

5. Upon information and belief, on September 16, 2009 the Raleigh Police Department submitted the following items to the NCSBI laboratory for an examination for the presence of ignitable liquids:
 - a. Nylon bag containing carpet;
 - b. Nylon bag containing clothing consisting of a pink shirt;
 - c. Nylon bag containing clothing consisting of pants;
 - d. Nylon bag containing clothing consisting of a shirt;
 - e. Nylon bag/gauze pad which contained a sample of a liquid.
6. Upon information and belief, on September 23, 2009, the Raleigh Police Department submitted the following items to the NCSBI laboratory for an examination for the presence of ignitable liquids:
 - a. Nylon bag containing tennis shoes;
 - b. Nylon bag containing pants, t-shirt, and boxers.
7. Further, according to the lab reports of the NCSBI, examinations were, in fact, conducted on the items submitted to determine whether gasoline and/or other flammable materials were present on the items submitted.
8. The two laboratory reports generated by the NCSBI laboratory, both of which are dated October 30, 2009, indicate that residual gasoline, an n-alkaline product, and hydrocarbons were detected on the items submitted by the Raleigh Police Department.
9. The NCSBI laboratory reports do not include any reference to the type(s) of examination(s) and/or test(s) which were conducted on the items submitted by the Raleigh Police Department.
10. The NCSBI laboratory reports do not include any reference to the procedures and/or protocols that were used to conduct said examination(s) and/or test(s) on the items submitted by the Raleigh Police Department.
11. The NCSBI laboratory reports do not include the underlying bases for the conclusions reached and/or the opinions rendered by Agent X with respect to the items submitted by the Raleigh Police Department.
12. The laboratory reports of the NCSBI contain only the conclusions reached by Agent X and do not contain any reference explaining the underlying bases for the conclusions asserted in the reports.

13. 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 in addition to those referenced in paragraphs 1 through 12 above;
 - b. The identity and curriculum vitae of any experts the State intends to call as expert witnesses in the trial of these matters, including, but not limited to, Agent X;
 - c. Any and all bases for said scientific conclusions, including, but not limited to, the conclusions of Agent X as set forth in the NCSBI laboratory reports of October 30, 2009;
 - d. Any and all procedures and tests used to reach said conclusions;
 - e. Any and all data generated by the procedures and used to reach said conclusions;
 - f. Any and all procedures the State's expert(s) should have used to reach said conclusions; such procedures generally being termed "protocols";
 - g. Any and all information concerning the chain of custody and transfer of all evidence; and
 - h. Any and all reports from the NCSBI laboratory and/or the NCSBI related to the investigation of these matters.
14. 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.
15. At trial, the State may introduce expert opinion regarding the alleged conclusions reached by the NCSBI laboratory in its reports of October 30, 2009. As the State's expert will have performed experiments and tests on the items submitted by the Raleigh Police Department, the Defendant would be prejudiced in the trial of these matters if the methods and procedures used by the expert to reach any opinions were not disclosed to the defense.
16. In order to effectively prepare for cross-examination of the State's expert, the Defendant must have access to the information outlined in paragraph 13(a – h) above.

17. If the Defendant is not given access to the information outlined in paragraphs 13(a – h) 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.
18. The Defendant previously requested the type of discovery outlined in paragraph 13(a – h) above in the Defendant’s *Motion for Production of Discoverable Materials*, filed on October 29, 2009.
19. 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).
20. 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...”
21. In *Dunn*, the Court of Appeals said the defendant was entitled to such information and ordered a new trial.
22. 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 13(a – h) 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 13(a – h) 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 16th day of May 2010.

By:

Maitri "Mike" Klinkosum
Assistant Public Defender
Attorney for the Defendant
227 Fayetteville St. Mall, Suite 500
Raleigh, NC 27601
Telephone: (919) 715-1514
Facsimile: (919) 715-1510
Email: mklinkosum@yahoo.com

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 Melanie A. Shekita*);

_____ 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 17th day of May 2010.

By: _____
Maitri "Mike" Klinkosum
Assistant Public Defender
Attorney for the Defendant
227 Fayetteville St. Mall, Suite 500
Raleigh, NC 27601
Telephone: (919) 715-1514
Facsimile: (919) 715-1510
Email: mlinkosum@yahoo.com