

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
07 CRS 000000

STATE OF NORTH CAROLINA)

vs.)

JOHN Q. DOE,)

Defendant.)

) MOTION FOR DISCOVERY
) (LABORATORY/SCIENTIFIC
) EVIDENCE)
)
)
)

NOW COMES the Defendant, *John Q. Doe*, by and through the undersigned counsel, Maitri "Mike" Klinkosum, Assistant Public Defender, and hereby moves this Honorable Court, pursuant to the Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution; Article I §§ 19 and 23 of the North Carolina Constitution; *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963) and its progeny; N.C.Gen.Stat. §§ 15A-903(a)(2); *State v. Cunningham*, 108 N.C.App. 185, 423 S.E.2d 802 (1992); *State vs. Dunn*, 154 N.C.App. 1, 571 S.E.2d 650 (2002); *State v. Fair*, 164 N.C.App. 770 (2004); and *State v. Edwards*, 174 N.C.App. 490, 621 S.E.2d 333 (2005), for an Order requiring the State to disclose to the defense the underlying basis for the opinions of any witnesses the State intends to call to present evidence of a scientific nature in these matters. In support of the foregoing Motion, the Defendant would show unto the Court as follows:

1. The Defendant is charged with Possession with Intent to Sell and Deliver Cocaine, Sale of Cocaine, and Delivery of Cocaine in 07 CRS 105; Possession with Intent to Sell and Deliver Cocaine, Sale of Cocaine, and Delivery of Cocaine in 07 CRS 1009; Possession of Cocaine in 07 CRS 5798; and Habitual Felon status in 07 CRS 575.
2. The Defendant was originally represented by Assistant Public Defender W.
3. On June 1, 2007, undersigned counsel was assigned the responsibility for the representation of the Defendant.
4. Based upon communications with the prosecution in this matter, it is known that these matters are set for trial beginning July 2, 2007.
5. On April 27th, 2007, the prosecution filed a Notice of Intent to Introduce Expert Testimony in 07 CRS 105, providing the defense with notice of the State's intent

to introduce the expert testimony of I.A., a Forensic Chemist employed by the North Carolina State Bureau of Investigation.

6. Upon information and belief, witness A is the same individual who tested the substance alleged to be cocaine in 07 CRS 105.
7. The prosecution has previously provided a laboratory report of the North Carolina State Bureau of Investigation dated October 26, 2006 in which witness A concluded that the substance alleged to be cocaine was, in fact cocaine base.
8. Other than the October 26, 2006 laboratory report and a Statement of Qualifications of Agent A dated May 20, 2004, the prosecution has not provided any further discovery regarding Agent A or the tests performed by Agent A.
9. The October 26, 2006 laboratory report lists only the conclusion(s) of witness A. The lab report does not list the basis for the conclusion(s) of witness A.
10. Pursuant to the legal authorities cited in the preamble of this Motion, the Defendant hereby moves the Court to enter an Order commanding the prosecution to provide the following information within ten days prior to the trial of these matters:
 - a. Any and all scientific conclusions the State intends to offer at trial;
 - b. Any and all bases for said scientific conclusions;
 - c. Any and all procedures and tests used to reach said conclusions;
 - d. Any and all data generated by the procedures and used to reach said conclusions;
 - e. Any and all procedures the State's expert should have used to reach said conclusions; such procedures generally being termed "protocols."
 - f. Any and all information concerning how the samples (evidence) were collected and handled;
 - g. Any and all information concerning the chain of custody and transfer of all evidence;
 - h. Any and all laboratory receiving records (records documenting the date, time, and condition of receipt of the evidence in question; laboratory assigned identifiers; storage location);

- i. Any and all information concerning procedures for sub-sampling and contamination control;
- j. Copies of all technical procedures in effect at the time the test was performed during sample screening and confirmation, including, but not limited to: sample preparation, sample analysis, data reporting and instrument operation;
- k. Copies of proficiency results and testing for each analyst and technician responsible for preparation or analysis of subject specimens, including, but not limited to: raw data and reported results, target values and acceptance ranges, performance scores, and all related correspondence;
- l. Any and all information related to traceability documentation for standards and reference materials used during analysis, including unique identifications, origins, dates of preparation and use, composition and concentration of prepared materials, certification or traceability records from suppliers, assigned shelf lives and storage conditions;
- m. Any and all information related to sample preparation records, including dates and conditions of preparation, responsible analyst, procedural reference, purity, concentration and origins of solvents, reagents, and control materials prepared and used, samples processed concurrently, and extract volume;
- n. Copies of all bench notes, log books, and any other records pertaining to case samples or instruments; records documenting observations, notations, or measurements regarding case testing;
- o. Any and all information related to instrument run logs with identification of all standards, reference materials, sample blanks, rinses, and controls analyzed during the day/shift with subject samples (as appropriate run sequence, origins, times of analysis and aborted run sequences);
- p. Copies of any and all records on instrument operating conditions and criteria for variables, including but not limited to: GC column, instrument file identification, tuning criteria, instrument performance check, initial calibration, continuing calibration checks, calibration verification;
- q. Records of instrument maintenance status and activities for instruments used in the testing of the substance at issue in this case, documenting routine as-needed maintenance activities in the four weeks prior to the testing of the substance at issue in this case;

- r. Raw data for complete measurement sequence (opening and closing quality control included) that includes the subject samples.
- s. A description of the library used for spectral matches for the purpose of qualitative identification of controlled substances, including source(s) and number(s) of reference spectra;
- t. Copies of records documenting computation of the SBI Lab's theoretical production yield, including the basis for the computation and the algorithm used;
- u. Copies of the procedures for operation and calibration checks of analytical balance used to weigh the substance at issue in this case;
- v. Copies of results of calibration checks and documentation of mass traceability for gravimetric determinations;
- w. Copies of results of contamination control surveys for trace level analytes relevant to test methods and the time of analysis, including sample design and analytical procedures;
- x. Copies of any and all records and results of internal review of subject data;
- y. Copies of any and all method validation records documenting the laboratory's performance characteristics for qualitative identification and quantitative determinations of the controlled substances, including, but not limited to, data documenting specificity, accuracy, precision, linearity, and method detection limits;
- z. Copies of the SBI Lab's Quality Manual in effect at the time the subject samples were tested as well as the laboratory's most recent Quality Manual (i.e., the document(s) that describe the laboratory's quality objects and policies);
- aa. Copies of the SBI Lab's technical or operational procedures in effect at the time the subject samples were tested (often termed Standard Operating Procedures, for analytical laboratory operations) as well as the laboratory's most recent technical or operational procedures for analytes detected in subject samples;
- bb. A copy of the NC SBI lab's ASCLD-LAB application for accreditation, and most recent Annual Accreditation Review Report;

- cc. A copy of the statement of qualifications of each analyst and/or technician responsible for processing case samples to include all names, locations, and jurisdictions of cases in which said personnel testified concerning the same substances found in the present case;
 - dd. A copy of the NC SBI lab's ASCLD-LAB on-site inspection report, as well as any reports of the on-site inspections by any other testing laboratory audit organization;
 - ee. A copy of any and all internal audit reports generated during the period the subject samples were tested;
 - ff. A list of capital instrumentation in the laboratory at the time subject testing was performed, including manufacturer, model number, and major accessories;
 - gg. A copy of the Drug Chemistry Section Procedures Manual; and
 - hh. A copy of the Drug Chemistry Section Training Manual.
11. The requested information/documentation is critical to ensuring that the Defendant's rights to effective assistance of counsel, confrontation and cross-examination, and due process are provided.
 12. At trial, the State intends to introduce expert opinion regarding the substance alleged to be cocaine. As the State's expert has performed experiments and tests on the substance alleged to be cocaine (in order to render opinion that said substance is, in fact, cocaine), the Defendant would be prejudiced in the trial of these matters if the methods and procedures used by the expert to reach said opinion were not disclosed to the defense.
 13. In order to be able to prepare for cross-examination of the State's expert, and to prepare for cross-examination of the State's expert, the Defendant must have access to the information outlined in paragraphs 10(a – hh) above.
 14. If the Defendant is not given access to the information outlined in paragraphs 10(a – hh) above, the lack of such access will result in a denial of the Defendant's rights to effective assistance of counsel, confrontation and cross-examination, and due process of law.
 15. In *State v. Cunningham*, 108 N.C.App. 185, 423 S.E.2d 802 (1992), the Court of Appeals, in holding that defendants are entitled to "pretrial discovery of not only conclusory lab report, but also of any tests performed or procedures utilized...to reach such conclusion", the Court also held the scope of discovery to encompass

the materials necessary to enable a defendant to determine that “the tests performed were appropriate and to become familiar with the test procedures.” (citing 2 A.B.A. Standards for Criminal Justice, Commentary to Standard 11-2.1(a)(iv)2d.ed. 1980 & Supp. 1986).

16. In *State v. Dunn*, 154 N.C.App. 1, 571 S.E.2d 650 (2002), the defendant argued that the trial court erred “in failing to provide defendant discovery information pertaining to laboratory protocols, incidences of false positive results, quality control and quality assurance, and proficiency tests of the State Bureau of Investigation laboratory...”
17. In *Dunn*, the Court of Appeals said the defendant was entitled to such information and ordered a new trial.
18. In order to ensure that the Defendant’s constitutional rights are afforded, the Court should order the State to disclose to the defense all of the information outlined in paragraphs 10(a – hh) above.

WHEREFORE, the Defendant respectfully prays unto this Court for the following relief:

1. That the Court enter an Order requiring the prosecution to provide the defense with the information outlined in paragraphs 10 (a – hh) above; and
2. For such other and further relief to which the Defendant may be entitled and which the Court may deem just and proper.

This the 2nd day of July, 2007.

By:

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Certificate of Service

This shall certify that a copy of the foregoing *Motion for Discovery (Laboratory/Scientific Evidence)* was this day served upon the District Attorney by the following method:

_____ depositing a copy hereof in a postpaid wrapper in a post office or official depository under the exclusive care, custody, and control of the United States Postal Service, properly addressed to Office of the District Attorney;

 X by personally serving the Office of the District Attorney via hand delivery (*Assistant District Attorney Matt Lively*);

_____ by transmitting a copy via facsimile transmittal to the Office of the District Attorney; and/or

_____ by depositing a copy in the box for the Office of the District Attorney maintained by the Clerk of Superior Court.

This the 2nd day of July 2007.

By: _____
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