

CAUSE NO. _____

THE STATE OF TEXAS

§

IN THE COUNTY COURT

VS.

§

AT LAW NUMBER 3

§

FORT BEND COUNTY, TEXAS

COURT'S DISCOVERY ORDER IN DWI PROSECUTION

COUNSEL:

Based on your MOTION FOR DISCOVERY the following matters are Granted. If there is any item 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.

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 jail after arrest, and, at the jail video facility.
3. A list of all State's witnesses.
4. The specific name of the State's expert who will testify as a technical supervisor and will interpret the intoxilyzer results.
5. 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 statutory rights as relates to have 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 vs. Arizona*, 451 U.S. 477 (1981) (right to counsel).
 - (D) Consent to any investigative detention, search or seizure.
 - (E) The defendant consenting to any test, i.e. field sobriety, breath, blood or urine.

6. 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.
7. Evidence of any extraneous offenses under Tex. R. Crim. Evid. 404 (a) (b) and (c).
8. All character evidence sought to be admitted by the State during the guilt or innocence and/or punishment phases of this case under Tex. R. Crim. Evid. 404 (a) (b) and (c) and 608.
9. EXCULPATORY EVIDENCE:
 - (1) 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;
 - (2) Any third party confession to the crime with which the Defendant has been charged whether the State considers the same credible or not;
 - (3) Any evidence which could be used to cast 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 to be credible or not;
 - (4) Evidence regarding any eyewitness's failure to give a positive identification of the Defendant, or misidentification of the Defendant;
 - (5) The failure of any eyewitness familiar with the Defendant to point out or mention the Defendant to the State investigating agency.
10. Copies of any search or arrest warrants or related affidavits.
11. All records of conviction which may be admissible in evidence or used for impeachment of Defendant per Rule 609.
12. IMPEACHMENT EVIDENCE:
 - (1) Any promises of immunity, leniency, financial assistance, or other forms of assistance to any witness;
 - (2) Any prior inconsistent statement made by any witness;
 - (3) The prior criminal convictions that could be used to impeach any witness which the State intends to use at trial;
 - (4) The probation or parole status of any witness which the State intends to use at trial;
 - (5) The payment of any money or reward to any witness the State intends to use at trial;

- (6) Any understanding or agreement between the State and a witness regarding a related prosecution;

IF YOUR CASE IS A DWI TEST CASE:

13. A copy of the intoxilyzer test record of the Defendant.
14. Copies of all reports, testing logs, records, computer data, or other memoranda of testing performed through use the intoxilyzer and simulator machines used to test the Defendant herein beginning 30 days before the date the Defendant was arrested and 30 days after said date. Said request to include the twenty five (25) intoxilyer test results which were run immediately before the Defendant was tested. In addition, said production is include all reports which evidence that. (See Regulation §19.2(c) and §19.6(k))
15. 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 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.
16. An opportunity for defense experts to view, inspect, diagram and photographically record other electronic devices in the intoxilyzer and simulator room. Arrangements are to be made with the state and coordinated with police agency to be at a time and date that is least disruptive to the police agency involved.
17. A detailed description of any repairs, changes, deletions, modifications, or adjustments, made to either the simulator and intoxilyer used to test the Defendant herein and shall be limited to 6 months before and after the Defendant's arrest.
18. This court will follow the Court of Criminal Appeals decisions of:
 - (1) Emerson vs. State – Thus, HGN will be admitted insofar as Kelly/Hartman prong was followed in that the officer was trained on the technique of the test and that the officer properly followed that technique;
 - (2) Nenno vs. State – Thus, FST'S will be admitted if 3rd prong has been complied with in that the officer's testimony utilized the principles of FST involved in his

training and whether the officer properly followed the technique trained on according to those;

(3) Mata vs. State – Retrograde extrapolation factors include (assuming technical supervisor has qualified as expert according to 702, etc.), time of stop, time of test and the individual factors, e.g. time of last drink and that the technical supervisor can explain the theory and technique followed;

(4) Dye vs. State – A non-certified officer cannot testify to HGN results;

(5) Kelly/Hartman – Breath test is admissible if 3rd prong followed in that there was a proper following of technique applying the theory. (Court takes judicial notice of 724.064).

A court reporter will be available to have every aspect of a trial, motion, or hearing present and no formal request is required.

The Order of Discovery orders:

1. the prosecutor to be under a continuing duty to disclose any information which the Court orders but which the State at present does not possess at this time; and
2. the Court may prohibit the State from introducing evidence at trial which the Court orders the State to reveal but it fails to do so.

GRANTED/DENIED as per court's notation in the body of motion. State to produce at least thirty (30) days prior to trial or when it first has in its possession. Burden on defendant to make all arrangements to obtain items granted and to seek non-compliance hearing.

SIGNED on _____.

Juli A. Mathew, Judge
County Court at Law No. 3