CAUSE NO. _____

THE STATE OF TEXAS	§	**IN THE COUNTY COURT**
	§	
VS.	§	**AT LAW NUMBER ONE (1) OF**
	§	
_____	§	**FORT BEND COUNTY, TEXAS**

COURT'S DISCOVERY ORDER

On this date the above captioned cause is reset for Pre-trial Motions at the request of the Defendant,_____ (hereinafter referred to as "Defendant").

COURT ORDER
HEARING ON MOTION TO SUPPRESS EVIDENCE

IT IS ORDERED that the Defendant has seven (7) days from the pre-trial hearing to file with factual specificity the basis on which the Defendant relies on his/her request for an oral hearing on the motion to suppress evidence. When the Defendant files the original factual basis with the Clerk, the Defendant shall also deliver a copy of same to the Court and the attorney for the State on the same day. The Court shall hear said motion to suppress evidence at the oral pre-trial hearing. **IT IS FURTHER ORDERED** that in the event the Defendant does not file factual basis within seven (7) days before the pre-trial hearing or the Defendant does not timely deliver a copy of same to the Court, and attorney for the State, the motion to suppress evidence shall be deemed late filed in accordance with Tex. Code of Crim. Proc. § 28.01, Sec. 2, and shall only be heard upon good cause shown to the court.

COURT'S DISCOVERY ORDER

Based on your Motion for Discovery, the following matters are **GRANTED**, if there are any items not contained in the body of this **ORDER** that is relevant and necessary as it pertains to a particularized need as it relates to your case please address that issue in a special motion to the Court in accordance with the Court's local rules. Also, matters regarding Driving While Intoxicated (D.W.I.) are in the section noted for D.W.I. **IT IS ORDERED** that The State of Texas is to provide Defendant, either with an electronic copy, physical copy or through the State's open file policy, with the following:

1. All statements written or oral and any evidence of acts amounting to statements alleged to have been made by the Defendant, including res gestae statements.

2. All audio and video electronic recordings which contain purported conduct and conversations of the Defendant, said recordings made near or at the time of arrest, at the scene of the arrest, during transit to the jail after arrest and at the jail video facility.

3. A list of all State's witnesses in State's case in chief and punishment to be filed in Court's file ten (10) days before trial and a list of rebuttal witnesses when known by the State.

4. Any written waiver or any evidence of waiver alleged by the State to have been made by the Defendant concerning the Defendant's Constitutional or statutorial rights as relates to the following:

    (a) *Miranda v. Arizona*, 384 U.S. 436 (1966) (custodial interrogation safeguards).

    (b) Article 38.22, Tex. Code Criminal Procedure (custodial interrogation procedural safeguards).

    (c) *Edwards v. Arizona*, 451 U.S. 477 (1981) (right to counsel).

    (d) Consent to any investigative detention, search or seizure.

    (e) The Defendant's right to a second, independent chemical test under authority of Article 6701(1)-5 Section 3(d).

    (f) The Defendant consenting to any test, i.e., field sobriety, breath, blood or urine.

5. Evidence of any extraneous offenses under Tex.R.Crim.Evid. 404(a)(b) and (c).

6. All character evidence sought to be admitted by the State during the guilt/innocence and/or punishment phases of this case under Tex.R.Crim.Evid. 404(a)(b) and (c) and 608.

7. EXCULPATORY EVIDENCE

(A) Any evidence which tends to negate the guilt of the Defendant, mitigate the degree of the offense, or reduce the punishment whether the State considers the same credible or not;

(B) Any third party confession to the crime which the Defendant has been charged whether the State considers the same credible or not;

(C) Any evidence which could be used to cause doubt upon the Defendant's guilt, to uncover other leads or defense theories, or to discredit the police investigation whether the State considers the same credible or not;

(D) Evidence regarding any eyewitness's failure to give a positive identification of the Defendant, or misidentification of the Defendant;

(E) The failure of any eyewitness familiar with the Defendant to point out or mention the Defendant to the State investigating agency.

(F) Information concerning a photo spread or in person line-up procedures used in this case.

8. IMPEACHMENT EVIDENCE

(A) Any promises of immunity, leniency, financial assistance, or other forms of assistance to any witness;

(B) Any prior inconsistent statements made by any witness;

(C) The prior criminal convictions that could be used to impeach any witness which the State intends to use at trial;

(D) The probation or parole status of any witness which the State intends to use at trial, if known;

(E) The payment of any money or reward to any witness the State intends to use at trial including expense reimbursement;

(F) Any understanding or agreement between the State and a witness regarding a related prosecution.

9. A copy of the intoxilyzer test record of the Defendant.

10. Copies of all reports, testing logs, records, computer data, or other memoranda of testing performed through use of the intoxilyzer and simulator machines used to test the Defendant herein beginning thirty (30) days before the date the Defendant was arrested and thirty (30) days after said date. Said request to include all intoxilyzer test results which were run thirty (30) days immediately before the Defendant was tested. In addition, said production is to include all reports and records which evidence that repairs were made on the intoxilizer and the nature of the repairs.

11. Copies of all Texas Department of Public Safety and that of the arresting agency's internal memoranda, advisories or notices, or those sent from the manufacturers of the intoxilyzer and simulator (which were used to test the Defendant for intoxication on the date of the arrest) that generally provide information that the machines herein possibly suffer from a design defect, if they do, or that they may be subjected to false readings or errors because of outside interference, if they do. In addition, all information from the Department of Public Safety in regard to possible malfunctions of the intoxilyzer because of radio frequency interference, if at all. This shall exclude any patent or trade secret of the intoxilyzer.

12. An opportunity of defense experts to view, inspect, diagram and photographically record other electronic devices in the intoxilyzer and simulator rooms, as well as adjoining (side, above or below) and nearby rooms (within approximately 100 feet) which may emit radio frequency interference, i.e., photocopying machines, radio transmitter, microwave ovens, computer terminals, etc. Arrangements are to made with the State and coordinated with police agency involved and the Department of Public Safety Technical Supervisors.

13. A detailed description of any repairs, changes, deletions, modifications or adjustments made to, either the simulator and intoxilyzer used to test the Defendant herein, said production to include all records, computer data and memoranda of the repairs and the reasons therefore and shall be limited to thirty (30) days before and after.

14. The written automobile inventory procedures of the law enforcement agency which impounded and inventoried the Defendant's vehicle and the written inventory of that vehicle if there was an inventory (if applicable, e.g., open container).

15. The specific name of the State's expert which will testify as a technical supervisor and will interpret the intoxilyzer results.

ALSO GRANTED AS TO ANY ADDITIONAL MATERIAL REQUESTED TO BE PRODUCED AS FOLLOWS:

16.

(A) The underlying theorems, if any, and the formulae contained in the program used in the Intoxilyzer model for this case, which program the conversion of the decrease of light intensity to a specific alcohol concentration;

(B) The underlying theorem contained in the program which converts the breath alcohol into a specific numerical value;

(C) The underlying theorem contained in the program which converts, if it does, blood alcohol concentration and breath alcohol concentration which is represented by a specific numerical value for that relationship;

(D) The underlying theorem contained in the program which explains the process of how the electronic signal is processed, averaged or analyzed regarding the measurement of the electronic signal derived from the infrared light attenuation of the subject's breath:

(E) The underlying theorem contained in the program and/or text which explains how the model self-calibrates and self-tests the instrument;

(F) The time sequence theorems contained in the program and/or text which explains how the timing operation is controlled by the program contained in the machine. In particular is that explanation in the program which determines the calculations of time during which the breath sample is acquired;

(G) The underlying theorems and/or text in the program which explains how the scope detection:

(i) Safeguards against contamination of the breath sample from alcohol contained in the subject's mouth or stomach; and

(ii) How the instrument meets the requirements of the Texas Breath Testing Regulations (Section 19.1(B)(2)) for analysis of breath samples being essentially alveolar in composition.

This Order is not requiring the State to produce a copy of the "Adams" Program or the password necessary to gain access to the program or instrument.

This order of Discovery **FURTHER ORDERS:**

1. The prosecutor to be under a continuing duty to disclose any information, evidence, records or statements which the Court orders but which the State does not possess at this time but may possess at some time in the future;

2. The court reporter shall record all matters pertaining to this cause, if requested, to include pre-trial hearing, voir dire, trial, final argument and matters pertaining to sentencing;

3. Defendants who are incarcerated shall be dressed in street clothing during any jury trials;

4. The District Attorney shall provide all evidence in his possession favorable or mitigating to Defendant's attorney;

5. The District Attorney shall provide all oral, written, audio and video recorded statements made by the Defendant to investigating officer or to third parties in the possession of the District Attorney or law enforcement;

6. The District Attorney shall provide all witnesses statements to defense attorney upon completion of the witnesses' testimony;

7. The District Attorney shall permit the defense attorney inspection of all physical evidence to be introduced at trial;

8. The District Attorney shall provide the defense attorney the results of any tests to be used in trial for inspection;

9. The District Attorney shall provide the defense attorney the criminal history of the Defendant as it relates to felony convictions, convictions of any crime which constitutes a crime of moral turpitude;

10. The District Attorney shall provide the defense attorney the results of physical or mental examinations, if any;

11. The District Attorney shall provide details of any plea agreements in relation to a co-defendant, accomplice or informant;

12. It shall be the responsibility of the defense counsel to schedule a pre-trial conference with the District Attorney and/or one of his Assistants in the office of the district attorney prior to trial for the purpose of inspecting documentation and complying with this order which shall be at least thirty (30) days prior to trial date.

Defendant bears the burden of arranging the time to obtain items granted and to seek a non-compliance hearing at least five (5) days prior to the date the case is called for the pre-trial hearing.

Both the State and the Defendant are **ORDERED** to disclose the name and address of all expert witnesses the party may use at trial to present evidence under Rule 702, 703, and 705, Texas Rules of Evidence. It is further **ORDERED** that the disclosure be made not later than the 20th day before the trial begins.

IT IS FURTHER ORDERED that this case is set for trial by jury on the _____ day of _____, 20_____, at _____ ___.M. The pre-trial hearing shall be heard on the _____ day of _____, 20_____ at _____ ___.M.

SIGNED the _____day of _____, 20_____.

_____
HON. CHRISTOPHER G. MORALES
PRESIDING JUDGE
COUNTY COURT AT LAW NO. 1

_____
ATTORNEY FOR DEFENDANT

_____
Name Printed

Telephone No._____

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Court's Discovery Order has been delivered to the Fort Bend County District Attorney's Office on this the _____day of _____, 20_____.

_____
ATTORNEY FOR DEFENDANT