



IN THE DISTRICT COURT OF LOGAN COUNTY
STATE OF OKLAHOMA

STATE OF OKLAHOMA
LOGAN COUNTY SS:
FILED FOR RECORD ON

2023 APR -5 AM 8:10

STATE OF OKLAHOMA,)
)
Plaintiff,)
)
vs.)
)
NANCY E. KEMP,)
)
Defendant.)

CHERYL SMITH
COURT CLERK

BY MR DEPUTY

Case No. CM-2022-167

DEFENDANT'S MOTION FOR DISCOVERY

COMES NOW the Defendant, by and through his attorney of record, Stephen G. Fabian, Jr. for the firm, FABIAN & ASSOCIATES, INC., P.C. and moves the Court to require the District Attorney or City Attorney representing the Petitioner in the above Captioned Court, on behalf of the Plaintiff, or any assistant or other prosecuting attorney who may be involved in the above-styled and numbered cause, to disclose and produce for copying, all of the following information:

1. Pursuant to the Oklahoma Criminal Discovery Code, Okla. Stat. Tit. 22 § 2001, 2002 (supp. 1996), the Defendant requests:
 - a. The names and addresses of any and all witnesses the State intends to call at trial along with their written or recorded statements or significant summaries of their oral statements;
 - b. All Law enforcement reports made in connection with this case;
 - c. Any and all written or recorded statements made by the Defendant and the substance of any oral statement the Defendant made;
 - d. The reports or statements made by any experts in connection with this case: including physical or mental examinations and scientific tests or experiments or comparisons;
 - e. Any books, papers, documents photographs, or tangible objects, buildings or places which were obtained from the Defendant;
 - f. The record of any past criminal convictions of the defendant; and,
 - g. OSBI rap sheet/records check of any witnesses the State, or the Defendant, intends to call at trial.
 - h. Any and all records of the Medical Examiner regarding this case.

CHEMICAL TESTING

- i. All documents, evidence, scientific evidence, including but not limited to Chemical or other tests performed on the defendant, including any and all documents reflecting any information regarding Creation of Standards, Purchase orders for any and all other equipment used in the performance of any chemical test to be used against the Defendant, and any and all maintenance and repair records for any equipment or machines used to test the Defendant or his blood, breath, urine or saliva for the past year.

- j. Certified copies of all Intoxilyzer, Breathalyzer, Blood, Urine or Saliva operator, chemist, or maintenance supervisor licenses/permits issued from any source, to any individual performing or analyzing the results of any such test.
- k. All records dealing with the operational procedure, adopted, approved, promulgated and/or prescribed for use with the Intoxilyzer Models 5000D or 8000 and by the Oklahoma Board of Tests for Alcohol and Drug Influence or the State Director of the Board of Tests for Alcohol and Drug Influence.
- l. A list of all schools, workshops, seminars, etc., for any person or persons administering or analyzing any sample of bodily fluids or breath of the Defendant that were attended by such person or persons to qualify for a maintenance supervisor permit, to maintain said permit, or to expand his knowledge of Intoxilyzer, Breathalyzer operation or maintenance, or the operation or maintenance of any other equipment used to perform any such Chemical test.
- m. A list of all schools, workshops, seminars, etc., that any person testing the Defendant has attended to qualify for his or her Intoxilyzer or Breathalyzer operator's permit, has attended to maintain said permit, or to expand his knowledge of Intoxilyzer and Breathalyzer operation or maintenance.
- n. Certified copies of all Intoxilyzer or Breathalyzer operators licenses/permits issued to any person testing the Defendant by the Oklahoma Board of Tests for Alcohol and Drug Influence.
- o. All training and instruction Manuals (Cover Sheet and Index) used in the training of the person performing a chemical test on the Defendant or on any evidence obtained by the State.
- p. All Source code for the Software which is resident on or located in any E-prom device used on the Intoxilyzer Model 5000D or 8000 and controls the operation of the Intoxilyzer Model 5000D or 8000 Machine which was used to perform a breath test on the Defendant.
- q. All Maintenance records and downloads from the Intoxilyzer Model 5000D or 8000 used to test the Defendant from its date of.
- r. All Data stored in the Intoxilyzer Model 5000D or 8000, at the time of testing, or used by the Intoxilyzer Model 5000D or 8000, including but not limited to Breath Volume, velocity and duration, at the time of the test of the Defendant.
- s. All of the data from all of the records for all of the files used in the Intoxilyzer 5000 or 8000 for the breath test on the captioned Defendant, This includes, but is not limited to: subject files, maintenance files, diagnostic files, calibration files, operational error files, quick tests and instrument files. NOTE: File names may not be exactly as requested but the intent of this item is to receive all data files. Any data fields, records or files that are provided must be clearly identified, and should be provided in electronic (digital) format, capable of being accessed by Microsoft Excel or similar generic Spread Sheet Program.
- t. All O.S.B.I. Records regarding this analysis of blood of the Defendant, as indicated by the Attached List Exhibit "A".

FIELD SOBRIETY TESTING AND DRUG RECOGNITION EVALUATION IF ANY

- u. Any and All training Manuals used in the training of the arresting officer or any participating officer involved in the administration of Field Sobriety Tests or Drug

Recognition Evaluation to the Defendant. Including DRE Training Manuals and DRE Records kept by the Officer administering said tests or examinations. Copy of any Certification received by the officer regarding his training in Field Sobriety Tests

- v. Copies of all DRE and SFST Logs kept by the Officer or officers administering said tests or examinations. Including but not limited to
 - 1. Copy of DRE Certificate
 - 2. Curriculum Vitae
 - 3. Training Log
 - 4. Rolling Log
 - 5. Calibration records for pupilometer, thermometer, and sphygmomanometer
 - 6. DRE Report for the 3 months immediately prior to the arrest of the Defendant.
 - 7. Video of the DRE Evaluation.
- w. Copies of all tests results and reports on anyone upon whom the Officers had previously or subsequently performed Standardized Field Sobriety Tests or Drug Recognition Evaluations.
- x. The notes, reports or statements made by the officers, or any experts or persons performing Drug Recognition Evaluations done in connection with this case: including physical or mental examinations and scientific tests or experiments or comparisons;
- y. All documents which purport to substantiate the Scientific Validity of the Field Sobriety Tests or Drug Recognition Evaluations, including all evaluations of said scientific tests, which shows the tests to be scientific reliable and accurate, and accepted by the relevant scientific community.
- z. All reports, evaluations, notes, made by any officer or other person regarding any Drug Evaluation, done on the Defendant on the night of the arrest.
- aa. Copies and inspection of any and all Video or other type of Pictures or video, either digital or otherwise, of the defendant during the night of his arrest.
- bb. Any and all training Manuals used in training the arresting officers regarding the Arrest, Detection and Apprehension of Drinking and Intoxicated Drivers.

PORTABLE BREATH TESTING EQUIPMENT IF ANY

- cc. All documents relating to, or evidence, scientific evidence, including but not limited to Chemical or other tests performed on the defendant, including any and all documents reflecting any information regarding Creation of Standards, Purchase orders, maintenance and repair records, owners manuals, operator manuals, training manuals, for any and all equipment or Portable Breath Testing Machines used in the performance of any breath test or drug test, used on the Defendant or his property, on the night of his arrest, and any and all maintenance and repair records for the past year, for any equipment or machines used to test the Defendant or his blood, breath, urine or saliva, or other drugs..
- dd. All records dealing the operational procedure, adopted, approved, promulgated and/or prescribed for use with the any Portable Breath Test, Intoxilyzer Models 5000D or 8000, by the Oklahoma Board of Tests for Alcohol and Drug Influence or the State Director of

the Board of Tests for Alcohol and Drug Influence. .

- ee. All Source code for the Software which is resident on or located in any E-prom device used in the Portable Breath Test equipment used to test the Defendant on the night of his arrest.
- ff. All of the data from all of the records for all of the files used in the Portable Breath Test equipment used on the Defendant at the time of his arrest to test his breath for alcohol, This includes , but is not limited to: subject files, maintenance files, diagnostic files, calibration files, operational error files, quick tests and instrument files. NOTE: File names may not be exactly as requested but the intent of this item is to receive all data files. Any data fields, records or files that are not provided must be clearly identified, and should be provided in electronic (digital) format, capable of being accessed by Microsoft Excel or similar generic Spread Sheet Program.

Furthermore, pursuant to the Code, the defendant requests the disclosure of any evidence favorable to the defendant with regards to guilt or punishment;

2. Any and all prior criminal convictions of persons the State of Oklahoma, and the Plaintiff, intend to call as witnesses in the trial of the above-styled and numbered cause. Stafford v. District court of Oklahoma Co., 595 P.2d 797 (Okl. Cr. 1979);
3. All information or material in prosecutor's possession or control or that which could be acquired by due diligence by the prosecutor that would tend to negate the guilt of the accused, or which would tend to reduce the punishment of the accused should the accused be convicted. Brady v. Maryland, 373 U.S. 83, 83 S. Ct 1194 (1963); United States v. Agurs, 427 U .8. 97, 96 S. Ct 2392 (1976) Allen v. District Court of Washington Co., 803 P.2d 1164 (Okl. Cr. 1990);
4. An opportunity to inspect, review, and/or copy all evidentiary material and real evidence including copies of fingerprints, instruments, clothing, or other paraphernalia relating to the charge filed against this Defendant. Lambert v. State, 471 P.2d 935 (Okla. Cr. 1970); Layman v. State, 355 P.2d 444 (Okl. Cr. 1960);
5. An opportunity to inspect and to obtain copies of any and all photographs made at or near the scene of the alleged crime by any photographer or police officer, highway patrolman, district or assistant district attorney, or any other person acting under the supervision and control of the Plaintiff and for its benefit. Layman v. State, 355 P.2d 444 (Okl. Cr. 1960);
6. Copies of any and all sworn or unsworn statements obtained from purported witnesses to the alleged crime which has been charged against the Defendant. Okla. Stat. tit. 22 § 749 (1991);
7. All statements made by this Defendant to the District Attorney, his assistants, and agents, or police officers that pertain to this case. Clewis v. Texas, 386 U.S. 707, 87 S. Ct. 1338 (1967); Allen v. District Court of Washington Co., 803 P.2d 1164 (Okl. Cr. 1990). This includes, but is not limited, to the following:
 - a) All oral statements made by the Defendant prior to trial, of which the State and its agents and employees have knowledge. Watts v. State, 487 P.2d 981 (Okl. Cr. 1971); Allen v. District Court of Washington Co., 803 P.2d 1164 (Okl. Cr. 1990)

- b) Any signed confessions and written statements made by this Defendant; Watts v. State, 487 P.2d 981 (Okl. Cr. 1971) Allen v. District Court of Washington Co., 803 P.2d 1164 (Okl. Cr. 1990);
- c) Any recorded statements made by the Defendant. Allen v. District Court of Washington Co., 803 P.2d 1164 (Okl. Cr. 1990);
- 8. An opportunity to inspect and obtain UNREDACTED copies of any audio or video recorded of the Defendant, including but not limited to, In-car Video, body cam video, all jail or booking Videos, in the possession of any law enforcement agency or private entity including statements or conversations between the Defendant and any law enforcement agents, police, confidential informant or any person. Allen v. District Court of Washington Co., 803 P.2d 1164 (Okl. Cr. 1990);
- 9. An opportunity to inspect and obtain copies of all prosecution exhibits that are to be introduced at trial, including but not limited to photographs and confessions. Doakes v. District Court of Oklahoma Co., 447 P.2d 461 (Okl. Cr. 1968); Layman v. State, 355 P.2d 444 (Okl. Cr. 1960);
- 10. All records of prior felony convictions of the Defendant. Stafford v. District Court of Oklahoma Co., 595 P.2d 797 (Okl. Cr. 1979); Allen v. District court of Washington Co. , 803 P.2d 1164 (Okl. Cr. 1990);
- 11. An opportunity to inspect, review, and obtain samples and copies of reports, records, and/or other evidentiary material. which is the basis for an opinion of a State's expert witness. Stafford v. District Court of Oklahoma Co., 595 P.2d 797 (Okl. Cr. 1979);
- 12. All Brady Material in the form of inconsistent statements made by the State's witnesses, including but not limited to contradictory or inconsistent statements made by the witnesses, police officers, and the Defendant. United States v. Bagley, 473 U.S. 667, 105 S. Ct. 3375 (1985);
- 13. The name, Social Security number, address, telephone number, NCIC, OSBI or FBI Rap Sheet/Records Check of any confidential informant(s) used by law enforcement agents or police in the investigation of or as a witness to the alleged crime which has been charged against the Defendant; Allen v. District Court of Washington Co., 803 P.2d 1164 (Okl. Cr. 1990);
- 14. Notice of other crimes, testifying witnesses, and evidence admissible against this Defendant under Okla. Stat. tit. 12 § 2404(B) (1996); Burks v. State, 594 P.2d 771 (Okl. Cr. 1979);
- 15. Reports and statements, from any and all expert witnesses and/or technical investigators the Plaintiff intends to call at trial, including results of physical or mental examinations, and of scientific tests, experiments, or comparisons. Stafford v. District Court of Oklahoma Co., 595 P.2d 797 (Okl. Cr. 1979); Okla. Stat. tit. 22 & 751 (1991); Allen v. District Court of Washington Co., 803 P.2d 1164 (Okl. Cr. 1990);
- 16. An opportunity to inspect and obtain copies of all records, reports, and photographs reflecting the manner and the mode in which the State conducted any and all pre-trial identification proceedings. This request includes, but is not limited to, any "live" line-ups, any photographic line-ups, and any other proceeding or investigation during which a State's witness was given the opportunity to view the accused or a photograph of the accused for the purpose or with the result of making an

identification of a suspect. United States v. Wade, 388 U.S. 218, 87 S. Ct. 1926 (1967); Thompson v. State, 438 P.2d 287 (Okl. Cr. 1968);

17. All agreements between the State and any or its witnesses reflecting said witnesses obtaining special or lenient treatment in pending or potential criminal cases in exchange for their testimony in this case. Napue v. Illinois, 360 U.S. 264, 79 S. Ct 1173 (1959); Binsz v. State, 675 P.2d 448 (Okl. Cr. 1984);
18. All agreements between the State and any confidential informant(s) reflecting said confidential informants(s) obtaining special or lenient treatment in pending or potential criminal cases in exchange for their assistance or testimony; California v. Trombetta, 467 U.S. 479, 104 S.Ct. 2528 (1984); Giglio, v. United States, 405 U.S. 150, 92 S. Ct. 763 (1972);
19. Any books, papers, documents, photographs, tangible objects, buildings or places which the prosecuting attorney intends to use in this hearing or trial or which were obtained from or belong to the Defendant. Allen v. District Court Washington Co., 803 P.2d 1164 (Okl. Cr. 1990);
20. OSBI Records check on any witness listed by the State or the Defense as a possible witness who will testify at trial. Allen v. District Court of Washington Co., 803 P.2d 1164 (Okl. Cr. 1990);
21. The names, addresses, and telephone numbers of all persons interviewed by the District Attorney, Assistant District Attorney, Investigator, detective, Police Officer, or others acting under the supervision and control of the Plaintiff or for its benefit, in connection with this case or this Defendant. Including disclosure of any and all audio or video recordings of said interviews or statements. Brady v. Maryland, 373 U.S. 83, 83 S. Ct 1194 (1963); Burks v. State, 594 P.2d 771 (Okl. Cr. 1979);
22. A list of names and address of anyone who might have favorable testimony on behalf of the Defendant. Brady v. Maryland, 373 U.S. 83, 83 S. Ct. 1194 (1963); Levin v. Katzenbach, 373 F.2d 287 (D.C. Cir. 1986);
23. Information as to whether testifying government officer or agent is under investigation for taking money from informants, lying on warrant applications, and or stealing money, weapons or property from informants or suspects, or under investigation for committing perjury in court, directing witnesses to commit perjury, and for dealing drugs. United States v. Veras, 51 F. 3d 1365, 1374 (7th Cir. 1995)
24. All Highway patrol policy and procedures for Troopers. When provided, the Defendant and her attorney will not release that documentation without leave of the court, except for use in this Criminal matter against the Defendant.
25. Records of all training and training material regarding the use of force by Highway Patrol Troopers.

That such obligation to disclose such information be extended to materials and information in possession or control of members the Prosecutor's staff and to those law enforcement agencies

who regularly report to the Prosecutor or, who have reported in reference to this particular case, and that this duty be continued until the close of this trial. See: Okla. Stat. tit. 22 S§ 2001, 2002 (Supp. 1994); Allen v. District Court of Washington Co., 803 P.2d 1164 (Okl. Cr. 1990).

WHEREFORE, Defendant prays that this Court grant this Motion for Discovery and further order the State to produce the requested discovery or otherwise respond to this Motion.

Respectfully submitted,
FABIAN & ASSOCIATES, INC. P.C.



Stephen G. Fabian, JR., OBA No. 2795

Brian P. Young, OBA No. 19979

For the Firm

Court Plaza Building, Suite 700

228 Robert S. Kerr

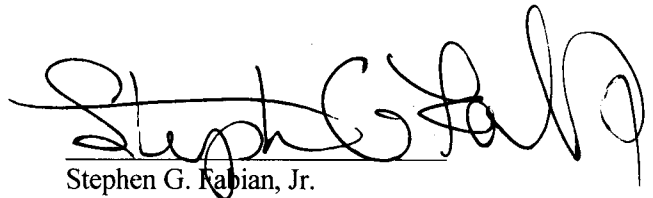
Oklahoma City, OK 73102

(405) 232-4384

CERTIFICATE OF SERVICE

This is to certify that on the _____ day of April, 2023, a true and correct copy of the foregoing Pleading was delivered by way of 1st Class prepaid mail, to:

Laura A. Thomas, District Attorney
J. R. Kalka, Assistant District Attorney
Logan County District Court
301 E. Harrison St. Rm 300
Guthrie, OK 73044



Stephen G. Fabian, Jr.

EXHIBIT "A"

Please provide the following in reference to a blood alcohol and/or drug test, Lab No. 2022-00 6453, Blood Kit No. 193581 reported on 5/11/2022 on the above named Defendant for the Gas Chromatograph and Mass Spectrometer used for analysis. All files may be provided in digital format.

Please provide,

Documentation Required for Independent External Scientific Validation for Reported and Alleged Test Results involving Blood Tests for ETOH and/or OTHER INTOXICANTS including all tests made by Enzymatic Process

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 procedures as to testing and calibration.
4. The policy that applies to the section of the laboratory where this particular testing or 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 analysis 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 analysis performed in this particular test or calibration event that covers the calibration or the achieving of a calibration curve.
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 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.

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 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.

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/Drug 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 analysis that was used in this particular testing or calibration event 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 t_0 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 spectra examined and reported.
 - 28.3 All "tune" reports ran within one year if a MS detector was used.

The Following Items Concern Protocols and Method Matters:

29. For each machine used in the analysis of the above blood:
 - A copy of the Method used in this analysis of the Blood for Drugs.
 - Documentation regarding when the method used in this test was developed.
30. Name, address and employer of individual or individuals developing or involved in

the development of this method of performing this analysis.

31. Provide copies of all drafts of the Method, identifying by date of the each draft, and list all changes and dates for said changes ever made to the to these methods.
32. Name of the person that loaded the method file used in this analysis.
33. All policy, procedures, instructions, and any other document referencing the development, altering, changing, and installation or loading of methods for this type of analysis by the OSBI.
34. All notes, e-mails, submissions, between employees of OSBI regarding of the methods, and protocols used in this test.
35. All methods used by OSBI for trouble shooting the operation of all of the equipment used in the testing and analysis of the sample in the above referenced case.
36. All documents created regarding the testing of the Method or Protocol used in the performance of this test.
37. All documents regarding the purchase or use of the Extraction Solvent, and all Documentation that was provided to you by the Creator of the Extraction Solvent. Including but not limited to the Grade of the Extraction Solvent.
38. All Photographs of the Blood Kit, and Vacutainers in the kit upon arrival at the Laboratory. Indicating level of blood in each vial.
39. Reports of the Level of Blood in each vial.