

NO. 900000

STATE OF TEXAS) IN THE COUNTY COURT
VS.) AT LAW NUMBER TWELVE
JOE SMITH) BEXAR COUNTY, TEXAS

**MOTION FOR PRODUCTION
OF OFFICER’S FIELD SOBRIETY TRAINING MANUALS**

TO THE HONORABLE JUDGE OF SAID COURT:

Joe Smith moves that the Court order the prosecution and its witness, John Jones, to produce any and all manuals, booklets, and written materials in officer Jones’s possession that he has used to learn to administer field sobriety tests.

I.

At Mr. Smith’s last trial, San Antonio police John Jones testified that the standardized field sobriety tests “were designed by scientists and doctors and trained professionals. . . .” [RR I–18] He told the jury that he had attended courses sponsored by the National Highway Traffic Safety Administration [NHTSA] concerning the administration of the standardized field sobriety tests, and that he had used booklets produced by that agency in the courses. [RR I–50-51] He also testified the one leg stand is appropriate unless the subject is “extremely, extremely overweight.” When pressed as to what this meant, he claimed not to know what language the manual used to define how overweight a person must be to disqualify. He specifically denied being familiar with the language in the NHTSA manual that says that the one leg stand test has not been

validated for persons 50 pounds or more overweight. When counsel showed officer Jones a NHTSA manual, he claimed never to have seen it, and also to be unfamiliar with the 50-pound requirement. “I don’t recall that. That’s not what I was trained nor have I ever instituted that language or that practice by this information that you got in this book.” When asked if he thought the manual counsel had was “suspicious,” he responded: “Absolutely. . . . I think your whole book is suspicious.” He claimed that the manual he was trained out of “referred to obesity.” “My book also refers to obesity; it does not refer to a specific number of pounds. . . .” When asked about the walk and turn test, he said: “I do not know where you’re getting this number of pounds, sir. It was not in my book that I was trained out of.” [RR I–65-73]

II.

“Impeachment evidence . . . as well as exculpatory evidence, falls within the *Brady* rule.” *United States v. Bagley*, 473 U.S. 667, 676 (1985). In *Kyles v. Whitley*, 514 U.S. 419, 437 (1995), the Court observed that the “prosecutor has a duty to learn of any favorable evidence known to the others acting on the government’s behalf in the case, including the police.”

When counsel tried to impeach officer Jones in Mr. Smith’s last trial, he claimed not to recognize the manual presented to him by counsel. Instead, he invoked his “book,” presumably a NHTSA manual. Fair enough. If this officer claims he trained with a different manual, he should be ordered to bring it to Court for inspection by the defense,

so that it can be used to challenge his testimony and credibility. If he is unable to produce such a manual, that too could be used for impeachment. This officer should not be allowed to avoid legitimate impeachment by claiming that he relied on a manual to which the defense has no access.

III.

The defendant asserts that:

1. The items requested are in the exclusive possession, custody and control of the State of Texas or the United States Government by and through its agents, the police or the prosecuting attorney's office, and the Defendant has no other means of ascertaining the disclosures requested.
2. The items requested are not privileged.
3. The items and information are material to this cause and the issues of guilt or innocence and punishment to be determined in this cause.
4. The Defendant cannot safely go to trial without production of the requested items, such information and inspection, nor can the Defendant adequately prepare the defense to the charges against him.
5. The absent such discovery the Defendant's rights under Article 39.14, Article I, §§ 3, 10, 13 and 19 of the Constitution of the State of Texas, and the Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments to the Constitution of the United States of America will be violated, to his irreparable injury and thus deprive the Defendant of a fair trial herein.

Respectfully submitted:

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CERTIFICATE OF SERVICE

I certify that a copy of this Motion has been delivered to the Bexar County District Attorney's Office, 101 W. Nueva, San Antonio, TX 78205, on July 12, 2018.

MARK STEVENS

ORDER

On this the ____ day of _____, 2018, came to be considered Defendant's Motion For Production Of Officer's Field Sobriety Training Manuals and said motion is hereby

(GRANTED)

(DENIED)

JUDGE PRESIDING