NO.

|  |  |  |
| --- | --- | --- |
| THE STATE OF TEXAS | § | IN THE name COURT |
|  | § |  |
| v. | § | OF |
|  | § |  |
| name | § | name, TEXAS |

***Ex Parte* Motion For Court Ordered Production of**

**Documents and/or Things**

**TO THE HONORABLE JUDGE OF SAID COURT:**

COMES NOW, the Defendant, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, by counsel, and pursuant to U.S. Const. amends. V, VI, VIII and XIV; Tex. Const. art. I §§ 10, 13, 15, and 19; Tex. Code Crim. Pro. art. 1.03, 1.04, 1.05, 1.051, 1.09, 1.12, 1.25 and 37.071; and The Texas State Bar Performance Guidelines for the Non-Capital Criminal Defense Representation Guideline 4.1 and 4.2, and moves this Court to enter an Order directing the Lubbock County Sheriff’s Office to provide evidence to the defense for testing. In support thereof, this Defendant would show:

**I.**

a) Defendant has been charged with the offense of <<Possession with Intent to Deliver 4-200g>>.

b) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, undersigned Counsel has been appointed to represent Defendant.

c) To prepare a defense, Counsel has a duty to conduct a thorough, independent, and searching investigation into both the guilt-innocence phase and the punishment phase of the above entitled action.

**II.**

a) Defendant, through Counsel requests the Court order the Lubbock County Sheriff’s Office (LSO) to provide all material evidence held by LSO (LSO Case # \_\_\_\_\_\_\_\_\_\_) and any of its entities; including, to wit:

1. <<Alleged methamphetamine>>;

2. Any field test kit used;

3. The packaging, i.e. the baggies, in which the alleged <<Methamphetamine>> was found; and

4. Any printouts, spectrums, chromatographs, analyses, lab notes, reports or other documentation regarding the State’s testing.

b) The documents and/or items requested relate to guilt/innocence and punishment issues in this case. They are relevant and material to the presentation of the defense of Defendant. Specifically, these documents and/or items relate to the development of a defense to Defendant’s alleged possession.

**III.**

a) Defendant has an absolute right to independent examination of drugs in drug possession cases. *Detmering v. State*, 481 S.W.2d 863 (Tex. Crim. App. 1972). Denial of Defendant’s request to assert that right is reversible error. *Terrell v. State*, 521 S.W.2d 618 (Tex. Crim. App. 1975). Due process and the right to effective assistance of counsel compel the appointment of a qualified chemist to inspect the alleged controlled substance in the indictment at no cost to Defendant. *McBride v. State*, 838 S.W.2d 248 (Tex. Crim. App. 1992).

b) Defendant has a constitutional right to present a defense but no means of using it. Counsel has a constitutional duty, but no means to carry it out. One Court dealing with this issue said “Criminal defendants have the right to ‘put before a jury evidence that might influence the determination of guilt.’ To effectuate this right, a defendant must have the ability to obtain that evidence.” *U.S. v. Tucker*, 249 F.R.D. 58, 65 (2008).

**IV.**

WHEREFORE, PREMISES CONSIDERED, Defendant herein prays this Court ORDER LSO to produce all items of physical evidence described herein and to allow Defendant and the expert(s) designated by Defendant the right to examine, inspect, photograph, and conduct scientific tests on said items.

Defendant further PRAYS that the Court order LSO and its entities to maintain the confidentiality of this request and any subsequent order.

Defendant moves the Court’s Order contain the following language:

THIS ORDER, AND THE DEFENDANT’S EX PARTE MOTION FOR COURT ORDERED PRODUCTION OF DOCUMENTS AND/OR THINGS, SHALL BE SEALED IN THE RECORD AND PLACED IN AN ENVELOPE IN THE RECORD AND SHALL BE SEEN BY AND DISTRIBUTED TO DEFENSE COUNSEL AND THIS COURT ONLY.

 Defendant finally moves for any further relief as he may show himself to be justly entitled.

Respectfully submitted,

Law Office Name

Address

Address

P.:

Email Address

/s/ NAME

NAME

State Bar No.:

NO.

|  |  |  |
| --- | --- | --- |
| THE STATE OF TEXAS | § | IN THE name COURT |
|  | § |  |
| v. | § | OF |
|  | § |  |
| name | § | name, TEXAS |

**Order Granting *Ex Parte* Motion For Court Ordered Production of**

**Documents and/or Things**

 Came to be considered Defendant’s Ex Parte Motion for Court Ordered Production of Documents and/or Things. Defendant’s motion is GRANTED.

 The Lubbock County Sheriff’s Office (LSO) is ORDERED to produce the <<alleged methamphetamine>> forming the basis for the charges against Defendant in this case; any field test kit used; the packaging, i.e. the baggies, in which the <<alleged methamphetamine>> was found; and any printouts, spectrums, chromatographs, analyses, lab notes, reports or other documentation regarding the State’s testing. The LSO is directed to produce the above-listed materials to the expert(s) designated by Counsel for Defendant for the purposes of examination, inspection, photography, and the conducting of scientific tests. The LSO is additionally directed to maintain the confidentiality of Defendant’s Motion and this Order.

**THIS ORDER, AND THE DEFENDANT’S EX PARTE MOTION FOR COURT ORDERED PRODUCTION OF DOCUMENTS AND/OR THINGS, SHALL BE SEALED IN THE RECORD AND PLACED IN AN ENVELOPE IN THE RECORD AND SHALL BE SEEN BY AND DISTRIBUTED TO DEFENSE COUNSEL AND THIS COURT ONLY.**

 IT IS SO ORDERED.

 ENTERED this \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_\_\_\_\_.

 JUDGE PRESIDING