# IN THE DISTRICT COURT FOR MONTGOMERY COUNTY, MARYLAND STATE OF MARYLAND :

**v. : Case No. XXXXX**

**XXXXXX :**

**Defendant :**

**MOTION FOR A NEW TRIAL**

COMES NOW THE DEFENDANT, by and through his attorney, GOLDSTEIN & STAMM, P.A., and pursuant to Maryland Rule 4-331 moves for a new trial and for reasons states as follows:

1. At a trial in this matter, on August 27, 2013, the Court found the Defendant guilty of driving while impaired by alcohol and sentenced him to probation before judgment. During the trial, the stopping officer, Officer Petty, testified that he stopped the Defendant on Wisconsin Avenue, and identified him. He never testified that he requested the Defendant’s license and registration, or smelled an odor of an alcohol beverage, or requested the Defendant to exit the car. The State then excused Officer Petty. The State next called Officer Bieber. Officer Bieber testified that when he arrived at the scene of the stop, the Defendant was out of the car, standing near Officer Petty.
2. The exit from the vehicle is a critical Fourth Amendment threshold. The State is obligated to prove that unless the Defendant was asked to exit the vehicle for safety purposes, that the State possesses sufficient articulable reasonable suspicion to investigate a second crime, to detain the Defendant beyond simply writing out the citations for the traffic violations witnessed. *Ferris v. State*, 355 Md. 356, 735 A.2d 491 (1999). As the Court there stated:

In sum, the officer's purpose in an ordinary traffic stop is to enforce the laws of the roadway, and ordinarily to investigate the manner of driving with the intent to

issue a citation or warning. Once the purpose of that stop has been fulfilled, the continued detention of the car and the occupants amounts to a second detention. See Royer, 460 U.S. at 500, 103 S.Ct. at 1325–26. Thus, once the underlying basis for the initial traffic stop has concluded, a police-driver encounter which implicates the Fourth Amendment is constitutionally permissible only if either (1) the driver consents to the continuing intrusion or (2) the officer has, at a minimum, a reasonable, articulable suspicion that criminal activity is afoot. United States v. Sandoval, 29 F.3d 537, 540 (10 th Cir.1994).

*Ferris*, 355 Md. at 372, 735 A.2d at 499. When the State failed to offer any evidence concerning this critical Fourth Amendment event, the Court was obligated to grant the Defendant’s motion to suppress.

1. Warrantless searches and seizures “are per se unreasonable under the Fourth Amendment subject only to a few specifically established and well-delineated exceptions.” *Katz v. United States*, 389 U.S. 347, 353, 88 S.Ct. 507, 512, 19 L.Ed.2d 576 (1967). The burden at this point in the trial was squarely on the State to prove the Defendant, who had been stopped by Officer Petty and was therefore under his care, custody, and control, exited his car in a manner consistent with the Fourth Amendment. It was not incumbent upon the Defendant to question Officer Petty as to this issue. Instead, there was a huge gap in the evidence that the State failed to close.

For the reasons stated, the Defendant requests the Court grant his Motion for a New Trial, grant the Defendant’s Motion to Suppress, and enter an Acquittal in this case.

GOLDSTEIN & STAMM, P.A.

By LEONARD R. STAMM

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Motion for New Trial was mailed, postage prepaid this 28th day of August, 2013 to the Office of the State's Attorney, 50 Maryland Avenue, Rockville, Maryland.

LEONARD R. STAMM

# IN THE DISTRICT COURT FOR MONTGOMERY COUNTY, MARYLAND STATE OF MARYLAND :

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**XXXXXX :**

**Defendant :**

**O R D E R**

UPON CONSIDERATION of the Defendant’s Motion for a New Trial, it is this

day of , 2013,

ORDERED that the Defendant’s Motion for a New Trial is GRANTED; and it is further, ORDERED that the Defendant’s Motion to Suppress is GRANTED; and it is further,

ORDERED that the Defendant’s Motion for a Judgment for Acquittal is GRANTED; and it is further,

ORDERED that the Defendant is found NOT GUILTY.

J U D G E