

IN THE CIRCUIT COURT OF THE
17TH JUDICIAL CIRCUIT IN AND
FOR BROWARD COUNTY, FLORIDA

CASE NO.: 12-016157-CF-10-A

STATE OF FLORIDA,

JUDGE: LEVENSON/SOLOMON

Plaintiff,

vs.

BERTRAM HADLEY,

Defendant.

DEFENDANT'S MOTION TO COMPEL THE PRODUCTION OF ANY AND ALL COMPLAINTS, INQUIRIES, CORRESPONDENCE, NOTICES OF ACTION, AND/OR DEMANDS FOR RESPONSE AND RESPONSES BY THE AMERICAN SOCIETY FOR CRIME LABORATORY DIRECTORS (ASCLD/LAB) TO AND FROM THE BROWARD COUNTY SHERIFF'S OFFICE AND/OR ITS CRIME LAB, INCLUDING DNA UNIT; OR IN THE ALTERNATIVE, DEFENDANT'S MOTION FOR MUTUAL SUBPOENAS DUCES TECUM FOR SAME

COMES NOW, the Defendant, BERTRAM HADLEY, by and through undersigned counsel, and files this Motion to Compel the Production of any and all Complaints, Inquiries, Correspondence, Notices of Action, and/or Demands for Response and Responses by the American Society for Crime Laboratory Directors (ASCLD/LAB) to and from the Broward County Sheriff's Office and/or its Crime Lab, Including DNA Unit; or in the Alternative, Defendant's Motion for Mutual Subpoenas Duces Tecum for Same, and as grounds therefore would state the following:

PROCEDURAL HISTORY

1. On September 15, 2015, the Defendant filed the Supplemental DNA Discovery Motion Regarding Conventional Serology Testing and Short Tandem Repeat (STR) Typing.

2. On December 4, 2015, an Agreed Order Granting Defendant's Supplemental DNA Discovery Motion Regarding Conventional Serology Testing and Short Tandem Repeat (STR) Typing was entered.
3. On February 6, 2016, the Defendant filed a Motion to Strike State's DNA Evidence and DNA Expert, based upon the State failing to timely produce same pursuant to the Court's Order.
4. On February 8, 2016, the Defendant submitted Orders for Rules to Show Cause against the Broward County Sheriff's Office (BSO) Crime Lab, DNA Unit as to why they did not provide same.
5. On February 9, 2016, the Honorable Judge Levenson signed the Orders for Rules to Show Cause against the employees of the BSO Crime Lab, DNA Unit.
6. On approximately February 10, 2016, Supplemental Discovery was received regarding the Defendant's Motion to Compel and related Order, and the Rules to Show Cause were dismissed.

GROUNDS

1. On Monday, June 13, 2016, undersigned counsel met with Defense DNA Expert, Tiffany Roy, in preparation of our upcoming trial currently scheduled for June 27, 2016 before Judge Solomon.
2. While discussing and preparing our defense with respect to the DNA issues contained in both cases, Ms. Roy (who is available for the purposes of this hearing by phone) indicated that, pursuant to an inquiry and complaint that she lodged in unrelated cases to ASCLD/LAB, as the accrediting agency for

the BSO DNA Unit, she received a response last Thursday, June 9, 2016, from ASCLD/LAB, indicating that her prior complaint to ASCLD/LAB regarding DNA testing by the BSO Crime Lab had been addressed and apparently the Sheriff's Office has responded to said complaint and a hearing is to be held.

3. Attached in Exhibit "A" to this Motion you will find correspondence with regard to Ms. Roy's inquiry as to the status of her complaint of October 29, 2015.
4. Given the fact that a hearing has apparently been scheduled, it is likely that BSO has responded to the complaint and is invoking its due process rights with regard to defending itself on the merits of Ms. Roy's complaint which strike at the heart of BSO's policies, procedures, testing techniques, and the related authenticity and accuracy of DNA testing results.
5. Evidentiary issues involving possible contamination and authentication of results are in question.
6. The State has an obligation pursuant to *Brady* and *Daubert* to inquire and provide information regarding the sum and substance of this complaint and ASCLD/LAB's ultimate findings because it may possibly affect the State's ability to utilize DNA results in both of Mr. Hadley's cases on evidentiary grounds.
7. Mr. Hadley qualifies as HOQ/PRR. He faces the potential of thirty (30) years in state prison if convicted as charged. To move forward to trial on these issues on June 27, 2016 would be prejudicial to Mr. Hadley's right to pursue

further discovery on these newly discovered issues which fall within the relevant period of Ms. Roy's complaint with reference to BSO testing.

8. To force counsel to trial without further discovery on said issues would limit undersigned's ability to effectively cross examine State witnesses related to DNA collection and testing, and/or interfere with counsel's ability to possibly have DNA evidence excluded on evidentiary grounds in both cases.
9. At this time the Defense foresees having to take the depositions of two (2) State "B" expert witnesses; namely, Dr. Martin Tracey and Paula Bolivar, and possibly holding a *Daubert* Hearing specifically with reference to the BSO Crime Lab DNA Unit's policies and testing procedures.
10. The sum and substance of Ms. Roy's complaint of October 29, 2015 is attached as Exhibit "B" of this Motion and calls into question, in general, the specific testing procedures utilized by Broward County in reaching evidently biased results.
11. The accreditation agency that oversees this County's Sheriff's Crime Lab/DNA Unit has evidentially found "probable cause" to hold an administrative hearing (see attached Exhibit "C" "Appeals and Complaints Procedure") given the bases set forth in Ms. Roy's aforementioned complaint, and the results of this process could be detrimental to the State's ability, on legal grounds, to utilize DNA evidence in Mr. Hadley's cases.
12. To deny Mr. Hadley the right to investigate further and possibly litigate on these grounds would be in violation of his right to a fair trial.

13. Under separate cover in each of Mr. Hadley's relevant cases, undersigned counsel will be filing a public records request with BSO and the Broward County State Attorney's Office in and for the Seventeenth Judicial Circuit on these issues.

14. Other grounds to be argued *Ore Tenus*.

WHEREFORE the undersigned attorney respectfully prays this Honorable Court grant this Motion to Compel the Production of any and all Complaints, Inquiries, Correspondence, Notices of Action, and/or Demands for Response and Responses by the American Society for Crime Laboratory Directors (ASCLD/LAB) and from the Broward County Sheriff's Office and/or its Crime Lab, Including DNA Unit; or in the Alternative, Defendant's Motion for Mutual Subpoenas *Duces Tecum* for Same.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished this 14th day of June, 2016, to the Office of the State Attorney, Broward County Courthouse, 201 Southeast Sixth Street, Fort Lauderdale, Florida 33301 via the Florida E-filing Portal and to Terrance Lynch, Esquire (BSO Legal Department) via email Terrance_Lynch@sheriff.org and to ASCLD/LAB, Pam Bordner, Vice President via email pbordner@asclld-lab.org.

RICHARD A. MERLINO, P.A.
Counsel for Defendant
101 N.E. Third Avenue, Suite 1430
Fort Lauderdale, Florida 33301
Telephone: 954-745-7497
Facsimile: 954-745-7698
E-Mail: richmerlinoesq@gmail.com

/s/ Richard A. Merlino
Richard Merlino
Florida Bar No.: 0977640