

NO. 000000

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

**MOTION FOR DISCOVERY OF THE ARREST AND  
CONVICTION RECORDS AND EVIDENCE ADMISSIBLE  
UNDER RULE 404(a)(2) OF THE TEXAS RULES OF EVIDENCE  
CONCERNING THE DECEASED, TOM JONES**

TO THE HONORABLE JUDGE OF SAID COURT:

Joe Smith seeks discovery of the arrest and conviction records and all evidence admissible under Rule 404(a)(2) of the Texas Rules of Evidence concerning the deceased, Tom Jones, and shows the following in support of this request:

I.

Evidence of the following admissible pursuant to Rule 609 of the Texas Rules of Evidence; the Sixth and Fourteenth Amendments to the United States Constitution; and, Article I, § 10 of the Texas Constitution:

1. final felony convictions;
2. felony convictions for which probation has not been satisfactorily completed;
3. final misdemeanor convictions involving moral turpitude;
4. misdemeanor convictions involving moral turpitude for which probation has not been successfully completed;
5. offenses pending between the date of this offense and trial, which might have a bearing on the witness's motive to testify, including juvenile cases, felonies and misdemeanor cases, convictions, probations or deferred adjudications. *See Davis v. Alaska*, 415 U.S. 308 (1974).

## II.

Pursuant to Rule 404(a)(2) of the Texas Rules of Evidence, evidence of a pertinent character trait of the alleged victim of the crime offered by the accused is admissible. Any evidence that Tom Jones has been convicted of, or committed, any crime of violence is evidence of a pertinent character trait and therefore admissible under Rule 404(a)(2).

## III.

Mr. Smith has no access to records of local law enforcement agencies, the Texas Crime Information Center and the National Crime Information Center, but the prosecutor does. Mr. Smith moves that this Court order the state to examine the records of its local law enforcement agencies, the Texas Crime Information Center, and the National Crime Information Center concerning the arrest and conviction records of Mr. Tom Jones for evidence admissible under the above cited constitutional and statutory provisions, rules and case law.

## IV.

Defendant requests an evidentiary hearing at which he can establish that the records he requests exist and are in possession of the state and are otherwise discoverable. *See Smith v. State*, 721 S.W.2d 844, 851 (Tex. Crim. App. 1986); *Reed v. State*, 644 S.W.2d 494, 497-99 (Tex. App.—Corpus Christi 1982, pet. ref'd).

## V.

If this Court overrules this motion for discovery, we request the Court to order the state to produce the arrest and conviction records for an *in camera* review, to determine their

discover ability. If the Court persists in not ordering discovery, we ask that the records be made a part of the appellate record in this case, if there is an appeal.

WHEREFORE, PREMISES CONSIDERED, Mr. Smith prays that this Honorable Court order the state to disclose the arrest and conviction records and all evidence admissible under Rule 404(a)2) of the Texas Rules of Evidence concerning Tom Jones.

Respectfully submitted:

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Attorney for Defendant

### **CERTIFICATE OF SERVICE**

I certify that a copy of the Motion For Discovery Of The Arrest And Conviction Records And Evidence Admissible Under Rule 404(a)(2) Of The Texas Rules Of Evidence Concerning The Deceased, Tom Jones, has been delivered to the Bexar County District Attorney's Office, 101 W. Nueva St, San Antonio, TX 78205, on July 11, 2018.

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MARK STEVENS

**ORDER**

On this the \_\_\_\_\_ day of \_\_\_\_\_, 2018, came to be considered defendant's Motion for Discovery of the Arrest and Conviction Records and Evidence Admissible Under Rule 404(a)(2) of the Texas Rules of Evidence Concerning the Deceased, Tom Jones, and said motion is hereby

(GRANTED)

(DENIED)

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JUDGE PRESIDING