

NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION

\* COUNTY

STATE OF NORTH CAROLINA

vs.

\*

Defendant

MOTION FOR DISCLOSURE OF DNA TESTING PROCEDURES, PROTOCOLS & DATA

NOW COMES the Defendant, \*, by and through the undersigned counsel, and hereby moves this Honorable Court, pursuant to Article I, §§ 19 & 23 of the North Carolina Constitution, and the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution, N.C.Gen.Stat. § 15A-903(e), and *State v. Cunningham*, 108 N.C.App. 85, 423 S.E.2d 802 (1992), for an Order commanding the prosecution to provide the Defendant with a copy of any and all lab reports, data, and documentation generated in connection with the testing procedures conducted upon the items submitted for genetic analysis in connection with the instant case. In support of this Motion, the Defendant would show unto the Court as follows:

1. The Defendant is an indigent charged in the above-captioned matter with first-degree murder.
2. On September 23, 2002, the undersigned counsel received a Notice of Return of Bill of Indictment in the above-referenced matter.
3. On September 30, 2002, the undersigned counsel filed a Request For, Voluntary Discovery and for Brady/Agurs Material in these matters. The State did not respond to this Request, and on October 7, 2002 a Motion for Discovery was filed within the time limits set forth in N.C.G.S. §15A-606 and 15A-611 through 15A-615.
4. On March 27, 2003 the District Attorney served on the defense less than 173 pages of discovery. Said discovery did not include any information on DNA, or reports from the SBI Laboratory.
5. On August 26, 2003 the District Attorney served on the defense 4 pages of discovery which consisted of two SBI Laboratory Reports dated June 3, 2003.
6. On October 12, 2004 the Counsel for the Defendant filed a new Request For Voluntary Discovery, or in the

Alternative Motion for, Discovery and Production of Specific Brady and Kyles Information. In this Request, the following prayer for relief was set forth:

That if the Office of the District Attorney fails or refuses to provide the requested voluntary discovery herein, within the time prescribed by law, that the Court treat this voluntary request as a motion for the Court to issue an Order compelling the Office of the District Attorney to provide the foregoing items pursuant to N.C.G.S. § 15A-902.

7. On January 20, 2005 Counsel for the Defendant filed a Request for Prompt Discovery of Information Related to Scientific and DNA Testing and Production of Specific Brady and Kyles Information Regarding Scientific and DNA Testing.
8. With the exception of the 4 pages of the two June 3, 2003 SBI Laboratory Report, at the filing of this Motion, the defense counsel has not been provided copies of any documentary discovery material in this case, related to DNA testing done with respect to this case.
9. Although defense counsel has made several requests for copies of all relevant discovery the prosecutor has not provide copies of discovery related to the SBI Laboratory Reports.
10. Pursuant to N.C.Gen.Stat. § 903(e):

Upon motion of a defendant, the court must order the prosecutor to provide a copy of or to permit the defendant to inspect and copy or photograph results or reports of physical or mental examinations or of tests, measurements, or experiments made in connection with the case, or copies thereof, within the possession, custody, or control of the State, the existence of which is known or by exercise of due diligence may become known to the prosecutor. In addition, upon motion of a defendant, the court must order the prosecutor to permit the defendant to inspect, examine, and test, subject to appropriate safeguards, any physical evidence, or a sample of it, available to the prosecutor if the State intends to offer the evidence, or tests or experiments made in connection with the evidence, as an exhibit or evidence in the case. (emphasis added)

11. In order to adequately represent the Defendant and to prepare for cross-examination of the State's witnesses, relative to the testing performed by each witness, the defense must be allowed to have clear and legible copies of the results of the testing procedures, as well as the

data discovered as a result of the testing procedures.

12. Any failure to provide this information will not only result in the denial of the Defendant's rights to due process, a fair trial, confrontation and the opportunity for meaningful cross-examination, and compulsory process, as guaranteed by the Fifth, Sixth, and Fourteenth Amendments of the United States Constitution, but also his rights as guaranteed by the North Carolina Constitution, Article I, §§ 19 and 23 and other pertinent sections, as well as his statutorily prescribed right to pretrial discovery under N.C.Gen.Stat. § 15A-903(e).
13. In *State v. Cunningham*, 108 N.C.App. 85, 423 S.E.2d 802 (1992), the NC Court of Appeals held that a criminal defendant is entitled to information of the type requested above. In its ruling, the Court of Appeals stated:

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 material analyzed contained cocaine, reveals only the ultimate result of the numerous tests performed by Agent Higgins. 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...and therefore the trial court erroneously denied the defendant's motion for pretrial discovery of these documents. *Id.*, at 196.

14. The holding of *Cunningham* clearly sets forth that N.C.Gen.Stat. § 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."
15. Based upon the holding of *Cunningham*, the conclusory report, which the defense has only been provided is deficient as a matter of law.
16. Pursuant to *Cunningham*, this Court should command the District Attorney to provide copies of all DNA evidentiary results, generated by either gel electrophoresis, capillary electrophoresis, or both, all bench notes related to DNA testing in the instant case, and copies of all proficiency exam results for all lab personnel involved in DNA testing in the instant case, and all other items requested in Defendant's January 20, 2005 motion.

WHEREFORE, the Defendant respectfully prays unto this Honorable Court for the following relief:

1. That the Court enter an Order commanding the District Attorney to provide the following materials:
  - a. Copies of all DNA evidentiary results generated by either gel electrophoresis, capillary electrophoresis, or both;
  - b. All bench notes related to DNA testing in the instant case;
  - c. Copies of all proficiency exam results for all laboratory personnel involved in DNA testing in the instant case; and
  - d. All items requested in Defendant's January 20, 2005 Request for Prompt Discovery of Information Related to Scientific and DNA Testing and Production of Specific Brady and Kyles Information Regarding Scientific and DNA Testing.
2. For such other and further relief to which the Defendant may be entitled and which the Court may deem just and proper.

Respectfully submitted this the \_\_\_\_ day of February, 2006.

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CERTIFICATE OF SERVICE

This is to certify that on this date the attached pleading or paper was served upon the State of North Carolina by hand delivery or by mailing a copy of said motion to the Office of the District Attorney, \* County Courthouse, \*, North Carolina.

This the \_\_\_\_ day of February, 2005.

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Attorney for Defendant