

STATE OF NORTH CAROLINA
COUNTY OF MOORE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. 06 CRS 50272
06 CRS 50273
06 CRS 1497-1498

STATE OF NORTH CAROLINA)
)
)
v.)
)
)
JOHNNY CLETES MANESS)

THIRD MOTION FOR PRODUCTION
OF DISCOVERY REGARDING
DNA AND FORENSIC EVIDENCE
AND MOTION TO PREVENT
CONSUMPTIVE DNA TESTING

NOW COMES the defendant, by and through counsel, and respectfully requests, pursuant to N.C. Gen. Stat. § 15A-903(a), the Sixth, Eighth and Fourteenth Amendments to the United States Constitution, *Brady v. Maryland*, 373 U.S. 83 (1963), and the authority cited previously in the defendant’s “Request for or Alternative Motion for Discovery of DNA Testing Procedures, Protocols and Data; and Motion to Preserve Evidence,” and the defendant’s “Additional Motion for Production of Discovery Regarding DNA Evidence,” both of which have been previously filed with the Court, that the State voluntarily provide. or, alternatively, that the Court order the State to provide, the following items in addition to those previously requested in this matter:

1. All electronic DNA data produced in the above-captioned matter, to be provided in hard copy and in color copy if the data is in color form, and on a cd-rom as well;
2. First generation photographic images of all quantitation slot blots;
3. First generation photographic images of all items of evidence collected in the above-captioned matter;
4. Electronic quantitation data captured by TaqMan Technology (e.g. Real-Time) if such

was used in the above-captioned matter;

5. Complete copies of all internal/external audits involving the SBI Laboratory;
6. Complete copies of all software product manuals relied upon by the SBI for data interpretation (e.g., GeneScan-Genotyper/GeneMapper ID) or any other software product manuals relied upon by the SBI for data interpretation in the above-captioned case;
7. Complete copies of all software product updates and advisory bulletins relied upon by the SBI for data interpretation in the above-captioned case;
8. All laboratory / analyst error and contamination logs;
9. A summary of all DNA testing and data interpretation in the above-captioned matter;
10. A report regarding the DNA testing conducted in this matter, including:
 - (i) what was tested;
 - (ii) who conducted the testing
 - (iii) identification of the protocol used in the testing and any deviation from the protocol;
 - (iv) the data and results produced by the testing or data interpretation,
 - (v) the examiner's interpretation of the results and conclusions therefrom;
 - (vi) the method and results of any statistical computation;
 - (vii) any additional information that could bear on the validity of the test results, interpretation or opinion;
 - (viii) a section of the report should explain the test results, interpretation and opinion in language comprehensible to a layperson;

11. A portion of any extract from the DNA evidence should be preserved for further testing; the defendant specifically hereby MOVES that no consumptive testing be conducted in this matter which entirely consumes the DNA evidence or the extract from it;
12. If the State intends to conduct a test that entirely consumes DNA evidence or the extract from it, the defendant requests the presence of an expert representing the defendant during evidence preparation and testing and videotaping and photographing the preparation and testing;
13. The defendant requests a laboratory report be provided in accord with paragraph 10 above; the defendant further requests:
 - (i) if different from or not contained in any laboratory report, a written description of the substance of the proposed testimony of each DNA expert, the expert's opinion, and the underlying basis of that opinion;
 - (ii) the laboratory case file and case notes;
 - (iii) a curriculum vitae for each testifying expert and for each person involved in the testing;
 - (iv) any internal or external audit of the SBI laboratory procedures and a description of cases that may have been affected by any laboratory misconduct or serious negligence and any written reports regarding the same;
 - (v) reports of all proficiency examinations of each testifying expert and each person involved in the testing;

- (vi) reports of laboratory contamination and other laboratory problems affecting testing procedures or results relevant to the evaluation of the procedures and test results obtained in the case and corrective actions taken in response;
 - (vii) a list of collected items in the above-captioned case that there is reason to believe contained DNA evidence but have been destroyed or lost or have otherwise become unavailable;
 - (viii) a list of collected items in the above-captioned case that there is a reason to believe contained DNA evidence and a description of whether such items were tested;
 - (ix) a list of collected items in the above-captioned case that there is a reason to believe contained DNA evidence and a description of the method of preservation of such items for further testing;
 - (x) material or information with in the SBI lab or within the prosecutor's possession or control, including laboratory information or material, that would tend to negate the guilt of the defendant or reduce the punishment of the defendant;
14. The defendant requests that the DNA evidence in this matter be collected and preserved in a manner designed to document its identity, ensure its integrity and ensure its availability for testing and retesting. Specifically:
- (i) Defendant requests that the evidence be properly handled, packaged, labeled and stored; and
 - (ii) Defendant requests that the location where and the place or thing from which the evidence was collected or the person from whom or the entity from which it was

collected, the date and time it was collected, the identity of the person who collected it, and the manner in which it was collected and preserved be documented;

15. The defendant requests that each step in the testing of DNA evidence and in the interpretation of the test results be recorded contemporaneously by the SBI laboratory personnel conducting such testing in case notes;
16. The defendant requests that such case notes document all information necessary to allow an independent expert to evaluate the process used and the conclusions reached;
17. The defendant requests that all case notes made and raw electronic data produced during testing be preserved; and
18. The defendant requests that the SBI laboratory produce the database for the DNA profiles used in the laboratory in the above-captioned matter; the defendant requests that the SBI laboratory produce the results of all database searches and analyses performed in connection with the above-captioned matter, and the search procedures used to identify profiles relevant to the above-captioned case; and
19. The defendant requests permission to inspect all physical items of evidence collected along with an expert(s) of the defendant's choosing, and to videotape and photograph such items of physical evidence, and permission to enter the property where the evidence was collected along with an expert(s) of the defendant's choosing.

The defendant cannot be prepared to respond meaningfully to the physical evidence collected and/or analyzed in the above-referenced case without production of the above-listed items in addition to those previously sought in the defendant's earlier-filed Additional Motion for

Production of Discovery Regarding DNA Evidence and the Request for Discovery and Request
for Discovery of DNA Testing Procedures, Protocols and Data and Motion to Preserve Evidence.

This the 17th day of October, 2006.

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Certificate of Service

I certify that I served a copy of the foregoing THIRD MOTION FOR PRODUCTION OF DISCOVERY REGARDING DNA AND FORENSIC EVIDENCE AND MOTION TO PREVENT CONSUMPTIVE DNA TESTING, via hand-delivery upon:

Alan W. Greene
Assistant District Attorney
Courthouse
108 East Main Street
Troy, NC 27371

This the ___ day of October, 2006.

Craig M. Blitzer