

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
12CRS00318

IN RE:)
MATTER OF THE NORTH)
CAROLINA STATE CRIME)
LABORATORY) ORDER REQUIRING DISCLOSURE
OF INFORMATION TO EACH
PROSECUTORIAL DISTRICT
WITHIN THE STATE

2012 JUN 17 PM 12:34

FILED

This cause came on to be heard and was heard by the undersigned Superior Court Judge on the 26th day of June, 2012, on Motion of the State of North Carolina through District Attorney Ronald L. Moore and Assistant District Attorney Megan L. Apple. Senior Deputy Attorney General William P. Hart, Sr. appeared at the hearing representing the interests of Roy Cooper, Attorney General of the State of North Carolina, Greg McLeod, Director of the State Bureau of Investigation, Joseph John, Sr., Director of the North Carolina State Crime Lab, and Joy Strickland, Assistant Attorney General. This Court having considered the contents of said Motion and having heard arguments of counsel in open court finds as follows:

1. That this Court has jurisdiction to hear this matter pursuant to the North Carolina Constitution Article IV, 12(3) as well as N.C.G.S. §15A-901 and N.C.G.S. §7A-270.
2. In 2011, the North Carolina General Assembly passed the Forensic Sciences Act, codified in Session Law 2011-19 with subsequent amendments at Session Law 2011-307, requiring 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.
3. While no certification consistent with international and ISO standards is currently available for at least a portion of the specialty areas, the State Crime Laboratory administration, in an apparent effort to embrace the statute, required all analysts take some form of examination. Many of the examinations given to analysts were over-inclusive and tested analysts in subject areas in which they had no formal education, training, or experience.
4. Pursuant to these requirements, analysts at the State Crime Laboratory were given tests at State expense in December 2011. Some of these analysts were not successful in obtaining certification.
5. The District Attorney's Office for the 28th Prosecutorial District was not

made aware of the above mentioned unsuccessful testing prior to June of 2012. Further other District Attorney's Offices across the State were also not aware of the unsuccessful testing.

6. The results of the December 2011 tests were made known to the State Crime Laboratory at some time in January of 2012.
7. District Attorney's Offices throughout North Carolina have been handling cases which involved evidence subject to analysis by the State Crime Laboratory since the administration of the tests and subsequent to the State Crime Laboratory obtaining the results of the tests.
8. There are numerous criminal cases currently pending in both the Superior and District Courts of the 28th Judicial District, as well as across the State of North Carolina which involve evidence subjected to analysis by agents of the North Carolina State Crime Laboratory. Further there are numerous criminal cases which have been adjudicated since November 2011 within the applicable time periods of the Forensic Sciences Act, both in the 28th Judicial District as well as across the State of North Carolina.
9. Following their receipt of knowledge as noted above, the District Attorney's Office for the 28th Prosecutorial District filed this Motion, seeking disclosure of information regarding the above-mentioned testing, including the results of all testing, from the North Carolina State Crime Laboratory, the State Bureau of Investigation and the Attorney General's Office.
10. On June 13, 2012, counsel for the Interested Parties requested this matter be continued until a later date, set for June 26, 2012.
11. In the interim, Counsel for the Interested Parties, as well as some District Attorneys across the State in other Prosecutorial Districts sought various orders from Superior Court Judges authorizing disclosure of a portion of the information originally requested by the 28th Prosecutorial District in its June 12, 2012 Motion. Consent Orders were signed in these jurisdictions. On June 20, 2012, the Wake County Superior Court entered an order extending the purview of these Orders statewide, including the 28th Prosecutorial District.
12. These various Orders required the North State Crime Laboratory provide the following information:
 - a) a complete list of all scientists and analysts employed at the State Crime Laboratory;
 - b) the results of the certification examinations that were administered in December of 2011 to these scientists and analysts;
 - c) the results of future certification examinations that are administered to any scientists and analysts employed by the State Crime Laboratory.

13. However, none of these various Orders require the State Crime Laboratory to produce the actual letters sent to analysts by any testing organization; further the State Crime Laboratory has not to this date provided documentation sent to analysts from the testing agency which indicate actual test results and areas where the analysts needed further study.
14. In the case of testing proctored by the American Board of Criminalistics, which tested analysts in multiple discipline areas within the State Crime Lab, unsuccessful analysts received two letters indicating they had not passed the examination. The second of these letters included a second page listing test results and areas in which the analyst needed further study prior to retesting.
15. Counsel for the Interested Parties has represented that all letters (both first and second letters) from the testing agencies were mailed directly to the tested analysts and not to the State Crime Lab and that the State Crime Lab currently has in those analysts' personnel files only a single page letter (first letter) indicating simply whether or not the analyst passed the test. It being represented to the Court that the State Crime Lab only requested the pass/fail letter from the analysts to place in their personnel file.
16. All testing agencies are located outside the State of North Carolina.
17. Disclosure by the State Crime Laboratory to District Attorneys of the actual "pass/fail letter" (first letter), the actual test results and these "further study" areas(second letter) is necessary and essential to the administration of justice. Failure to require the disclosure of such information to District Attorneys' Offices across the State would inhibit District Attorneys in their duty and ability to provide appropriate discovery materials in the criminal cases in their districts, which is required by law and in the interests of justice.

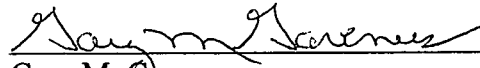
Based on the findings and conclusions above, this Court concludes and orders as follows:

1. Within ten working days of the date of this Order, the North Carolina State Crime Laboratory shall furnish to each District Attorney in the State, in addition to the information required by any prior Orders as mentioned above, all documentation provided to the State Crime Laboratory and/or to analysts by any testing organization which administered testing to analysts since December of 2011. This documentation is to include successful and/or unsuccessful notification letters (first letter), as well as any and all further documentation which indicate actual test results and areas where the testing organization noted an unsuccessful analyst would benefit from further study ("second letter"). This documentation may be provided by the State Crime Laboratory to the District Attorneys in one of two forms, in order that the documentation may be authenticated in the future:

- a) Documentation may be provided to the State Crime Laboratory directly from the testing organization for forwarding to the District Attorneys; or
 - b) Documentation may be provided from individual analysts to the State Crime Laboratory for forwarding to the District Attorneys, provided this documentation is accompanied by a sworn affidavit setting forth that the documentation represents the original and unaltered documentation, or a true and accurate unaltered copy of the same, as received by the analyst directly from the testing organization.
2. Within ten working days of the date of this Order, the North Carolina State Crime Laboratory shall furnish to each District Attorney in the State, all contact information for any organization used for testing of lab analysts, agents and/or personnel.
3. This Order sets forth a continuing obligation that the State Crime Laboratory shall furnish to each District Attorney in the State the full results of any and all examinations undertaken by Lab analysts in the future without the necessity of obtaining a further order of this Court. This continuing obligation includes the production of all information set forth in prior Orders as outlined above, as well as information required to be disclosed as a part of this Order. This continuing obligation specifically includes production of all results of all testing in any form in the future.
4. Any names and results of certification examinations released to the various District Attorneys pursuant to this Order shall be used by said District Attorneys and their Assistants only on a case by case basis and only as they deem necessary to comply with their obligations under the law, but shall not, unless otherwise ordered by a court of competent jurisdiction, be publically released, disclosed, or used in any way except in conjunction with said individual cases, and in no event used by any person in any manner contrary to law.
5. This court specifically declines to rule that this information is or is not subject to protection under the Personnel Act, however, to avoid confusion and facilitate the distribution of the information ordered herein, to the extent that any of the information ordered to be disclosed herein is contained in a State Crime Laboratory's employee's personnel file, this Order shall constitute a Court Order pursuant to N.C. Gen. Stat. § 126-24 authorizing release of said information by the State Crime Laboratory.
6. As the prior Superior Court Orders provided to this court did not actually encompass the production of the actual "first letter" and did not address the production of the "second letter" containing actual test results and

designated areas requiring further study and as no representations were made to this court that these prior orders were entered with an awareness of the existence of the "second letter", nothing contained in or mandated by this Order is intended to amend or modify any of the Superior Court Orders referenced herein as they relate to the notification of pass/fail of analysts as provided by those orders and it is this Court's intent that such Orders retain their full force and effect.

This the 13th day of July, 2012.



Gary M. Gavenus
Superior Court Judge Presiding