

# CRIMINAL MOTIONS

PREPARED AND PRESENTED BY HON. RICHARD WATERS



Jun. 9. 2010 12:59PM

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## CRIMINAL MOTIONS

### Pre-Trial Motions

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Before a criminal or traffic case goes to trial, the prosecutor and/or the defendant's attorney may appear before the judge and make pre-trial motions -- arguments that certain evidence should be kept out of the trial, that certain persons must or cannot testify, or that the case should be dismissed altogether.

1. In general, all pre-trial motions must be in writing.
2. All pretrial motions shall be filed within ten days after the date of arraignment, unless the time for filing is extended by the court. (O.C.G.A. § 17-7-110)
3. Generally, the State (City) bears the burden of proof when the Defendant challenges the propriety of any police actions.

Pre-trial motions are tools used by the City or the defense in an effort to set the boundaries for trial, should one take place: What physical evidence and testimony can be used? What legal arguments can and cannot be made? Is there any reason that the defendant should not be forced to stand trial?

### What Arguments are Made During Pre-Trial Motions?

While specific possibilities are endless, following are some examples of pre-trial motions that might be made in a criminal/traffic case:

1. In a misdemeanor marijuana case, the defense may ask the Judge to "exclude" or keep out of the case, drugs that the defense argues was obtained through an illegal search of his apartment.
2. The defense argues that the defendant's statement that he had drank four beers should be excluded, because it was made in response to questions from a police officer who failed to first read the defendant his Miranda rights.
3. The prosecutor argues that one of the defendant's key witnesses, an elderly neighbor with Alzheimer's disease, is not legally competent to testify and should be excluded as a witness at trial.
4. The defense asks the judge to dismiss the case against the defendant altogether, arguing that the police did not have "probable cause" to arrest the defendant in the first place, or that insufficient evidence exists for any reasonable judge to find the defendant guilty.

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**TYPES OF MOTIONS**

**Discovery Motions**

DEMAND FOR COPY OF ACCUSATION, LIST OF WITNESSES,  
PRODUCTION OF DEFENDANT'S STATEMENTS AND SCIENTIFIC  
REPORTS (Example #1)

BRADY AND GIGLIO MOTIONS (Example #2)

**Motions Regarding the Charging Document**

GENERAL DEMURRER (Example #3)

SPECIAL DEMURRER (Example #4)

**Evidentiary Motions**

MOTION IN LIMINE AND MOTION TO SUPPRESS EVIDENCE (Example  
#5)

JACKSON – DENNO MOTION (Example #6)

NOTICE OF PROSECUTOR'S INTENT TO PRESENT EVIDENCE OF  
SIMILAR TRANSACTIONS (Example #7)

**Motions Related to Pleas**

FIRST OFFENDER PETITION (Example #8)

PETITION TO PLEA NOLO CONTENDERE (Example #9)

PLEA IN ABSENTIA (Example #10)

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IN THE STATE COURT OF MITCHELL COUNTY,

STATE OF GEORGIA.

STATE OF GEORGIA,	:	CITATION NO.: 015853
	:	(Transferred from the Municipal Court
v.	:	for the City of Pelham)
	:	
	:	CHARGE - POSSESSION OF LESS
	:	THAN AN OUNCE OF MARIJUANA
Defendant.	:	

**DEMAND FOR COPY OF ACCUSATION, LIST OF WITNESSES,  
PRODUCTION OF DEFENDANT'S STATEMENTS AND SCIENTIFIC REPORTS**

Now comes the Defendant, and demands the following:

1. A copy of the accusation.
2. List of witnesses on whose testimony the charges against her are founded and a complete list of witnesses whom the Solicitor may call to testify at trial including addresses and telephone numbers of the State's witnesses.
3. Copies of all written statements made by Defendant while in custody and all relevant and material portions reduced to writing of any and all oral communications and statements made by Defendant while in custody.
4. Complete copies of all scientific reports in the possession of the prosecution.

This \_\_\_ day of August, 1999.

**POWELL & WATERS, P.C.**  
Attorney for Defendant

\_\_\_\_\_  
RICHARD L. WATERS, JR.

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IN THE SUPERIOR COURT OF MITCHELL COUNTY,  
STATE OF GEORGIA

STATE OF GEORGIA,

v.

#1#,

Defendant.

§  
§  
§  
§  
§  
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§  
§

WARRANT NO.

CHARGE: #2#

BRADY AND GIGLIO MOTIONS

Now comes the Defendant, hereinafter referred to as "Movant," and files this motion prior to arraignment and for cause thereof shows:

1. Movant has been indicted for the offense of #2# .

2. Movant brings this motion and shows that he should be afforded with all information and evidence in the possession of the State or Prosecution that may be materially favorable to the accused, either of a direct or impeaching nature and in this regard, Movant specifically alleges that he is entitled to be afforded with the following items, information and details, to-wit:

(a) Copies of any and all statements allegedly made by Defendant and whether such statement is oral, written, taped, recorded or otherwise reduced to writing by summary or otherwise.

(b) The total and complete list of all persons interviewed in the entire investigation and the name of the person or persons conducting such interview, together with a copy and correct account of the interview. If more than one interview has been made as to any person, then a copy and result of each interview should be produced.

(c) Any and all written reports, documents or any physical evidence that is in the possession of the State or the Prosecution relative to this case or the investigation thereof.

(d) The total and complete investigative files of the Camilla Police Department, the District Attorney's Office, or any agency or bureau of the State which may have taken part in any phase of said investigation; together with all correspondence and communications concerning the same.

(e) The names and addresses of all agents of the Sheriff's Department or District Attorney's

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Office, who may have participated in said investigation.

(f) Any and all statements of Co-Defendants, whether oral or written.

(g) The names, addresses and telephone numbers of any confidential informants and the content of any tip or information given by such informant(s).

(h) There may be other items and matters of evidence, information and data in existence that are not enumerated aforesaid and of which Movant is unaware, due to the secrecy surrounding the investigation and the lack of a preliminary hearing but in any event, Movant now request and demands that he be afforded with any and all evidence and information, whether specifically delineated and listed herein or not, that may be materially favorable to the Movant within the context of Brady v. Maryland or Giglio.

Movant requests that an evidentiary hearing be held on this motion in order that a proper foundation may be laid as to what evidence, information and data is in the possession of the State and Prosecution, and that the State be directed to make such disclosures immediately. Movant requests that all of the State's files, reports, statements and all other items specified herein should be properly identified, examined in camera by the Court, and as to all items that are not disclosed to the defense pursuant to this motion, that such undisclosed items be deposited into the Registry of the Court where they will be available for appellate review and/or post conviction relief, if necessary.

This \_\_\_ day of June, 2010.

POWELL & WATERS, P.C.

By: \_\_\_\_\_  
Attorney for Defendant

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No. 0533 P. 8



IN THE SUPERIOR COURT OF MITCHELL COUNTY,  
STATE OF GEORGIA.

STATE OF GEORGIA,	§	CRIMINAL ACTION
	§	FILE NO. 98-R-157
v.	§	
	§	
	§	Theft by Deception
	§	
Defendant,	§	
	§	

**GENERAL DEMURRER**

Comes now the Defendant named in the above styled matter and through her attorney and after arraignment but with the Court's permission, and demurs thereto, and for grounds of demurrer states as follows:

1. This defendant demurs to said accusation upon the grounds that the allegations contained in each and every count thereof do not charge this defendant with any offense under the law and under the allegations therein this defendant is not guilty of any offense under the law of this State.
2. This defendant demurs to said accusation upon the ground that the allegations contained in each and every count thereof are not sufficient to charge this defendant with any offense under the laws of this State and said accusation is wholly insufficient in law.

**WHEREFORE**, the defendant prays that each and all of the foregoing grounds of demurrer be examined into by the Court and that said accusation and each and every count thereof be quashed upon each and all of said grounds.

This the \_\_\_ day of August, 1998.

**POWELL & WATERS, P.C.**



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In the Municipal Court of Newton,  
State of Georgia.

City of Newton

v.

Defendant

§ Case No.: \_\_\_\_\_

§

§ Charge: Poss. of Marijuana (l/t/o)

§

SPECIAL DEMURRER

Comes Now, the Defendant, named in the above styled accusation, without waiving formal arraignment or any other rights to which he is entitled, and files this his special demurrer to the accusations as follows:

- 1. That the accusation is vague and indefinite as follows:
  - a. The accusation fails to specify what type of species of marijuana that the Defendant is charged with possessing such as stalks, seeds and/or leaves.
  - b. The accusation fails to allege how or in what manner the Defendant possessed marijuana.

Wherefore, the defendant prays that this demurrer be inquired into and that it be sustained on each and every ground hereof and that the above-styled accusations be dismissed.

This the \_\_\_ day of June, 2010.

POWELL & WATERS  
Attorney for Defendant

\_\_\_\_\_

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No. 0533 P. 10



IN THE MUNICIPAL COURT FOR THE CITY OF PELHAM,  
STATE OF GEORGIA.

CITY OF PELHAM

v.

"

Defendant.

§  
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§  
§  
§  
§  
§  
§

CITATION NOS.: 017945

CHARGES: DUI

**MOTION IN LIMINE AND MOTION TO SUPPRESS EVIDENCE**

NOW COMES the Defendant, in the above styled case and moves the Court for an order suppressing from use as evidence the results of the breath test that was administered to the Defendant in connection with the charge of driving under the influence of alcohol contained in the above styled accusation, and for an order in limine ruling that such chemical test be inadmissible as evidence and the Defendant further moves the Court for an order suppressing from use as evidence any and all other evidence regarding the Defendant's performance of any field sobriety tests and for an order in limine ruling that such results of any field sobriety tests be inadmissible as evidence and shows to the Court as follows:

1. Defendant herein is charged with the offense of D.U.I.
2. Defendant shows that on January 22, 2000, officers of the Pelham Police Department ordered a stop of the Defendant's vehicle. Defendant was committing no traffic violations and the officers had no reasonable articulable suspicion that criminal activity was afoot.
3. Defendant shows that, at the time of his stop and detention, he was required to perform field sobriety tests by the arresting officer. The officer did not inform the Defendant that the field sobriety tests were 100% voluntary and that his acquiesce was not required under

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(a) The test of the Defendant's breath was not performed according to the methods approved by the Division of Forensic Sciences of the Georgia Bureau of Investigation pursuant to O.C.G.A. § 40-6-392;

(b) The machine on which the breath test was administered was not operated with all of its electronic and operating components prescribed by its manufacturer properly attached and in good working order as required by § 40-6-392;

(c) The machine used to test the breath of the Defendant is not a machine properly maintained or calibrated pursuant to the rules, techniques, and methods of the Division of Forensic Sciences of the Georgia Bureau of Investigation pursuant to O.C.G.A. § 40-6-392.

**WHEREFORE**, Defendant prays that this Court inquire into this matter and issue its Order suppressing any evidence seized as a results of any breath test obtained in this matter and rule the same inadmissible upon a trial of the charges set out herein. The Defendant further prays that this Court issue its Order suppressing any evidence relating to the Defendant's performance of field sobriety tests and rule same inadmissible upon a trial of the charges set out herein.

This the \_\_\_ day of June, 2010.

**POWELL & WATERS, P.C.**

\_\_\_\_\_  
RICHARD L. WATERS, JR.

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No. 0533 P. 13



IN THE SUPERIOR COURT OF \_\_\_\_\_ COUNTY

STATE OF GEORGIA

INDICTMENT NO. \_\_\_\_\_

STATE OF GEORGIA

vs.

\_\_\_\_\_  
Defendant

**MOTION TO SUPPRESS STATEMENTS OF THE DEFENDANT MADE TO POLICE AND REQUEST FOR JACKSON-DENNO HEARING**

COMES NOW, Defendant, \_\_\_\_\_, by and through undersigned counsel, and respectfully moves this Honorable Court prior to trial to suppress any and all statements made by him to \_\_\_\_\_ law enforcement officers after or during his arrest in violation of the Constitution and laws of the United States and State of Georgia and applicable case law, including but not limited to the Fourth, Fifth, Sixth, and Fourteenth Amendments to the Constitution of the United States; Articles I, II, XIII, XIV, and XVI of the Constitution of the State of Georgia (1983); Jackson v. Denno, 378 U.S. 368, 84 S. Ct. 1774, 12 L. Ed. 2d 908 (1964); O.C.G.A. §§ 24-3-50, et seq.; and Brown v. State of Mississippi, 297 U.S. 278, 56 S. Ct. 461, 80 L. Ed. 682 (1936), Escobedo v. State of Ill., 378 U.S. 478, 84 S. Ct. 1758, 12 L. Ed. 2d 977 (1964), Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966), and progeny; and in support states as follows:

1. Defendant is charged with murder, felony murder, and aggravated assault. The State, by and through the District Attorney, will attempt to introduce into evidence at trial oral and written statements made by the Defendant to the arresting officers while in custody.
2. Those statements which may incriminate the Defendant were made in the absence of counsel AFTER the Defendant unequivocally invoked his right to counsel in violation of Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966). See McDougal v. State, 277 Ga. 493, 591 S.E.2d 788 (2004).
3. Moreover, those statements were made with the "hope of benefit" because \_\_\_\_\_ officers told the Defendant that if he confessed to "the truth" he would only be guilty of involuntary manslaughter instead of murder which carries a sentence of five-ten years.
4. Before any statement can be used against an accused in a criminal case, the burden is on the State to prove that the statement has been freely and voluntarily given. Jackson v. Denno, 378 U.S. 368, 84 S. Ct. 1774, 12 L. Ed. 2d 908 (1964). Statements which were obtained in violation of Jackson v. Denno are subject to suppression.

WHEREFORE, DEFENDANT RESPECTFULLY REQUESTS a Jackson v. Denno hearing prior to trial to determine the voluntariness of the statements in the totality of circumstances and to determine the validity of any waiver of counsel prior to Defendant's Interrogation. Defendant further requests the suppression of any such statements.

Respectfully submitted,

Attorney for Defendant

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No. 0533 P. 14



IN THE MUNICIPAL COURT OF \_\_\_\_\_  
STATE OF GEORGIA

STATE OF GEORGIA

V. CASE NO. \_\_\_\_\_

\_\_\_\_\_  
DEFENDANT

NOTICE OF PROSECUTION'S INTENT TO  
PRESENT EVIDENCE OF SIMILAR TRANSACTIONS

COMES NOW THE CITY OF \_\_\_\_\_ A, by and through the undersigned, and hereby provides notice of its intent to present evidence of similar transactions involving the defendant in the trial of the above-styled case pursuant to Uniform Municipal Court Rule 23.3 showing the following:

1. A copy of this notice has been served upon defendant's counsel at least ten (10) days prior to trial in accordance with Rule 23.3, as reflected by the Certificate of Service attached hereto.
2. The similar transactions to be presented are listed in Exhibit "A" attached hereto.
3. Copies of the indictment(s)/police reports pertaining to the similar transactions are attached hereto and incorporated by reference herein pursuant to Rule 23.3 (B).
4. The witnesses to these similar transactions are listed on the police report(s)/indictment(s) or on Exhibit "A" and incorporated by reference herein.

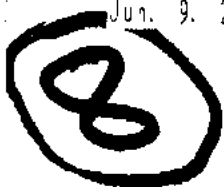
WHEREFORE, the State requests leave of Court to present evidence of similar transactions on the trial of the above-styled case and that a hearing be held on this request at the call of the case for trial or at such other time the Court deems appropriate.

This \_\_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
Solicitor

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No. 0533 P. 15



IN THE STATE COURT OF MITCHELL COUNTY,  
STATE OF GEORGIA.

STATE OF GEORGIA

vs.

Defendant.

§  
§ CASE NO: 99-CR-150  
§  
§  
§ CHARGE: CRIMINAL TRESPASS  
§  
§  
§

**FIRST OFFENDER PETITION**

COMES NOW, \_\_\_\_\_, Defendant in the above-styled case, by and through his attorney of record, and petitions the Court as follows:

1. Defendant shows that he has tendered a plea of guilty to the charge of criminal trespass made against him by way of an accusation filed with the State Court of Mitchell County, Georgia.
2. Defendant shows that no judgment has been entered and no adjudication of guilt has been made.
3. Defendant shows that he has not availed himself of the provisions of O.C.G.A. §42-8-60 at any time previous.
4. Defendant hereby consents to the Court's withholding the entry of a judgment of guilt and deferring further proceeding placing him on probation as provided by O.C.G.A. §42-8-60.
5. Defendant understands and agrees that, upon his violation of any of the terms of his probation or upon the conviction for another crime, the Court may enter an adjudication of guilt and proceed as otherwise provided.

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WHEREFORE, DEFENDANT PRAYS that the Court withhold the entry of judgment of guilt and defer further proceedings and place Defendant on "First Offender" probation.

This \_\_\_\_ day of August, 1999.

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Richard L. Waters, Jr.  
Attorney for Defendant

The Solicitor (Assistant Solicitor) of the State Court of Mitchell County, Georgia, hereby consents to Defendant's being treated as a "First Offender" for the purpose of the disposition of this matter.

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Solicitor/Assistant Solicitor  
State Court of Mitchell County

This document prepared by:

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Richard L. Waters, Jr.  
P.O. Box 188  
Camilla, Georgia 31730  
(912) 336-3962

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IN THE MUNICIPAL COURT FOR THE CITY OF CAMILLA,  
STATE OF GEORGIA

CITY OF CAMILLA	§	CASE NO.
	§	
v.	§	CHARGE: Possession of Less Than
	§	an Ounce of Marijuana
	§	
Defendant.	§	

**PETITION FOR NOLO CONTENDERE  
UNDER O.C.G.A. SECTION 40-5-75**

Personally appeared before the undersigned officer duly authorized to administer oaths,  
, who after being duly sworn as provided by law, deposes and says:

1. Defendant was charged with Possession of Less than an Ounce of Marijuana in violation of Official Code of Georgia Section 16-13-2 on or about February 13, 1999.

2. Defendant brings this verified petition under O.C.G.A. Section 40-5-75 requesting the Court to accept a plea of nolo contendere to said charge and in connection therewith shows:

(a) Defendant has never been convicted of or had a plea of nolo contendere accepted on a charge of violating Code Section 16-13-2.

(b) The facts and special circumstances necessary to enable the Court to determine that the acceptance of nolo contendere plea is in the best interest of justice are as follows:

- \_\_\_\_\_ 1. Public transportation would not be suitable under his circumstances;
- \_\_\_\_\_ 2. He is required to drive as a regular condition of his employment;
- \_\_\_\_\_ 3. It would be difficult for him to be without a driver's license and result in an extreme hardship. His employment requires the necessity of a license and his family depends on his having his license for transportation and errands.



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WHEREFORE, Defendant prays that the Court grant this petition and accept and approve a plea of nolo contendere to the charge of Possession of Less than an Ounce of Marijuana.

This \_\_\_\_ day of March, 1999.

\_\_\_\_\_  
,  
Defendant

Sworn to and subscribed before  
me this \_\_\_\_ day of March, 1999.

\_\_\_\_\_  
Notary Public

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No. 0533 P. 19



IN THE \_\_\_\_\_ COURT OF \_\_\_\_\_

STATE OF GEORGIA

STATE OF GEORGIA

vs

CASE NO. \_\_\_\_\_

OFFENSE: \_\_\_\_\_

Defendant

PLEA IN ABSENTIA

I, the above-named defendant, hereby certify that I am now residing in \_\_\_\_\_ and that it would be expensive and burdensome for me to travel to \_\_\_\_\_, Georgia, to dispose of this case. It is my understanding that I have been charged with the above offense and that my case is scheduled for disposition on \_\_\_\_\_.

It is my understanding, through my attorney, \_\_\_\_\_, that the prosecuting attorney will recommend a fine of \_\_\_\_\_ and a sentence of \_\_\_\_\_ to be suspended upon payment of the fine. I understand this recommendation is not binding upon the trial judge. I understand that upon conviction the court can impose a sentence of up to \_\_\_\_\_ in the state penitentiary and a fine of \_\_\_\_\_ or both for each charge against me.

I hereby authorize my attorney to enter a plea of \_\_\_\_\_ on my behalf and in my absence to Case No. \_\_\_\_\_. I hereby request and consent that my case be disposed of in my absence and I hereby waive my presence at such trial.

My attorney has fully explained to me the following rights which I understand and which I waive:

- 1. The right to a trial with or without a jury.
- 2. The right to confront and cross-examine any witness against me.
- 3. The right to present witnesses and evidence in my behalf.
- 4. The right to examine all physical and documentary evidence against me.
- 5. The right to remain silent.
- 6. The right to have free counsel appointed to represent me if I am indigent.
- 7. The right to appeal to a higher court except in certain limited circumstances.
- 8. The right to require the State to prove its case against me beyond a reasonable doubt.

This \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

Defendant

Sworn to and subscribed to by the Defendant before me, an officer duly authorized to administer oaths, on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

Notary Public

Approved, Defendant's attorney