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STATE OF NORTH CAROLINA GENERAL COURT OF JUSTICE  
DISTRICT COURT DIVISION  
COUNTY OF CATAWBA 2002 APR 2 FILE NO: [REDACTED]

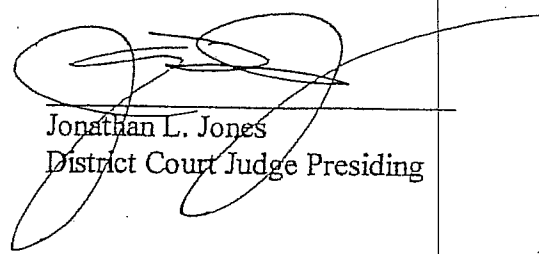
CATAWBA COUNTY, C.S.C.  
BY \_\_\_\_\_

\_\_\_\_\_  
STATE OF NORTH CAROLINA )  
)  
)  
VS. )  
)  
[REDACTED] )  
Defendant. )  
\_\_\_\_\_

ORDER TO PRESERVE  
EVIDENCE AND NOTES

THIS CAUSE, COMING ON TO BE HEARD and being heard by the undersigned, the Honorable Jonathon Jones, District Court Judge Presiding upon the Defendant's Motion and the Court hereby orders that the State, the District Attorney's office, the Catawba County Sheriff's Department, the State Bureau of Investigation and or their agents or designates are absolutely prohibited from disposing of any notes taken during the investigation of this case and are prohibited from consuming all trace and blood evidence without prior notice to the Court and consent of the Court thereto. Further, the Court orders that this Order to Preserve Evidence and Notes be forwarded immediately to any person or entity involved in the investigation of this case by the Office of the District Attorney and the Catawba County Sheriff's Department and that a record of such notification be kept.

This the 23 day of April, 2002.

  
Jonathan L. Jones  
District Court Judge Presiding

STATE OF NORTH CAROLINA  
COUNTY OF CATAWBA

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
FILE NO. [REDACTED]

STATE OF NORTH CAROLINA

VS

ORDER

[REDACTED]

This matter coming on before the undersigned Judge presiding, on the motion to compel discovery, the Court has heard evidence in regard to the taking and disposition of evidence including submission of certain evidence to the North Carolina State Bureau of Investigation laboratory. During the hearing it has been discovered that certain evidence is currently in possession of the SBI lab, and tests are yet to be performed.

The Court concludes that an Order is necessary to effectively protect the future use and disposition of evidence.

IT IS THEREFORE ORDERED that the State Bureau of Investigation Lab will immediately locate and inventory all items relevant to this case currently physically at the laboratory or in any storage facility controlled by the laboratory. A written inventory of such items will be prepared and sent to the District Attorney, the Catawba County Sheriff's Department and the Attorneys for the defense, at the addresses provided in a list attached to this Order. All photographs for which negatives exist relevant to this case will be developed, and a set of prints provided to the District Attorney and to the defense by sending two sets of prints to the District Attorney. Any items which are yet to be tested will not be tested ~~if such tests will destroy any portion thereof, including suspected substances thereon.~~ The laboratory personnel will prepare a written report as to the contemplated testing, the purposes of the testing, and the effect of the testing. Such testing will proceed only upon giving of written consent by both the state and the defense, or upon a court order. Agent Bissett will prepare a written report in regard to the type of testing performed on the arm rest, the results of the testing, the remaining nature of the residue of the tested substance (the Court is informed that there remains a quantity of DNA, but nothing else of the substance tested that was found on the armrest) and Agent Bassett's opinion as to the potential for valid testing of that residue.

IT IS FURTHER ORDERED that all reports, examination results photographs or other laboratory products are subject to discovery by the defense.

This the 14<sup>th</sup> day of October, 2004

  
\_\_\_\_\_  
Presiding Judge

NORTH CAROLINA  
CATAWBA COUNTY

FILED  
IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
FILE NO. [REDACTED]  
CATAWBA COUNTY, C.S.C.

THE STATE OF NORTH CAROLINA,  
PLAINTIFF

BY \_\_\_\_\_

Vs

**ORDER**

[REDACTED]

DEFENDANT

THIS MATTER COMING on to be heard before the undersigned judge presiding upon the motions of the defendant to compel discovery and to suppress evidence, the Court finds the following:

#### FINDINGS OF FACT

1. Previously the Court had entered an order dated October 14, 2004, which required the State Bureau of Investigation to perform certain activities and prepare a written inventory and to prepare and produce photographs, and specifically "any items which are yet to be tested will not be tested" was a specific provision of the order.
2. Laboratory personnel were also ordered to prepare a written report as to contemplated testing, the purpose of testing, and effect of testing. Testing would only proceed upon given written consent by both the State and the defense or upon a court order. Agent Bissette was to prepare a written report in regard to the type of testing performed on the armrest, the results of the testing, and that officer's opinion as to the potential for valid testing.
3. There was an order entered by Judge Jones of the District Court April 23, 2002 ordering and prohibiting the State Bureau of Investigation from disposing of any notes taken during the investigation and prohibited them from consuming all trace and blood evidence without prior notice to the Court and consent of the Court thereto and ordering that the order be forwarded immediately to the persons and entities involved.
4. The Court further finds as a fact that the copy of the Court's order of October 14 was in fact provided to the State and to the defense on October 14. The Courts finds that today a report, Defendant's Exhibit M-25, indicates testing has occurred. It is difficult to ascertain on what date testing occurred of vaginal swabs.
5. The Court further finds that Randell Libby has testified as an expert neurogeneticist and that he has been consulted by the defense in this matter. The witness described testing methods for forensic purposes in cases of this type and has reviewed the methods employed by the SBI in this case.

[REDACTED]

6. The Court finds as a fact that the raw data necessary for reasonably accurate analysis and evaluation of the evidence has not been provided to the defense, nor has an opportunity for a site visit to the SBI laboratory been allowed. The photocopies provided to the defense are so inferior in quality as to substantially deprive the defendant of an opportunity to know what test results may have been obtained. The photocopies provided are in black and white, and color differentiation is necessary for accurate interpretation of the data provided in item 28-1 and other items. Apparent errors have occurred or are reported to have occurred in the SBI interpretation indicating the defendant is female in gender. All other circumstantial evidence indicates the defendant is of the male gender. DNA extracts, which were earlier reported to exist, have been examined by Dr. Libby and appear to be in the form of 18 vials, which do not appear to contain any volume of liquid. Evaporation is reasonable conjecture as to the reason for the absence of the liquid. The vials were not refrigerated.

7. Testing of item 23, containing the armrest from the truck of the suspect, [REDACTED] consists of tests that do not determine substantially relevant issue or issues or provide a basis for forming opinions as to their value.

8. Validation and proficiency tests for forensic labs is an indicator of ability to properly perform tests. There is no way to determine if the SBI DNA laboratory analysis has been performed in any manner so as to provide reasonable assurance of validity. Contamination of the tested materials and the results has not been ruled out. Site visits would be helpful, but site visit has been denied to the defense and its expert.

9. No witness has testified for the State from the SBI lab. The vaginal swab results either express an error in the evaluation, or an error in reporting the evaluation, in that the report is that the DNA profile does match the victim but does not match the defendant or another suspect, George Lewis.

### CONCLUSIONS OF LAW

Considering the evidence presented at this hearing and the evidence educed at the previous hearing in October of this year, The Court finds that there have been violations of the Courts' orders that justify sanctions for failure to comply with appropriate discovery.

The Court concludes further that the defense has been diligent in its pursuit of discovery; the State has not been diligent in its response to discovery or communication within its agencies as to the requirements of discovery. The Court, at this time, concludes that these violations are sanctionable. The Court is also aware that the appellate courts of this state, have admonished the trial courts to be reticent to dismiss cases of a magnitude of a murder case as a sanction for discovery.

### ORDER

IT IS THEREFORE ORDERED that the State, the prosecution and its agencies, be sanctioned in the following manner:

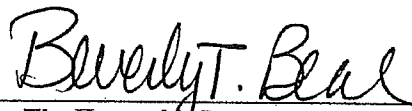
1. The State at trial will not be allowed to produce any evidence of any testing of any kind by the State Bureau of Investigation, whether such testing has occurred in the past, is occurring

[REDACTED]

now, or will occur at any time in the future. No test of any type, no evidence of any test, no evidence of any expert relying upon testing done by the SBI in this case in the past, at the present, or in the future will be allowed. This shall be the ruling even though the defense determines that it wishes to present evidence of any testing by the SBI. That will not open the door to the State in regard to any additional evidence as to any additional testing at any time.

2. The SBI is ordered to cease testing and make no further tests.
3. The district attorney for this district is ordered to inform the SBI today orally or by some transmission electronically or fax of the Court's ruling today in summary fashion and when an order is drawn to provide a copy of that order immediately upon receipt of it.
4. The clerk is ordered to file the order and to provide copies to the State and to the defense immediately upon the filing of it.
5. The defense is ordered to send a copy of the order to the State Bureau of Investigation addressed to the director and addressed to each and every person whose name appears anywhere in these reports as having been a person testing or in charge of the laboratory or in any other way involved in this case. The State is ordered to do so also.
6. The SBI laboratory is ordered to comply immediately with the prior orders of the Court to provide all information that was previously ordered by this Court.
7. The district attorney shall see that a copy of the Court's order of October 14 is this day transmitted to the SBI laboratory, and the district attorney will prepare a written certificate that that was done and will know and provide the name of the individual who received that transmission, along with a clear transmission today, that all testing is to cease. All evidence they have is to be preserved. All reports previously ordered shall be provided. All reports ordered shall be provided by December 31, 2004 upon pain of contempt of court.
8. To the extent that the defense has asked for further discovery such as a visit to the site, at this time in view of the rulings herein, that motion is denied. That motion may be renewed upon showing of any violation of any order the Court has entered or is entering now or any other substantial information of any kind which indicates that such a site visit would be useful to the defense in this case.

Entered this the 17<sup>th</sup> day of December 2004, signed this the 28<sup>th</sup> day of December 2004.



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The Honorable Beverly T. Beal  
Superior Court Judge Presiding

**SUPREME COURT OF NORTH CAROLINA**

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(State v [REDACTED])

STATE OF NORTH CAROLINA

v

[REDACTED]

From Catawba

[REDACTED]

\*\*\*\*\*

**ORDER**

Upon consideration of the petition filed by Attorney General on the 26th day of April 2005 in this matter for a writ of certiorari to review the order of the Superior Court, Catawba County, the following order was entered and is hereby certified to the Superior Court of that County:

**"Denied by order of the Court in conference, this the 6th day of October 2005.**

**s/ Newby, J.  
For the Court"**

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 7th day of October 2005.

Christie Speir Cameron  
Clerk, Supreme Court of North Carolina

*Shaula A. Brannan*

Shaula A. Brannan  
Assistant Clerk

Copy to:

- Mr. Ralph A. White, Appellate Reporter (By E-Mail)
- Mr. John G. Barnwell, Assistant Attorney General, For State of NC (by E-Mail)
- Mr. S. Mark Rabil, Attorney at Law, For [REDACTED] E-Mail)
- Ms. Lisa Andrew Dubs, Attorney at Law, For [REDACTED] E-Mail)
- Mr. James C. Gaither, Jr., District Attorney
- Ms. Al Jean Bogle, Clerk of Superior Court
- West Publishing Company (By E-mail)
- Lexis-Nexis (By E-mail)
- LOIS Law (By E-mail)



STATE OF NORTH CAROLINA

File No. [Redacted]
In The General Court Of Justice
District Superior Court Division

CATAWBA County

FILED

STATE VERSUS

Defendant

[Redacted]

06 AUG 25 AM 8:09

DISMISSAL

CATAWBA COUNTY, N.C.

NOTICE OF REINSTATEMENT

G.S. 15A-302(e), -931, -932, -1009

Table with 4 columns: File Number, Count No.(s), BY, Offense(s). Row 1: [Redacted], 1, [Redacted], First Degree Murder

DISMISSAL

NOTE: Recall all outstanding Orders For Arrest in a dismissed case.

The undersigned prosecutor enters a dismissal to the above charge(s) and assigns the following reasons:

- 1. No crime is charged.
2. There is insufficient evidence to warrant prosecution for the following reasons:
3. Defendant has agreed to plead guilty to the following charges:

in exchange for a dismissal of the following charges:

4. Other: (specify)
State's evidence suppressed by judicial order. Lack of sufficient evidence to gain a conviction.

A jury has not been impaneled nor has evidence been introduced. (If a jury has been impaneled, or if evidence has been introduced, modify this sentence accordingly.)

DISMISSAL WITH LEAVE

The undersigned prosecutor enters a dismissal with leave to the above charge(s) and assigns the following reasons:

- 1. The defendant failed to appear for a criminal proceeding at which the defendant's attendance was required and the prosecutor believes that the defendant cannot readily be found.
2. The defendant has been indicted and cannot readily be found to be served with an Order For Arrest.
3. The defendant has entered into a deferred prosecution agreement with the prosecutor in accordance with the provisions of Article 82 of G.S. Chapter 15A.
4. The defendant has been found by a court to be incapable of proceeding pursuant to Article 56 of G.S. Chapter 15A.
5. Other: (specify)

NOTE: This form must be completed and signed by the prosecutor when the dismissal occurs out of court. The better practice is for the prosecutor to complete and sign the form when the charges are orally dismissed in open court.

Also, in accordance with G.S. 15A-931(a1), unless the defendant or the defendant's attorney has been otherwise notified by the prosecutor, a written dismissal of the charges against the defendant must be served in the same manner prescribed for motions under G.S. 15A-951. If the record reflects that the defendant is in custody, the written dismissal shall also be served by the prosecutor on the chief officer of the custodial facility where the defendant is in custody.

Date: 08-25-2006 Name Of Prosecutor (Type Or Print): Sean McGinnis Signature Of Prosecutor: [Signature]

REINSTATEMENT

This case, having previously been dismissed with leave as indicated above, is now reinstated for trial.

Date: Name Of Prosecutor (Type Or Print): Signature Of Prosecutor: