

STATE OF NORTH CAROLINA  
FORSYTH COUNTY

FILED  
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IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION

IN RE: FORSYTH CO., C.S.C.  
MATTER OF THE NORTH CAROLINA STATE CRIME LABORATORY ) STATE'S MOTION FOR RELEASE OF CERTIFICATION TESTING INFORMATION

**NOW COMES THE STATE OF NORTH CAROLINA**, by and through the Office of the District Attorney, James O'Neill, 21st Prosecutorial District and moves this Court for an Order requiring the North Carolina State Crime Laboratory, under the administration of the State Bureau of Investigation (hereafter referred to as SBI) and the Attorney General's Office for the State of North Carolina, to produce to the undersigned:

1. A complete list of all scientists and analysts employed at the North Carolina State Crime Laboratory;
2. The results of the certification examinations administered on or after December 1, 2011, to these scientists and analysts, pursuant to The Forensic Sciences Act, codified in Session Law 2011-19 with subsequent amendments at Session Law 2011-307.

In support of this Motion, the undersigned District Attorney says the following:

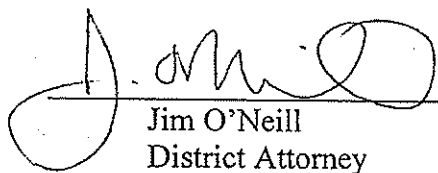
1. On Tuesday, June 12, 2012, a copy of a memo from the North Carolina State Crime Laboratory dated January 13, 2012 (hereafter referred to as memo) was forwarded to the Forsyth County District Attorney's Office from the North Carolina Conference of District Attorneys;
2. The State Crime Laboratory believed that this memo was sent to all District Attorneys statewide, although this Office has no record of this memo being received either by e-mail or regular mail;
3. The State Crime Laboratory acknowledges that some District Attorney's offices may not have received this memo;
4. The undersigned District Attorney believes that the State Crime Laboratory's failure to notify this Office of the certification examination and the results thereof was inadvertent and not done maliciously;
5. The memo indicates that scientists with the State Crime Laboratory were administered certification examinations on or after December 1, 2011;
6. The Forensic Sciences Act, codified in Session Law 2011-19 with subsequent amendments at Session Law 2011-307, requires in pertinent part that forensic science professionals working for the North Carolina State Crime Laboratory, which operates under the administration of the State Bureau of Investigation, obtain individual certification consistent with international and ISO (International Organization for Standardization) standards in their specialty area, unless no such certification is available for that specialty;

7. Some scientists/analysts who took the exams were unsuccessful in achieving certification;
8. The memo goes on to say that the State Crime Laboratory considers that the names of those scientists/analysts who were unsuccessful in their attempts to achieve certification is a personnel matter under the Personnel Privacy Act in accordance with N.C.G.S. 126-24;
9. The memo also states the State Crime Laboratory's position that the names of those scientists/analysts that were not successful on the certification exams may not be released by the Laboratory without a Court Order;
10. Had the undersigned District Attorney been made aware by the State Crime Laboratory back in January 2012, that some of the scientists/analysts with the Laboratory were unsuccessful in their attempts to gain certification during the testing on or after December 1, 2011, the undersigned District Attorney would have sought a Court Order allowing disclosure to this Office of the names of those scientists/analysts that were unsuccessful in gaining certification to be released to the defense on a case by case individual basis;
11. The undersigned District Attorney believes that such information must now be immediately turned over to this Office, so that it may be disclosed to opposing counsel in all relevant individual criminal cases;
12. Pursuant to Kyles v. Whitley (514 U.S. 419), Giglio v. U.S., (405 U.S. 150) and Brady v. Maryland (373 U.S. 83), the names of those scientists/analysts are necessary for the proper administration of justice so that scientists/analysts may be properly examined and cross-examined;
13. The purpose of this request is not to embarrass or malign the analysts/scientists that were unsuccessful in their attempt to receive certification;
14. The purpose of this request is not to embarrass the State Crime Laboratory;
15. Time is of the essence in this matter as criminal cases are tried and plead every day in Forsyth County, wherein the North Carolina State Crime Lab and its analysts/scientists have analyzed and tested items of evidence and continue to do so every day;
16. The Forsyth County Office of the District Attorney agrees that the name of the analyst/scientist who has attempted but not successfully completed the certification examination should be disclosed only on an individual case by case basis;
17. To the extent any of the information set forth above is contained in a State Crime Laboratory employee's personnel file, the Order issued upon this Motion shall serve as a Court Order pursuant to N.C. Gen. Stat. 126-24 authorizing release of said information by the State Crime Laboratory; and
18. It is the undersigned District Attorney's belief that the State Crime Laboratory will not resist the names and results of the certification examination being released to this Office, so long as the names of the scientists/analysts and the results of their certification examination 1) are used only on an individual case by case basis, 2) are not released, disclosed or used in any way except in conjunction with said specific individual case, and 3) that only the names of analysts involved in such specific case are released or disclosed in that case;

and 4) that no release or disclosure of the name of any analyst is effected except upon the determination that such disclosure is required by the court decisions referenced in paragraph 12 above, North Carolina discovery laws, or other applicable law.

**Based upon the foregoing**, the State of North Carolina, by and through the undersigned District Attorney, moves this Court for an Order to disclose the information requested herein, under the terms requested herein.

Respectfully submitted, this the 12<sup>th</sup> day of June, 2012.



Jim O'Neill  
District Attorney  
Forsyth County