

STATE OF NORTH CAROLINA
COUNTY OF FORSYTH

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. 07 CRS 52020

FILED
MAR 23 PM 3:16
FORSYTH COUNTY, C.S.C.

STATE OF NORTH CAROLINA)
)
v.)
)
KEITH A. CARTER, Defendant)
_____)

ORDER ALLOWING
TESTING AND INSPECTION
OF FIREARMS EVIDENCE AND
TO TRANSPORT
EVIDENCE TO DEFENSE EXPERT
(FILED UNDER SEAL)

THIS CAUSE CAME ON TO BE HEARD before the undersigned Superior Court Judge on the 12th day of December, 2008, upon Defendant's Motion For Testing and Inspection of Firearms Evidence and To Transport Evidence to Defense Expert; the Defendant was represented by his attorneys, S. Mark Rabil and Kimberly C. Stevens, and the State was represented by District Attorney Tom Keith, David Hall, Chief Assistant District Attorney; the Defendant was present and the hearing on this matter was conducted in judicial chambers with the court reporter present; and the Court, having reviewed the Motion, and having considered the arguments of counsel, hereby finds and concludes as follows:

1. The Defendant Keith A. Carter has been charged with one count of first degree murder.
2. The State has produced discovery to the Defendant indicating that a 9mm handgun purchased by the Defendant is consistent with the bullet that killed the victim, [REDACTED] and that shell casings found in the parking lot where the shooting took place are consistent with a 9mm handgun purchased by the Defendant. The State has used the SBI Crime Laboratory to test the firearms and toolmark evidence in this case. The Defendant questions the accuracy of

these SBI Laboratory conclusions. The Defendant is, by law, presumed to be innocent of these charges.

3. The firearms and toolmark identification evidence is material to both the State and the Defendant in this case. The State contends that this evidence is inculpatory, whereas the Defendant contends that his expert should be allowed to inspect, test and analyze the evidence to determine the accuracy of the State's contention or to determine whether the evidence is in fact exculpatory.
4. N.C.G.S. § 15A-903(a)(1) provides, in pertinent part, as follows: "Upon motion of the defendant, the court must order the State to ... [m]ake available to the defendant evidence obtained during the investigation of the offenses alleged to have been committed by the defendant....The defendant shall have the right to inspect and copy or photograph any materials contained therein and, under appropriate safeguards, to inspect, examine, and test any physical evidence or sample contained therein."
5. Pursuant to N.C.G.S. § 15A-903(a)(1), the Defendant is entitled to have an expert in the field of firearms and toolmark identification inspect, analyze and test the firearms and toolmark evidence in this case under appropriate safeguards. In this case, those "appropriate safeguards" include the method of transport or shipment of the said evidence to the defense expert in Texas.
6. The "firearms and toolmark identification evidence" referred to in this Order includes the following: all of the items listed on the attached Exhibit A (Discovery pages L-000001 - 000008).

7. The North Carolina Office of the Capital Defender has appointed Mr. Ronald Singer as an expert to assist the Defendant in the field of firearms and toolmark identification.
8. Mr. Ronald Singer, the defense expert, is the crime laboratory director of the Tarrant County Medical Examiner's Office that is located in Ft. Worth, Texas. It is not possible for Mr. Singer to bring all of the necessary equipment to North Carolina to conduct his inspection, testing and analysis. Consequently, the firearms and toolmark evidence must be transported or shipped by the State to Mr. Singer's laboratory in Texas.
9. In his Motion, and during the in-chambers hearing, the Defendant personally and through his attorneys, have stipulated and agreed that appropriate safeguards must be taken to make sure that this evidence is properly transported or shipped to Texas. The Defendant has also stipulated, through counsel, to the chain of custody of the said physical evidence between the time the State ships or transports the said evidence to the Defendant's expert until the time the said evidence is returned to the State. That is, the Defendant is waiving his right to make an objection to the admissibility of the firearms and toolmark identification evidence on chain of custody grounds between the time the State ships or transports the said evidence to the Defendant's expert until the time the said evidence is returned to the State. The Defendant is not waiving his right to challenge the admissibility of the firearms or toolmark identification or to file a motion to suppress the firearms or toolmark identification evidence propounded by the State on grounds other than the chain of custody of the said physical

evidence between the time the State ships or transports the said evidence to the Defendant's expert until the time the said evidence is returned to the State.

10. The Defendant's Motion should be allowed, under the conditions set forth below.

IT IS THEREFORE ORDERED AS FOLLOWS:

1. The Defendant's Motion For Testing and Inspection of Firearms Evidence and To Transport Evidence to Defense Expert is ALLOWED, subject to the limitations and conditions set forth below.
2. The State shall transport the following evidence as identified in the SBI Laboratory Report dated March 12, 2007, pages L-000007 – 000008; specifically SBI items K-4, K-4A, K-5, Q-2 through Q-8, and Q-1 through 10.
3. The State shall transport or ship the "firearms and toolmark evidence" to the defense expert, Mr. Ronald L. Singer, Tarrant County Medical Examiner's Office, 200 Feliks Gwozdz Place, Fort Worth, Texas 76104, (Telephone 817-920-5700), at a time convenient to the defense expert and those agents of the state transporting the said evidence to Texas. Mr. Singer shall make a good faith effort to complete his testing within three business days and return it to the agents for transportation back to North Carolina. If he is unable to complete his testing within three business days, however, law enforcement may remain in contact with Mr. Singer to schedule a return trip to retrieve the evidence. In any event, the testing shall be completed within 30 days from the date the evidence is delivered to Mr. Singer. The State of North Carolina shall reimburse the law enforcement officer chosen to transport the evidence for any and all travel and lodging expenses reasonably incurred during transport.

4. The Defendant is waiving his right to make an objection to the admissibility of the firearms and toolmark identification evidence on chain of custody grounds between the time the State ships or transports the said evidence to the Defendant's expert until the time the said evidence is returned to the evidence custodian within the State of North Carolina. The Defendant is not waiving his right to challenge the admissibility of the firearms or toolmark identification or to file a motion to suppress the firearms or toolmark identification evidence propounded by the State on grounds other than the chain of custody of the said physical evidence between the time the State ships or transports the said evidence to the Defendant's expert until the time the said evidence is returned to the State.
5. The Defendant's Motion and this Order shall remain under Seal and shall not be disclosed without further order of the Court; however, the Defendant's Motion and this Order shall in any event be unsealed at the final disposition of this case. However, copies of the Motion and Order may be provided to the Defendant and experts and investigators for the parties so long as the Motion and Order are not disclosed to any other persons.

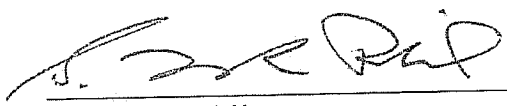
This the 16 day of January, 2009.



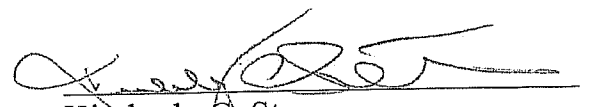
SUPERIOR COURT JUDGE

STIPULATION BY DEFENDANT:

The Defendant, through counsel, hereby stipulates and agrees to the matters set forth in paragraph four (4) of the Order above.



S. Mark Rabil
Assistant Capital Defender
Attorney for Defendant Carter



Kimberly C. Stevens
Attorney At Law
Attorney for Defendant Carter