# STATE OF NORTH CAROLINA IN THE GENERAL COURT OF JUSTICE

**SUPERIOR COURT DIVISION**

**COUNTY OF WAKE 09 CRS XXXX**

**STATE OF NORTH CAROLINA )**

**)**

**vs. ) MOTION FOR DISCOVERY**

**) (LABORATORY/SCIENTIFIC**

**DEFENDANT ) EVIDENCE)**

**)**

**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 in July, 2010 on charges of Second Degree Murder, Felony Aggravated Serious Injury by Motor Vehicle, Felony Hit and Run, DWI, and Habitual Felon 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 09 CRS XXXX, providing the defense with notice of the State’s intent to introduce the expert testimony of AGENT, in the area of forensic chemistry, employed by the North Carolina State Bureau of Investigation.
4. Upon information and belief, AGENT is the same individual who tested the defendant’s blood for a deoxyribonucleic acid (DNA) match.
5. The prosecution has previously provided a laboratory report of the North Carolina State Bureau of Investigation dated DATE in which AGENT

concluded that the collected sample (evidence) matched the DNA found in Defendant’s blood.

1. 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.”
	6. A complete record of the manner in which all evidence items, whether or not attributed to the accused, were located, developed and obtained and by whom, including but not limited to evidence items used in DNA extraction and/or analysis;
	7. Any and all information concerning the chain of custody and transfer of all evidence, including time and date of collection, name and affiliation of custodian personnel, treatment and handling of all DNA evidence, including but not limited to any DNA collection kits, such as Sexual Offense Evidence Collection (SOEC) kit, “Rape Kit”, or similar, from point of sample collection up to and including current disposition of the evidence;
	8. 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);
	9. A complete list of all automated and/or manual DNA extractions, DNA purification, amplification (PCR), electrophoresis kits, reagent expiration dates, testing and analysis hardware and software used in this case, including the name of the software program, manufacturer and version used, and laboratory equipment calibration and validation as per the prescribed guidelines for each instrument and lab procedure used;
	10. A complete hard copy and raw data record of any and all DNA quantitation for each sample, standard curves used for DNA quantity determination, PCR sample plate layouts, electrophoresis sample plate layouts, electropherograms or “trace” data obtained from analyzing all the DNA evidence in connection with this case, including but not limited to positive controls, negative controls, internal “known” controls such as DNAs from lab or clinic personnel who were involved in sample identification, extraction, and analysis;
	11. Internal standards, ladders, including the 250 bp standard for equipment calibration, any indications whether samples underwent reruns or longer injection times as pertaining to electrophoresis equipment, software allele calls including peak heights, manual allele calls, including an explanation of such call for known or ambiguous peaks, complete data used to analyze allele frequencies for all relevant ethnic populations used in calculating match probabilities and odds of inclusion/exclusion for any and all match or mismatch correlations used in connection with this case;
	12. 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;
	13. Copies of proficiency results and testing for each analyst, technician, or reviewer responsible for preparation or analysis of subject specimens or review of analysis, including, but not limited to: raw data and reported results, target values and acceptance ranges, performance scores, and all related correspondence;
	14. Copies of certification exam results for each analyst, technician and reviewer responsible for preparation or analysis of subject specimens or review of analysis, including, but not limited to: each letter specifying the results of the exam and a list of topics where the analyst missed more than 20% of the questions (the second page of the second letter from the American Board of Criminalistics).
	15. The complete resume or curriculum vitae of each individual involved in the collection, preservation, and analysis, of the DNA evidence, including but not limited to job description, education and training, proficiency and competency testing and results, and testimony reviews.
	16. Copies of all documentation related to corrective actions for each analyst and technician responsible for preparation of analysis of

subject specimens;

* 1. Copies of the corrective action report and corrective action tracking, quality assurance review tracking and non-conformity tracking for the DNA Section and all sections of the State Crime Lab;
	2. Copy of the Unexpected Results Log and instances of unintended DNA transfer or sample contamination. Copies of all records maintained in the laboratory that document instances of unintended transfer of DNA or sample contamination, such as instances of negative controls that demonstrated the presence of DNA or the detection of unexpected extra alleles in the control or reference samples, and any corrective measures taken;
	3. 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;
	4. 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;
	5. Any and all information related to instrument logs with identification of all standards, reference materials, sample blanks, rinses, and controls analyzed during the day/shift with subject samples;
	6. Copies of any and all records on instrument operating conditions and criteria for variables, including but not limited to: instrument performance check, initial calibration, continuing calibration checks, calibration verification;
	7. 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;
	8. Copies of any and all records and results of internal review of subject data;
	9. Copies of any and all quality assurance and training guidelines, including a copy of the DNA Section Training Manual and protocols used in the laboratories that collected and/or analyzed the DNA evidence;
	10. Copies of any and all method validation records documenting the laboratory’s performance of DNA analysis, including, but not limited to, data documenting, accuracy, precision, and method detection limits;

aa. 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);

bb. A copy of the DNA Section Procedures Manual, including 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 DNA analysis, including, but not limited to: sample preparation, sample analysis, data reporting and instrument operation;

cc. A copy of the NC SBI lab’s ASCLD-LAB application for accreditation, and most recent Annual Accreditation Review Report;

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 all licenses or other certification of accreditation in DNA sample collection and analysis held by the laboratory(ies) or clinics involved in any DNA evidence collection and/or DNA analysis in the present case;

1. These records should include all the data necessary to conduct an independent analysis of the raw data and to reconstruct the analysis

performed in the present case.

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 DNA. As the State’s expert has performed experiments and tests on the blood (in order to render an opinion that Defendant’s DNA matched the collected sample), 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 6(a – gg) above.
4. If the Defendant is not given access to the information outlined in paragraphs 6(a – gg) 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. Under ***The Forensic Sciences Act of 2011***, North Carolina General Statute Section 15A-903(a) was amended by adding new language that states, “[w]hen any matter or evidence is submitted for testing or examination, in addition to any test or examination results, all other data,

calculations, or writings of any kind shall be made available to the defendant, including, but not limited to, preliminary test or screening results and bench notes.”

1. 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 6(a – gg) 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 6(a – gg) 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 10th Judicial District by hand delivery to said office in the Wake County Courthouse, Raleigh, NC on the date indicated below.

This the day of , 2012.

Attorney