



VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF RICHMOND

COMMONWEALTH OF VIRGINIA

V.

WRONGFULLY ACCUSED,  
Defendant.

MOTION

NOW COMES the Defendant, WRONGFULLY ACCUSED, by and through the undersigned counsel, [NAME], Attorney, and hereby moves this Honorable Court, pursuant to the Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution; Article I §8 of the Constitution of Virginia; *Brady v. Maryland*, 373, U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963) and its progeny; *Florida v. Harris*, 133 S. Ct. 1050 (2013); The Virginia Rules of Evidence, Rule 3A:11 of the Rules of the Supreme Court of Virginia, and Virginia Code §19.2-187.1, and *Husske v. Commonwealth*, 252 Va. 203 (1995), for an Order requiring the Commonwealth to disclose to the defense the training records and protocols for the drug detection dogs/handlers involved that the Commonwealth intends to use to present evidence of a legal drug search and seizure. In support of the foregoing Motion, the Defendant states as follows:

1. The Defendant is charged with one counsel of possession of cocaine.
2. Upon information and belief, the Defendant believes the prosecution will call one or more witnesses from the [POLICE DEPARTMENT] Canine Division as an expert(s) in detection dog searches.
3. Specifically, on [DATE], the Defendant and his vehicle were subject to a search by [POLICE OFFICER] using [DOG], a police canine trained in drug detection.
4. Based on the search by [POLICE OFFICER] and [DOG], the [POLICE DEPARTMENT] obtained a search warrant for the Defendant's vehicle.
5. Upon information and belief, the [POLICE OFFICER] recovered a nylon bag containing white powder from the ensuing search.

6. Upon information and belief, on [DATE] the [POLICE DEPARTMENT] submitted the nylon bag containing white powder to the Virginia Department of Forensic Science for an examination for the presence of drugs.
7. Whether the detector dog was rewarded with a narcotic scented toy or other items either before or after his encounter with the Defendant.
8. The prosecution has previously provided a laboratory report of the Virginia Department of Forensic Science, dated [DATE], in which [AGENT NAME] concluded that the nylon bag contained [AMOUNT OF DRUGS] of cocaine.
9. Pursuant to the legal authorities cited in the preamble of this Motion, the Defendant hereby moves the Court to enter an Order commanding the prosecution to provide the following information within ten days prior to the trial of these matters:
  - a. All documents relating to the canine searches conducted in the case, including, but not limited to, police reports, case reports, notes, photographs, and videos;
  - b. All documents relating to the training and certification of the dog/handler team, including, but not limited to, current resumes, maintenance training records, veterinary records, results of proficiency assessments, testing and field logs, handler's logs, score sheets, list of items the dog(s) has been trained to alert on, the dog's method for alerting, and certification records;
  - c. All documents relating to the work history of the dog(s) involved in the case, including, but not limited to, any and all documents relating to false positives and false negatives, as well as handler strategy following such errors;
  - d. Any and all documents describing how every test, trial, or evaluation of the dog(s) involved was conducted, and the dog's performance on each and every test, trial, or evaluation;
  - e. All documents relating to the results of canine searches conducted by the dog(s) involved in the case, including but not limited to, deployment/utilization logs, confirmed case results, number of false alerts, and seizure logs;
  - f. All standards, protocols, guidelines, and training materials utilized by the canine search units involved in the investigation of this case;
  - g. All documents establishing minimum performance standards for narcotic detection canine certification tests;
  - h. All standards, procedures, and protocols for certification of canine detection dog teams;
  - i. The names of any and all veterinarians used for the dog(s) involved in this case;
  - j. All purchase information on the dog(s) involved in this case;
  - k. All biographical records of the dog(s) involved in the case, including, but not limited to, those that would establish its date of birth, place of birth, breed, and pedigree.
  - l. Whether the detector dog was rewarded with a narcotic scented toy or other item wither before or after his encounter with WRONGFULLY ACCUSED.

training videos - to evaluate if  
Curing errors or  
if none - is there an

- m. The name of the law enforcement officer who requested a detection dog be brought to where WRONGFULLY ACCUSED was being held. *error made that*
- n. The time the request in paragraph M was made. *not*
- o. The time the drug detection dog arrived at the place WRONGFULLY ACCUSED was held. *how*
- p. Where WRONGFULLY ACCUSED was held, whether he was in handcuffs, placed in a vehicle, or dispossessed of his identification, or in the presence of informed law enforcement officers while awaiting arrival of the detection dog. *Can that sure it is*
- q. Any notes or observations of the WRONGFULLY ACCUSED's behavior during his encounter with the detection dog. *Done properly*
10. The requested information/documentation is critical to ensuring that the Defendant's rights to effective assistance of counsel, confrontation, cross-examination, and due process are provided.
11. At trial, the Commonwealth may introduce expert opinion regarding the alleged search conducted by [POLICE OFFICER] and [DOG(S)] on [DATE]. As the Commonwealth's expert will have utilized training methods and alert signals pursuant to the Canine Unit's training protocol, the Defendant would be prejudiced in the trial of these matters if the methods and procedures used by the officer to reach any conclusions were not disclosed to the defense.
12. In order to effectively prepare for cross-examination of the State's expert, the Defendant must have access to the information outlined in paragraph 9 (a-k) above.
13. If the Defendant is not given access to the information outlined in paragraphs 9 (a-k) above, the lack of such access will result in a denial of the Defendant's rights to effective assistance of counsel, confrontation, cross-examination, and due process of law.
14. In *Florida v. Harris*, 133 S. Ct. 1050 (2013), the Supreme Court held that the adequacy of the dog's alert for the purposes of probable cause must be evaluated under the totality of the circumstances. If the Commonwealth establishes a presumption of probable cause to search by demonstrating the dog's satisfactory performance in the certification or training program, then the defendant must have the opportunity to challenge evidence of the dog's reliability. *Id.* at 1057. Evidence that the defendant may present to challenge the dog's reliability includes: the adequacy of the dog's certification or training program, how the dog (or its handler) performed during training, the dog's (or its handler's) history in the field, and the circumstances surrounding the particular alert in the case, including whether the dog (or its handler) were working in unfamiliar conditions. *Id.* at 1057-8. The Defendant can only present evidence on these issues enumerated in *Florida v. Harris* if requested information regarding the dog and handler's training and performance is provided in discovery.
15. As in the above cases, the training and use of drug detection dogs requires specialized skills, knowledge, and records that the Defendant would not otherwise have access to. The information in the training records and other materials listed in paragraph 9 (a -

q) are necessary in order for the Defendant to determine the appropriateness and reliability of the procedures used by the Canine Unit.

WHEREFORE, the Defendant, by counsel, asks this Honorable Court to enter an Order requiring the Commonwealth to disclose to the defense all of the information outlined above.

Respectfully Submitted,  
WRONGFULLY ACCUSED

By: \_\_\_\_\_  
Counsel

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**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_ day of September 2013, a true and exact copy of this Motion was mailed to the Office of the Commonwealth's Attorney for the City of Richmond at 400 North Ninth Street, Richmond, Virginia 23219.

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William T. Linka  
Counsel for WRONGFULLY ACCUSED