

STATE OF NORTH CAROLINA
COUNTY OF DURHAM

FILED
IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

2016 MAR 01 CRS 24821
3/11

STATE OF NORTH CAROLINA,
vs.
MICHAEL IVER PETERSON,
Defendant.

DURHAM COUNTY
MOTION FOR ALL INFORMATION
RELATED TO EVIDENCE
HANDLING & STORAGE
PROCEDURES OF THE DURHAM
COUNTY CLERK OF SUPERIOR
COURT & EVIDENTIARY HEARING
ON MISHANDLING OF EVIDENCE

COPY

NOW COMES the Defendant, *Michael Iver Peterson*, by and through the undersigned counsel, Maitri "Mike" Klinkosum, Attorney at Law, and Mary Jude Darrow, Attorney at Law, and hereby move this Honorable Court, pursuant to the Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution, *Brady v. Maryland*¹ and its progeny, Article 1 §§ 19 and 23 of the North Carolina Constitution, and Article 48 of the North Carolina General Statutes, for an Order from this Court commanding the Clerk of Superior Court of Durham County, Archie L. Smith, III, to produce, to the defense the following:

- I. Copies of any and all protocols, regulations, policies, and/or any other written documentation related to the proper storage of physical evidence within the Office of the Clerk of Superior Court for Durham County;
- II. Copies of any and all log books, log sheets, date books, and any other recordation of the individuals who have obtained access to the evidence in the case of State v. Michael Iver Peterson held in the Clerk's office, along with the dates and times of such access;
- III. The identities of any and all assistant clerks, or other employees of the Durham County Clerk of Superior Court, who have access to, or have had access to, the evidence in State v. Michael Peterson held in the Clerk's office; and
- IV. Access and viewing of any and all locations where the evidence in the case of State v. Michael Iver Peterson has been stored, while in the custody of the Durham County Clerk of Superior Court.

FURTHER, the Defendant, *Michael Iver Peterson*, by and through undersigned counsel, further requests that, upon compliance with the above-cited requests by the Clerk of Superior Court of Durham County, the Court convene an evidentiary hearing to

¹ 373 U.S. 83, 83 S. Ct. 1194, 10 L.Ed. 2d. 215 (1963).

inquire into the mishandling and storage of the evidence which is the subject of this Motion and, if necessary, request investigation by any outside agencies as needed. In support for the foregoing motion, the Defendant would aver unto the Court as follows:

1. Michael Peterson was charged in 2001 with first-degree murder for the death of his wife, Kathleen Peterson. Mr. Peterson was previously tried in 2003 and was convicted of first-degree murder. Mr. Peterson has steadfastly maintained his innocence.
2. In December, 2011, based primarily upon the fact that one of the primary investigators in the case, SBI Special Agent Peter Duane Deaver, committed perjury at Mr. Peterson's trial, regarding his expertise, work and investigation of the death of Kathleen Peterson, Mr. Peterson was granted a new trial by this Court.
3. The first trial of this matter is considered to be one of the longest trials in the history of North Carolina. In addition to the length of the trial, numerous items of physical evidence were introduced into evidence at Mr. Peterson's trial.
4. Upon information and belief, several items the aforementioned evidence, which include biological material, have been kept in the possession of the Durham County Clerk of Superior Court.
5. In preparation for the second trial of this matter, undersigned counsel requested a review of all physical evidence in this matter. Undersigned counsel and the prosecution reviewed the physical evidence at issue in this case on four different dates at three separate locations. Those dates and locations are as follows:
 - a. June 25, 2015 – Durham Police Department Property & Evidence located at 921 Holloway Street in Durham, NC;
 - b. December 3, 2015 – Office of Durham County Clerk of Superior Court at the Durham County Courthouse;
 - c. December 3, 2015 – Durham Police Department Forensics Unit 516 Rigsby Street in Durham, NC; and
 - d. December 16, 2015 – Office of the Durham County Clerk of Superior Court at the Durham County Courthouse.
6. The defense and prosecution reviewed the evidence at the different locations because the evidence has been, and is being, held at the three different locations referenced above.

7. Further, upon information and belief, some of the physical evidence in this case was previously delivered to the North Carolina Court of Appeals and later returned to Durham County.
8. This motion addresses the evidence (specifically, the condition of the evidence as observed by the prosecution and defense) which has been held in the custody of the Clerk of Superior Court of Durham County.

The Evidence Review of December 3, 2015 – Documents & Records From an Unrelated Criminal Case Found Among Evidence from the Peterson Trial

9. On December 3, 2015, the prosecution and the defense reviewed evidence which has, upon information and belief, been stored in the possession of the Durham County Clerk of Superior Court.
10. At the beginning of the evidence review, it was noted that much of the evidence was contained within numerous cardboard boxes. Upon information and belief, said cardboard boxes were not sealed. Instead, the boxes had been closed by folding and interlocking the cardboard flaps at the top of each box.
11. One of the first boxes that was opened during the evidence review contained evidence introduced at Michael Peterson's trial in 2003. However, mixed in among the evidence from said trial were notes and documents and records from an entirely unrelated criminal case.
12. In reviewing the contents of the aforementioned box, neither the defense nor the prosecution were able to determine why documents and records from an unrelated criminal case had been stored and commingled with evidence from the Peterson trial.
13. At the filing of this Motion, the defense has not been provided with any information or explanation as to why documents and records from another unrelated criminal case have been stored and commingled with evidence from the Peterson trial.
14. Upon information and belief, at the filing of this Motion, the prosecution has not been provided with any information or explanation as to why documents and records from another unrelated criminal case have been stored and commingled with evidence from the Peterson trial.

**Evidence Review of December 16, 2016 – Evidence Bags Containing Physical
Evidence & Biological Material Found to Have Been
Ripped Opened & Evidence Contained Within Exposed**

15. On December 16, 2016, the prosecution and the defense continued its review of evidence stored in the possession of the Durham County Clerk of Superior Court.
16. The boxes opened during the December 16, 2016 evidence review contained evidence from Michael Peterson's 2003 trial. Some of the evidence viewed consisted of physical evidence, which, upon information and belief, was seized during the investigation into Kathleen Peterson's death, and which was later introduced at Mr. Peterson's trial.
17. Upon information and belief, several items of evidence included biological material (i.e., blood, saliva, sweat). Some items of evidence were contained within brown paper evidence bags which had "Biohazard" stickers affixed to the outside.
18. After opening the boxes of evidence, both the prosecution and the defense observed that many of the brown paper bags containing said evidence had been ripped open. Additionally the evidence contained within the ripped bags had been allowed to fall out of the bags onto other evidence bags and items of evidence within in the same box.
19. The brown paper bags appeared to have been ripped open and the contents within exposed to the surrounding environment. The brown paper bags did not appear to have been cut open, or otherwise meticulously opened.²
20. In one instance, a navy blue T-shirt was observed at the bottom of one of the cardboard boxes, without having been sealed in any type of evidence container or otherwise properly preserved and documented
21. In order to document the condition of the aforementioned evidence, the defense, in the presence of the prosecution, photographed the condition of the evidence and the evidence containers. Some of the photographic observations are as follows:
 - a. The inside of one the boxes containing items of physical evidence showing the state in which the evidence and the evidence bags were

² Undersigned counsel specifically notes this fact because, in undersigned counsels' experience, individuals trained in the proper methods of handling physical evidence in a criminal case typically use cutting instruments (e.g., scissors, small knives) to open paper evidence containers. Based on undersigned counsel's experience, the condition of the evidence containers referred to in this Motion leads undersigned counsel to believe that the brown paper bags were ripped open, possibly, by someone other than a trained evidence technician or agent of law enforcement.

found immediately after the box was opened (see *Defendant's Exhibit M-1, M-2, and M-3*);

- b. A brown paper bag containing what appeared to be shoes collected as part of the investigation into Kathleen Peterson's death. The bag containing the shoes has been ripped open, exposing the contents within to the surrounding environment, including other items of evidence within the same box (see *Defendant's Exhibit M-4*);
- c. A brown paper bag containing what appears to be a dark blue article of clothing. The bag has been ripped open, exposing the contents within to the surrounding environment, including other items of evidence within the same box (see *Defendant's Exhibit M-5*);
- d. A brown paper bag containing what appeared to be a purple plaid shirt. The bag has been ripped open, exposing the contents within to the surrounding environment, including the other items of evidence within the same box (see *Defendant's Exhibit M-6*);
- e. A brown paper bag containing what appears to be a pair of Converse brand "All Star" sneakers. The bag has been ripped open, exposing the contents within to the surrounding environment, including other items of evidence within the same box (see *Defendant's Exhibits M-7, M-8, and M-9*);
- f. A brown paper bag containing what appears to be a dark grey article of clothing. The bag has been ripped open, exposing the contents within to the surrounding environment, including the other items of evidence within the same box (see *Defendant's Exhibit M-10*);
- g. A brown paper bag containing what appears to be white-in-color socks. The bag has been ripped open, exposing the contents within exposed to the surrounding environment, including the other items of evidence within the same box (see *Defendant's Exhibit M-11*);
- h. An unsealed and unmarked brown paper bag, which contains what appears to be a dark fleece article of clothing. The bag itself did not appear to have been marked by a law enforcement officer or evidence technician, and there did not appear to be any way of discerning who placed the article of clothing within the bag. The bag was not sealed and the contents of the bag were exposed to the surrounding environment, including the other items of evidence within the same box. (see *Defendants Exhibits M-12, M-13, M-14, M-15, and M-16*);
- i. A brown paper bag containing what appears to be an article of clothing, presumably sweat pants, alleged to have been collected from the body of Kathleen Peterson. The pants have what appear to be

dried blood on them. Further, the brown paper bag is marked with "Biohazard" stickers, yet the bag has been ripped open and the contents exposed to the surrounding environment, including the other items of evidence within the same box (see *Defendant's Exhibit M-17*; see also *Defendant's Exhibits M-1 and M-2*);

- j. A brown paper bag, marked as "State's Exhibit 14A." The bag has been ripped open exposing the contents within to the surrounding environment, including other items of evidence within the same box (see *Defendant's Exhibit M-18*);
- k. A navy blue T-shirt, which was found at the bottom of one of the boxes containing the evidence shown in *Defendant's Exhibits M-1, M-2, and M-3*. The navy blue T-shirt was not contained or preserved in any type of evidence container. The only identifying markings on the t-shirt was the writing "PDD 9/12 T-6" (see *Defendant's Exhibits M-19, M-20, and M-21*); and
- l. Various documents, some marked with "State's Exhibit" stickers, which were found at the bottom of the box containing the above-referenced evidence and adjacent to the navy blue T-shirt listed in paragraph 21(k) above. The documents were found loose within the box and were comingled with the above-referenced evidence (see *Defendant's Exhibit M-22*).

**Based Upon the Mishandling/Improper Storage of Evidence the Court Should Allow
& Conduct a Detailed Inquiry Into the Polices/Procedures Regarding
Evidence Handling & Storage in the Durham County Clerk of Court Office**

- 22. One of the most basic tenets of crime scene investigation and evidence collection is that every item of physical evidence must be collected, packaged, and held separately to prevent any contamination and/or cross-contamination between items of evidence.³
- 23. The same principle applies to the storage of evidence by law enforcement and/or the court system, particularly items of physical evidence which have been introduced at trial. The office or agency holding the items of physical evidence should store them in such a manner as to prevent any contamination and/or cross-contamination between items of evidence.
- 24. Upon information and belief, the items of evidence listed above were collected during the investigation into Kathleen Peterson's death in 2001 and 2002, and were later introduced at Mr. Peterson's trial in 2003. Upon information and belief, sometime between their introduction into evidence

³ Lee, Henry C., Timothy Palmbach, Marilyn T. Miller. *Henry Lee's Crime Scene Handbook*. Oxford: Elsevier: Academic Press, 2009, Print.

at trial and the review of evidence by current defense counsel and the prosecution in 2016, the bags containing the physical evidence were ripped open and their contents were allowed to come in contact, thereby being subjected to contamination and/or cross-contamination.

25. As a result of the manner in which the evidence in the Peterson case has been stored, there is no way to discern the extent to which any of the evidence has been contaminated and/or cross-contaminated. Further, because of the state in which the evidence has been held, there is no way to discern which items of evidence have been contaminated and/or cross-contaminated and which items of evidence have not been contaminated and/or cross-contaminated.
26. An example of the problems cited in the preceding paragraph are illustrated through the condition in which the navy-blue T-shirt (see *Defendant's Exhibits M-19, M-20, and M-21*) was discovered:
 - a. The shirt was found at the bottom of one of the boxes containing evidence, which also contained the other items of evidence contained in evidence the bags which had been ripped open;
 - b. In examining the T-shirt, dust, dirt, or some other substance, was noted on the front of the T-shirt (see *Defendant's Exhibit M-23*);
 - c. Further, in examining the navy-blue T-shirt, some manner of detritus was located on the shirt (see *Defendant's Exhibit M-24*);
 - d. Due to the condition of the box of evidence, and all of the contents within said box, it cannot be determined with any degree of certainty whether the detritus was originally part of the T-shirt, whether the detritus was deposited from another item of evidence in the same box, whether the detritus was already in the box at the time the shirt was cast into the box, or whether and when some unknown individual negligently or purposefully deposited the detritus on the T-shirt.
27. As a result of the manner in which the aforementioned physical evidence has been stored and handled by the Office of the Durham County Clerk of Superior Court, there now exist numerous questions regarding the handling, storage, and preservation of the physical evidence in this case, including, but not limited to, the following:
 - a. When were the evidence bags were ripped open?
 - b. How long has the physical evidence in this case remained in its current condition?

- c. Why were the evidence bags ripped open instead of being meticulously opened?
- d. Who ripped open the evidence bags?
- e. Why were the evidence bags not resealed after being ripped open?
- f. Why was the evidence not re-sealed in new evidence bags?
- g. Were the bags ever opened before being ripped apart?
- h. How was the physical evidence handled after the evidence bags were ripped open?
- i. Was/were the individual(s) who ripped open the evidence bags connected with law enforcement, court personnel, or random individuals?
- j. What was done with the physical evidence after the evidence bags were opened?
- k. Is evidence missing from the evidence bags/boxes?
- l. Did the individuals who ripped open the evidence bags contaminate the physical evidence, either negligently or purposefully?
- m. What was the environment, surroundings, and conditions at the time the evidence bags were ripped open?
- n. Were all of the evidence bags ripped open at the same time, or did such conduct occur over a period of time?
- o. Were the evidence bags ripped open at the time of the first trial? If so, were they re-sealed and then opened again later?
- p. Were the evidence bags ripped open in the Durham County Clerk's Office or were they taken to another location?
- q. Have the evidence boxes been handled by the same Assistant Clerk(s) of the Durham County Clerk of Superior Court?
- r. Does the Durham County Clerk of Superior Court keep a log of who views evidence from a case and when such viewing takes place?
- s. Was anyone in the District Attorney's Office, either under the current District Attorney or any former District Attorneys, aware that the evidence bags had been ripped open?

- t. Was anyone in the Durham Police Department aware that the evidence bags had been ripped open?
 - u. As several items of physical evidence appear to have previously been sent to the North Carolina State Crime Laboratory, were the evidence bags ripped open in that location and not resealed?
 - v. How many agencies and/or individuals were involved in the handling/storage of the physical evidence in question?
 - w. Since Michael Peterson's trial, where has the evidence in question been kept and who had access to it?
 - x. Does the Durham County Clerk of Superior Court have policies/procedures regarding the handling and storage of physical evidence during and after a trial?
 - y. Did the Durham County Clerk of Superior Court have evidence handling/storage policies and procedures during Michael Peterson's first trial?
 - z. If the Durham County Clerk of Superior Court did not have evidence handling/storage policies and procedures during or immediately after Michael Peterson's first trial, but created them later, were such policies later adhered to in regards to the evidence in this case?
 - aa. Given that it is known that one of the evidence boxes in the Peterson case contains documents/evidence from an entirely unrelated case, is the evidence contained within the other Peterson evidence boxes and the ripped evidence bags the actual evidence from the Peterson investigation/trial or is it evidence from some other investigation/trial?
 - bb. Given that it is known that one of the evidence boxes in the Peterson case contains documents/evidence from an entirely unrelated case, is there evidence missing from the Peterson case that may be located in any other files in the Durham County Courthouse, the Durham Police Department, or any other agency?
28. The defense would posit that much of the physical evidence in this case was central to Mr. Peterson's first trial. As such, the same evidence should be central to his upcoming re-trial.
29. However, the integrity of the evidence has been severely compromised, due to manner of storage and mishandling of the evidence, as evinced in the defense's attached exhibits. As a result of the manner of storage and mishandling of evidence, which has caused the contamination and/or

cross-contamination of such critical evidence, Mr. Peterson is now unable to obtain accurate and reliable forensic testing, of any kind, on any of the evidence in order to further investigate the charges and prepare to defend himself against the charges of first-degree murder.

30. Due to the improper handling and storage of the physical evidence in this case, and due to the fact that Mr. Peterson will be unable to obtain accurate and reliable testing on any of the evidence, he will be deprived of his rights to inspect and test evidence, pursuant to Article 48 of the North Carolina General Statutes, as well his rights to effective assistance of counsel and presentation of a defense under the U.S. and North Carolina Constitutions.
31. Based upon the improper handling and storage of the aforementioned evidence in this case, which has compromised the integrity of the evidence, the Court should enter an order requiring the following:
 - a. That the Clerk of Durham County Superior Court produce to the defense any and all protocols, regulations, policies, and/or any other written documentation related to the proper handling, documentation, and storage of physical evidence within the Office of the Clerk of Superior Court for Durham County from 2001 to the present time;
 - b. That the Clerk of Durham County Superior Court produce to the defense any and all log books, log sheets, date books, and any other recordation of the dates, times, and individuals, who have obtained, or been allowed, access to the evidence in the Peterson case held in the Clerk's office;
 - c. That the Clerk of Durham County Superior Court produce to the defense the identities of any and all assistant clerks, or other employees of the Durham County Clerk of Superior Court who have, or have had, access to the evidence in the Peterson case held in the Clerk's office;
 - d. That the Clerk of Durham County Superior Court provide access and viewing to any and all locations where the evidence in the Peterson case has been stored, while in the custody of the Durham County Clerk of Superior Court. Such locations should include, but not be limited to the new Durham County Courthouse located at 510 S. Dillard Street in Durham and the old Durham County Courthouse; and
 - e. That after the Durham County Clerk of Superior Court complies with the above orders, the Court convene an evidentiary hearing to inquire into the mishandling and storage of the evidence in questions and, if necessary, request an independent investigation by any outside agencies as needed.

WHEREFORE, the Defendant respectfully prays unto this Honorable Court enter an order providing for the following relief:

1. That the Clerk of Durham County Superior Court produce to the defense any and all protocols, regulations, policies, and/or any other written documentation related to the proper handling, documentation, and storage of physical evidence within the Office of the Clerk of Superior Court for Durham County from 2001 to the present time and that such information be provided to the defense within fourteen (14) days of the entry of such order;
2. That the Clerk of Durham County Superior Court produce to the defense any and all log books, log sheets, date books, and any other recordation of the dates, times, and individuals, who have obtained access to the evidence in the Peterson case held in the Clerk's office within fourteen (14) days of the entry of such order;
3. That the Clerk of Durham County Superior Court produce to the defense the identities of any and all assistant clerks, or other employees of the Durham County Clerk of Superior Court who have, or have had, access to the evidence in the Peterson case held in the Clerk's office within fourteen (14) days of the entry of such order;
4. That the Clerk of Durham County Superior Court provide access and viewing to any and all locations where the evidence in the Peterson case has been stored, while in the custody of the Durham County Clerk of Superior Court. Such locations should include, but not be limited to the new Durham County Courthouse located at 510 S. Dillard Street in Durham and the old Durham County Courthouse within fourteen (14) days of the entry of such order;
5. That after the Durham County Clerk of Superior Court complies with the above orders, the Court convene an evidentiary hearing to inquire into the mishandling and storage of the evidence in questions and, if necessary, request an independent investigation by any outside agencies as needed; and
6. For such other and further relief to which the Defendant may be entitled and which this Court may deem just and proper.

This the 18th day of March, 2016.

By: 

Maitri "Mike" Klinkosum

Attorney at Law

State Bar No.: 25052

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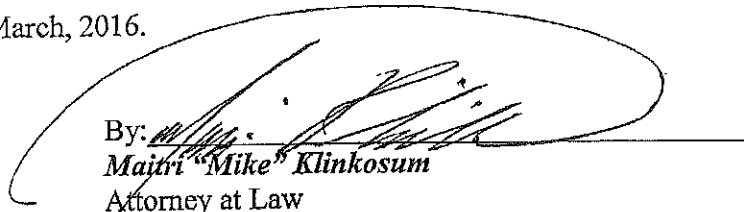
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Certificate of Service

This shall certify that a copy of the foregoing *Motion for All Information Related to Evidence Handling & Storage Procedures of the Durham Count Clerk of Superior Court & Evidentiary Hearing on Mishandling of Evidence* was this day served upon the District Attorney by the following method:

- _____ depositing a copy hereof in a postpaid wrapper in a post office or official depository under the exclusive care, custody, and control of the United States Postal Service, properly addressed to Office of the District Attorney;
- X by personally serving the Office of the District Attorney via hand delivery (*Assistant District Attorney James Dornfried*);
- _____ by transmitting a copy via facsimile transmittal to the Office of the District Attorney; and/or
- _____ by depositing a copy in the box for the Office of the District Attorney maintained by the Clerk of Superior Court.

This the 18th day of March, 2016.



By: _____
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