this case was run was purchased from an outside supplier, any quality control certificate provided by the supplier or manufacturer with or applicable to such solution.
15. Documents reflecting the expiration date of all externally purchased solutions or reagents used in the batch in which the sample in this case was tested.
16. Documents reflecting the brand and model number of the machine, and all attached or integrated components that was used for testing in this case. For example, if this test was done by gas chromatography (GC), then this requests the brand and model of the GC, the auto sampler, if one was used, the flame ionization detector, if one was used, and the mass spectrometer, if one was used -- all of which would be considered attached or integrated components of the machines used to conduct the test.
17. All proficiency testing results for the section of the laboratory testing the sample in this case as well as for the person who conducted the testing in this case -- both for the three years preceding the test and for any such testing since the testing in this case. This specifically includes the summary report of expected results for the proficiency testing (and the manufacturers information sheet) against which the proficiency test results are judged.
18. All internally generated maintenance or repair records or logs for the machine and all attached or integrated components for the two years preceding the test in this case and since the test in this case.
19. All documents, apart from those in the prior item, evidencing or concerning maintenance for or repair of the machine, and all attached or integrated components, by any outside repair facility or source -- for two years

preceding the test in this case and at any time since the test in this case.

20. All records, other than those responsive to the prior two items, evidencing or concerning the return of the machine to the manufacturer or supplier for maintenance or repair -- for two years before the testing in this case and at any time since the test in this case.
21. Documents evidencing the purchase of parts to be used in the operation or maintenance of the machine, and all attached or integrated components, used in the testing in this case -- for two years before the test in this case and at any time since the test in this case.
22. All lab notes, case files, case reports, or bench notes, by whatever name known, and in whatever form, as well as all documents contained in the testing folder specific to the test in this case. This includes a copy of the case or testing folder itself if it contains any notations or entries.
23. All chain of custody documents and records, whether maintained manually or electronically generated, specific to the specimen(s) in this case.
24. All documents, whether manually maintained or electronically recorded, reflecting, evidencing, or concerning, the identity of any person(s) involved in the acquisition, transportation, transmittal, storage, analysis, disposal, or other possession or manipulation of the specimen(s) from which the analysis in this case was performed.
25. All documents, including emails, reflecting communications within the lab or between lab personnel and others outside the lab regarding the drafting or editing of any audit or quality control report or related to the analysis or specimens in this case.
26. All warranties for all machines, and all attached or integrated components, used for testing the sample or any

standard or control used in the batch in which this sample was tested.

27. All reports of internal audits for the last three years or since the time of the test in this case of the section of the laboratory performing the test used in this case as well as the report of any overall lab audit that includes machines, components, chemicals, reagents, storage facilities, or anything else used in connection with the testing of the sample, internal standards, controls, mixtures, or standards in the batch in this test.
28. All reports of external audits for the three years preceding the test in this case and at any time since the test in this case of the section of the laboratory performing the test used in this case as well as the report of any overall lab audit that includes machines, components, chemicals, storage facilities, or anything else used in connection with the testing of the sample, internal standard, mixtures, standards, and controls in the batch in this test.
29. All documents reflecting lab accreditation (for forensic labs, this specifically includes, without limitation ASCLD and DPS accreditation) and all reports to or of, or communications to and from, any accrediting entity in the three years prior to the test in this case and at any time since the test in this case. This specifically requests not only the accreditation certificate, but also the evaluation and report generated as part of the accreditation process. The documents should include any accreditation in effect at the time of the test in this case as well as any accreditation subsequent to the time of the test in this case.
30. All annual accreditation audit reports prepared for ASCLD or any other accreditation since the labs last complete accreditation.
31. If the lab received more than one vial or container of urine or other substance, records reflecting which vial was tested in this case.

32. Log Book records for two years prior to the test in this case to the present for:
- A. The GC log book, by whatever name known, reflecting all maintenance and repair.
 - B. The log books for all equipment ancillary to the GC (e.g., auto sampler, FID, etc.).
 - C. The balance log book for any balance used for any equipment used in urine alcohol testing.
 - D. Ethanol or other Standards.
 - E. n-propanol or other internal standards.
 - F. 95% ethanol solution.
 - G. All Stock solutions.
 - H. NaCl/n-propanol Internal standard solution,
 - I. Volatile Mixture standard
 - J. Saponin
33. Quarterly Balance quality control records on any balance instrument related to or used in urine alcohol testing for 20052008.
34. Records reflecting the calibration of weights on any balance or instrument related to or used in urine alcohol testing for 20052008.
35. Linearity plots for the GC used in this case from two years prior to the test in this case to the present.
36. All evaluation forms for any person listed on chain of custody documents in this case from two years prior to the test in this case to the present.
37. All quality assurance plans for or regarding urine alcohol testing of or for any person listed on chain of custody documents in this case from two years prior to the test in this case to the present .
38. Annual self assessment reports for from two years prior to the test in this case to the present.
39. All deviation request forms regarding urine alcohol testing from two years prior to the test in this case to the present.

40. All client complaints and client complaint logs regarding urine alcohol testing or persons involved in urine alcohol testing from two years prior to the test in this case to the present.
41. Client survey results regarding urine alcohol testing from two years prior to the test in this case to the present.
42. Annual vault inspection reports and records from two years prior to the test in this case to the present.
43. Regarding any person listed on chain of custody documents in this case:
 - A. Employee training record.
 - B. Employment application.
 - C. All CV's and resumes.
 - D. Performance reviews for two years prior to the test in this case to the present.
44. Laboratory staff and meeting documentation two years prior to the test in this case to the present.
45. Critical supply and service list for two years prior to the test in this case to the present.
46. Approved vendor list including for the critical supply and services list for two years prior to the test in this case to the present.

In support of this MOTION, the Defendant shows as follows:

1. The matters requested are in the exclusive possession, custody and control of the State of Georgia by and through its agents, a law enforcement agency, or the prosecuting attorney's office, and

the Defendant has no other way to obtain said information other than through this motion and an order from this court.

2. The items requested are not privileged.

3. The items requested are material and necessary for the preparation of the defense in this case.

4. Absent all of the requested discovery, Defendant's rights under O.C.G.A. § 40-6-392(a)(4), the Fourth, Fifth and Sixth Amendments to the United States Constitution, and Article I, Section I, Paragraphs XIII, XIV and XVI of the Georgia Constitution will be violated to his irreparable injury and thus deprive the Defendant of a fair trial. 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).

5. This MOTION is made in good faith and not for delay.

WHEREFORE, Defendant respectfully prays that this motion be granted in its entirety.

D. BENJAMIN SESSIONS,
Bar #141280
Counsel for Defendant

IN THE PROBATE COURT FOR MONROE COUNTY
STATE OF GEORGIA

STATE OF GEORGIA,	:		
	:		
v.	:		
	:		CITATION #. _____
_____,	:		
	:		
Defendant.	:		

MOTION IN LIMINE TO EXCLUDE CHEMICAL TEST RESULTS

COMES NOW, Defendant in the above-styled case and moves the Court in limine to exclude from evidence the results of the chemical test that was administered to Defendant in connection with the charges of driving under the influence of alcohol contained in the above styled accusation, for and upon the following grounds and reasons:

(1)The state cannot show that the request for Defendant's chemical test was preceded by a valid DUI arrest supported by probable cause.

(2) The state cannot show that Defendant was properly and timely advised of implied consent rights as required under OCGA § 40-6-392(a)(4), see Perano v. State, 250 Ga. 704 (1984).

(3) The state cannot show that Defendant was given a reasonable opportunity to have additional chemical tests performed

by a person of Defendant's own choosing, as required by OCGA § 40-6-392(a)(3).

(4) The state cannot show that Defendant's chemical test was performed according to the methods approved by the Division of Forensic Sciences of the Georgia Bureau of Investigation ("DFS") as required by OCGA § 40-6-392(a)(1)(A).

(5) The state cannot show that Defendant's 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 a valid permit issued by the DFS for this purpose as required by OCGA § 40-6-392(a)(1)(A).

(6) The state cannot show that Defendant's blood was drawn by a qualified person as required by OCGA § 40-6-392(a)(2).

(7) The state cannot show that Defendant's chemical test was administered as soon as possible as required by OCGA § 40-5-67.1(a).

(8) The state cannot show that the identity of the sample allegedly taken from Defendant was adequately preserved through proper identification and chain of custody.

(9) The state cannot show that DFS has approved “requirements for properly operating and maintaining” the testing instruments used in this case. OCGA § 40-6-392(a)(1)(A), as amended.

(10) Defendant was advised that the test was “for purpose of determining if [Defendant was] under the influence of alcohol and drugs.” Hence, the state cannot show that use of the test to determine the presence of a prohibited substance was authorized or condoned by his limited consent. See Beasley v. State, 204 Ga.app. 214 (1992); State v. Gerace, 210 Ga.App. 874 (1993).

WHEREFORE, Defendant moves the Court to suppress the results of any 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.

D. BENJAMIN SESSIONS,
Bar #141280
Counsel for Defendant

STATE OF GEORGIA, :
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 Defendant. :

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 December 9, 2010, at approximately 2:22 p.m., Officer M. Hull of the Monroe County Sheriff's Office detained the Defendant and proceeded to interrogate him and search his 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 him/her 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.

D. BENJAMIN SESSIONS,
Bar #141280
Counsel for Defendant

IN THE PROBATE COURT FOR MONROE COUNTY
STATE OF GEORGIA

STATE OF GEORGIA,	:	
	:	
v.	:	
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_____,	:	
	:	
Defendant.	:	

MOTION IN LIMINE TO EXCLUDE ALL EVIDENCE GATHERED
AS A RESULT OF AN UNLAWFUL SEIZURE

Comes now, Defendant in the above-styled case and moves the Court to exclude from use at trial any evidence gathered after the initial detention of the Defendant. On December 9, 2010, at

approximately 2:22 p.m., Officer M. Hull of the Monroe County Sheriff's Office detained the Defendant and proceeded to interrogate him and search his person and property without a warrant of any kind. Any evidence gathered after the initial stop and detention of Defendant should be excluded from use at trial based upon the following grounds and reasons:

- (1) At the time of Defendant's initial detention by the police, sufficient facts did not exist to support even an articulable suspicion that Defendant was under the influence of alcohol or drugs, or that any other criminal activity was underfoot. Specifically, Defendant never failed to maintain lane and committed no other traffic violations prior to being detained by law enforcement; and
- (2) Defendant further shows that this initial detention was an unlawful warrantless seizure, not supported by probable cause or suspicion, violating Defendant's rights under the Fourth Amendment to the Constitution of the United States, and Article I, Section I, Paragraph XIII of the Constitution of the State of Georgia of 1982.

WHEREFORE, Defendant moves the Court to exclude the evidence illegally obtained as set forth above, and to direct the prosecutor and the state's witnesses to not use, mention or otherwise refer to such evidence at the trial or other proceeding in this case.

D. BENJAMIN SESSIONS,
Bar #141280
Counsel for Defendant

STATE OF GEORGIA, :
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 v. :
 : CITATION #. _____
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 Defendant. :

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

On December 9, 2010, at approximately 2:22 p.m., Officer M. Hull of the Monroe County Sheriff's Office detained the Defendant and proceeded to interrogate him and search his person and property without a warrant of any kind.

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 of driving under the influence of alcohol, speeding, and failure to obey traffic control device.

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:

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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.

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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 jury 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, and the results of state-administered chemical test which the Defendant _____ 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.

D. BENJAMIN SESSIONS,
Bar #141280
Counsel for Defendant

IN THE PROBATE COURT FOR MONROE COUNTY
STATE OF GEORGIA

STATE OF GEORGIA,	:	:	
		:	
v.		:	
		:	CITATION #. _____
_____	:	:	
		:	
Defendant.		:	

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.

D. BENJAMIN SESSIONS,

Bar #141280
Counsel for Defendant

STATE OF GEORGIA, :
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 Defendant. :

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

- By depositing it in the United States mail with adequate postage affixed thereon and addressed as follows:

This day of _____, 2010.

D. BENJAMIN SESSIONS,
Bar #141280
Counsel for Defendant

3155 Roswell Road, Suite 220
Atlanta, Georgia 30305
Tel: (470) 225-7710
Fax: (678) 348-7165