STATE OF NORTH CAROLINA
_____ COUNTY

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
FILE NO

STATE OF NORTH CAROLINA

V

,
Defendant

MOTION TO DISCOVER TESTING PROCEDURES AND DATA DERIVED (BLOOD TEST)

NOW COMES the Defendant through counsel, and respectfully moves this Honorable Court pursuant to State v. Cunningham, 108N.C. App (1992), State v. Fair, 164 NC App 770, State v. Dunn, 154 NC App 1, and State v. Goode, 341 NC 513, for an Order directing the State to provide the defendant with all testing procedures and data discovered as a result of the testing procedures conducted upon blood seized in the instant case as well all underlying documents needed to determine the reliability of the opinions rendered by the State's experts. In support of this motion, the defendant states as follows:

1. The Defendant through his attorney has previously filed a Motion for Discovery and Exculpatory Material, pursuant to N.C.G.S. §15A-902 and Brady v. MD 373 US 83 (1963). One part of the motion for discovery was a request for "a report of the results of examination and tests of the expert and other information required by G.S. §15-903(a)(2), and under Brady v MD.

2. After making the Motion, the defendant's lawyer may be furnished with a copy of a laboratory report from the State Bureau of Investigation. Nowhere in the report will be indicated 1) the testing procedures used by the examiner; 2) the results of the testing procedures used by the examiner; 3) any data discovered as a result of testing procedures that had been conducted by the examiner on the above-stated items that were submitted to the S.B.I. Laboratory or 4) other materials needed to determine the validity of the government expert's opinions rendered in his report.

3. In State v. Cunningham, 108 N.C. App. 185, 196 (1992) the Court noted that:

"Section 15A-903(e) must be construed as entitling a criminal defendant to pretrial discovery of not only conclusory laboratory reports, but also of any tests performed or procedures utilized by chemists to reach such conclusions."

and:

"In sum, the sole document provided to defendant before trial by the State was the SBI 'laboratory report.' This report, which basically is limited to a statement that the blood material analyzed contained cocaine, reveals only the ultimate result of the numerous tests performed by the Lab. As such, it does not enable defendant's counsel to determine what tests were performed and whether the testing was appropriate, or to become familiar with the test procedures. We

conclude that the information sought by defendant is discoverable pursuant to Section 15A-903(e) and the North Carolina Constitution..."

The Defendant argues that these rights also apply as well in a blood test case.

A mere conclusion of the examiner in this matter also will not be enough for the defendant's lawyer to adequately prepare for cross-examination of the testing officer of the State Bureau of Investigation or to decide whether to hire an expert for the defendant to review the testing procedures utilized and/or to retest the materials analyzed by the State Bureau of Investigation Crime Laboratory.

4) Furthermore, State v. Dunn, 154 N.C. App 1, concluded that the trial court erred by refusing to require the State to provide the defendant information pertaining to laboratory protocols, incidences of false positive results, quality control and quality assurance, and proficiency tests of the State Bureau of Investigation laboratory.

5) In State v. Fair, 164 NC App 770 the Court stated that under N.C. Gen. Stat. §15A-903 as construed in Cunningham and Dunn, a defendant is entitled to more than just the conclusory reports of the SBI laboratory but is entitled to the following:

> "1. Results or reports of physical or mental examinations or of tests, measurements or experiments. N.C. Gen. Stat. § 15A-903(e).
>
> 2. Inspection, examination or testing of physical evidence by the defendant. Id.
>
> 3. Tests performed or procedures utilized by experts to reach their conclusions. Cunningham, 108 N.C. App. 185, 423 S.E.2d 802.
>
> 4. Laboratory protocol documents. Dunn, 154 N.C. App. 1, 571 S.E.2d 650.
>
> 5. Reports documenting "false positives" in the laboratory results. Id.
>
> 6. Credentials of individuals who tested the blood. Id.

[The State] did not, however, provide him with the discovery he requested of information regarding the procedures used in the tests; the data derived from the tests or other materials pertinent to whether the techniques used have been tested; subjected to peer review and publication or submitted to the scrutiny of the scientific community. Nor did the State provide the requested discovery of the technique's known or potential rates of error and general acceptance in the scientific community..."

The court found that the defendant was entitled to discover the results of the tests and the manner in which the tests were performed. This information was deemed necessary for the defendant to understand the testing procedure and to conduct an effective cross-examination of the State's expert witness.

6) And finally in State v. Goode, 341 N.C. 513, the Court found that:

"Thus, under our Rules of Evidence, when a trial court is faced with a proffer of expert testimony, it must determine whether the expert is proposing to testify to scientific, technical, or other specialized knowledge that will assist the trier of fact to determine a fact in issue. As recognized by the United States Supreme Court in its most recent opinion addressing the admissibility of expert scientific testimony, this requires a preliminary assessment of whether the reasoning or methodology underlying the testimony is sufficiently valid and whether that reasoning or methodology can be properly applied to the facts in issue."

In order to satisfy the requirements established by State v. Cunningham, State v. Fair, State v. Dunn , State v. Goode, and Brady v. MD the defendant through counsel requests the following items be provided:

a. Evidence collection forms or logs (description of evidence, packaging, identification of specimens, identification of individuals collecting samples, sample collection procedures).

b. Chain-of-custody records (field-to-lab transfers, and all transfers of evidence and associated analytical samples within the laboratory).

c. Laboratory receiving records (records documenting the date, time and condition of receipt of the evidence in question ; laboratory-assigned identifiers; storage location).

d. Laboratory procedures for subsampling (collection of analytical aliquots) and contamination control.

e. Copies of technical procedures in effect at the time the subject testing was performed (often termed Standard Operating Procedures, or SOP's) for each procedure used during sample screening and confirmation, including; sample preparation, sample analysis, data reporting, and instrument operation.

f. Copies of the two bracketing proficiency results for each analyst and technician responsible for preparation or analysis of subject specimens,
including: raw data and reported results, target values and acceptance ranges, performance scores, and all related correspondence.

g. Copies of traceability documentation for standards and reference materials used during analysis, including unique identifications, origins, dates of preparation and use, composition and concentration of prepared materials, certifications or traceability records from suppliers, assigned shelf lives and storage conditions.

h. Sample preparation records, including dates and conditions of preparation,

responsible analyst, procedural reference, purity, concentration and origins of solvents, reagents, and control materials prepared and used, samples processed concurrently, extract volume.

i. Copies of bench notes, log books, and any other records pertaining to case samples or instruments; records documenting observations, notations, or measurements regarding case testing.

j. Instrument run log with identification of all standards, reference materials, sample blanks, rinses, and controls analyzed during the day/shift with subject samples (as appropriate: run sequence, origins, times of analysis and aborted run sequences).

k. Record of instrument operating conditions and criteria for variables.

l. Record of instrument maintenance status and activities for instruments used in subject testing, documenting routine and as-needed maintenance activities in the weeks surrounding subject testing.

m. Raw data for the complete measurement sequence (opening and closing quality control included) that includes the subject samples.

n. Copy of records documenting computation of the laboratory's theoretical production yield, including the basis for the computation, and the algorithm used, as appropriate.

o. Results of calibration checks and documentation of mass traceability for gravimetric determinations.

p. Results of contamination control surveys for trace level analytes relevant to test methods at the time of analysis, including sampling design and analytical procedures.

q. Records and results of internal reviews of subject data.

r. Method validation records documenting the laboratory's performance characteristics for qualitative identification and quantitative determinations of the controlled substance, to include data documenting specificity, accuracy, precision, linearity, and method detection limits.

s. Copy of the laboratory's Quality Manual in effect at the time the subject samples were tested as well as the laboratory's most recent Quality Manual (however named; the document that describes the laboratory's quality objects and policies).

t. Copy of the laboratory's ASCLD-LAB application for accreditation, and most recent Annual Accreditation Review Report, as appropriate.

u. Statement of qualifications of each analyst and/or technician responsible for

processing case samples to include all names, locations and jurisdictions of cases in which these personnel testified concerning the same substances found in the present case.

v. Copy of the laboratory's ASCLD-LAB on-site inspection report, as appropriate, as well as any reports of on-site inspections by any other testing laboratory audit organization.

w. Copy of internal audit reports generated during the period subject samples were tested.

x. List of capital instrumentation in the laboratory at the time subject testing was performed, including manufacturer, model number, and major accessories.

aa. Production throughput data for the blood testing section: numbers of tests performed per month or per year, and the number of Full Time Equivalent personnel in the blood testing section of the laboratory.

Failure to provide this information will deny defendant his rights to due process, a fair trial, confrontation, and the right to compulsory processes guaranteed by the Fifth, Sixth and Fourteenth Amendments of the United States Constitution and his rights as guaranteed by the North Carolina Constitution, Article I, Sections 19 and 23 and other pertinent sections, and under Brady v. MD.

WHEREFORE, for these and any other reasons appearing to the Court, the defendant respectfully requests the granting of this motion and the provision of the items listed above.

This the _____ day of _____, 20_____.

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