

WUKELA LAW FIRM

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403 Second Loop Road
P.O. Box 13057
Florence, SC 29504-3057

June 9, 2011

(843) 669-5634
FAX (843) 669-5150

Trooper John Doe
South Carolina Highway Patrol
3415 E. Palmetto Street
Florence, SC 29506

Re: Jane Doe, Uniform Traffic Ticket No.: XXXXXXXX
Driving under the Influence
Date of offense:

Dear Trooper Doe:

Enclosed you will find for service upon you a subpoena compelling the production of documents or objects. This subpoena is issued pursuant to Rule 13 of the South Carolina Rules of Criminal Procedure, as well as pursuant to S.C. Code Ann. (2010) §56-5-2934.

I am informed and believe that you were the arresting officer on the above-referenced charges. As part of the traffic stop leading to that arrest, you had my client perform field sobriety exercises which you administered. As I am sure you are aware, persons accused of crimes in the United States enjoy certain constitutional rights, not the least of which is the right to due process of law, the right to present a defense, the right to confront the evidence against them and the right to compulsory process for obtaining evidence in their favor. That last right has been specifically codified in relation to DUIs, by S.C. Code Ann. (2010) §56-5-2934.

In order for my client to enjoy the rights described above, the purpose of the enclosed subpoena is to obtain information about your training. Specifically, the subpoena demands production of the manual you trained with when you underwent your *DUI Detection and Standardized Field Sobriety Testing* training.

Now, I understand it has most likely been quite a while since you underwent your training and you may have lost or misplaced your training manual. Because of that, I have included two additional enclosures with this correspondence. The first enclosure (enclosure A) is a copy of a FOIA request that was sent to the South Carolina Criminal Justice Academy on March 21, 2011 and the accompanying response that was provided by the CJA. As you can see from that response, the last updated version of the *DUI Detection and Standardized Field Sobriety Testing Student Manual* is the 2007 Edition. As documented in Director Hubert F. Harrell's March 28, 2011 correspondence, the

Trooper John Doe
June 9, 2011
Page 2

South Carolina Criminal Justice Academy has been using the NHTSA materials similar to this manual for instruction in DUI/SFSTs since the early 1990s.

The final enclosure is a stipulation I have drafted for your benefit in responding to this subpoena. The stipulation has been drafted to allow for the event that if you are unable to find a copy of your training manual or are unable to identify which version you were trained under, that you may stipulate that you were in fact trained in DUI Detection and the administration of Standardized Field Sobriety Testing consistent with the procedures as outlined in the most current edition being used by the South Carolina Criminal Justice Academy.

This information is being sought in order to allow my client to be able to properly cross-examine you on the stand, confront the evidence the State presents against my client and allow my client to present evidence in her defense. Failure to properly respond to this subpoena will be used to support argument to the court for dismissal of the charges against my client and/or suppression of evidence the State seeks to introduce. In full disclosure, it will be our position that in order for any evidence or testimony concerning the administration or results of any field sobriety tests, a proper foundation will have to be laid by the State before such evidence would be admissible. Specifically, if the State intends to have you testify about administering field sobriety tests, they will be required to show the Court that you have undergone training in administering and evaluating field sobriety tests.

In short, if this matter goes to trial your adherence to the standardized procedures you were trained on will be vital to my client's defense. My client is entitled to know exactly how you were trained and offer evidence to the court (or if need be, to a jury), of whether or not you adhered to that training. In addition to demanding compelling the production of this information, this correspondence is also placing the State on notice that should the information not be provided, my client will move for dismissal and/or suppression.

If you have any questions concerning any training you received from the Criminal Justice Academy, I suggest you contact Brandy Duncan, General Counsel for the South Carolina Criminal Justice Academy at 803-896-7414.

I look forward to your prompt attention to this matter.

With Kind Regards, I am,

WUKELA LAW FIRM

PATRICK J. MCLAUGHLIN

Enclosures: (3)
cc: Steven DeBerry, Assistant Solicitor

SUBPOENA IN A CRIMINAL CASE

SOUTH CAROLINA MAGISTRATE COURT	COUNTY FLORENCE
STATE V. JANE DOE	CASE NO. UTT: XXXXXXXX
TO:	SUBPOENA FOR <input type="checkbox"/> PERSON <input checked="" type="checkbox"/> DOCUMENT(S) OR OBJECT(S)
<input checked="" type="checkbox"/> YOU ARE HEREBY COMMANDED to appear in the above-named court at the place, date, and time specified below to testify in the above-entitled case.	
PLACE Wukela Law Firm 403 Second Loop Road Florence, SC 29504	COURTROOM N/A DATE AND TIME (14 days after service)
<input checked="" type="checkbox"/> YOU ARE ALSO COMMANDED to bring with you the following document(s) or object(s).	
LIST DOCUMENT(S) OR OBJECT(S) Any and all material, documents and/or tangible objects related to any training underwent by you for DUI Detection and SFST's. If you are unable to produce your training materials, it is demanded that you provide a written response specifically detailing what training you underwent, the agency/entity that conducted the training, the dates that you underwent the training and the contact information for the agency/entity which conducted the training. Alternative response may be made via the prepared Stipulation served with this subpoena as an enclosure.	
This subpoena shall remain in effect until you are granted leave to depart by the court or by an officer acting on behalf of the court.	
CLERK OF COURT	DATE
(BY) DEPUTY CLERK	
THIS SUBPOENA IS ISSUED UPON APPLICATION OF THE: <input type="checkbox"/> SOLICITOR <input type="checkbox"/> DEFENDANT	ATTORNEY'S NAME AND ADDRESS

PROOF OF SERVICE

SERVED	DATE	PLACE
SERVED ON (PRINT NAME)		MANNER OF SERVICE
SERVED BY (PRINT NAME)		TITLE

DECLARATION OF SERVER

I certify that the forgoing information contained in the Proof of Service is true and correct.

Executed on

SIGNATURE OF SERVER

ADDRESS OF SERVER

Enclosure A

WUKELA LAW FIRM

Steve Wukela, Jr.
 Benjamin D. Moore
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March 21, 2011

403 Second Loop Road
 P.O. Box 13057
 Florence, SC 29504-3057

(843) 669-5634
 FAX (843) 669-5150

CJA-00688
 03/1/30

Via Facsimile 803-896-7776 & US Mail

Brandy A. Duncan, Esq.
 S.C. Criminal Justice Academy
 5400 Broad River Road
 Columbia, SC 29212

Re: FOIA Requests for DUI Detection and Standardized Field Sobriety Testing Manual

Dear Brandy:

I hope you are doing well. My old copy of the DUI training manual has logged quite a bit of wear and tear, and I need to replace it. I actually have some trials coming up the week of March 28th, and I would greatly appreciate it if you could expedite sending me out a new one. In addition, if you could enclose correspondence which documents how long the S.C. Criminal Justice Academy has been using the manual and its previous editions, I would greatly appreciate it. Of course, please forward an invoice along, and I will see that a firm check is promptly cut.

If you have any questions or concerns, please feel free to contact me.

With kind regards, I am,

Yours truly,

WUKELA LAW FIRM


 PATRICK J. MCLAUGHLIN

PJM/jen



South Carolina Criminal Justice Academy

March 28, 2011

Patrick J. McLaughlin, Esquire
Wukela Law Firm
Post Office Box 13057
Florence, South Carolina 29504-3057

RE: Freedom of Information Act
Training Manual

Dear Mr. McLaughlin:

I have enclosed an invoice in the amount of \$35.00, along with the referenced training manual as requested in your correspondence dated March 21, 2011, pursuant to the Freedom of Information Act. The Academy has been using this manual since 2007 and has been using NHTSA training materials similar to this manual for instruction in DUI/SFST since the early 1990s.

If you have questions, please feel free to contact Brandy A. Duncan, General Counsel at 803-896-7414.

As always, please feel free to contact me if I can be of further assistance.

Sincerely,


Hubert F. Harrell
Director

HFH:bad

Enclosures



U.S. DEPARTMENT
OF TRANSPORTATION



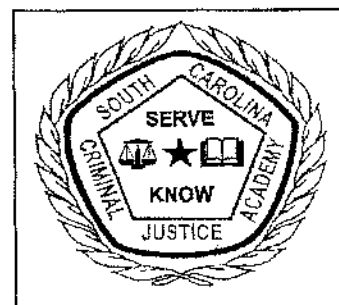
DUI Detection and Standardized Field Sobriety Testing

2007 Edition

Student Manual



SOUTH CAROLINA
CRIMINAL JUSTICE ACADEMY
TRAFFIC SAFETY UNIT



Brandy Duncan, General Counsel
S.C. Chemical Justice Academy
5400 Broad River Road
Columbia, South Carolina 29212

Patrick J. McLaughlin, Esquire
Wukala Law Firm
Post Office Box 13057
Florence, SC 29504-3057



\$05.200
03.31.2011
United States 29212
US POSTAGE

Enclosure B

STATE OF SOUTH CAROLINA)
)
COUNTY OF _____)
)
State,)
)
Plaintiff,)
)
vs.)
)
Jane Doe,)
UTT: XXXXXXXX)
)
Defendant.)
_____)

IN THE MAGISTRATE COURT

STIPULATION OF TRAINING

By my signature below, I, Trooper John Doe of the South Carolina Highway Patrol, stipulate that on or about _____, I underwent *DUI Detection and Standardized Field Sobriety Testing* provided through the South Carolina Criminal Justice Academy. I have been served a subpoena in the above captioned case requesting a copy of my training manual and other materials which I received while undergoing this training. While I am unable to produce such copies, I stipulate below that I am informed and believe that I was trained on DUI detection and the administration of standardized field sobriety testing in accordance and consistent with the procedures as outlined in the 2007 edition of the *DUI Detection and Standardized Field Sobriety Testing* student manual.

_____, 2011

Trooper John Doe