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FORSYTH CO, C.S.C.

BY ALB

STATE OF NORTH CAROLINA  
FORSYTH COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION

IN RE: )  
MATTER OF THE NORTH ) ORDER  
CAROLINA STATE CRIME LAB )

This cause coming on to be heard and being heard by the undersigned on the 14<sup>th</sup> day of June, 2012, on Motion of the District Attorney;

And the Court having considered the contents of said Motion;

The Court now finds as a fact and concludes as a matter of law 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 had previously been sent to all District Attorneys statewide, although the Forsyth County District Attorney's 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 State Crime Laboratory's failure to notify the Forsyth County District Attorney's Office of results of the certification examination 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 State Crime Laboratory considers the names of those scientists/analysts who were unsuccessful in their attempts to achieve certification a personnel matter under the Personnel Privacy Act in accordance with N.C.G.S. 126-24;
9. As a result the State Crime Laboratory is unwilling to release the names of those scientists/analysts who unsuccessfully sought certification without a Court Order;
10. Had the Forsyth County 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 examinations conducted on or after December 1, 2011, said District Attorney would have sought a Court Order allowing disclosure to the Forsyth County District Attorney's Office of the names of those scientists/analysts that were unsuccessful in gaining certification to be released to the defendant/defense counsel on a case by case individual basis;
11. The District Attorney believes that such information must now be immediately turned over to his Office, so that it may be disclosed to the defendant/defense 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 the District Attorney's motion is not to embarrass or malign the analysts/scientists that were unsuccessful in their attempt to receive certification;
14. The purpose of the District Attorney's motion 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 District Attorney's office agrees to disclose the name of the analyst/scientist who has not successfully completed the certification examination, on an individual case by case basis and as may be required by the court decisions referenced in paragraph 12 above;
17. To the extent any of the information requested in the District Attorney's Motion is contained in an employee's personnel file, this Order shall serve as a Court Order pursuant to N.C. Gen. Stat. 126-24 authorizing release by the State Crime Laboratory of said information; and
18. The State Crime Laboratory does not resist entry of this Court's Order that analyst names and results of the certification examinations be released to the Forsyth County District Attorney's Office, but requests that the Court direct such analyst names and exam results 1) be used only on an individual case by case, 2) not be released, disclosed or used in any way except in conjunction with said specific individual case, 3) that only the names of analysts involved in such specific case shall be released or disclosed in that case; and 4) that no release or disclosure of the name of any analyst shall be 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.

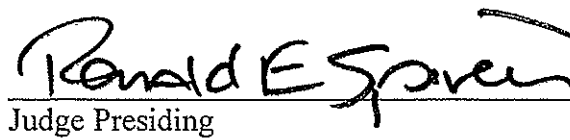
Based on the foregoing findings of fact and conclusions of law, the Court Orders, Adjudges and Decrees that, within five working days of the date of this Order, the North Carolina State Crime Laboratory shall furnish to the Forsyth County District Attorney's Office 1) a complete list of all scientists and analysts employed at said Crime Laboratory; 2) the results of the certification examinations that were administered on or after December, 2011 to said scientists and analysts, pursuant to The Forensic Sciences Act, codified in Session Law 2011-19 with subsequent amendments at Session Law 2011-307;

Additionally, the Court deems the obligation of the State Crime Laboratory to provide results of certification examinations undertaken by Lab analysts to be a continuing one; the Court, therefore, furthers Orders, Adjudges and Decrees that the State Crime Laboratory shall furnish to the Forsyth County Office of the District Attorney the results of certification examinations undertaken by Lab analysts as such analysts take the exams and the Laboratory receives the results; this obligation to disclose continues upon the State Crime Laboratory without the necessity of a further Order of this Court;

And the Court further Orders, Adjudges and Decrees that to the extent any of the information requested in the District Attorney's Motion is contained in a State Crime Laboratory employee's personnel file, this Order shall serve as a Court Order pursuant to N.C. Gen. Stat. 126-24 authorizing release by the State Crime Laboratory of said information;

And the Court further Orders, Adjudges and Decrees that any names and results of the certification examination released to the Forsyth County District Attorney's Office 1) shall be used by said District Attorney's Office only on an individual case by case basis, 2) shall not, unless otherwise ordered by the Judge of this Court presiding in that case, be released, disclosed or used in any way except in conjunction with said specific individual case, and 3) that, unless otherwise ordered by the Judge of this Court presiding in that case, only the names of analysts involved in such specific case shall be released or disclosed in that case; and 4) that no release or disclosure of the name of any analyst shall be 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.

This the 14 day of June, 2012.

  
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Judge Presiding