

Case No. _____

THE STATE OF TEXAS

§

IN THE DISTRICT COURT

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V.

§

OF HARRIS COUNTY, TEXAS

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§

_____ JUDICIAL DISTRICT

**MOTION FOR DISCOVERY AND INSPECTION
OF RECORDS RELATED TO THE BLOOD TESTING IN THIS CASE**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, the above referenced Defendant, by and through the undersigned counsel, and moves this Court to allow and order the discovery set forth below. These requests are brought pursuant to:

1. TEX. CODE CRIM. PRO ANN art. 39.14.
2. TEX. TRANS. CODE § 724.018, which mandates the disclosure upon request of “full information concerning the analysis of the specimen shall be made available to the person or the person's attorney.”
3. TEX. R. EVID 705(a), which provides for the court to order pretrial disclosure of all facts and data on which an expert will rely in rendering an opinion rather than waiting until cross examination when disclosure would materially delay continuation of trial.
4. The Due Process Clause of the 14th Amendment of the United States Constitution and Article I, §§ 13 and 19 of the Texas Constitution.
5. The right to effective assistance of counsel, the right to be informed of the nature of the accusation, the right of confrontation and cross-examination and the right to compulsory process as guaranteed by the Sixth Amendment of the United States Constitution and Article I, §

10 of the Texas Constitution. Without the items sought by this discovery, Defendant and his counsel cannot evaluate the validity of the test pretrial as an essential component of developing a trial strategy that would cast doubt on the reliability and believability of the testing in this case. Moreover, because Defendant must, when requested, identify the expert witnesses he will use at trial, pretrial information concerning the testing is required to retain and identify pretrial the necessary expert witnesses that will be needed at trial.

Defendant seeks an order requiring the State's attorney and the State's agents to produce and permit examination, inspection and copying by Defendant, undersigned counsel, co-counsel, and experts employed by the Defendant, counsel or co-counsel of the following items.

Protocols, Methods, and Standard Operating Procedures

1. The general laboratory protocol or standard operating procedures manual, by whatever name it is known.
2. The protocol, method, and standard operating procedure, by whatever name it is known, specific to the test used in this case.
3. The protocol for the calibration of the machine(s) used to test the sample in this case.
4. The protocol for calibration of all equipment, including flasks, containers, pipettes, balances or other equipment used in testing the sample at issue in this case.
5. The protocol for the preparation of all samples, solutions, reagents, mixtures, or other substances used as, as part of, or in relation to or as internal standards, controls, mixtures, or standards in the batch in which the sample in this case was run.
6. The quality control protocol for all solutions, reagents, mixtures, or other substances used as, as part of, or in relation to internal standards, controls, mixtures, or standards in the batch in which the sample in this case was run.

Method Validation and Parameters

7. Documentation evidencing validation of every method contained within the protocols

applicable to the test in this case or used on the specimen in this case. This specifically includes methods and protocols used in relation to the test in this case, calibration of all the equipment used in relation to the test in this case, used with respect to the preparation of all solutions, reagents, mixtures, or other substances used as, as part of, or in relation to or as internal standards, controls, mixtures, or standards in the batch in which the sample in this case was run, and all protocols and methods contained in items 1 through 6 as it relates to the testing in this case.

8. The raw electronic data files produced by the gas chromatograph (GC) used in this case (and generated or stored on attached software) from the sample in this case for all samples, internal standards, standards, mixtures, and controls run in the batch in which the sample in this case was run.
9. Documentation evidencing and reflecting the machine settings and parameters, by whatever name(s) known, used by the GC used in this case (and generated or stored on attached software) on the sample in this case for all samples, internal standards, standards, mixtures, and controls run in the batch in which the sample in this case was run.
10. Documentation evidencing and reflecting the integration settings, values, and parameters, by whatever name(s) known, used by the GC used in this case (and generated or stored on attached software) on the sample in this case for all samples, internal standards, standards, mixtures, and controls run in the batch in which the sample in this case was run.

The Batch in This Case

11. The chromatograms produced from all samples, internal standards, standards, mixtures, and controls run in the batch in which the sample in this case was run.
12. Any logs, reports or spreadsheets, or other documents, in whatever form, reflecting the analytical results of all samples, internal standards, standards, mixtures, and controls run in the batch in which the sample in this case was run.
13. All lab notes, case files, case reports, or bench notes, by whatever name(s) known, and in whatever form, as well as all documents contained in the testing folder specific to the test in this case. This includes a copy of the case or testing folder itself, if it contains any notations or entries. These documents should be produced as one group of items so that an independent analyst can know everything contained within the case folder.
14. All chain of custody documents and records, whether maintained manually or electronically generated, specific to the specimen(s) in this case and to the case folder in this case.
15. All documents, whether manually maintained or electronically recorded, reflecting,

evidencing, or concerning, the identity of any person(s) involved in the acquisition, transportation, transmittal, storage, analysis, disposal, or other possession or manipulation of the specimen(s) from which the analysis in this case was performed.

16. All documents, including emails, reflecting communications within the lab or between lab personnel and others outside the lab regarding the drafting or editing of any audit or quality control report or related to the analysis or specimens in this case.
17. If the lab received more than one vial or container of blood or other substance, records reflecting which vial was tested in this case.

The Machine(s) in This Case

18. Documents reflecting the brand and model number of the machine, and all attached or integrated components, that was used for testing in this case. For example, if this test was done by gas chromatography, then this requests the brand and model of the GC, the auto sampler, if one was used, the flame ionization detector, if one was used, and the mass spectrometer, if one was used -- all of which would be considered attached or integrated components of the machine used to conduct the test.
19. The operator's manual for whatever machine and attached or integrated components were used to test the sample in this case. For example, if this test was done by gas chromatography, then this requests the protocol or operator's manual of the GC, the auto sampler, if one was used, the flame ionization detector, if one was used, and the mass spectrometer, if one was used -- all of which would be considered attached or integrated components of the machine used to conduct the test.
20. Linearity plots for the GC used in this case from three years prior to the test in this case to the present.
21. All warranties for all machines, and all attached or integrated components, used for testing the sample or any standard or control used in the batch in which this sample was tested.

Calibration of the Machine

22. All calibration results and chromatograms for calibrations on the machine on which the sample in this case was tested -- for 60 days before the test at issue until 60 days after the test at issue, or to the present if less than 60 days.
23. All logs, reports, spreadsheets, or other documents, in whatever form, reflecting the calibration of all equipment including balances, flasks, containers, pipettes, or other equipment used in testing the sample at issue in this case.
24. Records reflecting the calibration of weights on any balance or instrument related to or

used in blood alcohol testing for three years before the test in this case to the present.

Quality Control and Assurance

25. All logs, reports, spreadsheets, or other documents in whatever form, reflecting quality control and assurance testing of all equipment including balances, flasks, containers, pipettes, or other equipment used in testing the sample at issue in this case.
26. All records reflecting internal testing or quality control testing of all substances and solutions, reagents, or mixtures used as, as part of, or in relation to samples, internal standards, controls, mixtures, or standards in the batch in which the sample in this case was run.
27. If any solution used in any sample, internal standard, control, mixture, or standard in the batch in which the sample in this case was run was purchased from an outside supplier, any quality control certificate provided by the supplier or manufacturer with or applicable to such solution as well as all internal testing or quality control documentation applicable to such item.
28. Documents reflecting the expiration date of all externally purchased solutions or reagents as well as all internally made solutions or reagents used in the batch in which the sample in this case was tested.
29. All balance quality control records on any balance instrument related to or used in blood alcohol testing in relation to the sample in this case for three years before the test in this case to the present.
30. All refrigeration logs, reports, or other documents in whatever form, for all refrigerated compartments in which the sample, internal standards, controls, mixtures, standards, and reagents used in or in relation to the analysis in this case were stored or kept at any time.

Proficiency Testing

31. All proficiency testing results for the section of the laboratory testing the sample in this case as well as for the person who conducted the testing in this case -- both for the three years preceding the test and for any such testing since the testing in this case, including:
 1. Any and all submission documents received from proficiency testing entities

relating to proficiency testing with respect to the analyst in this case.

2. Any and all chromatograms and related documentation (including the calibration chromatograms and all other chromatograms in the batch of the samples comprising the proficiency testing) of the proficiency samples tested by the analyst in this case.
3. Any and all internal documents, including memorandums, emails or other correspondence, relating to the full chain of custody (both before and after submission) and submission of the allegedly unknown proficiency samples to the analyst who tested the samples in this case.
4. Any and all documents contained in the case file for the proficiency tests of the allegedly unknown proficiency samples analyzed by the analyst who tested the samples in this case.
5. Any and all documents reflecting submission of the allegedly unknown proficiency samples analyzed by the analyst who tested the samples in this case to the entity conducting the proficiency testing.
6. Any and all documents received from the entity conducting the proficiency testing with respect to results of the proficiency testing relating to the analyst who tested the samples in this case. This specifically includes the summary report of expected results for the proficiency testing (and the manufacturer's information sheet) against which the proficiency test results are judged.
7. Any and all documents received from the entity conducting the proficiency testing relating to the analyst who tested the samples in this case indicating, reflecting, or evidencing the range of results for all participants in the proficiency testing.
8. To the extent that documents responsive to any prior portion of this order do not identify the analyst who tested the samples in this case, any and all documents identifying the analyst who tested the samples in this case and relating non-name identifiers to the name of the analyst in this case. This item specifically requires the production of any and all documents sufficient to allow the identification of the analyst in this case from any and all documents that simply list numbers or other non-name identifiers.
9. Any and all documents relating to internal communications, in whatever form, relating to the results of the proficiency testing from or to the analyst in this case.
10. Any and all documents, as set forth above, in whatever form, relating to retesting of proficiency samples related to the analyst who analyzed the samples in this case.

11. Any and all documents reflecting preliminary beta testing of samples used for later proficiency testing with respect to proficiency testing within the scope of this order.

Maintenance and Repair Records

32. All internally generated maintenance or repair records or logs for the machine and all attached or integrated components for the two years preceding the test in this case and since the test in this case.
33. All documents, apart from those in the prior item, evidencing or concerning maintenance for or repair of the machine, and all attached or integrated components, by any outside repair facility or source -- for two years preceding the test in this case and at any time since the test in this case.
34. All records, other than those responsive to the prior two items, evidencing or concerning the return of the machine to the manufacturer or supplier for maintenance or repair -- for two years before the testing in this case and at any time since the test in this case.
35. Documents evidencing the purchase of parts to be used in the operation or maintenance of the machine, and all attached or integrated components, used in the testing in this case -- for two years before the test in this case and at any time since the test in this case.

Audits and Accreditation

36. All documents reflecting lab accreditation (for forensic labs, this specifically includes, without limitation ASCLD and DPS accreditation) and all reports to or of, or communications to and from, any accrediting entity in the three years prior to the test in this case and at any time since the test in this case. This specifically requests not only the accreditation certificate, but also the initial evaluation and final report(s) generated as part of the accreditation process. The documents should include any accreditation in effect at the time of the test in this case as well as any accreditation subsequent to the time of the test in this case.
37. Any and all documents in whatever form reflecting correspondence or communications between the lab and any accrediting entity with respect to accreditation or continuation or renewal of accreditation.
38. All annual accreditation audit evaluations and reports prepared for ASCLD-LAB since the lab's last complete accreditation.
39. All reports of internal audits for the last three years or since the time of the test in this case of the section of the laboratory performing the test used in this case as well as the report of any overall lab audit that includes machines, components, chemicals, reagents, storage facilities, or anything else used in connection with the testing of the sample, internal standards, controls, mixtures, or standards in the batch in this test.

40. All reports of external audits for the three years preceding the test in this case and at any time since the test in this case of the section of the laboratory performing the test used in this case as well as the report of any overall lab audit that includes machines, components, chemicals, storage facilities, or anything else used in connection with the testing of the sample, internal standard, mixtures, standards, and controls in the batch in this test.

Log Books and Records

41. Log Book records for three years prior to the test in this case to the present for:
- A. The GC log book, by whatever name known, reflecting all maintenance and repair.
 - B. The log books for all equipment ancillary to the GC (e.g., auto sampler, FID, etc.).
 - C. The balance log book for any balance used for any equipment used in blood alcohol testing.
 - D. Ethanol or other Standards or controls.
 - E. N-propanol or other internal standard.
 - F. 95% (or pure) ethanol solution.
 - G. All Stock solutions.
 - H. NaCl or other salts or substances used in sample preparation,
 - I. Volatile Mixture standard
 - J. Negative Controls
 - K. Validation, verification, and use of all externally purchased solutions.

Other Lab Documents

42. Any and all testimony evaluations for any person listed on chain of custody documents in this case.
43. All Quality Action Plans for or regarding blood alcohol testing of or for any person listed on chain of custody documents in this case from three years prior to the test in this case to the present.
44. Annual self assessment reports from three years prior to the test in this case to the present for the section of the lab testing the sample in this case.
45. All deviation request forms regarding any and all aspects of blood alcohol testing from three years prior to the test in this case to the present.
46. All Client complaints and client complaint logs regarding blood alcohol testing or

persons involved in blood alcohol testing of the sample in this case from three years prior to the test in this case to the present.

47. Client survey results regarding blood alcohol testing from three years prior to the test in this case to the present.
48. Annual vault inspection reports and records from three years prior to the test in this case to the present for any vault or storage facility in which the sample in this case was stored.
49. Regarding any person listed on chain of custody documents in this case:
 - A. Any and all training records.
 - B. Employment application.
 - C. Any and all Curriculums Vitae (CV's) and resumes.
 - D. Performance reviews for three years prior to the test in this case to the present.
50. Laboratory Staff and Meeting Documentation related to blood alcohol testing for three years prior to the test in this case to the present.
51. Critical Supply and Service List related to blood alcohol testing for three years prior to the test in this case to the present.
52. Approved Vendor List related to blood alcohol testing including for the critical Supply and Services List for three years prior to the test in this case to the present.

Inspection

53. An opportunity for the defense and defense experts to view, visually inspect, diagram and photographically record the GC and all ancillary equipment used to test the sample in this case as well as the area, and all immediately adjacent and adjoining areas, in which the machine(s) used in this case are kept. This specifically also includes all other electronic devices in the room, as well as adjoining (side, above or below) and nearby rooms (within approx. 100 feet) which may emit radio frequency interference, i.e., photocopying machines, radio transmitters, microwave ovens, computer terminals, etc.

In support of this Motion, Defendant will show:

1. The matters requested are in the exclusive possession, custody and control of the State of Texas by and through its agents, a law enforcement agency, or the prosecuting attorney's office, and the Defendant has no other way to obtain said information other than through this

motion and an order from this court.

2. The items requested are not privileged.

3. The items requested are material and necessary for the preparation of the defense in this case.

4. Absent all of the requested discovery, Defendant's rights under Article 39.14 of the Texas Code of Criminal Procedure, Article 1, Section 10 of the Texas Constitution, and the Fourth, Fifth, Sixth, and Fourteenth Amendments to the United States Constitution, and Texas Transportation Code § 724.018 will be violated to his irreparable injury and thus, will deprive the Defendant of a fair trial.

5. This Motion is made in good faith and not for delay.

WHEREFORE, PREMISES CONSIDERED, Defendant respectfully prays that this motion be granted in its entirety.

Respectfully submitted,

SCHNEIDER & McKINNEY, P.C.

W. Troy. McKinney
T.B.C. No. 13725020
440 Louisiana
Suite 800
Houston, Texas 77002
713-951-994

713-224-6008 (fax)

ATTORNEY FOR DEFENDANT

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the attached and foregoing document has been served on the Harris County District Attorney's Office, 1201 Franklin, Suite 600, Houston, Texas 77002, by hand delivering a copy to the Assistant District Attorney handling this case on this __ day of _____, 20____.

W. Troy McKinney

Case No. _____

THE STATE OF TEXAS

V.

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IN THE DISTRICT COURT

OF HARRIS COUNTY, TEXAS

_____ JUDICIAL DISTRICT

ORDER

Before the Court is the Defendant's Motion for Discovery. The Court is of the opinion that the motion is well taken and should be GRANTED.

IT IS ORDERED that the Houston Police Department, 1200 Travis, Houston, Texas, produce to the Defendant, through his counsel, W. Troy McKinney, 440 Louisiana, Suite 800, Houston, Texas 77002, on or before 5 p.m. on the tenth day after the date of this order, as follows.

1. The general laboratory protocol or standard operating procedures manual, by whatever name it is known.

_____ GRANTED _____ DENIED

2. The protocol, method, and standard operating procedure, by whatever name it is known, specific to the test used in this case.

_____ GRANTED _____ DENIED

3. The protocol for the calibration of the machine(s) used to test the sample in this case.

_____ GRANTED _____ DENIED

4. The protocol for calibration of all equipment, including flasks, containers, pipettes, balances or other equipment used in testing the sample at issue in this case.

_____ GRANTED _____ DENIED

5. The protocol for the preparation of all samples, solutions, reagents, mixtures, or other substances used as, as part of, or in relation to or as internal standards, controls, mixtures, or standards in the batch in which the sample in this case was run.

_____ GRANTED _____ DENIED

6. The quality control protocol for all solutions, reagents, mixtures, or other substances used as, as part of, or in relation to internal standards, controls, mixtures, or standards in the batch in which the sample in this case was run.

_____ GRANTED _____ DENIED

7. Documentation evidencing validation of every method contained within the protocols applicable to the test in this case or used on the specimen in this case. This specifically includes methods and protocols used in relation to the test in this case, calibration of all the equipment used in relation to the test in this case, used

with respect to the preparation of all solutions, reagents, mixtures, or other substances used as, as part of, or in relation to or as internal standards, controls, mixtures, or standards in the batch in which the sample in this case was run, and all protocols and methods contained in items 1 through 6 as it relates to the testing in this case.

_____ GRANTED _____ DENIED

8. The raw electronic data files produced by the gas chromatograph (GC)used in this case (and generated or stored on attached software) from the sample in this case for all samples, internal standards, standards, mixtures, and controls run in the batch in which the sample in this case was run.

_____ GRANTED _____ DENIED

9. Documentation evidencing and reflecting the machine settings and parameters, by whatever name(s) known, used by the GC used in this case (and generated or stored on attached software) on the sample in this case for all samples, internal standards, standards, mixtures, and controls run in the batch in which the sample in this case was run.

_____ GRANTED _____ DENIED

10. Documentation evidencing and reflecting the integration settings, values, and parameters, by whatever name(s) known, used by the GC used in this case (and generated or stored on attached software) on the sample in this case for all

samples, internal standards, standards, mixtures, and controls run in the batch in which the sample in this case was run.

_____ GRANTED _____ DENIED

11. The chromatograms produced from all samples, internal standards, standards, mixtures, and controls run in the batch in which the sample in this case was run.

_____ GRANTED _____ DENIED

12. Any logs, reports or spreadsheets, or other documents, in whatever form, reflecting the analytical results of all samples, internal standards, standards, mixtures, and controls run in the batch in which the sample in this case was run.

_____ GRANTED _____ DENIED

13. All lab notes, case files, case reports, or bench notes, by whatever name(s) known, and in whatever form, as well as all documents contained in the testing folder specific to the test in this case. This includes a copy of the case or testing folder itself, if it contains any notations or entries. These documents should be produced as one group of items so that an independent analyst can know everything contained within the case folder.

_____ GRANTED _____ DENIED

14. All chain of custody documents and records, whether maintained manually or electronically generated, specific to the specimen(s) in this case and to the case folder in this case.

_____ GRANTED _____ DENIED

15. All documents, whether manually maintained or electronically recorded reflecting, evidencing, or concerning, the identity of any person(s) involved in the acquisition, transportation, transmittal, storage, analysis, disposal, or other possession or manipulation of the specimen(s) from which the analysis in this case was performed.

_____ GRANTED _____ DENIED

16. All documents, including emails, reflecting communications within the lab or between lab personnel and others outside the lab regarding the drafting or editing of any audit or quality control report or related to the analysis or specimens in this case.

_____ GRANTED _____ DENIED

17. If the lab received more than one vial or container of blood or other substance, records reflecting which vial was tested in this case.

_____ GRANTED _____ DENIED

18. Documents reflecting the brand and model number of the machine, and all attached or integrated components, that was used for testing in this case. For example, if this test was done by gas chromatography then this requests the brand and model of the GC, the auto sampler, if one was used, the flame ionization detector, if one was used, and the mass spectrometer, if one was used -- all of which would be considered attached or integrated components of the machine used to conduct the test.

_____ GRANTED _____ DENIED

19. The operator's manual for whatever machine and attached or integrated components were used to test the sample in this case. For example, if this test was done by gas chromatography, then this requests the protocol or operator's manual of the GC, the auto sampler, if one was used, the flame ionization detector, if one was used, and the mass spectrometer, if one was used -- all of which would be considered attached or integrated components of the machine used to conduct the test.

_____ GRANTED _____ DENIED

20. Linearity plots for the GC used in this case from three years prior to the test in this case to the present.

_____ GRANTED _____ DENIED

21. All warranties for all machines, and all attached or integrated components, used for testing the sample or any standard or control used in the batch in which this sample was tested.

_____ GRANTED _____ DENIED

22. All calibration results and chromatograms for calibrations on the machine on which the sample in this case was tested -- for 60 days before the test at issue until 60 days after the test at issue, or to the present if less than 60 days.

_____ GRANTED _____ DENIED

23. All logs, reports, spreadsheets, or other documents, in whatever form, reflecting the calibration of all equipment including balances, flasks, containers, pipettes, or other equipment used in testing the sample at issue in this case.

_____ GRANTED _____ DENIED

24. Records reflecting the calibration of weights on any balance or instrument related to or used in blood alcohol testing for three years before the test in this case to the present.

_____ GRANTED _____ DENIED

25. All logs, reports, spreadsheets, or other documents in whatever form, reflecting quality control and assurance testing of all equipment including balances, flasks, containers, pipettes, or other equipment used in testing the sample at issue in this case.

_____ GRANTED _____ DENIED

26. All records reflecting internal testing or quality control testing of all substances and solutions, reagents, or mixtures used as, as part of, or in relation to samples, internal standards, controls, mixtures, or standards in the batch in which the sample in this case was run.

_____ GRANTED _____ DENIED

27. If any solution used in any sample, internal standard, control, mixture, or standard in the batch in which the sample in this case was run was purchased from an outside supplier, any quality control certificate provided by the supplier or manufacturer with or applicable to such solution as well as all internal testing or quality control documentation applicable to such item.

_____ GRANTED _____ DENIED

28. Documents reflecting the expiration date of all externally purchased solutions or reagents as well as all internally made solutions or reagents used in the batch in which the sample in this case was tested.

_____ GRANTED _____ DENIED

29. All balance quality control records on any balance instrument related to or used in blood alcohol testing in relation to the sample in this case for three years before the test in this case to the present.

_____ GRANTED _____ DENIED

30. All refrigeration logs, reports, or other documents in whatever form, for all refrigerated compartments in which the sample, internal standards, controls, mixtures, standards, and reagents used in or in relation to the analysis in this case were stored or kept at any time.

_____ GRANTED _____ DENIED

31. All proficiency testing results for the section of the laboratory testing the sample in this case as well as for the person who conducted the testing in this case -- both for the three years preceding the test and for any such testing since the testing in this case, including:

1. Any and all submission documents received from proficiency testing entities relating to proficiency testing with respect to the analyst in this case.
2. Any and all chromatograms and related documentation (including the calibration chromatograms and all other chromatograms in the batch of the samples comprising the proficiency testing) of the proficiency samples tested by the analyst in this case.
3. Any and all internal documents, including memorandums, emails or other correspondence, relating to the full chain of custody (both before and after submission) and submission of the allegedly unknown proficiency samples

to the analyst who tested the samples in this case.

4. Any and all documents contained in the case file for the proficiency tests of the allegedly unknown proficiency samples analyzed by the analyst who tested the samples in this case.
5. Any and all documents reflecting submission of the allegedly unknown proficiency samples analyzed by the analyst who tested the samples in this case to the entity conducting the proficiency testing.
6. Any and all documents received from the entity conducting the proficiency testing with respect to results of the proficiency testing relating to the analyst who tested the samples in this case. This specifically includes the summary report of expected results for the proficiency testing (and the manufacturer's information sheet) against which the proficiency test results are judged.
7. Any and all documents received from the entity conducting the proficiency testing relating to the analyst who tested the samples in this case indicating, reflecting, or evidencing the range of results for all participants in the proficiency testing.
8. To the extent that documents responsive to any prior portion of this order do not identify the analyst who tested the samples in this case, any and all documents identifying the analyst who tested the samples in this case and relating non-name identifiers to the name of the analyst in this case. This item specifically requires the production of any and all documents sufficient to allow the identification of the analyst in this case from any and all documents that simply list numbers or other non-name identifiers.
9. Any and all documents relating to internal communications, in whatever form, relating to the results of the proficiency testing from or to the analyst in this case.
10. Any and all documents, as set forth above, in whatever form, relating to retesting of proficiency samples related to the analyst who analyzed the samples in this case.
11. Any and all documents reflecting preliminary beta testing of samples used for later proficiency testing with respect to proficiency testing within the scope of this order.

_____ GRANTED _____ DENIED

32. All internally generated maintenance or repair records or logs for the machine and all attached or integrated components for the two years preceding the test in this case and since the test in this case.

_____ GRANTED _____ DENIED

33. All documents, apart from those in the prior item, evidencing or concerning maintenance for or repair of the machine, and all attached or integrated components, by any outside repair facility or source -- for two years preceding the test in this case and at any time since the test in this case.

_____ GRANTED _____ DENIED

34. All records, other than those responsive to the prior two items, evidencing or concerning the return of the machine to the manufacturer or supplier for maintenance or repair -- for two years before the testing in this case and at any time since the test in this case.

_____ GRANTED _____ DENIED

35. Documents evidencing the purchase of parts to be used in the operation or maintenance of the machine, and all attached or integrated components, used in the testing in this case -- for two years before the test in this case and at any time since the test in this case.

_____ GRANTED _____ DENIED

36. All documents reflecting lab accreditation (for forensic labs, this specifically includes, without limitation ASCLD and DPS accreditation) and all reports to or of, or communications to and from, any accrediting entity in the three years prior to the test in this case and at any time since the test in this case. This specifically requests not only the accreditation certificate, but also the initial evaluation and final report(s) generated as part of the accreditation process. The documents should include any accreditation in effect at the time of the test in this case as well as any accreditation subsequent to the time of the test in this case.

_____ GRANTED _____ DENIED

37. Any and all documents in whatever form reflecting correspondence or communications between the lab and any accrediting entity with respect to accreditation or continuation or renewal of accreditation.

_____ GRANTED _____ DENIED

38. All annual accreditation audit evaluations and reports prepared for ASCLD-LAB since the lab's last complete accreditation.

_____ GRANTED _____ DENIED

39. All reports of internal audits for the last three years or since the time of the test in this case of the section of the laboratory performing the test used in this case as well as the report of any overall lab audit that includes machines, components, chemicals, reagents, storage facilities, or anything else used in connection with the testing of the sample, internal standards, controls, mixtures, or standards in the batch in this test.

_____ GRANTED _____ DENIED

40. All reports of external audits for the three years preceding the test in this case and at any time since the test in this case of the section of the laboratory performing the test used in this case as well as the report of any overall lab audit that includes machines, components, chemicals, storage facilities, or anything else used in connection with the testing of the sample, internal standard, mixtures, standards, and controls in the batch in this test.

_____ GRANTED _____ DENIED

41. Log Book records for three years prior to the test in this case to the present for:
- A. The GC log book, by whatever name known, reflecting all maintenance and repair.
 - B. The log books for all equipment ancillary to the GC (e.g., auto sampler, FID, etc.).
 - C. The balance log book for any balance used for any equipment used in blood alcohol testing.
 - D. Ethanol or other Standards or controls.
 - E. N-propanol or other internal standard.
 - F. 95% (or pure) ethanol solution.
 - G. All Stock solutions.
 - H. NaCl or other salts or substances used in sample preparation,
 - I. Volatile Mixture standard
 - J. Negative Controls
 - K. Validation, verification, and use of all externally purchased solutions.

_____ GRANTED _____ DENIED

42. Any and all testimony evaluations for any person listed on chain of custody

documents in this case.

_____ GRANTED _____ DENIED

43. All Quality Action Plans for or regarding blood alcohol testing of or for any person listed on chain of custody documents in this case from three years prior to the test in this case to the present.

_____ GRANTED _____ DENIED

44. Annual self assessment reports from three years prior to the test in this case to the present for the section of the lab testing the sample in this case.

_____ GRANTED _____ DENIED

45. All deviation request forms regarding any and all aspects of blood alcohol testing from three years prior to the test in this case to the present.

_____ GRANTED _____ DENIED

46. All Client complaints and client complaint logs regarding blood alcohol testing or persons involved in blood alcohol testing of the sample in this case from three years prior to the test in this case to the present.

_____ GRANTED _____ DENIED

47. Client survey results regarding blood alcohol testing from three years prior to the test in this case to the present.

_____ GRANTED _____ DENIED

48. Annual vault inspection reports and records from three years prior to the test in this case to the present for any vault or storage facility in which the sample in this case was stored.

_____ GRANTED _____ DENIED

49. Regarding any person listed on chain of custody documents in this case:

- A. Any and all training records.
- B. Employment application.
- C. Any and all Curriculum Vitae (CV's) and resumes.
- D. Performance reviews for three years prior to the test in this case to the present.

_____ GRANTED _____ DENIED

50. Laboratory Staff and Meeting Documentation related to blood alcohol testing for three years prior to the test in this case to the present.

_____ GRANTED _____ DENIED

51. Critical Supply and Service List related to blood alcohol testing for three years prior to the test in this case to the present.

_____ GRANTED _____ DENIED

52. Approved Vendor List related to blood alcohol testing including for the critical Supply and Services List for three years prior to the test in this case to the present.

_____ GRANTED _____ DENIED

53. An opportunity for the defense and defense experts to view, visually inspect, diagram and photographically record the GC and all ancillary equipment used to test the sample in this case as well as the area, and all immediately adjacent and adjoining areas, in which the machine(s) used in this case are kept. This specifically also includes all other electronic devices in the room, as well as adjoining (side, above or below) and nearby rooms (within approx. 100 feet) which may emit radio frequency interference, i.e., photocopying machines, radio transmitters, microwave ovens, computer terminals, etc.

_____ GRANTED _____ DENIED

It is further **ORDERED** that any evidence within the scope of the items granted above be provided by the State to defendant's attorney at his office, 440 Louisiana, Suite 800, Houston, Texas 77002, on or before 5 p.m. on the tenth day after the date of this order.

It is further **ORDERED** that this order is continuing and the State will immediately make available to the Defendant's attorney any subsequent discoverable matter within the scope of the above granted items within 48 hours of the time it learns of or obtains such discoverable matter.

It is further **ORDERED** that any items herein not produced in violation of this order shall be and are excluded from evidence in this case if offered by the State.

It is further **ORDERED** that testimony concerning the items not produced in violation of this order or the information contained in those items shall be and are excluded from evidence in this case if offered by the State.

It is further **ORDERED** that all orders herein for viewing, visual inspection, diagraming, and photographic recording are to occur during normal business hours at a mutually agreeable time, but in no event later than 10 business days after Defense counsel transmits this order to the law enforcement agency involved and specifically requests an agreeable time to view, visually inspect, diagram, and photographically record the items permitted in this order.

It is further **ORDERED** that any law enforcement agency, or person or entity having a contract with such law enforcement agency, shall be allowed as a copy cost that amount, and only that amount, that would be allowable under the Texas Public Information Act for copying the documents required to be produced by this order.

Signed and entered this _____ day of _____, 20____.

JUDGE PRESIDING

