# STATE OF NORTH CAROLINA IN THE GENERAL COURT OF JUSTICE

**DISTRICT COURT DIVISION**

**COUNTY OF WAKE 12 CR 00000000**

**STATE OF NORTH CAROLINA )**

**)**

**vs. ) MOTION FOR ACCESS TO**

**) PHYSICAL EVIDENCE**

**JOHN DOE, ) IN POSSESSION OF THE STATE**

**)**

**Defendant. )**

**NOW COMES**, the Defendant, ***John Doe***, by and through his undersigned counsel, Maitri “Mike” Klinkosum, Attorney at Law, 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, and ***Brady v. Maryland***, 373 U.S. 83 (1963) and its progeny for an Order commanding the production of certain evidence collected in connection with the investigation of these matters for the purpose of allowing the Defendant’s expert to examine said evidence. In support of the foregoing Motion, the Defendant would show unto the Court as follows:

1. The Defendant is charged with six counts of Second-Degree Sexual Exploitation of Minors.
2. At the filing of this Motion, the defense has been provided discovery in this matter. Part of said discovery consists of a report from the Police Department Cyber Crime Lab regarding that agency’s examination of the following items of evidence:
	1. Hewlett Packard Laptop Hard Drive;
	2. Startech Infosafe 320GB External Hard Drive;
	3. Seagate 500GB External Hard Drive;
	4. Toshiba Laptop Hard Drive;
	5. Sony Camera SD Card; and
	6. Memorex CD.
3. The aforementioned report of the Police Department Cyber Crime Lab indicates that the Hewlett Packard Laptop, the Startech Infosafe 320GB External Hard Drive, and the Seagate 500GB External Hard Drive contain images characterized as “child pornography related images.”
4. It is the alleged “child pornography images” which form the basis for the charges leveled against the Defendant.
5. In order to determine if the examination of the Police Department Cyber Crime Lab was conducted properly, and in order to confirm information provided to

undersigned counsel with regard to the physical evidence at issue in this Motion, undersigned counsel has retained the services of a Computer Forensics Expert, Max Miller of Computer Forensics, located in Raleigh, North Carolina.

1. In order to determine if the examination of the Police Department Cyber Crime Lab was conducted properly, and in order to confirm information provided to undersigned counsel with regard to the physical evidence at issue in this motion, Max Miller of Computer Forensics requires access to the physical evidence seized in this matter and examined by the Police Department Cyber Crime Lab.
2. Further, in order to properly perform the required analysis, and to properly comply with the requirements of the Adam Walsh Act, undersigned counsel requests that the Court order the following parameters for the review and examination by the defense expert at the law enforcement agency facility:
	1. The defense expert will supply in advance, an external hard drive, factory new, if required by the law enforcement agency, for the purpose of providing forensic copies of the evidence to be examined during the defense expert’s forensic examination;
	2. The law enforcement agency shall copy to the provided hard drive any FTK, Encase or other type of forensic image files that are an exact copy of the hard drive(s), CD-ROM or DVD-ROM media, flash cards, floppy disks, smart media cards or any other digital evidence seized and copied by law enforcement;
	3. The law enforcement agency shall provide to the defense expert an un-redacted copy of any computer forensic reports for the use of the defense expert while performing the forensic examination. Such un-redacted reports shall be returned to the law enforcement agent at the end of each day’s examination period;
	4. The law enforcement agency shall have available for inspection by the defense expert copies of any derivative evidence created and supplied to the prosecution, including but not limited to media created for the purpose of prosecution review, submission to the National Center for Missing and Exploited Children, or for the use by other law enforcement parties to the investigation of the charges, pending or otherwise;
	5. The expert will perform all of his work on the provided hard drive, while at the law enforcement agency facility, using at his option; either his own forensic analysis equipment and software or forensic analysis equipment provided by the law enforcement agency, provided that the software and hardware provided by the law enforcement agency is equivalent to a full copy of EnCase 6.XX forensic software and that the expert may install other forensic analysis software on the provided computer for the purpose of performing his examination;
	6. At the end of the forensic examination session, the examination hard drive will

be sealed in the presence of the defense expert and given to the law enforcement agent and kept in the custody of the police in case further review is needed at a future time;

* 1. When the expert sets up his case in his forensic analysis software, he will ensure that all temporary files, exports, and any other files that would normally be written out during the analysis will be written to the provided examination hard drive. The expert will show the law enforcement agent the setup of his analysis software for this case to support the above;
	2. The law enforcement agency shall make such supervisory arrangements as deemed appropriate in accordance with the law enforcement agencies’ policies and procedures for the forensic examination of contraband material by a defense expert;
	3. The expert will show to the law enforcement agent any items he wishes to copy or print, to provide to defense counsel as part of his analysis reporting, to ensure that no contraband images are copied or transferred;
	4. The expert will be given a minimum window of 6 hours per day, scheduled in advance, to perform the analysis. With further analysis time to be provided if needed at a future date; and
	5. All items and information discovered by the expert are to be treated as attorney work product, and protected as such even though the law enforcement agent will review said documents and information for the presence of contraband.

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

1. That the Court issue and order requiring the prosecution and law enforcement to provide to the defense expert, Max Miller of Computer Forensics, the physical evidence as set forth in paragraph 2 above;
2. That the Court issue an order allowing Max Miller of Computer Forensics the opportunity to examine and test the physical evidence as set forth in paragraph 2 above pursuant to the parameters requested in paragraph 7(a-k) above; and
3. For such other and further relief to which the Defendant may be entitled and which the Court may deem just and proper.

This the 7th day of March, 2013.

## *TIN FULTON WALKER & OWEN, PLLC*

By:\_

## *Maitri “Mike” Klinkosum*

Attorney for the Defendant

# STATE OF NORTH CAROLINA IN THE GENERAL COURT OF JUSTICE

**DISTRICT COURT DIVISION**

**COUNTY OF WAKE 15 CR 0000000**

**STATE OF NORTH CAROLINA, )**

**) ORDER ALLOWING**

**vs. ) DEFENDANT’S MOTION FOR**

**) ACCESS TO PHYSICAL EVIDENCE**

**JOHN DOE, ) IN POSSESSION OF THE STATE**

**)**

**Defendant. )**

**THIS MATTER** having come on to be heard before the Honorable Judge, Chief District Court Judge, pursuant to the Defendant’s ***Motion for Access to Physical Evidence in Possession of the State***, which was filed on March , 2013;

**AND THE COURT**, finding that at the time this matter was presented to the Court, the State of North Carolina was represented by Assistant District Attorney , and the Defendant was represented by Maitri “Mike” Klinkosum, Attorney at Law;

**AND THE COURT**, after determining that it has jurisdiction over the subject matter and the parties, after considering the Defendant’s Motion, and after hearing the arguments of counsel for both the State and the Defense, finds that the State does not object to the Defendant’s ***Motion for Access to Physical Evidence in Possession of the State*** and that the same should be allowed;

**IT IS THEREFORE, ORDERED, ADJUDGED, and DECREED**, that the ***Defendant’s Motion for Access to Physical Evidence in Possession of the State*** is hereby granted as follows:

1. The prosecution and law enforcement shall provide Max Miller of Computer Forensics with access to the following items of evidence:

* 1. Hewlett Packard Laptop Hard Drive;
	2. Startech Infosafe 320GB External Hard Drive;
	3. Seagate 500GB External Hard Drive;
	4. Toshiba Laptop Hard Drive;
	5. Sony Camera SD Card; and
	6. Memorex CD.
1. The Defendant’s expert shall be allowed to fully examine and test the forensic evidence listed in paragraph 1 (a – f) above.
2. In order to properly perform the required analysis, and to properly comply with the requirements of the Adam Walsh Act, the following parameters for the review and

examination by the defense expert at the law enforcement agency facility are hereby ordered:

* 1. The defense expert will supply in advance, an external hard drive, factory new, if required by the law enforcement agency, for the purpose of providing forensic copies of the evidence to be examined during the defense expert’s forensic examination;
	2. The law enforcement agency shall copy to the provided hard drive any FTK, Encase or other type of forensic image files that are an exact copy of the hard drive(s), CD-ROM or DVD-ROM media, flash cards, floppy disks, smart media cards or any other digital evidence seized and copied by law enforcement;
	3. The law enforcement agency shall provide to the defense expert an un-redacted copy of any computer forensic reports for the use of the defense expert while performing the forensic examination. Such un-redacted reports shall be returned to the law enforcement agent at the end of each day’s examination period;
	4. The law enforcement agency shall have available for inspection by the defense expert copies of any derivative evidence created and supplied to the prosecution, including but not limited to media created for the purpose of prosecution review, submission to the National Center for Missing and Exploited Children, or for the use by other law enforcement parties to the investigation of the charges, pending or otherwise;
	5. The expert will perform all of his work on the provided hard drive, while at the law enforcement agency facility, using at his option; either his own forensic analysis equipment and software or forensic analysis equipment provided by the law enforcement agency, provided that the software and hardware provided by the law enforcement agency is equivalent to a full copy of EnCase 6.XX forensic software and that the expert may install other forensic analysis software on the provided computer for the purpose of performing his examination;
	6. At the end of the forensic examination session, the examination hard drive will be sealed in the presence of the defense expert and given to the law enforcement agent and kept in the custody of the police in case further review is needed at a future time;
	7. When the expert sets up his case in his forensic analysis software, he will ensure that all temporary files, exports, and any other files that would normally be written out during the analysis will be written to the provided examination hard drive. The expert will show the law enforcement agent the setup of his analysis software for this case to support the above;
	8. The law enforcement agency shall make such supervisory arrangements as deemed appropriate in accordance with the law enforcement agencies’ policies

and procedures for the forensic examination of contraband material by a defense expert;

* 1. The expert will show to the law enforcement agent any items he wishes to copy or print, to provide to defense counsel as part of his analysis reporting, to ensure that no contraband images are copied or transferred;
	2. The expert will be given a minimum window of 6 hours per day, scheduled in advance, to perform the analysis. With further analysis time to be provided if needed at a future date; and
	3. All items and information discovered by the expert are to be treated as attorney work product, and protected as such even though the law enforcement agent will review said documents and information for the presence of contraband.

This the day of March, 2013.

The Honorable Judge

Chief District Court Judge