# STATE OF NORTH CAROLINA IN THE GENERAL COURT OF JUSTICE

**SUPERIOR COURT DIVISION**

**COUNTY OF XXXXX 12 CRS XXXX**

**STATE OF NORTH CAROLINA )**

**)**

**vs. ) MOTION FOR DISCOVERY**

**) FINGERPRINT EVIDENCE**

**DEFENDANT )**

**)**

**Defendant. )**

**NOW COMES** the Defendant, by and through the undersigned counsel,

 , 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. Undersigned Counsel was appointed to represent the Defendant on DATE on charges of CHARGES in the above file numbers.
2. Based upon communications with the prosecution in this matter, it is known that these matters are set for trial beginning DATE.
3. On DATE, the prosecution filed a Notice of Intent to Introduce Expert Testimony in 12 CRS XXXX, providing the defense with notice of the State’s intent to introduce the expert testimony of AGENT, in the area of fingerprint analysis, employed by the LAB.
4. Upon information and belief, AGENT is the same individual who performed the fingerprint analysis and comparison on the evidence in this case.
5. The prosecution has previously provided a laboratory report of the LAB dated DATE in which AGENT concluded that the Defendant’s fingerprints matched the evidence samples.
6. Pursuant to the legal authorities cited in the preamble of this Motion, the Defendant hereby moves the Court to enter and Order commanding the prosecution to provide the following information within ten days prior to the trial of these matters:
	1. Any and all scientific conclusions the State intends to offer at trial;
	2. Any and all bases for said scientific conclusions;
	3. Any and all procedures and tests used to reach said conclusions;
	4. Any and all data generated by the procedures and used to reach said conclusions;
	5. Any and all procedures the State’s expert should have used to reach said conclusions; such procedures generally being termed “protocols,” including a copy of all Fingerprint Technician Quality Assurance and Training Guidelines and Protocols used in the laboratory that analyzed the fingerprint evidence. This includes, but is not limited to, the Quality Manual. Please include any policy, procedure, or quality manual in effect at the time the evidence was tested as well as the laboratory’s most recent version. To minimize any burden of duplicating these items, we invite you to provide them in electronic form.
	6. Copies of any and all method validation records for the procedures used in this case;
	7. The complete copy of the case file including all records made by the laboratory in connection with this case. If the file includes photographs, please include photographic quality copies.
	8. A copy of all bench notes recorded by print examiners in the course of analyzing any and all evidence in this case.
	9. Any and all information concerning how the samples (evidence) were collected and handled;
	10. Any and all information concerning the chain of custody and transfer of all evidence;
	11. 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);
	12. Copies of any and all records and results of internal review of subject data;
	13. A list of all Automated Fingerprint Identification Systems (AFIS) used in this case, including name of software program, manufacturer and version used in this case;
	14. A list of all Automated Fingerprint Identification Systems (AFIS) used in this case, including name of software program, manufacturer and version used in this case.
	15. If AFIS was used in any way in this case, please provide the following. These files should include all data necessary to, (i) independently reanalyze the raw data and (ii) reconstruct the analysis performed in this case:
		1. Latent prints: All electronic images of any and all “latent” prints (prints recovered as evidence in this case) entered into an AFIS in this case in standard (.eft or .wsq) format.
		2. Encoding: Please provide the encoding record, indicating the ridge details (or “minutiae”) marked by laboratory personnel prior to any and all AFIS searches.
		3. Search results: Hard copy printout or electronic output in easily readable format of the results of any and all AFIS searches run in connection with this case. Information provided should include, but is not limited to:
			1. ranked list of “candidate matches”
			2. identification numbers of all images appearing on the “candidate list”
			3. “match scores” of all images appearing on the “candidate list.”
		4. Candidate matches: Electronic images of all items appearing on the candidate list in standard (.eft or .wsq) format.
		5. Client’s records: Electronic images of any and all ten-print records associated with or identified to our client in standard (.eft or .wsq) format.
	16. If the fingerprint evidence in this case was digitally enhanced at any time for any reason, please provide:
		1. A list of all software used for digital enhancement in this case, including name of software program, manufacturer and version used in this case.
		2. Any existing validation studies of that software.
		3. Documentation that the enhancement process complied with the requirements the guidelines recommended by the Association for Information and Image Management (AIIM). If

the enhancement process did not comply with AIIM guidelines, it is sufficient to respond: “The enhancement process did not comply with the AIIM guidelines.”

* 1. Documentation of Corrective Actions for Discrepancies and Errors including a copy of all documentation of corrective actions maintained by the laboratory that performed fingerprint analysis in this case. If the laboratory does not comply with the SWGFAST requirement that it maintain this documentation, it is sufficient to respond: “The laboratory does not comply with the SWGFAST requirement that it document corrective actions.”
	2. Any and all laboratory records of erroneous individualizations, erroneous verifications, clerical or administrative errors, or missed individualizations committed by the laboratory. [For definitions of these terms, please see SWGFAST, *Quality Assurance Guidelines for Latent Print Examiners,* version 2.11 (Aug. 22, 2002), §2.2.] Please provide the name(s) of the case(s), the name(s) of the examiner(s) involved, the reported cause(s) of the error(s), the resolution(s) of the case(s), and any corrective action(s) taken.
	3. Copies of all licenses or other certificates of accreditation in fingerprint analysis held by the laboratory and most recent Annual Accreditation Review Report;
	4. A copy of the LAB’s on-site inspection report, and any reports of the on-site inspections by any testing laboratory audit organization;
	5. A copy of any and all internal audit reports generated during the period the subject samples were tested;
	6. Background information about each person involved in conducting or reviewing the latent print analysis performed in this case, including:
		1. Current resume
		2. Job description
		3. All proficiency test results
		4. All Testimony Reviews [see SWGFAST, *Quality Assurance Guidelines for Latent Print Examiners,* version 2.11 (Aug. 22, 2002), §10].
1. 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.
2. 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 latent fingerprints collected in this case, 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.
3. 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.
4. 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.
5. 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).
6. 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…”
7. In ***Dunn***, the Court of Appeals said the defendant was entitled to such information and ordered a new trial.
8. 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 day of , 2012.

By:

ATTORNEY

**CERTIFICATE OF SERVICE**

I, ATTORNEY, certify that on the date indicated herein, a copy of this motion was served on the Office of the District Attorney for the XX Judicial District by hand delivery to said office in the COUNTY Courthouse, CITY, NC on the date indicated below.

This the day of , 2012.

ATTORNEY