

**NO. 2022CR0000**

<b>STATE OF TEXAS</b>	)	<b>IN THE DISTRICT COURT</b>
<b>VS.</b>	)	<b>186th JUDICIAL DISTRICT</b>
<b>JO SMITH</b>	)	<b>BEXAR COUNTY, TEXAS</b>

***Ex Parte Motion***

**Submitted Under Seal**

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

***EX PARTE* CONFIDENTIAL REQUEST FOR ADVANCE PAYMENT OF  
EXPENSES FOR AN EXPERT IN MOBILE DEVICE FORENSICS EXPERT**

TO THE HONORABLE JUDGE OF THIS COURT:

Jo Smith requests advance payment of expenses for David T. Gallant, an expert in the field of mobile device forensics, as provided for by article 26.052(f) of the Texas Code of Criminal Procedure.

I.

Ms. Smith was indicted on April 1, 2022 for capital murder by intentionally causing the death of the complainant, in the course of committing or attempting to commit the offense of robbery. Four other defendants were indicted for the same offense. From reviewing the discovery provided to date, it is clear to counsel that the State of Texas believes that only one of those indicted was the shooter; all others, including Ms. Smith, are implicated as parties. On February 1, 2023, the State moved to dismiss the case of one co-defendant. The charges of three of the remaining co-defendants are still pending

II.

From conferring with the prosecution and reviewing the discovery, counsel knows

that to date, the State has extracted data from the cell phones of the following:

- Jo Smith;
- John Jones (complainant);
- Samantha Brown (girlfriend of complainant);
- James Johnson (co-defendant).

Counsel also knows that the State intends to rely *heavily* on data seized from the cell phones of Ms. Smith, and those persons just identified, both to attempt to prove Ms. Smith's guilt as a party, and to corroborate the accomplice witnesses. Forensic testimony regarding the contents of the multiple cell phones in question will unquestionably play a large role in both the State's and the Defense's cases. Counsel are not experts in the highly technical field of mobile device forensics, and require the expertise of someone who is.

### III.

We have attached Exhibit A, the curriculum vitae of David T. Gallant. Exhibit A amply demonstrates Mr. Gallant's extensive training and experience in the field of mobile device forensics. He has more than 14 years experience as Federal Agent with the Air Force Office of Special Investigations, and more than 34 years experience as an investigator, and he has lectured and taught hundreds of people on the subject matter. He has been qualified as a digital forensics expert in State, Federal, and Military Courts, and has testified numerous time in this Court, and in others throughout Texas.

### IV.

Counsel has consulted briefly with Mr. Gallant on this case, and know that he can assist in the evaluation, preparation, and the presentation of the case. Specifically, Mr. Gallant can assist counsel in properly requesting necessary discovery, in examining the extraction reports of the cell phones of Ms. Smith, Mr. Jones, Ms. Brwon, and Mr. Johnson, and, if necessary, in examining the phones himself. Mr. Gallant believes that he can provide meaningful and necessary assistance to the defense, and is willing to accept a consulting role on the defense team if funded by this Court. He estimates that he will require at least five hours per phone to review the necessary information, and to consult with defense counsel. More time will be necessary if more than four phones are to be examined, or if testimony is required. Mr. Gallant's customary fee is \$xxx.xx per hour.

V.

Article 26.052(f) of the Texas Code of Criminal Procedure allows court-appointed counsel to file a confidential *ex parte* pretrial request for advance payment of funds necessary for a forensic expert in a capital case. A mobile device forensics expert is required in this case so that Jo Smith can receive the effective assistance of counsel, due process, and equal protection of the law, and can confront and cross-examine witnesses against him guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and Article I, §§ 10, 13, and 19 of the Texas Constitution. *See Ake v. Oklahoma*, 470 U.S. 68, 74 (1985); *DeFreece v. State*, 848 S.W. 2d 150 (Tex. Crim. App. 1993).

VI.

Counsel for Jo Smith requests that this Court authorize payment of reasonable funds to David T. Gallant as the defense's mobile device forensics expert consultant in this case, and order the Auditor of Bexar County to authorize initial funding in the amount of \$x,xxx.xx, which will compensate him for 20 hours of work at \$xxx.xx per hour. If more consultation time is required, or if testimony is needed, counsel will approach the Court with an itemization and an explanation why more funding is necessary.

Respectfully submitted:

/s/ Mark Stevens

MARK STEVENS

310 S. St. Mary's Street

Tower Life Building, Suite 1920

San Antonio, TX 78205

(210) 226-1433

State Bar No. 19184200

mark@markstevenslaw.com

Attorney for Defendant

**CERTIFICATE OF SERVICE**

This motion has been file *ex parte* motion, as provided by law, and has not been delivered to the Bexar County District Attorney's office.

/s/ Mark Stevens

MARK STEVENS

NO. 202CR0000

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

**ORDER**

On this the \_\_\_\_\_ day of \_\_\_\_\_, 2023, came on to be heard defendant's *Ex parte* Confidential Request For Advance Payment of Expenses for an Expert In Mobile Device Forensics.

This Court, after having read the pleadings and heard argument of counsel, is of the opinion that said motion should be granted:

It is therefore, ORDERED, ADJUDGED and DECREED, that David T. Gallant is hereby appointed as an expert in Mobile Device Forensics for the defendant, and will be compensated at the rate of \$xxx.xx per hour.

It is further ORDERED that the amount requested in defendant's motion, \$x,xxx.xx, for 20 hours of work, is approved and that the expenses and fees shall be paid according to the work performed and expenses actually incurred. The expert and the defense shall submit bi-monthly invoices detailing the work that has been performed, and expenses incurred, and said invoices shall be paid by the Bexar County Auditor directly to David Gallant and/or Gallant Computer Investigative Services LLC., Titan Building, 2700 NE Loop 410, Suite 301, San Antonio, TX 78217.

It is further ORDERED that this Order and the accompanying Motion shall be sealed, and a copy of this Order shall be provided to defense counsel via email upon signing. Once the expert has exhausted the initial \$x,xxx.xx, defense counsel is free to approach for additional funds as needed.

SIGNED on this the \_\_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
JUDGE PRESIDING