

TEXAS FORENSIC SCIENCE COMMISSION

Justice Through Science

CRIMINAL COURT DISCOVERY ORDERS:
A STUDY PREPARED FOR THE
TEXAS FORENSIC SCIENCE COMMISSION

January 2015



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Criminal Court Discovery Orders: a Study Prepared for the Texas Forensic Science Commission

I. Problem:

In criminal cases being litigated in Texas courts, motions for discovery are being heard by judges, wherein the attorney for one side seeks records from the crime laboratory that performed the testing of the evidence. Many of these motions call for an enormous volume of crime laboratory records, and it is burdensome on the laboratory to provide them, taking anywhere from four to sixteen hours of a laboratory employee's time to recover and provide the records.

II. Objective:

Evaluate some of the discovery orders received by Texas crime laboratories and determine what requested information is potentially significant to the defense, and then propose a model discovery motion/order. Focus on cases involving the offense of DWI.

Glossary of Forensic Terms in Discovery Orders

SOP: standard operating procedure. The written procedure followed by laboratory personnel to analyze the evidence sample. May also be called the method or protocol.

Method Validation: The method used to analyze the evidence is first validated by analyzing a series of known samples (for instance samples containing a known concentration of alcohol), and then testing the method to verify that it provides the correct answer, i.e., alcohol concentration, on a known sample.

Gas Chromatograph: The instrument commonly used for analyzing blood samples for alcohol. A sample is injected into the instrument with a syringe, the compound(s) within the sample are pushed through a column in an oven within the instrument by a carrier gas, then the compound(s) come into contact with a detector at the end of the column. When the compound is detected, a signal is recorded. A chromatogram drawing or chart is produced and stored on the instrument computer. One axis of the chromatogram chart displays the amount of the compound detected as a peak, while the other axis measures the time required for the compound to move through the instrument column. Chromatography separates the compounds, if more than one is in the sample, by either their size or polarity.

Calibration: An instrument used for measurements, such as a laboratory balance for measuring weights, or a volumetric pipet for measuring volumes, is calibrated or tested to verify that it is measuring properly. Laboratories may have these instruments calibrated by an outside vendor.

Internal Standard: A laboratory standard is a reference material that may be used to check to see that an instrument or measuring device is performing properly. An internal standard is a reference compound used when performing chromatography. It can serve as a reference for measuring the amount of ethyl alcohol in a blood sample. Typically another alcohol, such as propyl alcohol, is used as the internal standard when analyzing ethyl alcohol.

Control: When one is using a gas chromatograph for testing blood samples for ethyl alcohol, a control sample of a known concentration of ethyl alcohol is analyzed first to test the instrument performance. Raw Electronic Data: The electronic output from the detector of a gas chromatograph, for instance, is raw data acquired by the instrument computer. This data is then converted by the instrument operating software into a chromatogram, which yields the results of the test of the sample.

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Machine Settings: On a gas chromatograph instrument, for instance, the operator sets certain operating parameters or settings, including the oven temperature, the flow rate of the carrier gas, and the detector temperature. These settings affect the analysis of the alcohol, including the speed or rate at which the alcohol travels through the instrument column.

Operator's Manual: A laboratory instrument is typically provided by the manufacturer with an operator's manual. This is a set of instructions for operating the instrument, including how to set all of the parameters and how to perform routine maintenance. These manuals are typically copyrighted. The laboratory may also prepare its own version of an operating manual for the instrument.

Linearity Plot: A plot of the alcohol concentration values obtained on a gas chromatograph when analyzing a series of alcohol standards. The plot of a series of ethyl alcohol standards, such as standards having concentrations of 0.00, 0.05, 0.10, 0.15, 0.20, etc., where each standard contains the same 0.05% ethanol more than the last, should result in a linear curve. This is a quality control check on the instrument.

Refrigeration Log: A record of the temperature in a refrigerator when it is checked at some time intervals.

Case File: A case in a crime laboratory is an evaluation of evidence coming from a single offense. For instance, a blood sample from a single DWI offense would constitute one case. The case file would be all of the records of the analysis of that evidence sample, and usually would include the lab report and the chain-of-custody.

Proficiency Test: This is a sample to be tested in a laboratory by an analyst, for the purpose of testing the analyst's ability to analyze evidence. The result is not given to the analyst until well after his/her results are reported. Crime laboratory accrediting agencies require analysts to complete at least one proficiency test annually. The test result is provided to the test provider, when an external proficiency test is obtained from a commercial vendor.

Batch Records: Blood samples tested for ethyl alcohol or for drugs are typically analyzed in a batch, rather than alone. A batch of samples is typically loaded into a sample rack along with a series of known alcohol standards and controls. A queue is set up by logging the sample numbers into the instrument computer, noting the position of each sample in the sample rack. Once the instrument completes the analysis of the batch of samples, the batch of records, usually gas chromatograms of each sample in the batch, are available and stored on the computer.

Laboratory Accreditation: Accreditation of crime laboratories is available from several sources, including the American Society of Crime Laboratory Directors, Laboratory Accreditation Board (ASCLD-LAB). To attain accreditation, the crime laboratory must submit an application and be evaluated/inspected against an extensive list of requirements. The assessors/inspectors serve for the accrediting body and report their inspection results to that body. The purpose is to determine if a laboratory has sufficient quality control measures in place to indicate that it provides a quality analysis product.

Audits: An accredited laboratory must undergo audits annually to maintain its accreditation. Some audits must be conducted by an external source, meaning by individuals from outside the laboratory. Internal audits are those conducted by in-house staff. Both types of audits are performed in crime laboratories, and reports of those audits must be maintained.

Testimony Evaluation: One requirement of crime laboratory accreditation is that the testimony of analysts be monitored. A written monitoring form must be prepared and maintained, and the analyst must be apprised of the evaluation of their testimony. The purpose is to assist the analyst when needed to improve their delivery of information to a lay jury, and to ascertain that the analyst does not provide test results beyond those supported by the records in the case file.

Quality Action Plan: When a laboratory learns of a problem with an analytical procedure or with a laboratory instrument, such that the integrity of evidence testing is brought into question, a quality action plan is initiated. The typical plan first halts this type of testing, and a root cause is investigated to ascertain what caused the problem. A solution is sought and implemented, and an evaluation made to determine if the problem affected other cases. A written record of the quality action plan is maintained.

Deviation Request: All procedures followed in crime laboratories are required to be written. Occasions sometimes arise, such as when a unique type of evidence is encountered, when an analysis scheme or procedure requires a change in order to enable sufficient testing of the evidence material. This change is usually approved by laboratory management and documented, and is designated a deviation request.

Critical Supply: Those reagents and other supplies required for the testing of evidence for which the quality and integrity of the item may be critical to the testing performed.

Approved Vendor: An approved vendor is a supplier of critical supplies or services, such as instrument maintenance, which has met the laboratory's requirements for quality.

III. Discovery Orders

A sample of discovery orders received by crime laboratories in Texas are attached to this report. These include orders from Midland County, **Attachment A**, Tarrant County, **Attachment B**, and Harris County (apparently), **Attachment C**. These orders vary in the amount of documents requested.

Also attached are two Subpoena Duces Tecums from Tarrant County, which are commonly encountered by the crime laboratories in Tarrant County. These are included as **Attachment D**.

Finally, included as **Attachment E** is an **Agreed Court Order for Discovery and Inspection Related to Forensic Blood Alcohol Testing**. This agreed order was worked out between a member of the Department of Public Safety Crime Laboratory in Austin and both a prosecuting attorney and defense attorney in Brazos County.

IV. An Evaluation of Discovery Orders and Recommendation

Meetings were held during December 2014 and January 2015 with crime laboratory personnel in city, county, and state laboratories to discuss the issue of discovery orders. The personnel included Zoe Smith at the Texas Department of Public Safety Laboratory in Austin, Dr. Robert Johnson at the Tarrant County Medical Examiners Laboratory, and both Tom Stimpson and Jason Allison at the Fort Worth Police Department Forensics Laboratory, and Tony Arnold and Efrene Perez with the Austin Police Department Division of Forensic Sciences. Three other crime labs were provided a draft of this report to review, and conversations concerning it were conducted by telephone. From these meetings and conversations, an understanding was gained of the potential that an item of information, requested in a court order, would yield information significant to a criminal case. In addition, with each item requested in an order, the relative burden of retrieving and providing the information was ascertained. Also, it was learned that several local jurisdictions (counties) had engaged in similar projects to develop a standard discovery order, with varying levels of success.

A. Discovery Items That Should be Given as a Matter of Course

Following is a list of items laboratories believe should be given as a matter of course in a DWI case. The difficulty for a laboratory to retrieve and provide the discovery information for items depends on how the laboratory records and maintains the information.

Discovery Items	Comments
<p>1. The complete laboratory case file. This should include the following records:</p> <ul style="list-style-type: none"> a. Laboratory report b. Submission form received with the evidence identifying the name of the suspect, offense date and county, and inventory of the evidence c. Chain-of-custody of the evidence d. All records made concerning the testing of the evidence during its testing by the analyst e. All instrument charts prepared as part of the testing of the evidence (such as gas chromatograms) 	<p>Most, if not all crime laboratories have a laboratory information management system (LIMS) within which they maintain their case files. At least a portion of the case file is in the LIMS, and other documents can be scanned and added as a part of the case file within the LIMS. The case file should be relatively easy to provide.</p>
<p>2. Standard Operating Procedure used for testing the evidence</p>	<p>All laboratories in Texas are required to be accredited, and have their written SOPs stored in electronic fashion. Providing an SOP should be relatively easy.</p>
<p>3. If the sample was analyzed in a batch with other samples, then provide the documents (instrument charts) for the entire batch</p>	<p>Laboratories generally would test blood samples for ethyl alcohol in batches. The testing is performed on a Gas Chromatograph (GC), or a GC-Mass Spectrometer (GC-MS) instrument. Once a set of samples and standards and controls are loaded into the instrument, the run is started and the data collected and stored on the instrument computer. A chromatogram is produced for each sample, and the instrument computer calculates the ethyl alcohol concentration. Typically a laboratory would print out the chromatogram for each sample and place it in the case file for that case. In order to provide the chromatograms for an entire batch of samples, laboratories will have to store the entire batch electronically in some fashion, so that to provide this information, they won't have to go into numerous case files to retrieve the records. Once a laboratory stores the batch files, the batch records on blood alcohol tests should not be difficult to provide electronically.</p>

Discovery Items	Comments
<p>4. Records detailing the calibration of any instruments used to perform the testing of the evidence</p>	<p>The Gas Chromatograph is basically calibrated with each batch of samples analyzed, by many laboratories, as they include in the batch several positive ethanol controls as well as sample blanks (containing no alcohol). If not performed with each batch of samples, the laboratories calibrate the instrument either weekly or monthly. Retaining, retrieving, and providing these calibration records should not be difficult, as long as the lab has a systematic place to store them.</p>
<p>5. The analyst's training history, as indicated on a curriculum vitae</p>	<p>A laboratory is required to have and maintain a statement of qualifications, or curriculum vitae on each analyst who performs the testing of evidence. As long as this document is updated as the analyst acquires continuing education, this document can serve as the analyst's training record. This document can be easily maintained, retrieved, and provided.</p>
<p>6. The analyst's proficiency test results for three tests performed immediately before the evidence was tested.</p>	<p>A proficiency test sample, when analyzed by a forensic scientist, results in the creation of a proficiency test file containing much the same information as a case file. A laboratory may currently maintain the hard copy of the documents in this file. Those records can be scanned and maintained in electronic fashion. If so, they should not be difficult to provide.</p> <p>As indicated above, while some of these records can be easily retrieved and provided currently, others will require a laboratory to modify the way they maintain certain records, in order to make them more readily retrievable. A few crime laboratories in Texas have already obtained a software package that provides for the storage and organization of many quality assurance records. One such software system is called Qualtrax. The Tarrant County Medical Examiner Laboratory acquired this software around three years ago, reportedly set it up and optimized it for their use over about a one year period, and this has greatly reduced the time it takes them to respond to court discovery orders. For example, it takes their lab approximately four hours to respond to a discovery order, where a lab without this organization of records may need to spend as many as sixteen hours retrieving and preparing the discovery order response. Note that the Department of Public Safety acquired this software recently, and has begun the process of setting it up for use in its crime laboratories and breath alcohol testing program. Other laboratories use some other software product to assist with the organization and storage of electronic records, and perhaps within their LIMS system.</p>

B. Other Items Sometimes Included in Discovery Orders

In addition, the discovery orders we studied contain the following items, which we have ranked by the value to the court from the standpoint of the science in determining the fact issues surrounding the criminal case, and the degree of difficulty of providing the requested information. Laboratories ranked these items according to the following key:

Potential for Significance:	For Potential Burden on the Laboratory:
1 = most informative	1 = easiest to provide
2 = possibly informative in some cases	2 = challenging but doable
3 = may yield information in a small subset of cases	3 = moderately burdensome
4 = unlikely to be informative	4 = very challenging/clearly burdensome

Discovery Items	Ranking and Description
<p>7. Laboratory accreditation/audit records:</p> <ul style="list-style-type: none"> a. Certificate and/or letter noting the laboratory's accreditation with the period of the accreditation from the accrediting body b. Accreditation letters from the Department of Public Safety c. A list of any corrective actions required to achieve accreditation, as provided by the accrediting body, and the outcome of the actions taken by the laboratory. d. Any annual internal or external audit reports 	<p>Laboratory accreditation documents, as listed above. Both because crime laboratories in Texas are required to be accredited, and because accreditation is a measure of the laboratory's quality assurance system, these records have relevance and are ranked #2. If the request includes just those accreditation records noted above, then the laboratory should be able to provide them without difficulty so this is ranked #1.</p>
<p>8. Method validation studies. For instance, if the gas chromatograph was used to analyze the blood sample to determine the ethanol concentration, provide the records demonstrating the validation. A laboratory is required by accreditation standards to validate its methods. Those documents could be scanned and stored on a computer.</p>	<p>Method validation, which in the case of most, if not all crime labs, is of the gas chromatographic analysis of the sample for ethyl alcohol. It should be noted here that to attain accreditation, a laboratory has to provide method validation records for review by the accrediting body. So these records most likely have already been reviewed by a qualified external auditor. That being said, the scientific importance of validating an analytical method is high. The value to the attorneys of this information would be expected to be low, due to its previous scrutiny, so this is ranked as #3 in potential significance. The difficulty in providing these records would rank also as #3.</p>

Discovery Items	Ranking and Description
<p>9. The quality assurance policy regarding the validation of test procedures.</p>	<p>The laboratory's SOP for testing procedures, as in the method validation above. This request would rank as possibly informative, or a #2. This SOP would be easy for the lab to provide, so that would rank as a #1.</p>
<p>10. Instructions and records reflecting the testing of standards to obtain the linear response curve when testing different concentrations of ethanol.</p>	<p>Linear response curve for the gas chromatograph to testing ethyl alcohol. Since alcohol control samples are analyzed with each batch of blood samples when testing them for ethyl alcohol, the value of this linearity curve is ranked as a #3. Certainly the laboratory must perform this test, as a part of its method validation, and again, this will likely be reviewed by accreditation inspectors. The difficulty of providing this is ranked as #2.</p>
<p>11. The source of any standards and controls used within the batch of samples tested with the evidence in this case.</p>	<p>Source of standards and controls used in the analysis. The significance of this to any case is deemed such that it would likely yield little information. It would rank as #3 in significance. It can, however, be provided easily, so that would be ranked as a #1.</p>
<p>12. Records reflecting the quality control testing of any and all reagents, standards, and controls associated with the testing of the sample in this case.</p>	<p>Records related to the quality control testing of any reagents, standards and controls used in testing the evidence. As a quality assurance measure, a laboratory will always test any standards and controls it acquires, and any reagents it prepares, before using them to analyze evidence. Typically the lab will have a written QC test procedure, and then maintain a log of the tests by date and standard or control tested. The significance of these records to any case is ranked as a #3. The difficulty of providing the information is ranked as #1 for labs with the QA records software, but ranked as #3 for those labs without this tool.</p>
<p>13. Refrigeration logs associated with the refrigerator in which this sample and any associated controls and standards were stored prior to the analysis of the sample.</p>	<p>Refrigeration logs. The significance of this information is rated as #4. The ease of providing it is ranked as #1-2.</p>
<p>14. Balance quality control checks for any balance used in testing this sample.</p>	<p>Balance quality control checks. Some laboratories use balances in the preparation of their alcohol controls, while others do not. For labs that do, the QC check of their balances is important. The relevance or importance of providing this is ranked as #3, and the difficulty of providing it is ranked at #2.</p>

Discovery Items	Ranking and Description
15. Pipette quality control records for any pipette used in relation to the calibrators, standards, or controls, and samples in this case.	Pipette quality control records. The potential significance of the records of the QC test of pipettes used in preparing controls is ranked as #3. The difficulty of providing the records is ranked as #2.
16. The identity by make and model of any instruments, including balances and pipettes used to analyze this sample.	The identity of instruments and equipment used in the testing of the evidence. This information is ranked as #2, or possibly informative. It is ranked as #1 in the ease of providing it.
17. Maintenance and repair records for the instrument used to test the samples in this case.	Maintenance and records of the instruments used in the testing. This information is ranked as #4, as unlikely to be informative to the court. It is ranked as #2 in difficulty for most labs to provide.
18. Documents reflecting the instrument parameters set for the instruments used when testing this sample.	Documented instrument parameters used in testing the evidence. This information is ranked as #4, as unlikely to provide information of value to the court, however, the information is ranked #1 as relatively easy to provide.
19. The policy and instructions concerning the sample selection used in this case.	Policy concerning sample selection. This is ranked as #3 in importance. It is ranked as #1 in ease of providing it. Typically one, or two samples are submitted. Unless there is an indication that the two samples were collected at different times, or placed in different types of containers with different preservatives, then it does not matter which sample is tested.
20. The source and type of consumables used in the collection, preparation, and analysis of the samples in this case.	The source and type of consumables used to test the evidence. The type of consumables used will be noted in the SOP, but the source may only be noted in the laboratory's list of approved vendors. The potential significance is ranked as #3. The ease of providing the information is ranked as #1-#2.
21. Testimony evaluation records concerning the analyst testing the evidence in this case.	Testimony evaluation records. This information deals with the testimony by the analyst on other cases, so its potential significance to the present case would rank it as a #3. The ease of providing the records would rank as #1.

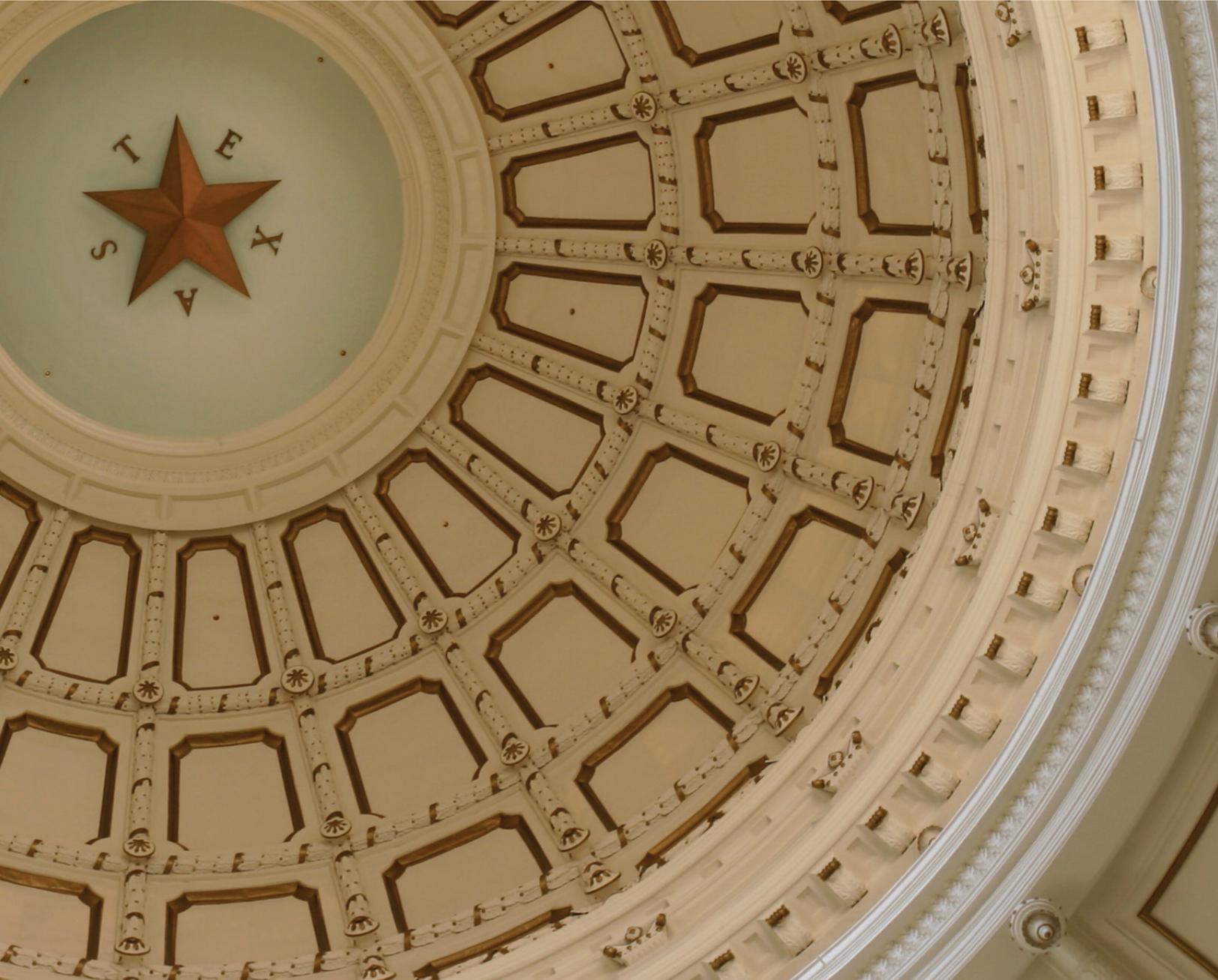
Discovery Items	Ranking and Description
<p>22. Any corrective action, quality action plan, or deviation request related to the type of testing, equipment, or personnel involved in testing this sample, for a period of six months before and after the testing on this case sample.</p>	<p>Any corrective actions, quality actions, or deviation requests concerning either the analyst, instruments, or method of testing used on the evidence in this case. The potential significance of this information would rank as #2, if there are any such actions within six months of the sample testing. The ease of providing the records would rank as either #2 or #3, depending on how the laboratory stores these records.</p>
<p>23. The actual raw data from the gas chromatographic analysis of the batch of blood samples.</p>	<p>The value of the raw data generated by the gas chromatograph to the defendant is ranked as #5. The reason for this is that the batch of chromatograms is already provided. As well, unless the requestor has the particular gas chromatograph instrument operating software, they would have no capability to analyze the data and determine the alcohol level from it for any sample. The ease of providing the raw data is also rated as #5. Many labs do not retain this data, because it has already been analyzed by the instrument, and the produced results obtained. Since the complete method of analysis was validated, the retention of this raw data is not necessary.</p>
<p>24. A request for the defense attorney to visit the laboratory and view the area where the testing of the samples is conducted, apparently for the purpose of evaluating the likelihood of radio frequency interference in the testing.</p>	<p>Viewing of the laboratory really provides a low level of scientific value to the defendant. This may not be the case if the lab was not accredited, but the court should understand that to obtain accreditation, a laboratory facility is thoroughly inspected. In addition, if there was any kind of electronic interference that affected laboratory testing, this would be apparent and recognizable with the control alcohol samples run with each batch of blood samples. The scientific value of the viewing is rated as #5. The burden to the lab apparently varies, as some labs consider it a huge burden, and others do not. Those labs that do consider it a burden are mostly concerned with the security of both evidence and records on those other criminal cases being investigated by lab staff on the day of any scheduled visit. To adhere to their own lab policies, they would likely to have to cease testing while visitors are present in the lab, which is counter-productive, especially in larger facilities.</p>

V. Summary:

As one can see from the evaluation of the records requested in items #7 through #24 above, many would provide potentially significant information in very few cases. While the degree of difficulty with release of any one set of records may be small, it is the cumulative effect of providing all of these records that is burdensome on the laboratory staff. Until or unless laboratories can develop a program of storing all of these records in a highly organized and easily retrievable format, it is currently taking as much as sixteen hours of labor to locate and produce these. The time required for laboratory staff to analyze and report findings on a typical DWI case is on the order of one hour per sample. When that lab staff has to spend up to sixteen hours to provide the court ordered records, and special staff to perform this service are not available, then it is common for scientist-analysts to stop and handle the court ordered request. This delays the scientific testing of other evidence.

Again, until Texas crime laboratories can fund the acquisition of appropriate software designed for the storage and organization of all laboratory records, including standard procedures, quality assurance documents and test results, procedure and method validations, accreditation records, and complete case file records, and then have the time (one year) to implement the program, it is recommended that the quantity of items routinely authorized for discovery be carefully considered by the courts with a view of meeting both the defendant's needs and the crime laboratory's needs. Crime laboratories desire that some limited order can be arranged, with the proviso that in special circumstances, the court may need to authorize an order for more information to be released.

Attachment A:



MID-1209-01905

RECEIVED

FEB 10 2014

DPS MIDLAND
LABORATORY

CAUSE NO. D41375
CAUSE NO. D41376

STATE OF TEXAS

§
§
§
§
§

IN THE DISTRICT COURT

vs.

358TH JUDICIAL DISTRICT

LOREN SAGE KINNEY

ECTOR COUNTY, TEXAS

**AGREED DISCOVERY ORDER ON COPYING
AND PRODUCTION OF BLOOD TESTING RECORDS**

THE COURT ORDERS ~~the District Attorney's Office and its agent,~~ the forensic laboratory that analyzed the Defendant's blood in this case whichever lab is used for analysis are to digitally copy and digitally produce the below documentation to the Defendant's attorney as directed below:

The Following Items Concern General Matters:

1. A copy of any accreditation certificates for the laboratory that were in effect at the time of the analysis and a copy of the lab's last complete inspection and final accreditation audit.
2. A copy of any internal, external, annual or reaccreditation, reviews, or reports since the time of the lab's last complete accreditation audit and any internal, external, annual, or reaccreditation audits since the time of the test in this case.
3. A copy of all documents, not otherwise included above, reflecting the failure of the laboratory to comply, at any point, with any essential, important, or desirable criteria for accreditation or reaccreditation and all documents evidencing subsequent satisfaction of any essential, important, or desirable criteria for accreditation or reaccreditation.
4. The laboratory's standard or general policies, protocol, and procedures concerning testing; quality control, quality assurance, calibration, achievement of the calibration curve, and administrative or technical review.
5. The laboratory's policies, protocols and procedures as to testing, quality control, quality assurance, calibration, achievement of the calibration curve, and administrative or technical review of all samples, solutions and equipment used in or related to the testing of the sample, solutions, and equipment used in this case.
6. The laboratory's policies, protocols, and procedures concerning the sample selection criteria used in this particular case.

7. The testimonial evaluation forms on each laboratory employee.

The Following Items Concern Pre-analytical Matters:

8. Validation studies (both internal and external) that prove the validation of the method, equipment, and instructions used.
9. The identification and source of all internal standards, standard mixtures (separation matrix), verifiers, blanks, and controls that were run within the batch in which the sample in this case was run as well as all certificates relating to the foregoing obtained from outside vendors.
10. All records reflecting internal testing and verification and ongoing quality control testing of all solutions, reagents, or standard mixtures used as, as part of, or in relation to calibrators, internal standards, controls, standard mixtures, or standards in the batch in which the sample in this case was run.
11. All refrigeration logs, reports, or other documents in whatever form, for all refrigerated compartments in which this sample, other unknowns within the run, calibrators, internal standards, controls, standard mixtures, standards, and reagents used in or in relation to the analysis in this case were stored or kept at any time.
12. All proficiency testing results for any person within the chain of custody for the sample in this case, including the person who conducted the testing in this case, for two years prior to the testing of the sample in this case and for any such testing since the testing 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.
13. Balance quality control records on any balance instrument used in relation to the calibrators, samples, controls, internal standards, mixtures or other solutions used in relation to the preparation of knowns or unknowns used in the blood alcohol testing of the samples in this case. This includes the records reflecting the calibration of weights on any balance related to the solutions, mixtures, or equipment used in relation to this case as well as any control charts, for two years before and at any time since the testing of the sample in this case.
14. Pipette quality control records on any pipette used in relation to the calibrators, samples, controls, internal standards, mixtures or other solutions or used in relation to the preparation of knowns or unknowns used in the blood alcohol testing of the samples in this case for two years before and at any time since the testing of the sample in this case.
15. The employee training records, curriculum vitae, and resume for any person listed on chain of custody documents in this case or who performed the analysis in this case.

16. Maintenance and repair records (Internal and external) for all equipment used in relation to the testing in this case for two years before the test in this case and since the test in this case.

The Following Items Concern Analytical Matters:

17. The identity, make, model, and brand or manufacturer of all equipment (GS, MS, and auto Sampler) and other supporting equipment (i.e. balance, pipette, etc.) used during the analysis and/or preparation of the samples in this case and the variables used in its installation and operation.
18. The source and type of all consumables used in collection, preparation, and analysis of the samples run in the batch.
19. If a Gas or Liquid Chromatograph is used, the reporting of t0 time (time zero) according to the method.
20. The calibration curve and chromatograms related thereto and all chromatograms generated in the batch in which the sample in this case was tested.
21. All logs, spreadsheets, or other documents reflecting the sequence, order and/or analytical results of all calibrators, samples, standards, controls, and blanks in the batch containing the sample in this case.
22. Documentation of all machine parameters, settings, variables, and integration criteria in relation to the batch in which the sample in this case was tested.

The Following Items Concern Reporting Matters:

23. The particular records maintained for this testing and calibration event.
24. All documents and bench notes contained within the folder or file for the sample in this case including a copy of any note or notation on the sample folder or file. These documents shall be segregated from all other documents produced.
25. If the lab received more than one vial or container of blood or other substance, records reflecting which vial was tested in this case.
26. The full reporting and the underlying validation of the valuation of the uncertainty measurement (UM) in the ultimate reported result.
27. All chain of custody logs or reports in relation to the sample and the case file or folder related to the sample in this case.
28. Any quality action plan and deviation request related to the type of testing, equipment, or personnel involved in this case for two years before the test in this case and since the test in this case.

29. An opportunity for the defense and defense experts to view, visually inspect, diagram and photographically record the GC, MS, 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 equipment used in this case are kept, and the sample(s) and kit or packaging in which the sample was received or may be contained. If the defense wants such an inspection, it shall be at a time mutually agreed upon by the parties and the laboratory.
30. If a Mass Spectrometer is used, then the following additional materials should be provided:
 - 30.1 If a spectral library is used to examine spectra and elucidate spectra, the source of the library spectra.
 - 30.2 The hit list and the hit histogram for the testing.
 - 30.3 All "tune" reports ran within one year if a MS detector was used.
31. The electronic data file containing all data for the entire batch of blood samples in which Accused Citizen's blood test was run.

THE COURT FURTHER ORDERS that any evidence within the scope of the items granted above be provided in electronic digital format (CD disk) by the State to Defendant's attorney's office at 1202 W. Texas, Midland, Texas, 79701, on or before 5:00 p.m. on the 20th day after the date of this order, or otherwise by mutual agreement.

THE COURT FURTHER ORDERS 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.

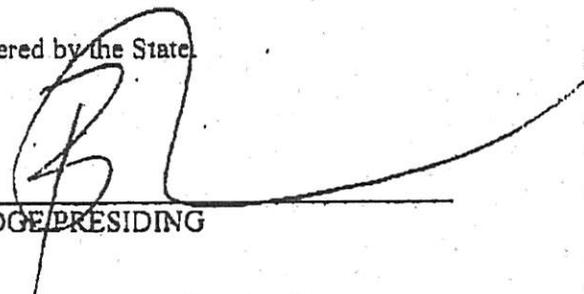
THE COURT FURTHER ORDERS that under the authority of *Brady v. Maryland*, 373 US 83; 83 S.Ct. 1194 (1963), all evidence favorable to the Defendant is to be produced. Additionally, as per the Texas Disciplinary Rules of Professional Conduct Rule 3.09(d), ("Duties of District Attorneys" requires that "[t]he prosecutor in a criminal case shall: ...make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or

mitigates the offense...") evidence that tends to negate guilt or mitigate the offense shall be disclosed. Said evidence is to be produced on or before 5:00 p.m. on the day of its discovery or by agreement.

THE COURT FURTHER ORDERS 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.

THE COURT FURTHER ORDERS that testimony concerning the items not produced in violation of this order, the information contained in those items, and the results obtained from those items shall be and are excluded from evidence in this case if offered by the State.

Signed October 15, 2013



JUDGE PRESIDING

FILED
at _____ o'clock
OCT 15 2013
District Clerk, East County, Texas
By _____ Deputy

CAUSE NO. D41375
CAUSE NO. D41376

THE STATE OF TEXAS
VS.
LOREN SAGE KINNEY

§
§
§
§
§

IN THE DISTRICT COURT
358TH JUDICIAL DISTRICT
MIDLAND COUNTY, TEXAS

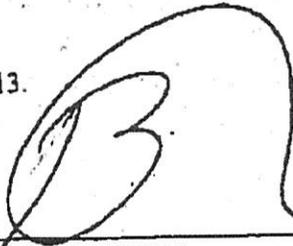
AGREED ORDER FOR DEFENSE ANALYSIS OF BLOOD SAMPLE

On _____, 2013, came on to be considered defendant's Motion for Defense Analysis of Blood Sample and said Motion is hereby

(GRANTED) (DENIED).

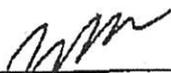
It is further ordered that the State shall tender a sample of the Defendant's blood specimen, along with Brian Carney's check # _____ in the amount of \$116.00 on or before _____, 2013, at _____ m.

Signed on Oct. 14, 2013.



JUDGE PRESIDING

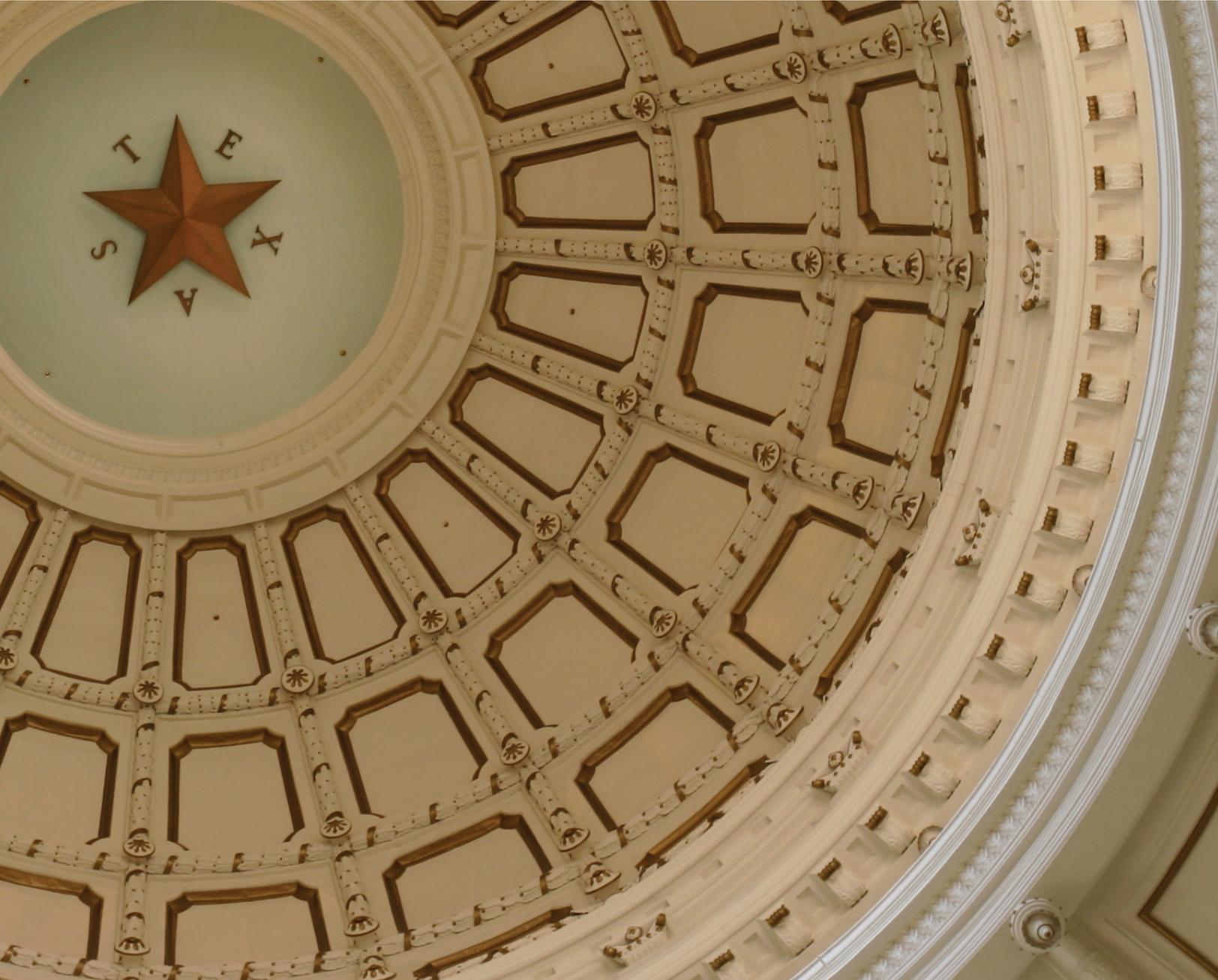
APPROVED BY:



Linda Doddick, District Attorney
Julie Pratica

FILED BY  DEPUTY
2013 OCT 15 AM 9 15
JAMES ROBERN
DISTRICT CLERK
MIDLAND COUNTY, TEXAS

Attachment B:



ATTACHMENT B

Case No. 1368568

THE STATE OF TEXAS § IN THE COUNTY CRIMINAL
 §
V. § COURT NUMBER TEN OF
 §
CHRISTOPHER YOUNGBLOOD § TARRANT COUNTY, TEXAS

**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, EDWIN J. YOUNGBLOOD 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, the Tarrant County Medical Examiner's Office and/or the Tarrant County Sheriff's Office to produce and permit examination, inspection and copying by Defendant, undersigned counsel, and experts employed by the Defendant, 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.

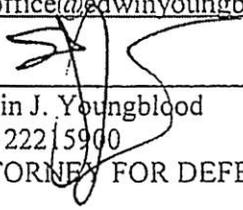
4. Absent all of the requested discovery, Defendant's rights under Article 39.14 of the Texas Code of Criminal Procedure, Article 1, Section 10 of the Texas Constitution, and the Fourth, Fifth, Sixth, and Fourteenth Amendments to the United States Constitution, and Texas Transportation Code § 724.018 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,

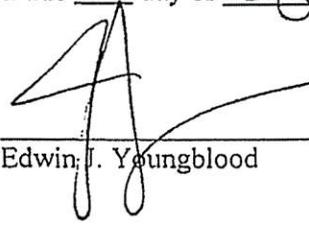
LAW OFFICE OF EDWIN J. YOUNGBLOOD
Two City Place
100 Throckmorton Street, Suite 540
Fort Worth, Texas 76102
(817) 338-4777
(817) 335-3940 (fax)
lawoffice@edwinyoungblood.com



Edwin J. Youngblood
SB# 22215900
ATTORNEY FOR DEFENDANT

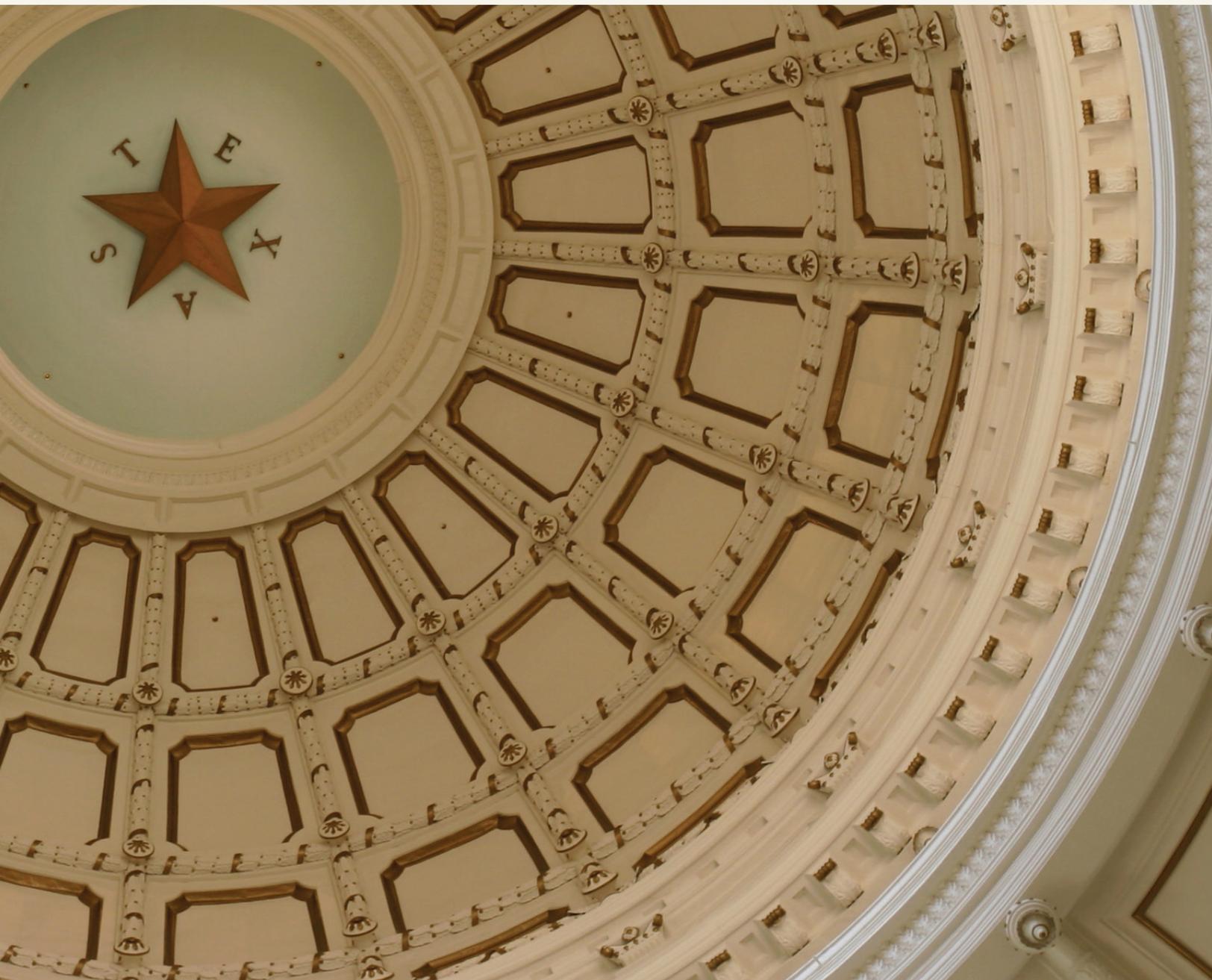
CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the attached and foregoing document has been served on the Tarrant County Criminal Attorney's Office by hand delivering a copy to the Assistant County Attorney handling this case on this 25 day of Sept, 2014.



Edwin J. Youngblood

Attachment C:



The Following Items Concern Pre-analytical Matters:

8. Validation studies, both internal and external, that prove the validation in this case of the method, equipment, and instructions used.
9. The identification and source of all internal standards, standard mixtures (separation matrix), verifiers, blanks, and controls that were run in the same batch as the sample in this case as well as all certificates relating to the foregoing obtained from outside vendors.
10. All records reflecting internal testing and verification and ongoing quality control testing of all solutions, reagents, or standard mixtures used as part of, or in relation to calibrators, internal standards, controls, standard mixtures, or standards in the batch in which the sample in this case was run.
11. All refrigeration logs for all refrigerated items related to the testing in this case, including the blood tested by the lab, that were stored by the lab, for one year before and after the date of the test in this case.
12. All proficiency testing results for any person involved in sample preparation, analysis, or administrative or technical review 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.
13. Balance quality control records on any balance instrument used in relation to the calibrators, samples, controls, internal standards, mixtures or other solutions used in the preparation of knowns or unknowns used in the blood alcohol testing of the samples in this case. This includes the records reflecting the calibration of weights on any balance related to the solutions, mixtures, or equipment used in relation to this case as well as any control charts, for six (6) months before and at any time after the testing of the sample in this case.
14. Pipette quality control records on any pipette used in relation to the calibrators, samples, controls, internal standards, mixtures or other solutions, or used in the preparation of knowns or unknowns used in the blood alcohol testing of the samples in this case for six (6) months before and at any time after the testing of the sample in this case.
15. The employee training records, curriculum vitae, and resume for any person involved in sample preparation, analysis, or administrative or technical review in this case.
16. All maintenance and repair records for all equipment used in relation to the testing in this case for six (6) months before and after the test in this case.

The Following Items Concern Analytical Matters:

17. The identity, make, model, and brand or manufacturer of all equipment (GS, MS, and Auto Sampler) and other supporting equipment (*i.e.* balance, pipette) used during the

analysis and/or preparation of the samples in this case and the variables used in its installation and operation.

18. If a Gas or Liquid Chromatograph is used, the reporting of t0 time (time zero) according to the method.
19. The calibration curve and chromatograms for this test and all chromatograms generated in the batch in which the sample in this case was tested.
20. All logs, spreadsheets, or other documents reflecting the sequence, order and/or analytical results of all calibrators, samples, standards, controls, and blanks in the batch containing the sample in this case.
21. Documentation of all machine parameters, settings, variables, and integration criteria in relation to the batch in which the sample in this case was tested.

The Following Items Concern Reporting Matters:

22. The particular records maintained for this testing and calibration event.
23. All documents and bench notes contained within the folder or file for the sample in this case including any note or notation on the sample folder or file. These documents shall be segregated from all other documents produced.
24. If the lab received more than one vial or container of blood or other substance, records reflecting which vial was tested in this case.
25. The full reporting and the underlying validation of the valuation of the uncertainty measurement (UM) in the ultimate reported result.
26. All chain of custody logs or reports related to the sample.
27. Any quality action plan or corrective action plan, and any deviation documentation related to the type of testing, equipment, or personnel involved in this case for six (6) months before and after the test in this case.
28. An opportunity for the defense and defense experts to view, visually inspect, diagram, and photograph the areas under the control of the laboratory containing the GC, MS, and all ancillary equipment used to test the sample in this case. The same access shall be given to the area where the equipment used in this case is kept, including all immediately adjacent and adjoining areas, and to the area where the sample and kit or packaging was received and where it is kept. If the defense wants such an inspection, it shall be at a time mutually agreed upon by the parties and the laboratory, but no later than 30 days from the date of the notice to the laboratory. **THE OPPORTUNITY TO VIEW DESCRIBED ABOVE ACCRUES ONLY WHEN THE CASE IS SET FOR TRIAL.**
29. If a Mass Spectrometer was used, then the following additional materials should be provided:

- 29.1 If a spectral library was used to examine and elucidate spectra, the identity of the group or organization publishing or creating the library and the identification of the source of the spectra used in the sample in this case.
 - 29.2 The hit list and the hit histogram, or quality match, for the testing.
 - 29.3 All “tune” reports that were run within 90 days, including quality assurance and quality control records, for the machine used in this case.
30. A laboratory covered by this order may comply with any required production by making the responsive material available to the requesting attorney on a website.

THE COURT FURTHER ORDERS that any material responsive to this order as detailed above shall be provided to the defense on or before 5:00 p.m. on the 30th day after the date of this order or otherwise by mutual agreement.

THE COURT FURTHER ORDERS that this order is continuing and the State will make available to the Defendant's attorney any subsequently discovered material within the scope of the above granted items within five business days of the time it learns of or obtains such discoverable material if the case is not yet set for trial or if the scheduled trial date is more than 10 days away. If additional material is discovered within 10 days of a trial date, the material shall be produced not later than 5:00 p.m. on the day following its discovery. If jury selection has begun, any additional material shall be produced immediately, without any delay.

THE COURT FURTHER ORDERS that under the authority of *Brady v. Maryland*, 373 US 83; 83 S.Ct. 1194 (1963), all evidence favorable to the Defendant is to be produced. Additionally, evidence that tends to negate guilt, is impeaching, or mitigates the offense shall be disclosed. *See Texas Disciplinary Rules of Professional Conduct Rule 3.09(d)* (requiring that the prosecutor in a criminal case shall “make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense...”). Said evidence is to be produced on or before 5:00 p.m. on the day of its discovery or by agreement.

THE COURT FURTHER ORDERS that any responsive items not produced may be excluded from evidence.

THE COURT FURTHER ORDERS that testimony concerning items not produced in violation of this order, the information contained in those items, and the results obtained from those items may be excluded from evidence in this case if offered by the State.

THE COURT FURTHER ORDERS THAT THE ATTORNEY REQUESTING THIS DISCOVERY ORDER MUST NOTIFY THE AFFECTED CRIME LAB WITHIN TWO BUSINESS DAYS OF: (1) THE ENTRY OF A GUILTY PLEA; (2) PLACEMENT OF THE CASE ON THE COURT'S PLEA DOCKET; OR (3) DISMISSAL OF THE CRIMINAL PROCEEDING. THE DEFENSE LAWYER SHALL OBTAIN A COPY OF THIS ORDER NOT LATER THAN 24 HOURS AFTER IT IS SIGNED AND SHALL IMMEDIATELY TRANSMIT IT TO THE LAB. ON REQUEST BY THE COURT OR ANY OTHER PARTY, DEFENSE COUNSEL SHALL PROVIDE PROOF OF SERVICE.

Signed _____

JUDGE PRESIDING

Attorney Requesting Discovery

Chief Prosecutor CCCL # _____

Print Name

Print Name

Address

Address

City State Zip Code

City State ZipCode

Telephone

Telephone

Fax

Fax

Email

Email

Attorney for Defendant

**Attorney for Harris County District
Attorney's Office**

Harris County Institute of Forensic Sciences

Fax: 713-796-6794
Phone: 713-796-9292

DPS Crime Lab - Houston

Fax: (281) 517-1395
Phone: (281) 517-1380

HPD Crime Lab

Fax: 713-308-2645
Phone: 713-308-2600
Mike.Manes@houstonpolice.org

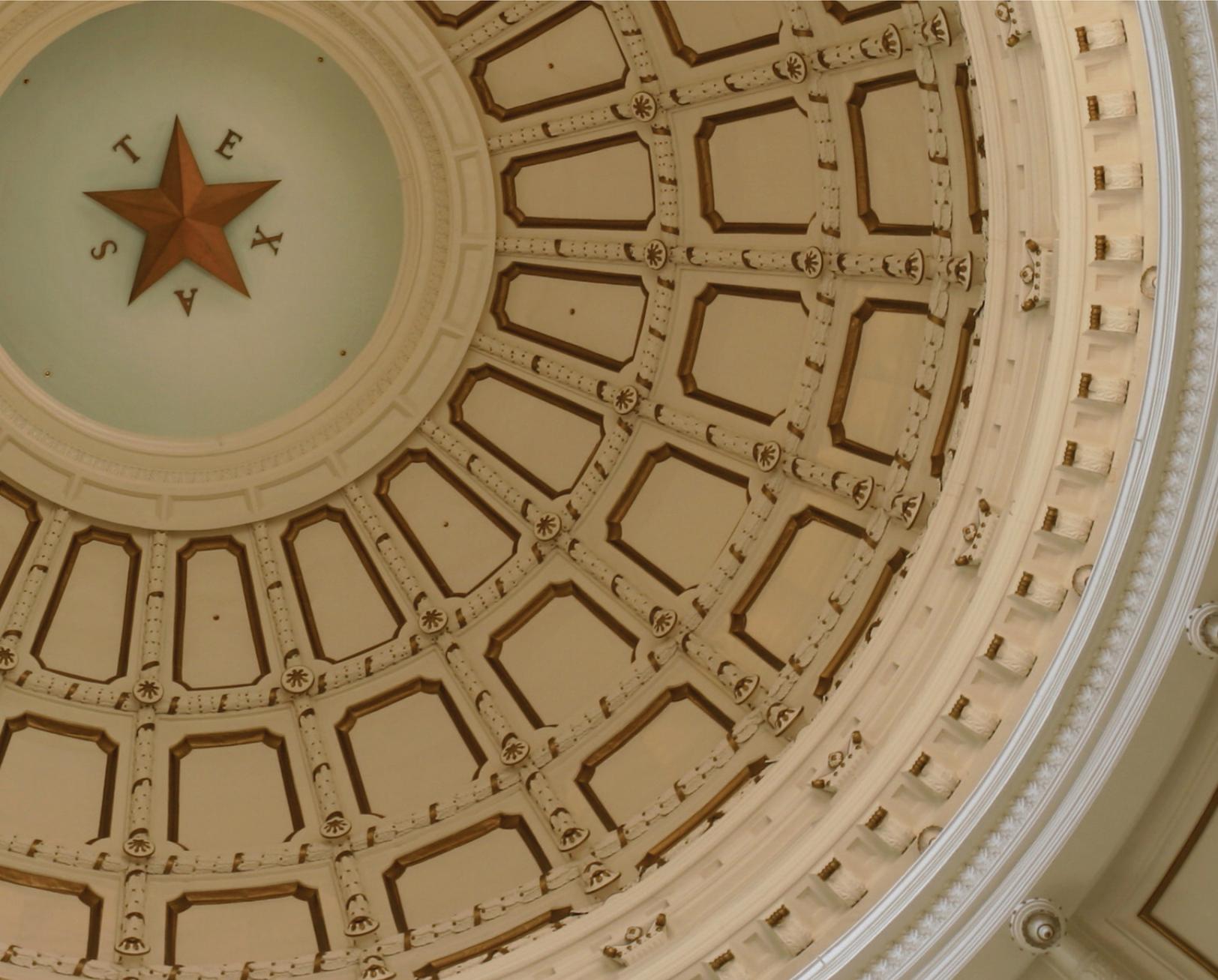
DPS Crime Lab – Austin

Fax: (512) 424-5638
Phone: (512) 424-2105

Pasadena Crime Lab

Fax: (713) 475-2022
Phone: (713) 475-7866

Attachment D:



To Any Peace Officer Within The State of Texas Or Any Person At Least 18 Years Old And Not A Participant In These Proceedings; Greeting: You Are Hereby Commanded, That You Summon,

Jason Allison, Forensic Scientist

who may be served at Tarrant County, 3616 E. Lancaster Ave., Fort Worth, TX. 76103-2506

to be and appear before the County Criminal Court Nine of Tarrant County, Texas, at the Tarrant County Justice Center thereof in Fort Worth, on 10/21/14 at 9:00 A.M then and there to testify on behalf of the State in a Criminal action now pending in our said Court, wherein the State of Texas is plaintiff and

MICHAEL L ALEXANDER , Defendant

and that He so diligently and carefully search for, examine, inquire for, and bring and produce in said Court, at said time and place a certain instrument in writing desired as evidence in said criminal action to wit:

Please See Attachment:

In Lieu Of Appearing In Court, The Requested Information Can Be Mailed To The Following: Attn: Mimi Coffey, The Coffey Firm, 4700 Airport Freeway, Fort Worth, TX. 76117 Or Emailed To Cfirm_Prcilla@Yahoo.Com to be inspected by our said Court ; and that He continue in attendance from day to day and from term to term until discharged by the Court.

HEREIN FAIL NOT BUT HAVE YOU THEN AND THERE BEFORE SAID COURT THIS WRIT, WITH YOUR RETURN THEREON SHOWING HOW YOU EXECUTED THE SAME.

GIVEN UNDER MY HAND AND SEAL OF SAID COURT, AT OFFICE IN FORT WORTH TARRANT COUNTY, TEXAS ON OCTOBER 6TH, 2014 A.D.

Attorney: Mimi Coffey The Coffey Firm 4700 Airport Freeway Fort Worth, Tx. 76117 (817) 831-3100

WARNING: FAILURE BY ANY PERSON WITHOUT ADEQUATE EXCUSE TO OBEY A SUBPOENA SERVED UPON THAT PERSON MAY BE DEEMED IN CONTEMPT OF THE COURT FROM WHICH THE SUBPOENA IS ISSUED OR A DISTRICT COURT FROM WHICH THE SUBPOENA IS SERVED, AND MAY BE PUNISHED BY FINE OR CONFINEMENT, OR BOTH.

MARY LOUISE GARCIA CLERK OF THE CRIMINAL COURTS OF TARRANT COUNTY, TEXAS Deputy

TARRANT COUNTY

Subpoena Duces Tecum

Cause No. 1376377 CCC9 THE STATE OF TEXAS VS. MICHAEL L ALEXANDER

Came to hand on the ___ day of ___ A.D. 20___, at ___ o'clock and executed on the ___ day of ___ A.D. 20___, at ___ o'clock by delivering to

in person, a true copy of this writ. _____, County, Texas By _____ Deputy

Service Fees

Fees- Serving\$ _____ Mileage..... \$ _____ Total \$ _____

FW14-03743 10/14/14 JEA

Subpoena Duces Tecum Attachment
Alexander, Michael
Cause No. 1376377
DOA: 7/6/2014
DOB: 3/20/1967
LAB #: FW14-03743-1

FW14-03743
10-14-14
JEA

THIS REQUEST TAKES
FW.PD 1/2 DAY

In lieu of appearing in court, the requested information can be mailed to the following: Attn: Mimi Coffey, The Coffey Firm, 4700 Airport Freeway, Fort Worth, Texas 76117 or Email to cfirm_priscilla@yahoo.com

most recent calibr. before & after

1. A copy of any record of blood test results pertaining to the test allegedly administered to the licensee on or about 7/6/2014.
2. A copy of the form DIC-23A;
3. A copy of the toxicology report pertaining to the test allegedly administered to the licensee on or about 7/6/2014.
4. A copy of all the chain of custody documents.
5. A copy of the qualifications, certifications, licenses, and permits of any individual performing analysis of the specimen in question. PROVIDE CHROMATOGRAMS
6. A electronic copy of the raw data of all quality control tests performed on the specimens themselves.
7. A electronic copy of the raw data of the analytical tests performed on the specimens themselves.
8. A description of the samples analyzed, including specimen type, amount, collection (storage) container, and current availability.
9. Bench notes from the chemist made during the analysis.
10. Any list made to identify the order of analysis of the calibrators, controls and case (e.g. "run list").
11. Results for Defendant's blood samples run and results of chromatogram for the sample run prior to Defendant's sample. This data should include:
 - Results of calibrators, controls and actual results of each respective sample.
 - For each solution / gas injected into the column / tested whether it is a calibrator, control, air blank, actual blood sample or other substance injected into the column / tested,
 - Please provide:
 - The respective GC Chart,
 - Resulting manual or machine generated calculations and
 - The respective calibration curve reports.
12. The calibration curve report for the blood test in this case.
13. Results of the test solutions ran before each blood test.
14. Results of subject's sample analysis, calibrators and controls.
15. The specificity/interference testing performed by the lab to ensure that other volatiles are not misidentified as ethanol.
16. Calculation, including handwritten notations; Related case documentation (including notes, memos, and emails); and verified quantification method.
17. Name and version of software used to gas chromatography.
18. Color picture of the top and label displaying concentrations/percentages of the chemicals included in the tube. of tube

8/20/14 em

To Any Peace Officer Within The State of Texas Or Any Person At Least 18 Years Old And Not A Participant In These Proceedings; Greeting: You Are Hereby Commanded, That You Summon,

Fort Worth Police Department Crime Laboratory / Crime Lab #: FW-14-02967-1

who may be served at 3616 E. Lancaster Avenue, , Fort Worth, TX 76103

to be and appear before the County Criminal Court Four of Tarrant County, Texas, at the Tarrant County Justice Center thereof in Fort Worth, on August 22nd, 2014 at 9:00AM then and there to testify on behalf of the Defense in a Criminal action now pending in our said Court, wherein the State of Texas is plaintiff and

MARK WAYNE WARREN , Defendant

and that They so diligently and carefully search for, examine, inquire for, and bring and produce in said Court, at said time and place a certain instrument in writing desired as evidence in said criminal action to wit:

Please See Attachment.

to be inspected by our said Court ; and that They continue in attendance from day to day and from term to term until discharged by the Court.

HEREIN FAIL NOT BUT HAVE YOU THEN AND THERE BEFORE SAID COURT THIS WRIT, WITH YOUR RETURN THEREON SHOWING HOW YOU EXECUTED THE SAME.

GIVEN UNDER MY HAND AND SEAL OF SAID COURT, AT OFFICE IN FORT WORTH TARRANT COUNTY, TEXAS ON AUGUST 14TH, 2014 A.D.

Attorney: Law Office Of Bruce Ashworth Bruce Ashworth, 2214 Park Springs Arlington, TX 76013

817-265-1568

WARNING: FAILURE BY ANY PERSON WITHOUT ADEQUATE EXCUSE TO OBEY A SUBPOENA SERVED UPON THAT PERSON MAY BE DEEMED IN CONTEMPT OF THE COURT FROM WHICH THE SUBPOENA IS ISSUED OR A DISTRICT COURT FROM WHICH THE SUBPOENA IS SERVED, AND MAY BE PUNISHED BY FINE OR CONFINEMENT, OR BOTH.

MARY LOUISE GARCIA
CLERK OF THE CRIMINAL COURTS
OF TARRANT COUNTY, TEXAS
BY [Signature] Deputy

TARRANT COUNTY

Subpoena Duces
Tecum

Cause No. 1371784
CCC4
THE STATE OF TEXAS
VS.
MARK WAYNE WARREN

Came to hand on the ___ day of
_____ A.D. 20___, at ___ o'clock
and executed on the ___ day of
_____ A.D. 20___, at ___ o'clock
by delivering to

in person, a true copy of this writ.

_____, County, Texas
By _____

Deputy

Service Fees

Fees- Serving \$ _____
Mileage..... \$ _____
Total \$ _____

FW14-02967
14-049172 8-21-14 TJA

Subpoena Duces Tecum Attachment
Mark Wayne Warren
Case #1371784 / Crime Lab #: FW-14-02967-1

FW14-02967
14-049172
8-21-14 JBA

DUCES TECUM

ARTICLES TO BE DELIVERED TO ATTORNEY:

The Following Items Concern General Matters:

- ✓ 1. A copy of any accreditation certificates for the laboratory that were in effect at the time of the analysis.
- ✓ 2. The laboratory's overall policies as to testing and calibration.
- ✓ 3. The laboratory's overall protocols as to testing and calibration.
- ✓ 4. The policies that applies to the section of the laboratory where this particular testing or calibration event occurred.
- ✓ 5. The procedures that applies to the section of the laboratory where this particular testing or calibration event occurred.

The Following Items Concern Pre-analytical Matters:

- ✓ 6. Validation studies (both internal and external) that prove the validation of the method and instructions used.
- ✓ 7. The policy that applies to the assay performed in this particular test or calibration or the achieving of a calibration curve.
- ✓ 8. The procedure that applies to the assay performed in this particular test or calibration event that covers the calibration or the achieving of a calibration curve.
- ✓ 9. The instructions that apply to the assay performed in this particular test or calibration event that covers the calibration or the achieving of a calibration.
- ✓ 10. The calibration curves and all chromatograms generated on the batch on the machine on which the sample in this case was tested.
- ✓ 11. The identification and sources of all internal standards, standards, mixed standards (separation matrix), verifiers, blanks, and controls that were run within the batch in which the sample in the case was run.
- ✓ 12. All records reflecting internal testing or quality control testing of all solutions, reagents, or standard mixtures used as, as part of, or in relation to internal standards, controls, standard mixtures, or standards in the batch in which the sample in this case was run.
- ✓ 13. All refrigeration logs, reports, or other documents in whatever form, for all refrigerated compartments in which this sample, other unknowns within the run, internal standards, controls, standard mixtures, standards, and reagents used in or in relation to the analysis in this case were stored or kept at any time.
- ✓ 14. 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 --- since the last date of accreditation inspection preceding the test, and for any such testing

FW14-02967
14-049172
8-21-14
JSA

since the testing in this case. This specifically includes the summary report of expected results for the proficiency testing (and the manufacture's information sheet) against which the proficiency test results are judged.

- ✓ 15. Quarterly balance quality control records on any balance instrument related to the calibration of the ETOH standard solution or the preparation of known or unknowns used in the blood alcohol testing of the samples in this case. The records reflecting the calibration of weights on any balance or instrument related to this case as well as the control charts kept.

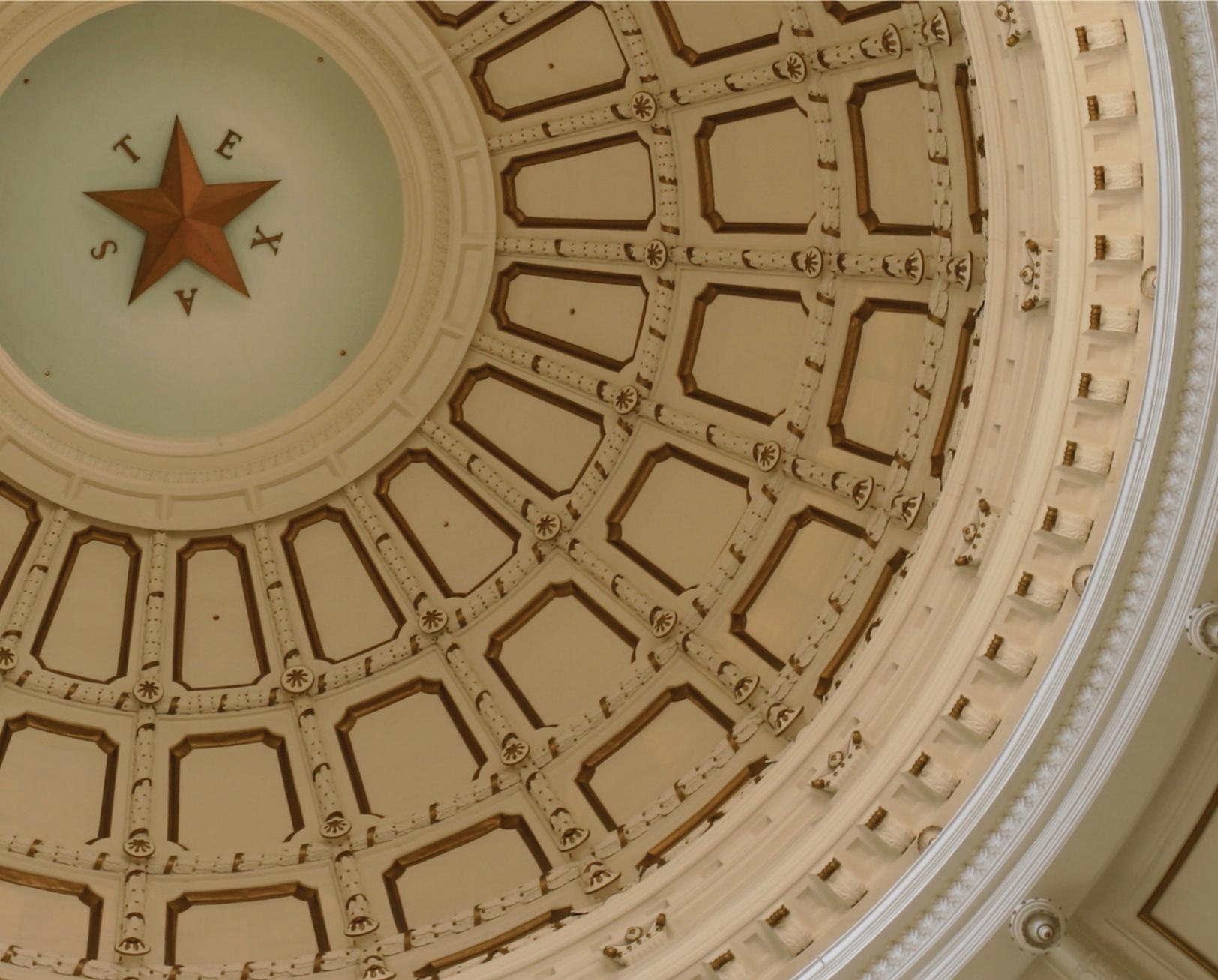
The Following Items Concern Analytical Matters:

- ✓ 16. The instructions that apply to the assay that was used in this particular testing or calibration event that occurred.
- ✓ 17. The employee training record, curriculum vitae, and resume for any person listed on chain of custody documents in this case or who performed the analysis.
- ✓ 18. Identify the make, model, and brand/manufacturer of the instruments and other supporting instruments (i.e. balance, pipette, etc.) used during the analysis and/or preparation of the samples in this case and the variables used in its installation and operation.
- ✓ 19. The policy concerning the sample selection criteria used in this particular case.
- ✓ 20. The procedure concerning the sample selection criteria used in this particular case.
- ✓ 21. The instructions concerning the sample selection criteria used in this particular case.
- 22. The source and type of all consumables used in collection, preparation, and analysis of the samples run in the batch.
- ✓ 23. If a Gas or Liquid Chromatograph is used, the reporting of t0 time according to the method.

The Following Items Concern Reporting Matters:

- ✓ 24. The particular records for this testing or calibration event.
- ✓ 25. The quality control policy and protocol for the laboratory, the section, and the assay performed.
- ✓ 26. The quality assurance policy and protocol for the laboratory, the section, and the assay performed.
- ✓ 27. The full reporting and the underlying validation of the valuation of the uncertainty measurement (UM) in the ultimate reported result.
- 28. If a Mass Spectrometer is used, then the following additional materials should be provided:
 - 28.1 If a spectral library is used to examine spectra and elucidate spectra, the source of the library spectra
 - 28.2 The hit list, and the hit histogram for the testing.
 - 28.3 All "tune" reports run within one year if a MS detector was used.

Attachment E:



NO. 14-05068-CRM-CCL2

THE STATE OF TEXAS

§
§
§
§
§

IN THE COUNTY COURT

VS.

AT LAW NO. 2 OF

BRAZOS COUNTY, TEXAS

AGREED ORDER FOR DISCOVERY AND INSPECTION RELATING TO
FORENSIC BLOOD ALCOHOL TESTING

THE COURT ORDERS the County Attorney's Office and its agent, the forensic laboratory that analyzed the Defendant's blood alcohol concentration in this case, specifically, Texas DPS Austin Crime Laboratory, to digitally produce the following items and provide to the Defendant's attorney as directed below:

The Following Items Concern General Matters: Laboratory Number-

1. A copy of any accreditation certificates for the laboratory that were in effect at the time of the analysis.
2. The laboratory's overall policies as to testing and calibration.
3. The laboratory's overall procedures as to testing and calibration.
4. The policy that applies to the section of the laboratory where this particular calibration event occurred.
5. The procedure that applies to the section of the laboratory where this particular testing or calibration event occurred.

The Following Items Concern Pre-analytical Matters:

6. Validation studies (both internal and external) that proves the validation of the method and instructions used.
7. The policy that applies to the assay performed in this particular test or calibration event that covers the calibration or the achieving of a calibration curve.
8. The procedure that applies to the assay performed in this particular test or calibration event that covers the calibration or the achieving of a calibration curve.
9. The instructions that apply to the assay performed in this particular test or calibration event that covers the calibration or the achieving of a calibration curve.

10. The calibration curves (if applicable) and all chromatograms generated in the batch in which the sample in this case was tested.
11. The identification and source of all internal standards, standards, standard mixtures (separation matrix), verifiers, blanks, and controls that were run within the batch in which the sample in this case was run.
12. All records reflecting internal testing or quality control testing of all solutions, reagents, or standard mixtures used as, as part of, or in relation to internal standards, controls, standard mixtures, or standards in the batch in which the sample in this case was run.
13. All refrigeration logs, reports, or other documents in whatever form, for all refrigerated compartments in which this sample, other unknowns within the run, internal standards, controls, standard mixtures, standards, and reagents used in or in relation to the analysis in this case were stored or kept at any time at the laboratory where this sample was tested.
14. All proficiency testing results for the testing analysts in the section of the laboratory testing the sample in this case as well as for the person who conducted the testing in this case - since the last date of accreditation inspection preceding the test, and for any such testing since the testing in this case. This specifically includes the summary report of expected results for the proficiency testing against which the proficiency test results are judged.
15. Quarterly balance quality control records on any balance instrument related to the calibration of the alcohol standard solution or the preparation of knowns or unknowns used in the blood alcohol testing of the samples in this case. The records reflecting the calibration of weights on any balance or instrument related to this case as well as the control charts kept.
16. Pipette quality control records on any pipette used in relation to the calibrators, samples, controls, internal standards, mixtures or other solutions, or used in relation to the preparation of knowns or unknowns, used in the blood alcohol testing of the samples in this case for one year before the testing of the sample in this case.

The Following Items Concern Analytical Matters:

17. The instructions that apply to the assay that was used in this particular testing or calibration event.
18. The employee training record, curriculum vitae, and resume for any person in this case who performed the analysis and a statement of qualifications for any other individual within the chain of custody.
19. Identify the make, model, and brand/manufacturer of the instruments and other supporting instruments (i.e. balance, pipette, etc.) used during the analysis and/or preparation of the samples in this case and the variables used in its installation and operation.
20. The policy concerning the sample selection criteria used in this particular case.
21. The procedure concerning the sample selection criteria used in this particular case.
22. The instructions concerning the sample selection criteria used in this particular case.
23. The source and type of all consumables used in collection, preparation, and analysis of the samples run in the batch.
24. If applicable, the reporting of tO time according to the method.