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 COUNTY OF \_\_\_\_\_ )      SS:      IN \_\_\_\_\_ COURT  
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 STATE OF \_\_\_\_\_ )  
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 )      vs.      )  
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**Motion for Discovery regarding Bloodstain Pattern Analysis**

The defendant, by counsel, respectfully requests that this Court, issue an Order directing the prosecution to provide undersigned counsel with the documents, items and/or information delineated below. The defendant requests that the prosecution be instructed to provide all matters responsive to this request on or before thirty days from the date of filing of the Order, and that the Order provide that the prosecution is under a continuing duty to disclose all matters deemed discoverable by the Court.

I. A complete statement as to the method used by the government’s expert to form his expert opinion and a complete statement as to his conclusions and supporting rationale.

II. The expert’s curriculum vitae, including but not limited to:

A. Employment history, educational history including any forensic training, history of retention as a consultant in any field of forensic expertise,

B. Names of any professional organizations the expert is a member of, the type of membership and contact information for each such organization. Identify the requirements for membership, whether the expert has ever held office in the organization and if so when, and whether the expert has ever been refused membership. If refused, provide details and dates.

C. Identify whether the expert is certified or licensed by any accrediting agency or organization, and if so provide dates and identifying details.

D. Identify whether the expert has published in the forensic field in issue, and, as to each article published, indicate whether the publication used is peer reviewed.

E. Identify whether the expert has qualified as an expert in any forensic field and if so provide the field of forensic expertise, the name and location of the courts, and the name of all cases involved.

F. A copy of transcripts of the expert's testimony in the last five cases in which the expert has testified and a transcript has been prepared.

G. Identify whether the expert has failed to qualify as an expert and if so, which courts, and provide names of cases involved.

H. Has the expert ever worked for the defense either as a consultant or a testifying expert and if so provide the name of the defense attorney, the jurisdiction and the year employed.

I. Has the expert ever been retained by the prosecution and come to a conclusion adverse that the prosecution's position is not supported by the forensic evidence and if so, provide the names of the cases, the location of the courts and the date.

J. Has the expert ever been wrong as to a matter of forensics and if so provide the name of the case(s), the jurisdiction and the dates.

K. A list of books and specific articles on blood stain pattern interpretation that the expert considers to be authoritative

L. A list of books and specific articles on bloodstain pattern interpretation that the expert relied upon or consulted in coming to his findings in the instant case.

III. If the expert is affiliated with a particular laboratory, please provide the following:

1. All of the laboratory's SOPS (standard operating procedures), written or unwritten protocols, laboratory and/or training manuals, lists of best practices pertaining to blood stain pattern interpretation, and research documenting known error rates.
2. Whether the laboratory is accredited and if so by whom, and the date(s) the laboratory was accredited, and any failure to secure accreditation.
3. Whether each and every employee is required to submit to proficiency testing
4. As to proficiency testing, for both the lab's bloodstain pattern analysis unit and the expert:
  - a. how often is said proficiency testing conducted, which members of the laboratory are required to participate in said testing, whether the proficiency testing is blind (i.e. with the examiner not knowing that he is being tested), the error rates for the particular expert and the lab

generally for the five years preceding the testing done in the instant case;

- b. the complete results from proficiency testing of the lab and the individual expert's testing;
  - c. any consequences of failed proficiency testing for this expert or the lab.
5. Documentation of any corrective action for discrepancies or deviations from adhering to SOPs and methodology, or errors found.
  6. Copies of any lab audit or quality assurance reports
  7. A schedule of the availability of the laboratory for a tour by the defense of all parts of the lab used in testing in this case, and permission to photograph same
  8. Sufficient access to the evidence and, if appropriate, the lab for the defense expert to undertake a thorough review, testing and investigation of the evidence.
  9. The name, contact information of each examiner that took any part in the examination, review or re-examination of the evidence or conclusions in the instant case, as well as the identity of the laboratory at which each such review or re-examination took place.

#### IV. The expert's work in the case at hand

A. A copy of any retainer letter, and the terms of the retainer, including hourly rate, billing for travel time, and all other pertinent terms.

B. A statement of what the expert was told about the case, when he was told the information and by whom.

C. A statement as to any questions asked by the expert about the government's theory of guilt, and who was asked and when the questions were posed.

D. A copy of all documents, records, diagrams, photographs and videos submitted to the expert for review, whether taken by law enforcement, or the expert if reviewed by the expert, including but not limited to

1. photographs and videos of the scene, of any experiments undertaken by the expert, of the autopsy, of standards used for comparison
3. of the autopsy
4. of standards used for comparison and identification purposes

E. A list of all alternative light sources and/or chemical reagents used to enhance the visibility of blood at the crime scene

F. Scene sketches, scene diagrams whether done by law enforcement or the expert

G. Notes re any measurements taken

H. A copy of the expert's bill.

- I. A chronology of the expert's work on the case including but not limited to:
1. a time line detailing all of the expert's involvement in the case
  2. emails or text messages sent or received, including but not limited to emails or texts to or from any member of the prosecutor's office, the investigating law enforcement agency, or other experts.
  3. all written correspondence sent or received
  4. notes, whether electronic, typed or handwritten
  5. any dictated observations regarding this case
  6. a list of all persons interviewed and dates of the interviews
  7. each date(s) and time the expert visited scene
  8. the date(s) of any experiments undertaken and a statement of who was present
- J. A list of the names of all persons who entered the scene before, during and after the expert's presence at the scene.
- K. Any notes of conversations with persons who were at the scene
- L. A list of the names of all persons who could have contaminated or altered the scene.
- M. A list of any items of hair or fiber evidence observed by the expert, and a statement as to what if any action the expert took with regard to the hair or fiber evidence observed. As to the hair evidence, a statement as to whether any of the hairs had a follicle.
- N. A list of any fingerprints or palm prints observed by the expert, and a statement as to what if any action the expert took with regard to the fingerprint evidence observed.
- O. Copies of reports from either the laboratory of any other expert upon which the expert relied.
- P. EMT records.
- Q. Per the SWGSTAIN Guideline regarding Equipment, Materials and Reagents (April 2009): Identify all means of
1. measurement used in this case, including but not limited to:
    - a. Single stain measurement devices (e.g., dividers, calipers, magnifying loupe, computer software)
    - b. Angle of impact devices (e.g., level and angle finder, protractor, geometric triangle, computer software)
    - c. Ruler and tape measure
    - d. Plumb bob
    - e. Strings in different colors
    - f. String support pole or tripod
    - g. Scientific calculator
    - h. Lasers (e.g., levels, distance measuring)

2. photographic or video recording equipment used in this case, including but not limited to:
  - a. Camera and media generally accepted for crime scene documentation
  - b. The make and model and age of the camera used
  - c. Any software programs used to produce evidence photographs or exhibits
  - d. Metadata pertaining to said software programs
  - e. A color balance card
  
3. reagents used in this case, including but not limited to:
  - a. presumptive blood tests: e.g. phenolphthalein, tetramethylbenzidine (TMB)
  - b. Visual blood enhancement chemicals: e.g., amido black, leucomalachite green (LMG), leuco crystal violet (LCV)
  - c. Blood searching chemicals: e.g., luminol, fluorescein)
  
4. whether a computer program was used in this case, including but not limited to Backtrack, and the name and date of the program used.
  
5. whether crime scene protection equipment was used, for example:
  - a. barrier tape
  - b. disposable personal protective equipment suitable for biohazard investigations (e.g. coveralls, gloves, shoe covers)
  - c. a statement regarding whether this protective equipment was photographed prior to destruction
  - d. Stepping plates
  
6. what marking, documentation or measuring equipment was used, including but not limited to:
  - a. Metric scales (e.g., photo evidence scales, folding scales, adhesive scales, fluorescent scales, L-shaped scales)
  - b. Compass with 360° scale
  - c. Note taking and sketching materials (e.g., notebook, graph paper, pencils, markers)
  - d. Audio recorder and media

V.A Specific Brady request pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963) and *Kyles v. Whitley*, 514 U.S. 419, 437 (1995) (“The individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the government’s behalf in the case, including the police.” See also *Gibson v. Superintendent*, 411 F.3d 427, 442 (3d Cir. 2005)(“The prosecutor’s duty to disclose extends beyond the information that he or she possesses, to include information in the hands of police investigators working on the case.”). Moreover, the prosecution’s duty to disclose exculpatory and impeachment evidence is ongoing. *Pennsylvania v. Ritchie*, 480 U.S. 39, 60 (1987); *Imbler v. Pachtman*, 424 U.S. 427 n.25 (1976)(“after a conviction the prosecutor is also bound by the ethics of his office to inform the appropriate authority of after-acquired or other information that casts doubt upon the correctness of the conviction.”)

This Brady request includes but is not limited to:

1. any opinion or conclusion contrary to the expert's findings in the instant case
2. any change in opinion by the expert with regard to this case
3. any evidence or information regarding circumstances that may have impaired the scientific integrity of the physical evidence in the instant case, including but not limited to evidence or information pertaining to contamination, mishandling, or the like.
4. any evidence or information pertaining to a break in the chain of custody regarding the physical evidence in the instant case.

VI. FOIA request

### **Memorandum of Points and Authorities**

1. The United States Constitution's Fifth and Fourteenth Amendment's Due Process Clause and the Eighth Amendment requirement that evidence be reliable and \_\_\_\_\_ of the \_\_\_\_\_ State Constitution.
2. *Gardner v. Florida*, 430 U.S. 349 (1977) (right to have adverse evidence be reliable in a capital case).
3. Cite cases re discovery rights in your own jurisdiction.
4. Cite local rules – e.g. FRCrP 16.
5. Evid. R 703 provides that an expert may rely on facts or data perceived by or made known to the expert in formulating an opinion or inference. Evidence R. 705 requires that the facts or data upon which the expert relies be fully disclosed to the defense on cross-examination. In order to serve the efficient administration of justice and not waste the jury's time, the defense contends that pretrial disclosure of these facts or data is warranted.
6. ABA Standards Relating to Discovery and Procedure Before Trial 66 (Approved Draft 1970):

“[T]he need for full and fair disclosure is especially apparent with respect to scientific proof and the testimony of experts. This sort of evidence is practically impossible for the adversary to test or rebut at trial without an advance opportunity to examine it closely.”

Respectfully