

NO. 50000

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

**DEFENDANT'S MOTION FOR DISCOVERY
AND OTHER RELIEF**

TO THE HONORABLE JUDGE OF SAID COURT:

Joe Smith moves for the following relief:

**I.
Request For Court Reporter**

Defendant requests that the official court reporter make a full record of all proceedings that occur in Court, as required by Rule 13.1 of the Texas Rules of Appellate Procedure.

(GRANTED)

(DENIED)

**II.
Request For Pre-Trial Hearing**

Defendant requests that this Court set a pre-trial hearing and hear all motions filed by the defense prior to the selection of the jury, as permitted by article 28.01 of the Texas Code of Criminal Procedure.

(GRANTED)

(DENIED)

**III.
Discovery**

1. Pursuant to article 39.14(a) of the Texas Code of Criminal Procedure, and Rules 612 and 615 of the Texas Rules of Evidence, defendant requests that the state, as soon as practicable, produce and permit the inspection and electronic duplication, copying and photographing of the following:

a. All offense and crime scene reports.

(GRANTED) (DENIED)

b. All written and recorded statements of the defendant.

(GRANTED) (DENIED)

c. All written and recorded statements of all witnesses.

(GRANTED) (DENIED)

d. All documents, papers, books, accounts, letters, photographs, videotapes, electronic recordings, cell phone records, text messages, voice mails, emails, social media content, objects and other tangible things that constitute or contain evidence material to any matter involved in the action that are in the possession, custody, or control of the state or any person under contract with the state, except as prohibited by article 39.15 of the Texas Code of Criminal Procedure, or section 264.408 of the Texas Family Code.

(GRANTED) (DENIED)

e. The following designated documents and materials:

i. All notes, calculations, diagrams, measurements, logs, photographs, videotapes, and reports made by experts and relied upon by the State of Texas in this case.

(GRANTED)

(DENIED)

- ii. All lab and toxicology reports in the possession of the prosecutors handling this investigation.

(GRANTED)

(DENIED)

- iii. All photographs and videotapes of the alleged crime scene taken by the San Antonio Police Department and any other State agencies or agents or experts employed by the State of Texas.

(GRANTED)

(DENIED)

- 2. Defendant moves that the Court order the prosecutor to provide him with a list of all witnesses the state intends to call at trial. We further request that this list be in writing and that it be provided no later than 30 days before trial commences. *See Young v. State*, 547 S.W. 2d 23, 27 (Tex. Crim. App. 1977).

(GRANTED)

(DENIED)

- 3. Pursuant to article 39.14(b) of the Texas Code of Criminal Procedure, defendant moves that the Court order the state to disclose no later than 20 days before commencement of trial the names and addresses of each person it may use at trial to present evidence under Rules 702, 703 and 705 of the Texas Rules of Evidence.

(GRANTED)

(DENIED)

- 4. Defendant moves that the Court order the state to disclose all evidence in its possession and in the possession of its agents, which is both favorable to the defendant and material either to guilt or to punishment, including impeachment evidence. *See Brady v. Maryland*, 373 U.S. 83, 87 (1963); *see also United States*

v. Bagley, 473 U.S. 667, 675-78 (1985). U.S. CONST. Amend. XIV; TEX. CONST. Art. I, §§ 13 and 19.

(GRANTED)

(DENIED)

5. Defendant moves that the Court order the state to disclose to defendant no later than 30 days before trial starts the arrest and conviction records of its witnesses that can be used for cross-examination and impeachment under 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, including, but not limited to the following: (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).

(GRANTED)

(DENIED)

6. Defendant moves the Court to order the state to reveal any inducements it has made - express or implied, formal or informal - that might tend to motivate its witnesses to testify in this case, including, but not limited to: plea bargain

agreements; fee, expense, or reward arrangements with witnesses or informants; agreements to dismiss, or reduce, or not to bring charges; and any other agreement for leniency in exchange for testimony or cooperation.

(GRANTED)

(DENIED)

7. Defendant moves the Court to order the state to preserve and to produce all items of physical evidence that it has collected during its investigation of this case for inspection by defense counsel. After these items are inspected by counsel, it may be necessary to have them examined by appropriate experts. If so, defendant will return to Court with such request.

(GRANTED)

(DENIED)

8. Defendant moves the Court to require the state to give written notice, at least 30 days prior to the start of trial, of all statements allegedly made by defendant that the state intends to offer at trial.

(GRANTED)

(DENIED)

9. Defendant moves the Court to require the state to give written notice, at least 30 days prior to the start of trial, of its intention to use evidence that may be subject to defendant's motion to suppress under the laws and constitutions of the Texas and United States.

(GRANTED)

(DENIED)

10. Defendant moves for copies of any search warrants, supporting affidavits, and

returns, obtained by law enforcement authorities to search defendant's real property, residence, vehicle, effects, papers or person in this case.

(GRANTED)

(DENIED)

11. Defendant moves for copies of any arrest warrants, capiases, and supporting affidavits, obtained by law enforcement authorities to arrest the defendant in this case.

(GRANTED)

(DENIED)

12. Defendant moves for copies of any documents purporting to contain defendant's consent to search cell phones, real property, residence, vehicles, effects, papers, or person.

(GRANTED)

(DENIED)

13. Defendant moves for copies of all mugshots of the defendant made by the state following arrest in this case.

(GRANTED)

(DENIED)

14. Defendant moves for copies of all recorded incoming telephone calls to "911" or the sheriff's office or the police station requesting assistance at the time this incident was reported.

(GRANTED)

(DENIED)

15. Defendant moves for copies of all recorded communications between the dispatcher and law enforcement agents who were called to the scene in this case.

(GRANTED)

(DENIED)

16. Defendant moves for production and disclosure of any information in the state's possession that the complainant or any of its witnesses has filed or is contemplating filing civil litigation concerning any wrongdoing the defendant has allegedly committed.

(GRANTED)

(DENIED)

17. Defendant moves for production of copies of all information, records and other data collected from the computers seized from defendant, or defendant's home, property, and storage units by the State of Texas and its representatives during its investigation, pursuant to the Fifth, Sixth and Fourteenth Amendment of the United States Constitution, Article I, §§ 3, 10, 13, and 19 of the Texas Constitution and Article 39.14 of the Texas Code of Criminal Procedure.

(GRANTED)

(DENIED)

18. Defendant moves for production of all reports that relate to blood, DNA, bodily fluids, breath, drugs, and controlled substances in the state's possession that are material to the commission of the crime for which defendant has been charged.

(GRANTED)

(DENIED)

IV. Motion In Limine

Defendant moves this Court before trial in limine for an order instructing the District Attorney, his representatives and witnesses to refrain from making any direct or indirect reference whatsoever, at trial before the jury to all extraneous crime or misconduct evidence

which is not alleged in the indictment, unless it can be shown to the Court, outside the presence of the jury by sufficient proof that defendant perpetrated such conduct, that this evidence is relevant to a material issue in the case, other than character conformity, and that its probative value outweighs its potential for prejudice.

(GRANTED)

(DENIED)

**V.
Motion To Voir Dire Experts**

Defendant moves this Court to conduct a hearing prior to trial and outside the presence of the jury to determine the preliminary question of the qualification of all expert witnesses upon which the state intends to rely at trial, and to determine the underlying facts and data upon which their opinions are based, as required by Rule 705(b) of the Texas Rules of Evidence.

(GRANTED)

(DENIED)

**VI.
Motion For *Daubert* Hearing**

Defendant moves that this Court set a hearing prior to trial as required by Rule 104(a) of the Texas Rules of Evidence to determine the preliminary question of the relevancy and reliability of any expert testimony proffered by the prosecution. *See Daubert v. Merrell Dow Pharmaceuticals*, 509 U.S. 579, 589 (1993); *see also Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 147 (1999); *Hartman v. State*, 946 S.W.2d 60, 62 (Tex. Crim. App. 1997).

(GRANTED)

(DENIED)

VII.
Motion For Identification Hearing

Defendant moves for an identification hearing outside the presence of the jury, prior to commencement of trial, to determine whether: (1) Defendant was exhibited to the identification witness in a lineup after the right to counsel attached, in violation of the Sixth and Fourteenth Amendments to the United States Constitution or Article I, § 10 of the Texas Constitution; (2) Defendant's identification was the fruit of an illegal arrest, search or seizure, in violation of the Fourth and Fourteenth Amendments to the United States Constitution; Article I, § 9 of the Texas Constitution; and articles 1.06, 38.23 and chapter 14 of the Texas Code of Criminal Procedure; (3) Defendant's identification, under the totality of circumstances, was so unreliable and unnecessarily suggestive as to violate the Due Process Clause of the Fourteenth Amendment to the United States Constitution, and due course of law, guaranteed by Article I, §§ 13 and 19 of the Texas Constitution. *See Martinez v. State*, 437 S.W.2d 842, 848 (Tex. Crim. App. 1969); *accord Franklin v. State*, 606 S.W.2d 818, 852 (Tex. Crim. App. 1979); *see also* Tex. R. Evid. 104(c).

(GRANTED)

(DENIED)

Respectfully submitted:

/s/

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Attorney for Defendant

CERTIFICATE OF SERVICE

I certify that a copy of defendant's Motion for Discovery and Other Relief was delivered to the Bexar County District Attorney's Office, 101 W. Nueva St., San Antonio, Texas, on this the 3rd day of April, 2019.

/s/ _____
Mark Stevens

ORDER

On this the ___ day of _____, 2019, came on to be considered Defendant's Motion For Discovery and Other Relief, and the Court's rulings are as reflected in the body of this motion.

JUDGE PRESIDING