

FACTS

August 12, 2011

From: Leitner, Jim

Sent: Friday, August 12, 2011 5:13 PM

To: All Prosecutors

Subject: Bat Van Notice

As you may know, former Houston Police Department crime lab technical supervisor Amanda Culbertson recently expressed concerns about the manner in which the Intoxilyzer 5000 instrument was being used and maintained in Houston Police Department Breath Alcohol Testing (HPD BAT) vans.

This office is currently investigating Ms. Culbertson's concerns. Until this investigation is concluded, cases based in part on a defendant's breath alcohol concentration as measured by a test result generated in a HPD BAT van should not be resolved by guilty or no contest plea unless the defendant is apprised of the existence of Ms. Culbertson's concerns and knowingly waives his right to pursue a defense based on those concerns.

At the conclusion of the office's investigation into Ms. Culbertson's concerns, our office will prepare a formal and comprehensive *Brady* disclosure for use by the staff in applicable HPD BAT van cases. Until that formal *Brady* disclosure is completed, please informally apprise defense counsel or *pro se* defendants of the existence of Ms. Culbertson's concerns.

PROPOSED WAIVER

Please add this language to any plea paperwork on an HPD BAT van case:

I acknowledge that I have been told that former Houston Police Department crime lab technical supervisor Amanda Culbertson recently expressed concerns about the manner in which the Intoxilyzer 5000 instrument was being used and maintained in Houston Police Department Breath Alcohol Testing (HPD BAT) vans.

After fully discussing the foregoing disclosure with my counsel (if any), I hereby expressly and knowingly waive my right to seek any trial or post-conviction relief based on the manner in which the Intoxilyzer 5000 instrument was used and maintained in my case.

FACTS

August 24, 2011

BRADY V. MARYLAND NOTICE

THE STATE OF TEXAS provides the following notice of potentially exculpatory, impeaching or mitigating evidence, pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963).

I.

On August 23, 2011, former Houston Police Department Crime Laboratory Technical Supervisor Amanda Culbertson, currently employed by Lone Star College, 5000 Research Forest Drive, The Woodlands, Texas 77381, informed the Harris County District Attorney's Office that she believes that Houston Police Department Breath Alcohol Testing (HPD BAT) vans are not suitable locations for conducting Intoxilyzer 5000 breath tests. She expressed her belief that all breath tests that had been conducted in HPD BAT vans since the summer of 2009 are suspect.

II.

The Harris County District Attorney's Office and the Scientific Director of the Texas Department of Public Safety (TDPS), who implements, administers and enforces the breath alcohol testing regulations for the State of Texas, currently do not believe that Ms. Culbertson's opinions are accurate. The TDPS is presently conducting scientific tests to determine whether Ms. Culbertson's suspicions are worthy of scientific belief.

The State provides this notice out of an abundance of caution pursuant to its responsibility to disclose potentially exculpatory, impeaching or mitigating evidence under *Brady v. Maryland*. In providing this notice, the State does not waive its right to litigate the admissibility, credibility, or authenticity of Ms. Culbertson's allegations.