STATE OF NORTH CAROLINA

COUNTY OF DURHAM

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. 01-CRS-24821

STATE OF NORTH CAROLINA,

Plaintiff,

vs.

MICHAEL IVER PETERSON,

Defendant.

MOTION FOR APPROPRIATE RELIEF

Michael I. Peterson, through undersigned counsel, hereby moves the Court, pursuant to N.C. Gen. Stat. §15A-1411 et. seq., the Due Process Clause of the Fifth and Fourteenth Amendments to the Constitution of the United States, and Article I, Section 19 of the North Carolina Constitution, for an order vacating his conviction and sentence. As grounds therefore, Michael Peterson shows the Court as follows:

Background

1. In December 2001, Michael Peterson was charged with first-degree murder arising out of the death of his wife, Kathleen Peterson, on December 9, 2001.

2. Kathleen Peterson died in the early morning hours, at the foot of a staircase in her house, as a result of loss of blood from injuries to her scalp. She had no fractures or other injuries to her skull, no subdural brain hemorrhage, no bruising to the brain, no

other significant brain injuries, no broken ribs or bones, and no other injuries similar to the injuries normally inflicted during a beating.[1] There were no eyewitnesses to how the injuries to her scalp were sustained. No witness testified to any problems or discord in the relationship, and no credible evidence of a financial motive was offered. The alleged murder weapon, a blow poke that was supposedly missing from the Peterson house, was located by the defense and introduced into evidence. No other alleged weapon was ever identified by the prosecution. The evidence regarding what happened in the stairway came solely in the form of "expert" opinions.

3. The experts who testified at trial offered diametrically opposed opinions as to whether there had been an accident or a beating. The prosecution witnesses claimed that the injuries were consistent with a beating and inconsistent with an accident; the defense witnesses testified that the injuries were consistent with an accident and inconsistent with a beating. But only one alleged "expert" testified that it was *Michael Peterson* who had beaten Kathleen Peterson to death. That "expert" was former SBI Agent Duane Deaver, who based his testimony on his interpretation of bloodstains found in the area of the stairway and bloodstains on Michael Peterson's shorts and sneakers.

4. Since the trial, new evidence has revealed that at the time he testified Deaver was not, as he portrayed himself to the Court and the jury, a fair-minded expert offering scientifically reliable opinions about what he had observed. Rather, the newly

[1] The autopsy results from hundreds of beating deaths from the previous ten years, introduced by the defense, showed no instances in which the beating resulting in death did not cause either massive brain injuries, skull fractures, other broken bones, or some combination of these injuries.

disclosed evidence establishes that since at least 1993 Deaver has had a long-standing pattern and practice of fabricating inculpatory evidence, concealing exculpatory evidence, tailoring his testimony to whatever the prosecutor wanted or needed him to say, and committing perjury in order to advance his primary goal: to secure the conviction of the person on trial. The Court and the jury knew none of this at the time Deaver was permitted to testify at Michael Peterson's trial. It would have had a powerful impact on this vigorously contested and close case that took a jury five days of deliberation to resolve.

5. As a result of these recent revelations, Defendant Michael Peterson now seeks to discover additional evidence regarding Duane Deaver and Deaver's 's testimony at his trial, and requests an evidentiary hearing at which he can prove that Deaver fabricated evidence at his trial, just as he fabricated evidence in other cases. Defendant further seeks an order vacating his conviction on the ground that this newly discovered evidence establishes that Peterson's constitutional right to due process was violated.[2]

Bloodstain Pattern Analysis

6. Jurors generally are not well equipped to evaluate complex expert testimony, as they can't judge the credibility of such evidence as they do other testimony, by falling back on their own knowledge, life experiences and common sense. Moreover, someone who has been declared an "expert" by the court comes to the witness stand with

[2] This motion is based upon facts that have only come to light since the last Motion for Appropriate Relief filed on Defendant's behalf was denied. Defendant was therefore not in a position to adequately raise the grounds underlying the present motion at the time the last Motion For Appropriate Relief was filed.

a presumption of objectivity and integrity, particularly when he isn't being "paid for his testimony." Where experts disagree, the jury is often forced to rely upon what they have been told about the competing experts, and their alleged motivation for testifying, rather than on the substance of their testimony. In short, all expert testimony comes with unique dangers that can undermine the jury's ability to ascertain its trustworthiness[3].

7. These dangers are particularly acute with regard to bloodstain pattern analysis. The National Academy of Sciences, in its landmark 2009 study of forensic sciences entitled *Strengthening Forensic Science in the United States: A Path Forward*, specifically discussed the significant limitations on bloodstain pattern analysis, and its particular susceptibility to fraud and abuse:

> Bloodstain patterns found at scenes can be complex, because although overlapping patterns may appear simple, in many cases their *interpretations are difficult or impossible*.
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> * * *
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> In general, the opinions of bloodstain pattern analysts are *more subjective than scientific*. In addition, many bloodstain pattern analysis cases are prosecution driven or defense driven, with targeted requests that can lead to *context bias*.
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> * * *
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> Scientific studies support some aspects of bloodstain pattern analysis. One can tell, for example, if the blood spattered quickly or slowly, but *some experts extrapolate far beyond what can be supported.*

[3] For an excellent analysis of the dangers of expert testimony, see the article by Justice Ken Crispin, who served on the Supreme Court of the Australian Capital Territory from 1997 until 2007, published by the International Institute of Forensic Studies and entitled *Of Augeries and Experts*, a copy of which is attached as Exhibit A.

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> [E]xtra care must be given to the way in which the analyses are presented in court. *The uncertainties associated with bloodstain pattern analysis are enormous.*

Strengthening Forensic Science in the United States: A Path Forward, http://www.nap.edu/catalog/12589.html, at pages 177-179 (emphasis supplied).[4]

8. The potential dangers of bloodstain pattern analysis recognized by the NAS report have now been documented to exist in the work of the SBI Bloodstain Pattern Analysis unit, which was trained by Duane Deaver. As reported by the *Raleigh News & Observer*, that unit operated without any written policy from 1988 until October 2009. One expert called the lack of policy "astounding," noting that "[i]f you are a reputable unit, you have written procedures for everything you do." The North Carolina Attorney General suspended the entire unit in August 2010, expressing concerns about the work they had performed and doubts about their training and experiments. Equally troubling, the Attorney General noted that he was "concerned about the potential of influence of prosecutors on the opinions of some SBI agents regarding this science." *Raleigh News & Observer*, *Bloodstain Analysis Team Had No Guidelines For 21 Years*, September 10, 2010.

[4] For a discussion of "context bias," and how it can affect the opinions of even honest and ethical forensic experts who rely upon their judgment and experience (as opposed to objective testing) in forming expert opinions, see D.M. Risinger, M.J. Saks, W.C. Thompson, and R. Rosenthal 2002, The Daubert/Kumho implications of observer effects in forensic science: Hidden problems of expectation and suggestion, California Law Review 90:1-56.

Duane Deaver's Testimony Was The Only Evidence That Michael Peterson Beat Kathleen Peterson To Death

9. From the very start of the trial, the prosecution focused on Duane Deaver as a critical witness in its case against Michael Peterson. The District Attorney argued in his opening statement that the information "from Agent Duane Deaver, who is the blood spatter expert from the SBI, will be . . . *critical*." The prosecutor explained: "[Deaver] finds what he will call several points of origin. And what he will also say is that, from his perspective, this was *very, very important*, because it was above the floor . . . . He will say its positioned in such a manner that these can't be due to an accidental impact on the stairs . . . . And that will also be *very, very important evidence*." Most significantly, the District Attorney argued "there are aspects of the blood spattering in that clothing and how it penetrated the clothing that it couldn't just be contact brush-off from what Mr. Peterson says he did, as Mr. Peterson holds and caresses her." Tr. at 4700-4701. In short, the District Attorney stressed from the beginning that Deaver, relying upon the blood spatter, would prove it was *Michael Peterson* who had beaten Kathleen Peterson to death in the stairway.[5]

10. The District Attorney began his evidence by focusing on the blood. Testimony about the blood at the scene and on the clothes of Michael and Kathleen Peterson came from the Emergency Medical Technicians, the various Durham Police officers who responded to the scene, and the Durham Crime Scene Technicians. But the

[5] Although other prosecution experts offered opinions that the injuries to Kathleen Peterson resulted from an assault, evidence that was strongly disputed by Defendant's experts, no prosecution expert other than Deaver tied Michael Peterson to the alleged assault.

critical testimony about the blood, and specifically how the bloodstain patterns purportedly "proved" that Michael Peterson was the person who had beaten Kathleen Peterson to death, came from Duane Deaver.[6]

11. Deaver testified that he arrived at the Peterson house about 14 hours after Kathleen Peterson's body was found. By the time he arrived, investigators Fran Borden and Art Holland, who had no training in the interpretation of bloodstains, or knowledge of how severely the scalp can bleed, had concluded that there was "too much blood" for the death to have been the result of an accident, and had secured a search warrant by alleging there was probable cause to believe there had been a homicide. They informed Deaver of their conclusion before he even entered the Peterson house. After entering the scene, Deaver interacted repeatedly with Durham Crime Scene Technicians Eric Campen, Dan George, and Angie Powell, giving them instructions about how to process the scene, and what to photograph.

12. Within ninety (90) minutes of arriving at the Peterson house, before doing any calculations regarding the alleged "points of origin" of the blood spatter in the stairway, or examining any of the clothing worn by Michael or Kathleen Peterson, Deaver told Art Holland that he agreed with Holland that the death was a "homicide." Only after reaching this conclusion did he proceed to allegedly determine that there were three very specific "points of origin" for the blood spatter in the stairway that were "out

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[6] Deaver's opinions relied in part on the work of several other agents from the SBI Lab, including Joyce Pretzka, Suzi Barker, and John Bendure. Barker, who at the time was a "blood spatter trainee," was suspended by the SBI in 2010 when it was discovered that she, along with Deaver and others in the serology section of the Lab, had falsely reported positive blood results in numerous cases, including death penalty cases.

in space" (*i.e*. not emanating from any surface in the stairway), and that these were the result of "impacts" (*i.e*. blows to the head). This formed the basis for the first critical opinion he gave at the trial: that the blood spatter in the stairway was not consistent with a fall, and was consistent with an intentional beating.

13. To buttress this opinion, Deaver claimed that there was cast-off from a weapon on a header located nine feet off the floor in the hallway outside the stairwell, that this alleged cast-off was "associated with" several blood spatters he found inside the stairway, and that this was where the alleged assault had started. He also claimed that he could determine that an area of impact on one of the steps was "too forceful" to be the result of a fall, and that in his opinion it was the result of Kathleen Peterson's head being intentionally slammed into the step.

14. Deaver also performed a series of what he called "experiments" that were designed to support the theory he and the prosecutors had already developed. These "experiments" were not performed until September 2002, six months after the prosecution had focused on the blow poke as the alleged murder weapon, and were attended by the lead investigator, Detective Art Holland, who helped Deaver and other SBI lab personnel set them up.[7] Deaver testified about these "experiments" at great

[7] The blow poke was actually brought to the SBI lab by Holland on September 12, 2002, the day the experiments were performed. The experiments included dropping a Styrofoam head (with a bloody sponge) attached to a metal rod straight down 12 feet onto the ground, stomping on a bloody sponge multiple times, hitting a bloody sponge 38 times in a model of the stairway, and smearing blood on a pair of test shorts and then pouring several pitchers of water over them.

length before the jury.[8] Based solely on these experiments, he claimed he had determined that Kathleen Peterson and/or Michael Peterson, were "moving" when blood spatters were deposited on Michael Peterson's sneakers, and that Michael Peterson's shorts had been in close proximity to "an impact" to Kathleen's Peterson's head. Both of Deaver's opinions, given with certainty, were critical to the testimony that only Deaver gave at Michael Peterson's trial, and that no other expert corroborated: *it was Michael Peterson, wearing the shorts and the sneakers Deaver had inspected, who had beaten Kathleen Peterson to death in the stairway*.[9]

15. Although Deaver was cross-examined at length about his opinions and the basis of those opinions, he constantly insisted on "explaining" his answers, often interjecting irrelevant and false information to distract the jury. Indeed, it got to the point that the Court had to admonish Deaver several times, either directly or through the District Attorney, to answer the questions posed before trying to "explain." *See, e.g.*, Tr. at 8918; 9012-9016. Deaver also steadfastly refused to concede that anything he testified to could possibly be mistaken or inaccurate. When faced with his prior inconsistent testimony from other cases, Deaver claimed a lack of memory, explained the inconsistent statements away, or both. *See, e.g.*, Tr. at 9247-48.

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[8] Deaver testified at the trial for seven (7) days, including about a day of *voir dire* on his "experiments" and his opinions outside the presence of the jury. His testimony encompassed almost 1,000 pages of the transcript. The entire state's case in chief was less than 6,000 pages of transcript in total.

[9] Deaver's testimony also served another important function. It was used to impeach Peterson's statement to the police that he and Kathleen had been sitting outside by the pool, that Kathleen had gone inside to go to bed while he remained outside, and that he found Kathleen's body when he subsequently went inside.

16. In contrast, the two defense blood pattern experts testified that the blood spatter was more consistent with a fall than a beating, but they could not ethically "rule out" that some of the spatter could have come from impacts that were intentional instead of accidental, since there is no scientifically valid way to determine whether an impact that caused a particular spatter pattern was accidental or intentional. Thus, the only expert testimony given with "certainty" regarding the meaning of the blood spatter was Deaver's unequivocal opinion that all the blood in the stairway and on the shorts and sneakers was the result of a beating inflicted by Michael Peterson.

17. In their closing arguments, the prosecution stressed repeatedly the importance of the blood spatter evidence, and Deaver's opinions about that evidence. First, the prosecutors improperly vouched for Deaver's honesty and integrity.[10] For example, the State argued that for the jury to believe the defense experts, "you're just going to have to believe that Duane Deaver is just a liar. And he has no reason in the world to come up here and lie to you." The prosecutor continued that Deaver worked "for your state, North Carolina . . . , *for us*," and that he

> "gave you truthful and accurate information. And you know what? They didn't get paid not one penny extra to come in here. Deaver should have, my goodness what he had to go through on the witness stand, but, no, he didn't get an extra penny. . . *They are tried and true. Tried and true. Because they work for us . . . . For our state*.

Tr. at 13194. She concluded that Deaver had "been in this very courtroom before" and

[10] The State ultimately conceded that this argument was "excessive and inappropriate." *State v. Peterson*, 361 N.C. 587, 607 (2007).

> "testified in front of people just like you. Durham County juries . . . . And because they have to go face Durham County juries again . . . why in the world would they stake their reputation, their integrity, why would they stick their necks out to ruin their reliability when they know they've got to face people like you again? The answer to that question is they wouldn't. They wouldn't. They wouldn't come in here and give you inaccurate information. They're not going to do that."

Tr. at 13199-200, 13216-220.

18. With regard to Duane Deaver, however, and various other SBI agents employed by the lab, we now know that is precisely what they did. Scores of times over many years, in the most serious cases imaginable, Duane Deaver lied to secure criminal convictions.

19. In his final argument, the prosecutor referred to Duane Deaver as "*obviously central* to this case." At another point he referred to Deaver as "*very central* to the state's case." He then proceeded over the next ten pages of transcript to detail exactly how the testimony of Deaver allegedly established Michael Peterson had beaten Kathleen Peterson with some object, where the initiation of the assault began (by the 15th step), how she "goes down" and Michael Peterson struck her "at least two more times" near the corner ("hitting her at two points out in space"), that she was "fighting for her life," that "the defendant was in close proximity to Kathleen when at least one impact occurred" and that he was "standing over her, striking her," that the spatter on the sneakers "means that when he had these things on, he had to be striking her," that the shoeprint in blood on Kathleen's sweatpants means "he has to be in close proximity when some of these actions occurred," that Kathleen "was struck, that she went down, that she

was probably down for some period of time. She began to bleed and then she got up. And he [Peterson] realized it, as he was going through the process of cleaning up everything, and then had to continue the assault." Tr. at 13240, 13247-13254.

20. The prosecutor then proceeded to describe the alleged "cleanup" on step 17 and the north wall about which Deaver had offered opinions, including that "Duane Deaver sees blood spatter on top of cleanup. There's only one way that can happen. If there is a second assault." Tr. at 13255-13256. This, the prosecutor said, is when Mike Peterson *"developed premeditation during the assault* . . . That's why I told you it was so *very important* to consider that there were two assaults. What we contend to you, ladies and gentlemen, is that he assaulted her, she went down, he continued to assault her, *and that's when the premeditation formulated* . . . . [W]hatever it was that caused the initial assault . . . during the assault, he develops the intent to complete the act and to kill Kathleen Peterson." Tr. at 13260-13262. After noting that the State was *not* claiming that there was any premeditation prior to the alleged assault beginning, he went on to note that premeditation and deliberation are usually proved by circumstances. He continued:

> "*this is the one [circumstance] that I want you to focus on. Infliction of lethal wounds after the victim was felled*. That's why this second assault is *very important*. That's why the cleanup here is *very important*. That's why the blood spatter, impact spatter, on top of the cleanup is *very important*. That shows there was a second assault. That shows he inflicted lethal wounds after the victim was felled."

Tr. at 13262.[11]

[11] Fourteen of the thirty-four pages of the District Attorney's closing argument, more than 40%, was devoted to and based upon Deaver's opinions.

21. In short, *the prosecution's entire argument about premeditation*, a critical issue since Peterson was charged solely with first-degree murder, rested on the testimony of Duane Deaver.

22. Similarly, without Deaver's opinion testimony about Peterson's shorts and sneakers, there was no evidence that Michael Peterson was present in the stairway when Kathleen was allegedly beaten to death with a blunt instrument.

23. The prosecutor concluded his final argument in the same manner as he began his opening – by focusing on the blood, and on what the blood spatter had allegedly "told" Duane Deaver: "What if these walls could talk? What would they say? Ladies and gentlemen, these walls are talking. Kathleen Peterson is talking to us through the blood on these walls. She is screaming at us for truth and justice. Its all in these photographs. These walls are talking. She's talking to us through them, and that's the only way she can do it." Tr. at 13265-66.

24. Following the closings, the jury deliberated for part of the day on October 6, 2003, for three full days on October 7-9, 2003, and for part of the day on October 10, 2003, not reaching a verdict until about noon that day.

It Has Now Been Established That Deaver And Other SBI Agents Had a Pattern and Practice of Fabricating Inculpatory Evidence and Concealing Exculpatory Evidence

25. Over the past year, there have been a series of revelations regarding the internal culture that existed at the SBI over the past two decades, and the fact that SBI agents have been found to have fabricated inculpatory evidence, to have suppressed exculpatory evidence and laboratory reports, to have tailored their investigations and their

in-court testimony to fit whatever theory local police and prosecutors wish to present to the jury, and to have even committed perjury, all in a misguided attempt to secure criminal convictions at the expense of due process. In short, the culture at the SBI has been one in which the ends have routinely justified the means.

Duane Deaver

26. No single agent has epitomized these violations of due process more than Duane Deaver who, as a result of the recent revelations concerning his misconduct over the past twenty years, was finally terminated by the SBI "for cause" on January 7, 2011. The reasons, according to Deaver's own lawyer, included that Deaver had been cited for contempt of court for giving false and misleading testimony, under oath, to a three-judge panel reviewing a wrongful conviction (that had initially been secured through Deaver's suppression of favorable blood testing).[12] The reasons also included Deaver's actions during an "experiment" in a first degree murder case, in which he told another agent "that's a wrap" when he had the result he was seeking. The "experiments" were derided as "unscientific productions designed not to seek the truth but to produce results sought by prosecutors." [13]

[12] Deaver was caught red-handed during the Peterson trial attempting to engage in similar conduct by concealing favorable evidence. In Peterson, he withheld exculpatory evidence from the DA regarding the results of a lumalite inspection of Peterson's shirt, an inspection that failed to reveal the presence of any spatters on his shirt despite the literally thousands of spatters present in the stairway. Tr. at 8983 - 8992. It is impossible to know at this point, without further discovery, what other favorable evidence Deaver either concealed or destroyed.

[13] Deaver engaged in similar conduct with Agent Suzi Barker at the end of an "experiment" he conducted in the Peterson case. The video showed Barker obviously celebrating when Deaver achieved the result he was seeking in the "experiment," although Deaver's words could not be heard because the sound on the video provided to the defense was deleted. Deaver's "experiments" in the Peterson case

27. An Independent Review commissioned by the North Carolina Department of Justice, and conducted by two former high ranking officials of the Federal Bureau of Investigation, looked only at one small part of Agent Deaver's conduct as an expert at the SBI: how he reported the results of blood testing on his laboratory reports. It found that:

> "in a *sampling* of lab files assigned to Agent Deaver from 1988 through 1993 (when he left the lab to become a full-time blood spatter analyst) in which a positive presumptive test was followed by a negative Takayama test, 34 reports failed to mention the negative confirmatory test. In five instances the report stated that 'the quantity of stain was insufficient for further testing' or 'the quantity of stain was insufficient to test further' when in fact a Takayama test (sometimes multiple tests) was conducted on the item(s) and the corresponding lab notes reflected a negative result.

Swecker & Wolf, Independent Review of the SBI Forensic Laboratory, attached as Exhibit B, page 18 (hereinafter the "Swecker Report"). In describing how the results of the review was organized, the report noted that the fourth and most serious category of misconduct involved cases in which the results contained in the lab report were *completely inconsistent* with the results reflected in the internal lab notes.

> "There were five such cases in this category, *all handled by SA Deaver. One of these cases involved a defendant who was executed.* In two instances the words 'revealed the presence of blood' were used [in the lab report] when in fact the results of the confirmatory test were reflected in the [lab] notes as negative . . . . In three other instances the [lab] report stated that further tests were 'inconclusive' or 'failed to give any result' when the lab notes reflect negative results."

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were likewise unscientific productions designed to produce results sought by the prosecutors and Art Holland, who was present while they were conducted.

Id. at page 11(emphasis added). Of all the agents who had engaged in misconduct at the SBI lab, Deaver's conduct was the most egregious.

28. In sum, the Swecker report found that Deaver was willing to ignore the truth, and write false and misleading lab reports, in order to advance the prosecution's case, even when a defendant's very life was at stake. It further found that, as the report charitably put it, Deaver's (and others) actions "had the potential to lead to violations of the Federal Constitutional and North Carolina discovery laws by not reporting information that might have been helpful or material to the defense of the accused." *Id*. at page 12. Deaver himself described his reports as "speaking to the [investigating] officer." He did not view himself as an independent scientist serving "the criminal justice system as a whole." *Id*. at pages 19-20.

29. Deaver's pattern of ignoring the truth for his own purposes, and providing false and misleading information to courts, existed the entire time he was with the SBI, nor was it limited to writing false and misleading lab reports.

a. For example, in *State v. Goode*, United States District Judge Malcolm Howard found that in a 1993 trial in which Deaver was qualified as an expert in the fields of forensic serology and blood stain pattern interpretation, his sworn testimony claiming there was blood spatter on a defendant's boots that was invisible to the naked eye had "*falsely portrayed* to the jury that he conducted a test for blood that indicated blood . . . was on petitioner's boot." *See* Order of Honorable Malcolm Howard, attached as Exhibit C, page 25. Judge Howard further found that "the State, through Agent Deaver, *presented misleading evidence* about the testing done on petitioner's boots being conclusive for blood." *Id*. at page 27.

b. Similarly, the Independent Review conducted by former FBI agents Chris Swecker and Michael Wolf, "found that SA Deaver's testimony before the Innocence Commission Three-Judge Panel [in

> February 2010] with respect to the SBI and ASCLD/LAB policies was inaccurate." *Id*. at page 12.[14]

Thus, Deaver's pattern of testifying falsely has existed for at least 17 years.

30. Likewise, Deaver's use of bogus "experiments" to bolster his false testimony has been his practice for many years. For example, in a 1989 case, Deaver wrote a report to support the testimony of the prosecution's main witness in a murder case - that he had merely been present when the defendant beat the victim to death with a 2 x 4, despite the presence of blood on his clothes and sneakers. To reach this conclusion, Agent Deaver bought several pumpkins and smashed them with a 2 x 4 in front of a white sheet. Based upon this experiment, Deaver was prepared to testify that the witness had merely been present, and that the defendant on trial had done all of the beating. Judge Don Stephens, however, refused to allow Deaver's testimony. *See* affidavit of attorney William Gerrans, attached as Exhibit D.

31. More recently, in a 2007 murder case, *North Carolina v. Kirk Turner*, the prosecution needed evidence to refute the defendant's claim of self-defense. The original bloodstain interpretation by SBI Special Agent Gerald Thomas had concluded that a bloodstain on the defendant's shirt was "consistent with a bloody hand being wiped on the surface of the shirt." But prosecutors subsequently decided on another theory – that the defendant had killed his estranged wife, *wiped the knife on his shirt*, and then staged the scene by stabbing himself in the leg with an 18-inch blade attached to a long spear. They asked to meet with Thomas, and he brought his mentor, Deaver, to the meeting.

[14] Deaver has since been ordered by the Panel to show cause why he should not be held in criminal contempt for his false testimony.

Despite Thomas' initial report, Deaver and Thomas agreed to support the prosecution's theory. The solution: change the initial report without any indication of the change. The sentence about the bloodstain on the defendant's shirt being "consistent with a bloody hand being wiped on the surface of the shirt" was changed to read that it was "consistent with a pointed object, consistent with a knife, being wiped on the surface of the shirt."[15] The rest of the report, including its date, remained the same. *See* SBI Reports, attached as Exhibit E.

32. Then Deaver and Thomas conducted an experiment that Thomas wrote in an email message to another SBI agent was specifically designed to "shore up" his new argument -- to produce the result Deaver and Thomas wanted. A video shows that twice, Thomas (accompanied by Deaver, who was filming) put on a clean shirt and then dipped a knife into blood, carefully getting the blood only on the edges. He then carefully wiped the blade on his shirt in an attempt to leave a stain that resembled the outline of the knife. After the second attempt, Deaver stated on the video "Oh, even better, holy cow, that was a good one. Beautiful. That's a wrap, baby." A copy of that video is attached as Exhibit F.[16] After the defense attorneys discovered the initial report, and confronted Thomas with

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[15] Similarly, in the Peterson case, according to the prosecutor's handwritten notes, Deaver's initial opinion in December 2001 was that the murder weapon was short and heavy. After the prosecution decided that the long, hollow blow poke was the murder weapon, Deaver changed his opinion, and testified at trial that the blow poke was consistent with the bloodstain evidence at the scene. Tr. 8722.

[16] At the Peterson trial, Deaver falsely testified that he turned the sound off because the "general procedure" "for doing forensic-type videotaping. The sound is left off." Tr. at 8912. He claimed having sound was not necessary for the jury to be able to evaluate how valid the tests were, a claim that the video in the *Turner* case clearly refuted. Based upon the *Turner* case, Defendant believes there is (or was) a video with sound of the experiments done in the Peterson case, and that Deaver intentionally deleted that sound from the video given to the District Attorney.

it at the trial, the jury acquitted Turner. The foreman of the jury, a self-described "law-and-order man," reported to the *Raleigh News and Observer* that the jurors were "stunned by the SBI's conduct. . . . I don't know what other word to use but a fraud." *See* Exhibit G. It was only after this information was published that Deaver (and the rest of the bloodstain pattern unit, all of whom had been trained by Deaver), was suspended by the SBI.

33. All of the evidence regarding Deaver's misconduct was revealed only over the past 15 months, in bits and pieces that finally formed a clear and unmistakable picture. Agent Deaver, over the past twenty years, established a pattern and practice, a modus operandi. He has viewed his job as helping to convict whoever had been arrested by the police and charged by the prosecutor, not with determining the truth of what had happened. In pursuit of that end, Deaver repeatedly created false and misleading reports, concealed evidence that was inconsistent with a defendant's guilt, and fabricated evidence to support the prosecution's theory. He also assisted and/or encouraged other law enforcement officers in the same sort of conduct. And he has done this even when the stakes were the defendant's very life.

34. In the Peterson case, consistent with his misconduct in these other cases, Deaver concealed exculpatory evidence from the District Attorney, changed his theory to comport with what the prosecutor wanted to argue, used bogus "experiments" to bolster his testimony, celebrated when he got the result he wanted from the experiments, and fabricated evidence.

Other SBI Agents

35. Deaver, however, was not the only agent at the SBI who was willing to create false and misleading reports, and to conceal evidence that was inconsistent with a defendant's guilt. The Independent Review found serious problems throughout the Serology Section, identifying more than 200 cases in which false and misleading reports about blood testing had been created, and exculpatory evidence about subsequent blood testing had been concealed. For example, Agent Susie Barker, who worked in that section, was being trained as a blood spatter agent by Deaver at the time of the Peterson trial, and helped him perform his "experiments" in the Peterson case, was found in at least seven instances to have engaged in conduct similar to Agent Deaver's conduct. Specifically, she indicated in lab reports that there had been a positive indication for the presence of blood on a particular object, while concealing subsequent confirmatory tests that were either negative or inconclusive. *See* Exhibit B. She was suspended from the SBI for this misconduct.

36. Moreover, the problems at the SBI, while centered on the laboratory, have not been limited to the lab. As the reporting in the *Raleigh News & Observer* regarding the cases of Alan Gell and Floyd Brown demonstrate, "the ends justify the means" philosophy has permeated the agency, leading agents to fabricate confessions (in the Brown case) and to hide exculpatory interviews with neutral witnesses (in the Gell case) in order help local law enforcement and prosecutors win convictions.

The Conduct And Testimony Of Deaver, And Other SBI Experts, Deprived Michael Peterson Of His Right to Due Process Under the United States and North Carolina Constitutions

37. A number of the other SBI agents who assisted Deaver in the Peterson investigation included members of the now discredited serology section[17] of the SBI lab -- including Suzi Barker and John Bendure, who both had access to Peterson's shorts. Joyce Pretzka of the Latent Evidence Section and James Gregory of the Trace Evidence Section also assisted Deaver. Until further discovery can be conducted, there is no way to determine if any evidence favorable to Peterson was concealed or destroyed by any of these agents in order to assist their colleague Deaver, Detective Art Holland, or the prosecutors.[18] Defendant wishes to preserve any claims related to such misconduct while discovery is being conducted.

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17 By the time of Swecker and Wolf's Independent Review in 2010, this Section was called the Forensic Biology Section.

18 Although not a member of the Serology Section of the SBI Lab, SBI agent Lawrence Young was contacted by the prosecution in April 2003, the month before the trial began, specifically to "support a financial motive" for Michael Peterson to murder his wife. Tr. at 5363. He testified as an accounting "expert" about the state of the Petersons' finances. In response to the prosecution's request, Young provided a misleading picture of the Peterson's finances to the jury by ignoring certified appraisals for properties owned by the Peterson in favor of tax values, using old tax values instead of updated tax values, ignoring significant non-real estate assets owned by the Petersons, ignoring the fact that their credit card debt had decreased during the year before Kathleen Peterson's death, ignoring the $90,000 cash surrender value of Michael Peterson's life insurance policy, as well as stock options and retirement funds that Kathleen owned, and ignoring the fact that they had chosen to defer over $223,000 in income during 2000 and 2001, which showed they were hardly concerned about cash flow. Tr. at 5364, 5366-71, 5376-5380, 5383, 5387, 5390-91, 5400-5405, 5410, 5414-15, 5419. Although all of this was brought out on cross, it illustrates the willingness of SBI "experts" in 2003 to slant their testimony to help prosecutors.

The Court's Decision to Allow Deaver to Render Expert Opinions Was Based Upon His False, Misleading and Fabricated Testimony

38. Prior to Deaver being qualified by the Court as an expert in bloodstain pattern analysis and being permitted to give opinions in this area, the defense filed two motions in limine directed at Deaver's proposed expert testimony. First, the defense filed a Motion for Determination of Admissibility of Expert Opinion and Results of Experiments. Second, the defense filed a Motion for Daubert Hearing on Admissibility of Expert Testimony Regarding Whether the Act that Caused Certain Bloodstains was Accidental or Intentional.

39. Based solely upon Deaver's testimony about (a) the experiments he conducted, (b) his conclusions and opinions from the scene with respect to bloodstain pattern analysis, and (c) the basis for those conclusions and opinions, the Court denied the defense motions. More specifically, the Court held that *"the experiments conducted by Agent Deaver are of the type routinely used in this field, were conducted in a reliable manner, and provided part of the reliable basis to support his conclusions."* The Court also held that all of Deaver's opinions were *"reliable in that sufficient facts or underlying data form a reliable basis to support each opinion."* *See* Order, attached as Exhibit H. The Court therefore allowed Deaver to testify as an expert on these matters.

40. At the time the Court made these findings and thereby allowed Deaver to provide these opinions to the jury, the Court was not aware that Deaver had prepared at least 34 lab reports that were false and/or misleading, and which concealed exculpatory information about scientific tests that were inconsistent with the lab reports he prepared

and signed. Nor was the Court aware that Deaver had testified falsely in 1993 as an expert in the *Goode* death penalty case, that he was willing to ignore the truth in order to advance the prosecution's case, or that he viewed his role as helping the prosecution obtain a conviction, rather than seeking the truth from a scientific perspective. *See* paragraphs 28-29, *supra*. Nor was the Court aware that another Superior Court Judge had refused to allow into evidence testimony based upon "experiments" that Deaver had conducted using pumpkins to support his proposed testimony. *See* Exhibit D.

41. Had the Court been aware that Deaver, over the preceding years, had established a pattern in which he (a) viewed his job as helping to convict whoever had been arrested by the police and charged by the prosecutor, not with determining the truth of what had happened, (b) created false and misleading reports, (c) hid evidence that was inconsistent with the defendant's guilt, (d) fabricated evidence to support the prosecution's theory, (e) assisted and/or encouraged other law enforcement officers in the same sort of conduct, and (f) committed perjury to support the prosecutor's theory, as he did in *Goode*, the Court would have found that the testimony Deaver offered in support of his "experiments" and opinions in this case was also false and misleading. The Court therefore would not have permitted Deaver to render all of the opinions he did, at least not without further evidence from other independent blood spatter experts attesting to their scientific validity and reliability.

42. In short, Defendant will prove that Deaver's testimony during the voir dire deceived the Court into finding that (a) the experiments he conducted were "of the type routinely used in this field, were conducted in a reliable manner, and provided part of the

reliable basis to support his conclusions," and (b) Deaver's opinions were "reliable in that sufficient facts or underlying data form a reliable basis to support each opinion."

43. Deaver's false and misleading testimony during the voir dire was particularly egregious with regard to his opinions relating to the alleged points of origin in space, which were based on completely subjective criteria and were not validated or confirmed by any other expert retained by the state, and his opinions regarding the meaning and significance of the bloodstains on Michael Peterson's shoes and shorts, which were based solely on the "experiments" Deaver conducted with the assistance of Art Holland and Suzi Barker.

44. Specifically with regard to the "experiments" that Deaver conducted, and which formed the *sole basis* for his opinions regarding the source and origin of the bloodstains on Michael Peterson's shorts and sneakers, had the Court known in 2003 what has now been revealed about Deaver's pattern and practice, the Court would have found that his "experiments" lacked scientific validity, and were designed solely to support the opinion Deaver had already reached -- that Michael Peterson had beaten his wife to death in the stairway -- rather than to search for the truth of what happened. Indeed, had the Court known in 2003 what is known today about Deaver's pattern and practice of fabricating evidence helpful to the prosecution, the Court would have excluded Deaver's opinions regarding the alleged significance of the bloodstains on Michael Peterson's shorts and sneakers, since Deaver admitted that these critical opinions

-- that Michael Peterson was in close proximity to Kathleen Peterson when she was beaten to death in the stairway -- were based solely upon these "experiments."[19]

45. With regard to Deaver's calculation of three specific "points of impact" out in space, which formed the linchpin of his conclusion that the blood spatter on the wall was the result of a beating, had the Court known in 2003 what has now been revealed, the Court would have found that this determination was based not on science but rather on a number of highly subjective factors that could easily be manipulated by a biased or unscrupulous expert (such as the number, location and size of the blood stains selected and the manner in which the measurements and angles were calculated), and that a calculation of a specific "point" rather than a general "area" of origin was *not* accepted in the field of blood spatter analysis. The Court would have therefore precluded Deaver from testifying to specific "points of impact" "out in space," as opposed to general "areas of origin" from which the spatter might have originated (which, because of the generally accepted margin of error in such calculations, would have included the wall or the floor of the stairwell).

46. In short, had the Court known of Deaver's prior misconduct, and the lack of a scientific basis for his opinions about precise and specific points of impact, and for the opinions he reached about Peterson's shorts and sneakers based on his "experiments," it would not have allowed him to testify to those opinions at all, and would have barred his

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19 Deaver admitted that his opinions regarding the interpretation of the bloodstains on Michael Peterson's shorts and sneakers were based on the experiments, and that he could not have testified to those opinions without relying upon the experiments. Tr. at 8899-8900. A DVD containing Deaver's "experiments" is attached as Exhibit I.

testimony as it did Sami Shabani's.[20] Defendant respectfully submits that Deaver deserved, and would have met, the same fate as Shabani.

The Jury Was Presented with False, Misleading and Fabricated Evidence, and Was Deprived Of Critical Impeachment Evidence Regarding Deaver's Credibility

47. Although the defense presented to the jury the testimony of two blood spatter analysts to refute Deaver's testimony, the jury was left to weigh the credibility of these experts "from Connecticut," as the prosecutor argued in her closing, against the "tried and true" local expert who worked for "their state." Deaver, she strenuously argued, had not been paid "a single penny" for testifying, and would never lie because he had to face the same jury pool again in the future.

48. In addition, although the defense attempted to impeach Deaver in various ways, including through learned treatises in the field of bloodstain analysis, he simply denied the validity of the statements in the treatises, insisted that everything he relied upon was well accepted in the field, and claimed that various photographs really didn't show what other experts testified they showed. *See, e.g.*, Tr. at 8905-06 (denying the validity of a North Carolina Justice Academy treatise on Blood Pattern Analysis); 9286; 9297-9302. In short, Deaver repeatedly lied and fabricated to blunt the impeachment, when he wasn't obfuscating by insisting on explaining every answer he gave on cross examination.

[20] The Court struck Shabani's direct testimony, which was based upon similarly unscientific experiments, when it learned during cross-examination that he had fabricated his credentials. Subsequently, convictions in other states that were based upon Shabani's testimony were vacated on collateral attack.

49. Deaver's lack of credibility would have been obvious to the jury had the facts set forth in paragraphs 26-34 above been known and revealed to them. Thus, even had the Court decided to allow some or all of Deaver's opinions into evidence, the jury would have been weighing the testimony of the Defendant's two experts against the testimony of a witness who had repeatedly written false and misleading lab reports, concealed evidence that was inconsistent with guilt, and fabricated evidence to support the prosecution's theory in other cases. Nor would the prosecutor been able to credibly argue that Deaver was "tried and true," someone who would never lie, and someone the jury could and should rely upon to reject the defense experts' testimony. It is respectfully submitted that the jury would have rejected Deaver's testimony had it known what has now been revealed.

The Fabricated Evidence

50. The fact that Deaver had a long-standing and pervasive practice and custom of writing false and misleading reports, of concealing exculpatory evidence, and of tailoring his testimony and opinions to support the theories adopted by local investigators and District Attorneys, establishes a *prima facie* case that his testimony and opinions at Michael Peterson's trial were inherently untrustworthy and unreliable, that he presented fabricated evidence to the Court and the jury, and that he thereby denied Michael Peterson's due process right to a fair trial. Defendant is therefore entitled to an evidentiary hearing on this issue.

51. More specifically, Defendant can and will prove at an evidentiary hearing that Deaver gave intentionally false and misleading testimony to the Court and the jury

about at least five critical aspects of the blood spatter found at the Peterson house on December 9, 2001:

> a. that he could and did determine the *exact* points of three "impacts" in the stairwell, down to three precise and specific locations in space (*i.e*. not on any surface in the stairwell), and could therefore say with certainty that the blood spatter on the stairway wall was caused by a weapon hitting the back of Kathleen Peterson's head in those three exact locations;
>
> b. that he could and did determine from the "experiments" he performed at the SBI lab that either Michael Peterson's sneakers and/or the source of blood on Kathleen Peterson were "in motion" at the time the spatters were deposited on the sneakers;
>
> c. that he could and did determine from the "experiments" he performed at the SBI Lab that the blood stains found on Michael Peterson's shorts were the result of Peterson being "in close proximity to a point of origin of at least one impact," thereby placing Michael Peterson in the stairway while Kathleen Peterson was allegedly being beaten;
>
> d. that he could and did determine that two drops of blood on a header in the hallway outside the stairway were cast-off spatter from a weapon swung by Michael Peterson and were "associated with" three other spatters found near step 15, which was where the assault began; and
>
> e. that he could and did determine that the impact on Step 16 was "too forceful" to be from a fall, and was instead caused by someone intentionally slamming Kathleen Peterson's head into that step;

These false and misleading statements formed the basis of his testimony that it was Michael Peterson who had beaten Kathleen Peterson to death with a blunt object in the stairway of their home.

52. Further, Defendant can and will prove that Deaver gave intentionally false and misleading testimony to the Court and the jury about basic principles of bloodstain pattern analysis, including but not limited to:

a. that the experiments he performed at the SBI Lab were scientifically valid, and were commonly used and accepted in the field of blood spatter interpretation to verify opinions in specific cases;

b. that as a blood spatter expert he could tell the difference between cast-off spatter from a hand and cast-off spatter from a weapon;

c. that the size of a stain is not affected by factors other than the amount of force that caused it.

These false and misleading statements about bloodstain pattern interpretation, and others, formed the basis of various opinions Deaver gave to the Court and the jury during his testimony about the meaning and significance of the bloodstains found in the Peterson house.

53. Finally, Defendant can and will prove that Deaver also gave intentionally false and misleading testimony to the Court and the jury about his observations at the Peterson house on December 9, 2001, and about the reports he wrote concerning those observations:

a. that he observed "runs" (*i.e*. drip marks) that indicated intentional cleanup on the north wall of the stairway while at the Peterson house on December 9. That this testimony was false and misleading is evidenced, among other things, by the fact that neither the notes he wrote at the scene that night, nor the diagram that he drew, nor the report he dictated on January 25, 2002, describe or mention any "runs" or suspected "cleanup" of the north wall, the fact that photos taken of the wall by the police that night do not show the runs, the fact that the prosecutor's notes from December 17, 2001 state that Deaver believed the area void of blood on the north wall had been caused not by cleanup, but by "something up against the wall" such as "defendant's butt," and the fact that Candace Zamperini subsequently admitted *she* had attempted to clean that wall *after* the police had released the house back to the Petersons. *See* Exhibit J, attached;

b. that he observed "clean-up" on the 17th step of the stairway that night. That this testimony was false and misleading is evidenced,

among other things, by the fact that neither the notes he wrote at the scene that night, nor the diagram that he drew, nor any of the other reports he prepared prior to the trial, ever mentioned any suspected "cleanup" on step 17. *See* Exhibit K, attached;

c. that he observed cast-off spatter from a weapon on a header in the hallway outside the stairwell that night. That this was false and misleading is evidenced, among other things, by the fact that neither the notes he wrote that night, nor the diagram he drew, nor any of the other reports he prepared prior to the trial, ever mentioned that he suspected these bloodstains were "cast-off spatter" *See* Exhibit K;

d. that he observed no tools by the fireplace that night. That this was false and misleading is evidenced, among other things, by the fact that pictures and video taken by the police on December 9, 2001 show such tools by the fireplace; and

e. that the reason there was no mention of either cast-off in the hallway or cleanup on step 17 in his final report, written on October 7, 2002, was because the SBI distinguished between "conclusions" and "opinions," that the things that he was less sure about were "opinions" rather than "conclusions," that the SBI had a policy that precluded him from putting his "opinions" into his reports, and that since his alleged observations of the cast-off and the cleanup were only "opinions," not "conclusions," he did not list those in his October 7, 2002 report. Tr. at 8884-8887 (re alleged SBI policy); 9090-9091; 9228-9229. Deaver went so far as to claim that documentation of what he had done was not necessary because it simply provided additional grounds for cross examination. Tr. at 9110.

54. Deaver's fabricated testimony was extremely prejudicial to the Defendant, because it formed the basis for the prosecution to argue in closing not only that the bloodstain evidence proved that Michael Peterson was the person who had beaten Kathleen to death in the stairway, but also to argue that Peterson *had formed the "premeditation"* required for the jury to convict him of first degree murder between what Deaver claimed was the initial assault and what he claimed was a "second assault." It also allowed the prosecutor to describe what Deaver had opined were "intentional

attempts" by Michael Peterson to alter the scene to hide relevant evidence, and to thereby paint Peterson in closing argument as acting inconsistently with an accidental explanation for Kathleen Peterson's injuries.

Deaver's Other Actions and Alleged Observations at the Scene

55. Deaver testified that while he was at the scene on the evening of December 9, 2001, he took a "break" and went into the Peterson's kitchen. While in the kitchen, he claimed to have discovered important evidence that had allegedly been overlooked by the police, who had already been in the Peterson house all day.

56. For example, Deaver claimed that when he went into the kitchen more than 12 hours after Michael Peterson had been removed from the house, he found a round bright-red round bloodstain on a kitchen counter. But he could not explain how this stain, which he conceded because of its color could not have been there for long, had gotten on the counter while the police were in control of the house, or how the police had previously missed seeing it. He also claimed to have discovered in the kitchen bloodstains on certain cabinets and shelving containing the wine glasses, which the police had also inexplicably missed. He claimed to have lifted a pot in the sink and smelled wine, which none of the police had previously smelled, and which he implied at the trial was a part of an alleged "staging" of the scene. Then he tested the wine bottle for invisible blood with phenolphthalein before it was checked for fingerprints, something that any beginning crime scene tech knew not to do, and which eliminated any fingerprints on the bottle.

57. Given Deaver's substantial involvement in processing the stairway and allegedly discovering new evidence in the kitchen long after the police had control of the house, Deaver's pattern and practice of manipulating the truth to bolster the prosecution's case would have raised significant suspicions about the discovery of this alleged evidence for the jury, had they known about it. It also would have put some of the irregularities brought out during the trial in a different and more suspect light. For example, multiple photographs taken by the police of the same locations in the stairway and the kitchen showed dramatic differences in the appearance of specific bloodstains on the stairs and on the kitchen cabinets. Some stains that were not there when the police initially took photos of the kitchen cabinets appeared in photos taken after Deaver had been in the kitchen, while the appearance of various stains in the stairway were altered. When questioned about this, the lead Crime Scene Technician, Dan George, testified that there had been a "glitch" in developing the photos. No other or further explanation was presented by the state. Had the jury known what has now been revealed about Deaver, these alleged "glitches" would have substantially undermined Deaver's credibility, and the integrity of the evidence allegedly found at the scene.

The Credibility of Other SBI Lab Witnesses

58. Similarly, the credibility of every other SBI lab expert who testified would have been substantially undermined had the Court and the jury known of the significant problems with misreporting and concealing the results of various tests and examinations at the SBI Lab, and of the training and culture that caused these supposedly neutral "experts" to view their role as helping the prosecution obtain a conviction, rather than as

searching for the truth in an unbiased and scientific manner. Given the reliance that the prosecution placed at trial on the testimony of SBI experts such as Agent Barker, Agent Pretzka and Agent Bendure, not to mention Agent Deaver, the impeachment of these "experts" with the information that has only recently been disclosed, but which existed at the time of trial within the SBI itself, would have substantially undermined the prosecution's case in the eyes of the jury.

Michael Peterson Was Deprived of His Right to Due Process of Law Through the State's Use of False, Misleading and Fabricated Evidence

59. It is well established that the state's use of false, misleading or fabricated testimony at a trial violates the defendant's right to due process of law. The Supreme Court has long held that it violates due process to convict a defendant through the use of fabricated evidence:

> [D]ue process . . . cannot be deemed to be satisfied . . . if a State has contrived a conviction through the pretense of a trial which in truth is but used as a means of depriving a defendant of liberty through a deliberate deception of court and jury by the presentation of testimony known to be perjured. Such a contrivance by a State to procure the conviction and imprisonment of a defendant is as inconsistent with the rudimentary demands of justice as is the obtaining of a like result by intimidation.

Mooney v. Holohan, 294 U.S. 103, 112 (1935) (citation omitted); *see also Miller v. Pate*, 386 U.S. 1, 7 (1967) ("More than 30 years ago this Court held that the Fourteenth Amendment cannot tolerate a state criminal conviction obtained by the knowing use of false evidence. There has been no deviation from that established principle. There can be no retreat from that principle here." (citations omitted)); *Giglio v. United States*, 405

U.S. 150, 153 (1972) (government's knowing use of false testimony violates due process); *Zahrey v. Coffey*, 221 F.3d 342, 355 (2d Cir. 2000) ("It is firmly established that a constitutional right exists not to be deprived of liberty on the basis of false evidence fabricated by a government officer."); *Ricciuti v. New York City Transit Auth*., 124 F.3d 123, 129, 130 (2d Cir. 1997) ("When a police officer creates false information likely to influence a jury's decision and forwards that information to prosecutors, he violates the accused's constitutional right to a fair trial"); *Washington v. Wilmore*, 407 F.3d 274, 282 (4th Cir. 2005).

60. Duane Deaver fabricated evidence, falsely described his observations at the Peterson house in December 2001, and provided false, misleading and scientifically unreliable testimony regarding the analysis of the bloodstains found in the stairway, the hallway next to the stairway, and on Michael Peterson's shorts and sneakers. All of this conduct deprived Michael Peterson of due process of law, and requires that Michael Peterson receive a new trial.

Michael Peterson Was Deprived of His Right to Due Process of Law By The Failure of the State to Disclose Evidence That Would Have Impeached the Credibility of Deaver and the Investigation

61. Similarly, it is well established that evidence that would impeach the credibility of a witness or, for that matter, the entire investigation must be disclosed to the Defendant. *Giglio v. United States, supra; Kyles v. Whitley,* 514 U.S. 419 (1995). The extent to which the serology section of the SBI lab, as well as the bloodstain pattern analysis unit and Deaver in particular, was engaged in concealing exculpatory evidence and fabricating inculpatory evidence from at least 1992 through July 2010 was

impeaching evidence that was clearly relevant and material to the credibility of the State's experts, including Deaver, particularly in light of the prosecutor's argument that they should be believed because they were "tried and true."

62. Regardless of whether the District Attorney had actual knowledge that Deaver's testimony was false, misleading and fabricated, the State as an entity is legally responsible for the failure of any state agent, such as Deaver or others at the SBI, to disclose exculpatory or impeaching evidence in their possession. Their failure to do so deprived Michael Peterson of his constitutional right to due process of law.

Conclusion

63. Counsel for Defendant recognizes that it is not easy for any Court, after presiding over a hard fought trial lasting more than four months, to vacate the verdict and order a new trial. But given the extraordinary revelations about Agent Deaver in particular, and the SBI lab in general, and given the central role Deaver and the other SBI experts played in the prosecution and conviction of Michael Peterson, that is the course that due process requires be taken in this matter.

WHEREFORE the Defendant, Michael Iver Peterson, respectfully moves this Court for an order:

a) requiring the State to make available to Defendant's counsel, pursuant to N.C. Gen. Stat. §15A-1415(f), the complete files of all the law enforcement and prosecutorial agencies involved in the investigation or the prosecution of Michael Peterson, including but not limited to all handwritten notes, draft reports, interim reports, emails, letters, videotapes, CD's, DVD's, photos, and negatives;

b) finding that Defendant is indigent, relieving Defendant of all of the costs of the proceeding pursuant to N.C. Gen. Stat. §15A-1421, and allowing Defendant's counsel to hire (i) an investigator to assist counsel, who is representing Defendant on a *pro bono* basis, in reviewing the complete files of all the law enforcement and prosecutorial agencies involved in the investigation or the prosecution of the Defendant, and (ii) bloodstain pattern experts, to review the evidence relating to this motion and to testify at an evidentiary hearing;

c) scheduling an evidentiary hearing on all issues raised by this and any amended Motion for Appropriate Relief; and

d) vacating Defendant's conviction and ordering a new trial.

RESPECTFULLY submitted this the _____ day of February, 2011.

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_____

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