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IN THE CIRCUIT COURT FOR BALTIMORE CITY

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STATE OF MARYLAND

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Plaintiff

*

v.

*

Case No. 115141033

EDWARD NERO

*

Defendant

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* * * * *

CIRCUIT COURT
BALTIMORE CITY
CRIMINAL DIVISION

MOTION TO PRODUCE RECORDS REGARDING DNA ANALYSIS

The Defendant, Edward Nero, through his attorney, respectfully requests that this Honorable court order the production of all documents and records which relate to the forensic testing conducted in the above captioned case. In support thereof, Defendant avers the following:

Defendant is charged with second degree assault and related charges.

1. The State has indicated that it intends to introduce the results of DNA testing in the above captioned cases.
2. The DNA analysis is performed with an automated testing system. The automated testing system employs specialized data collection and analysis software.
3. In this DNA analysis system, some information contained in the electronic data files generated during the analysis is not present in the hard copy printouts. Additionally, the testing data is routinely edited by the software program that responds to manual inputs and generates a visual image that differs from that of the original data. This electronic "raw data" is necessary to evaluate the scientific evidence that the State seeks to introduce at trial.
4. Counsel respectfully requests that the State be ordered to produce all records that relate to the DNA testing conducted in the instant case, including, but not limited to the following records:

a) **Case File**

Provide a legible copy of the complete laboratory case file including but not limited to the following records:

- 1) All laboratory notes generated in connection with the analysis, including chain of custody documents, sizing and hybridization information, statistical calculations, worksheets, and any CODIS and/or DNA database runs performed in the instant case;
- 2) Copies shall be first generation film copy or suitable reproductions of electropherograms, autoradiographs, dot blots, slot blots, gels, test strips, control strips and any other result(s) generated in the course of the analysis. A "suitable reproduction" is defined as a reproduction that is indistinguishable from the original;
- 3) A copy of the unedited electronic raw data saved on a CD-ROM;
- 4) All default settings and/or parameters utilized during the forensic analysis.

b) **Serology**

Provide a complete copy of all records created in reference to any serology conducted in the above captioned case including but not limited to the following records; laboratory notes, photographs, diagrams, sketches bench notes, final reports and draft reports.

c) **Documents relied upon in performing analysis.**

Provide legible copies of all records that were, or are claimed to have been, followed or relied upon in executing, interpreting and/or reporting the DNA tests performed in the instant case, including but not limited to the following:

- 1) Standard Operating Protocols (SOPS) of the DNA testing laboratory;
- 2) Quality Assurance Quality Control Manuals;
- 3) Instructions provided by manufacturers of commercial test kits ("package inserts" and "user guide");
- 4) Protocols and Manuals relating to instruments (including user's manual and machine run specifications) and/or software.

d) **Database**

Provide copies of the following materials for the databases that were used or relied upon in performing the statistical calculations in this Case:

- 1) Complete database or databases in such a format that the multi-locus genotype is given for each sample tested;
- 2) Copies of all documents related to the source or origin of the sample in any such databases including (I) the method by which samples were collected, (ii) the background and/or population and sub-populations that were sampled, and (iv) the nature of the sampling procedure that was used to collect the samples.
- 3) Laboratory notes and computer data files.

e) **Frequency tables**

Provide copies of allele frequency tables relied upon in performing the statistical analysis in this case and provide a statement setting forth the genotype data and the profile frequencies for the databases utilized.

f) **Statistical calculations**

Provide legible copies of all statistical calculations and statistics produced or created in this case.

g) **Chain of custody and current disposition of evidence**

Provide copies of all chain of custody documents for each item of evidence subjected to DNA testing starting with the first description or "log entry" for each item through to the current disposition of that item of evidence. This information should include documentation that indicates where and how the materials were stored (temperature and type of container), the amount of evidence that was consumed in the testing, the amount of material that remains, and where and how the remaining evidence is stored.

h) **Data Files**

Provide copies of all data files used and created in the course of performing the DNA testing and subsequent analysis of the data in this case. These files should include all data necessary to:

- 1) independently re-analyze the raw data;

- 2) reconstruct the analysis performed in the case.

I) **Software and macros**

Provide a list of all commercial software programs used in the DNA testing and analysis in this case, including the name of the software program, the manufacturer and the version used in this case, and identify any commercial macros used to analyze the data in this case. In the event that any programs and/or macros written by the testing laboratory were used in the analysis of data in this case, provide copies of these materials.

j) **Records of trouble-shooting or problems during testing**

Provide copies of any records documenting any trouble-shooting, repairs, modifications or changes that were made to the genetic analyzer and/or sequencing instrument used in this case. These materials should include but are not limited to the following:

- 1) Copies of any notes, or records of communications relating to any trouble-shooting that had to be performed on the instrument, including calls to technical support lines and visits by field technicians to repair the instrument;
- 2) Records of any changes that were made to the instrument during the course of testing samples in this case;
- 3) Records of all computer resets or reboots that had to be done during the testing in this case;
- 4) Records of all incidents in which manual control was used to override either the genetic analyzer/sequencer and/or Starcall software.

k) **Developmental validation**

Provide copies of any developmental validation studies pertaining to the specific DNA test performed in this case, including developmental validation studies relied upon by the testing laboratory and any additional developmental validation studies relied upon by the testing laboratory in claiming that the DNA testing has been adequately validated pursuant to SWGDAM, TWGDAM and DAB Guidelines. These materials should include but are not limited to the following: copies of laboratory notebooks, computer data files, unpublished scientific papers and citations to published scientific papers.

l) **Internal validation**

Provide copies of all internal validation studies pertaining to the specific DNA test performed in this case including but not limited to any and all internal validation studies conducted by the testing laboratory and any additional validation studies relied upon by the testing laboratory in claiming that the test has been adequately validated pursuant to SWGDAM, TWGDAM and DAB Guidelines. These materials should include but are not limited to the following: raw data, edited data, copies of laboratory notebooks, bench notes, electropherograms, gel images, computer data files, unpublished scientific papers and citations to published papers.

m) **Proficiency test(s)**

Provide copies of all proficiency tests undertaken by the analyst or any analyst who reviewed the analysis in this case. These materials should include:

- 1) the complete proficiency test case file;
- 2) computer data files;
- 3) evaluations and/or reports by the testing agency;
- 4) records maintained pursuant to SWGDAM, TWGDAM and DAB and/or other entity retained to provide and supervise proficiency testing.

n) **Accreditation**

Provide copies of all licenses or other certificates of accreditation held by the DNA testing laboratory and all corrective action reports related to deficiencies identified in accreditation audits.

o) **Laboratory personnel**

Provide a current resume and job description for each person involved in conducting the DNA testing in this case or in reviewing the testing done in this case.

p) **Contamination records**

Provide all records and/or electronic data relating to contamination, including but not limited to instances of reagent blanks and/or negative controls registering the presence of DNA and/or positive controls registering the presence of DNA other than that of the control DNA and all documents describing actions taken by the laboratory in response to contaminated controls or other forms of contamination.

q) **DNA Control/Sample Discrepancy Log**

Provide the complete STR Control/Sample Discrepancy Log for all DNA cases. Provide all records including but not limited to the following: case number, laboratory number, name of the analyst, extraction/ concentration method, type of control, nature of discrepancy, description of the discrepancy, the cause of the discrepancy and the correction action taken.

WHEREFORE, the Defendant respectfully requests that this Honorable Court grant Defendant's Motion to Produce all Records that relate to DNA testing that the State has conducted or intends to conduct in the above captioned case.

Respectfully Submitted,



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Attorney for Defendant
Edward Nero

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of September, 2015, a copy of the foregoing Motion to Produce Records Regarding DNA Analysis was mailed, first class, postage prepaid, to Michael Schatzow, Chief Deputy State's Attorney, Office of the State's Attorney for Baltimore City, 120 East Baltimore Street, The Sun Trust Bank Building, Baltimore, Maryland 21202.



Marc L. Zayon