

CAUSE NUMBER \_\_\_\_\_

THE STATE OF TEXAS

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§

COUNTY COURT AT LAW

VS.

NUMBER \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_ COUNTY, TEXAS

**AGREED ORDER TO WAIVE PERSONAL APPEARANCE AND TO CONDUCT PRETRIAL HEARING BY VIDEO-CONFERENCE**

The Defendant, \_\_\_\_\_ is represented by Defense Counsel, \_\_\_\_\_ . The State of Texas is represented by Assistant County Attorney \_\_\_\_\_ .

On May 26, 2020, the Texas Supreme Court issued its Seventeenth Emergency Order Regarding the Covid-19 State of Disaster. The order applies to all courts in Texas and provides in relevant part as follows:

ORDERED that:

1. ... 2.

3. Subject only to constitutional limitations, **all courts in Texas may** in any case, civil or criminal—and must to avoid risk to court staff, parties, attorneys, jurors, and the public— without a participant's consent:

a. ...b.

**c. Allow or require anyone involved in any hearing, deposition, or other proceeding of any kind—including but not limited to a party, attorney, witness, court reporter, grand juror, or petit juror—to participate remotely, such as by teleconferencing, videoconferencing, or other means;**

d. Consider as evidence sworn statements made out of court or sworn testimony given remotely, out of court, such as by teleconferencing, videoconferencing, or other means;

e. Conduct proceedings away from the court's usual location with reasonable notice and access to the participants and the public;

f. Require every participant in a proceeding to alert the court if the participant has, or knows of another participant who has: (i) COVID-19 or flu-like symptoms, or a fever, chills, repeated shaking with chills, cough, shortness of breath or difficulty breathing, muscle pain, headache, sore throat, loss of taste or smell, diarrhea; or (ii) been in close contact with a person who is confirmed to have COVID-19;

g. Take any other reasonable action to avoid exposing court proceedings to the threat of COVID-19.

Misc. Docket No. 20-9071, Seventeenth Emergency Order Regarding the Covid-19 State of Disaster, May 26, 2020. [Emphasis added].

**BY MUTUAL CONSENT AND AGREEMENT** the Defendant, Defense Counsel, and the State have signed and filed with the court a Written Consent to Waive Personal Appearance and Conduct Pretrial Hearing by Video Conference. The pretrial hearing shall be limited to the Defendant's Motion to Suppress Evidence filed in this cause on \_\_\_\_\_. Both the State and Defense reserve: (1) any right either side may have to conducting hearings in the future on other pretrial matters in-person before a judge or (2) conducting a trial on the merits of this case in-person before a judge or jury.

The court shall admonish the Defendant at the commencement of the hearing that prior to the start of the hearing the Defendant may continue the hearing and choose to participate in an in-person hearing before the court and that the Defendant may refuse to participate in a pretrial hearing conducted by video-conference. Further, the court shall admonish the Defendant that if the Defendant chooses to continue the hearing and participate in an in-person hearing before the court he will not be penalized for requesting such delay.

**IT IS HEREBY ORDERED THAT the time and date for pretrial hearing shall begin on the 14<sup>th</sup> day of July, 2020 at 10:00 o'clock a.m. Central Standard Time.**

The hearing shall be conducted by video-conference as described herein.

The video-conferencing system used shall be via ZOOM. The court shall host the video-

conference and all participants shall participate as guests. This format will provide a simultaneous full motion video and interactive communication of image and sound between the judge, the Court Reporter, court staff, the attorney representing the state, defense counsel, the Defendant, and the witnesses.

Each participant shall be responsible for their own audio and video equipment to connect through Zoom video-conferencing during the hearing.

The court shall ensure that:

- (1) the Zoom video-conference is recorded and that the recording is both visual and aural and is by electronic means to be made a part of the record;
- (2) the Zoom recording equipment is capable of making an accurate recording;
- (3) the Zoom operator is competent;
- (4) the Zoom recording is accurate and is not altered;
- (5) each voice on the Zoom recording is identified;
- (6) only one continuous Zoom recording of the hearing is made and the necessity for pauses in the recording or for multiple recordings is established at the hearing.
- (7) on the request of the defendant or defense counsel, the defendant and defense counsel shall be permitted to communicate privately throughout the hearing without being recorded or overheard by any other person. Communication between the defendant and defense counsel during the hearing may be by telephone, email, text, or by any other means.
- (8) on motion of the defendant, or the attorney representing the state, or in the court's discretion, the court may terminate an appearance by video-conference at any time during the appearance and require an appearance by the witness in open court at such time as an in-person appearance shall be possible to ensure compliance with applicable public health and safety guidelines.
- (9) A record of the hearing shall be made by a court reporter and preserved by the court reporter until all appellate proceedings have been disposed.
- (10) Subject to cross-examination and confrontation of the witnesses, admit and consider as evidence sworn testimony and exhibits offered remotely, out of court, by video-conferencing.

Not later than **TUESDAY, JULY 7, 2020**, Attorneys shall provide the Court Reporter

(E-MAIL) and the Court Coordinator (E-MAIL) with their email address and telephone number and an email address and telephone number for any witnesses they intend to call at the hearing. Defense counsel shall provide an email address and telephone number for the Defendant at that same time. The Court Reporter or Court Coordinator will email all participants a Zoom video conference link invitation to the email address provided for the hearing.

Not later than **TUESDAY, JULY 7, 2020**, attorneys shall serve on opposing counsel all Witness Lists and Exhibits for the hearing. Witness Lists and Exhibits must be in a commonly recognized electronic format readily available for viewing on a PC or Macintosh computer. Exhibits shall be pre-marked with exhibit numbers that visually display the exhibit number. The file name for each Exhibit shall refer to the Exhibit Number. Any edited exhibits such as video/audio recordings shall be served at the same time and in the same manner. Witness Lists and Exhibits shall be emailed or shared via a drive link to the State at (E-MAIL) and to Defense Counsel at (E-MAIL). Counsel shall confirm via email that the Witness List and Exhibits were received. Counsel shall endeavor to work out any objections and/or redactions to the admissibility of a witness's testimony or the introduction of an exhibit prior to the hearing.

Not later than **12:00 P.M. MONDAY, JULY 13, 2020** attorneys shall email or send a drive link to the Court and opposing counsel of all filed documents, witness lists, pre-marked exhibits, and legal authority (hereinafter referred to as "Materials") that counsel intends to offer during the hearing or rely on during argument. Materials must be in a commonly recognized electronic format readily available for viewing on a PC or Macintosh computer. Exhibits shall be pre-marked with exhibit numbers that visually display the exhibit number. The file name for each Exhibit shall refer to the Exhibit Number. Materials must be emailed to the State (E-MAIL), Defense Counsel (E-MAIL), the Court Reporter (E-MAIL), the Court Coordinator (E-MAIL) and the Judge

(E-MAIL). Each recipient shall confirm via email that the Materials were received. When responding by email, all responses should be sent by choosing “Respond All”.

Witnesses may only testify by video-conference. During testimony, Attorneys are prohibited from being in the same physical location as a testifying witness and shall not communicate with that witness in any way except through video-conference. Court staff will provide technical assistance for video-conferencing to the witness during the hearing if that need should arise. It is the responsibility of the attorney offering the witness to ensure that all exhibits are available to the witness, including those of opposing parties. Attorneys shall contact their respective witnesses to ensure their availability at the hearing and that they have access to adequate audio and video equipment to connect through Zoom for the hearing. Attorneys are responsible for advising each witness how to connect and participate in the hearing and should make every effort to avoid delays. All participants shall participate by Zoom. No party or witness shall travel in violation of any emergency orders issued by the local, state, or federal government.

SUBPOENAS: An attorney that issues or is granted a subpoena shall be responsible for having the subpoena served. The subpoena shall indicate that the hearing is being conducted by Zoom video-conference and that the witness must provide an email address and telephone number to the attorney that issues the subpoena. Attorneys shall be responsible for timely providing witness email and telephone number information to the Court Reporter and Court Coordinator. The state shall be required to subpoena any law enforcement witness they intend to call as a witness to bring to the hearing the following: DIC 23 (“Peace Officer’s Sworn Report”), DIC 24 (“Statutory Warning”), DIC 25 (“Notice of Suspension”), Affidavit for Warrant of Arrest and Detention, all video or digital recordings, APD Offense Report \_\_\_\_\_, any other report the witness prepared on this case.

PROCEDURES FOR WITNESSES: Before a witness is allowed to give testimony, the court shall:

- (1) confirm that the witness is the person he or she has been represented to be.
- (2) require the witnesses to present a valid form of identification to be recorded by camera to verify their identity to the Court.
- (3) swear in the witnesses and instruct the witness that “the Rule” (Texas Rule of Evidence, Rule 614) has been invoked. No witness shall hear another witnesses’ testimony.
- (4) instruct the witness that during their testimony, the witness must be alone in the room from where they are testifying, physically separated from any other person, and not to communicate in any way with any person other than the attorneys, the judge, or the Judge’s courtroom staff.
- (5) immediately prior to testifying admonish the witness as follows:

FOR PURPOSES OF YOUR TESTIMONY, THIS HEARING IS BEING CONDUCTED BY VIDEO-CONFERENCE AND IS AN “OFFICIAL PROCEEDING”.

A PERSON COMMITS AN OFFENSE IF, WITH INTENT TO DECEIVE AND WITH KNOWLEDGE OF THE STATEMENT'S MEANING A WITNESS MAKES A MATERIAL FALSE STATEMENT UNDER OATH OR SWEARS TO THE TRUTH OF A FALSE STATEMENT PREVIOUSLY MADE AND THE STATEMENT IS REQUIRED OR AUTHORIZED BY LAW TO BE MADE UNDER OATH DURING OR IN CONNECTION WITH AN OFFICIAL PROCEEDING.

Procedural Rights and Duties. All substantive and procedural rights and duties apply to this video-conference hearing, subject only to the limitations of the physical arrangement.

FOR THE PUBLIC: The Open Courts Provision of Texas law allows all Texans access to court proceedings. As such anyone may call the court coordinator (TELEPHONE NUMBER) to obtain access codes to observe the hearing via YouTube.

BE IT REMEMBERED, that on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ The court Approves of, Grants, and Enters this AGREED ORDER TO WAIVE PERSONAL APPEARANCE AND TO CONDUCT PRETRIAL HEARING BY VIDEO-CONFERENCE.

Ordered on this day: \_\_\_\_\_

\_\_\_\_\_  
Honorable (JUDGE)  
County Court at Law Number \_\_\_\_\_  
\_\_\_\_\_ County, Texas

Agreed to as to form and content:

\_\_\_\_\_  
(NAME),  
DEFENDANT

\_\_\_\_\_  
(NAME)  
Attorney and Counselor at Law  
Attorney for Defendant

\_\_\_\_\_  
(NAME)  
Assistant County Attorney  
Attorney for The State of Texas

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THE STATE OF TEXAS

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COUNTY COURT AT LAW

VS.

NUMBER \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_ COUNTY, TEXAS

**WRITTEN CONSENT TO WAIVE PERSONAL APPEARANCE  
AND CONDUCT PRETRIAL HEARING BY VIDEO CONFERENCE**

I, \_\_\_\_\_, am the defendant in the instant case and am the person charged with the offense of Driving While Intoxicated. I am not in custody and I am represented by my attorney, Mr. David B. Frank in this case and have fully consulted with my attorney concerning this charge.

I understand that I have the right under the Texas and U.S. Constitutions and Texas statutory law to appear personally before this Court in all proceedings in this cause. I acknowledge specifically that I have a right to appear and be present before a judge in person in any proceeding involving a Motion to Suppress Evidence in my case. I further acknowledge that I may waive the right to appear in person before the judge.

I have discussed the implications of waiving these rights with my attorney, and I understand the consequences of such a waiver. I am choosing to knowingly, intelligently, and voluntarily waive my rights to appear and be present before a judge in person. I consent to the Court hearing my Motion to Suppress Evidence via Zoom video-conferencing. While I reserve my right to appeal, I also specifically waive any right to assert the waiver of personal appearance at the hearing on the Motion to Suppress Evidence in any appeal or post conviction proceeding including a writ of habeas corpus.

I am waiving my right and consenting of my own free will and volition. Nobody, including my attorney, has insisted upon, coerced, or improperly influenced me in my decision to waive my personal appearance and consent to a hearing via video-conferencing.

**DECLARATION**

Taken pursuant to § 132.001 of the Texas Civil Practice & Remedies Code

STATE OF TEXAS §  
\_\_\_\_\_ COUNTY §

My name is \_\_\_\_\_. My Date of Birth is \_\_\_\_\_ and my address is \_\_\_\_\_.

I am the Defendant in the foregoing Written Consent to Conduct Pretrial Hearing by Video-Conference. I have read the WRITTEN CONSENT TO WAIVE PERSONAL APPEARANCE AND CONDUCT PRETRIAL HEARING BY VIDEO CONFERENCE and by my signature below I affirm under penalty of perjury that all the allegations of fact contained therein are true and correct.

Subscribed in Travis County, State of Texas, on \_\_\_\_\_.

\_\_\_\_\_  
(NAME),  
Defendant

**STATEMENT BY DEFENDANT’S ATTORNEY**

I have fully explained to the Defendant the right to personally appear before this Court for the hearing on Defendant’s Motion to Suppress Evidence and join in this waiver of personal appearance and Agreement to Conduct Pretrial Hearing by Video-Conference.

\_\_\_\_\_  
(NAME),  
Attorney for Defendant

**APPROVAL BY STATE’S ATTORNEY**

I approve of the waiver of personal appearance in this cause and request the Court to Proceed upon the Defendant’s Motion to Suppress Evidence by Video-Conference.

\_\_\_\_\_  
(NAME),  
Attorney for State