

NO. 000000

STATE OF TEXAS) IN THE DISTRICT COURT
VS.) 186th JUDICIAL DISTRICT
JOE SMITH) BEXAR COUNTY, TEXAS

**MOTION FOR DISCOVERY AND INSPECTION
OF ALLEGED MARIJUANA EVIDENCE**

TO THE HONORABLE JUDGE OF SAID COURT:

Joe Smith makes this Motion for Discovery and Inspection of Marijuana Evidence, pursuant to the Fourth, Fifth, Sixth and Fourteenth Amendments of the United States Constitution, Article I, §§ 10 and 19 of the Texas Constitution, and Article 39.14 of the Texas Constitution.

I.

The Defendant moves the Court to order the District Attorney to allow the Defendant's designated expert to have access to all alleged marijuana that defendant is alleged to have possessed so that the expert may test and quantitatively analyze the weight of said alleged marijuana. In support, the Defendant offers authority where, under similar factual circumstances, the Defendant, upon proper motion, was entitled to access to evidence in the custody or control of the state in order to perform independent chemical testing. *Terrell v. State*, 521 S.W.2d 618, 619 (Tex. Crim. App. 1975)(denying defense counsel's expert access to alleged marijuana for chemical testing was reversible error); *Detmering v. State*, 481 S.W.2d 863, 864 (Tex. Crim. App. 1972)(failure to grant Defendant's motion for independent chemical analysis was reversible error).

II.

Defendant would designate Dr. Jack Brown of Precision Laboratory Analysis as his expert. Dr. Brown is licensed by the Federal Government for the above-described testing and is licensed by the Drug Enforcement Agency to handle and transport such items as the alleged marijuana in this case.

III.

The Defendant further moves this Court to order the District Attorney to produce any and all documents, reports, or photographs pertaining to alleged marijuana evidence, since such documents are in the exclusive possession of the State of Texas and the Defendant has no other means of gaining access to the objects requested.

IV.

In further support hereof, the Defendant would show this Court that the production of all of the above evidence is the only fair and proper method of showing the good faith of the District Attorney in this case, the truth of all such matters which the District Attorney intends to introduce into evidence against the Defendant, and to insure that the Defendant has adequate time to inspect, examine, and test all of such evidence for its respective validity, authenticity and identity.

V.

In support of this Motion, the Defendant would also show the Court as followings:

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 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 C.C.P., Article I, § 10 of the Constitution of the State of Texas, and the Fourth, Fifth, Sixth 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.

WHEREFORE, PREMISES CONSIDERED, the Defendant respectfully prays that this Honorable Court will grant this the Defendant's Motion for Discovery and Inspection of alleged Marijuana Evidence in all things, or in the alternative, that this Court will set this matter down for a hearing prior to trial on the merits and that at such hearing this Motion will be in all things granted.

Respectfully submitted:

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Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion has been delivered to the Bexar County District Attorney's Office, Bexar County Justice Center; 300 Dolorosa; San Antonio, Texas, on March 12, 2013.

MARK STEVENS

ORDER

On this the ___ day of _____, 2013, came on to be considered Defendant's Motion for Discovery and Inspection of Alleged Marijuana Evidence, and said Motion is hereby

(GRANTED) (DENIED).

PRESIDING JUDGE