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ROCKINGHAM
SUPERIOR COURT

STATE OF NEW HAMPSHIRE

ROCKINGHAM COUNTY, SS.

2008 FEB 29 A 9 04 SUPERIOR COURT

Docket No. 07-S-2885

STATE OF NEW HAMPSHIRE

v.

JESSE BROOKS

MOTION FOR DISCOVERY

NOW COMES the Defendant, Jesse Brooks, by and through his attorneys, Dwyer and Callora, LLP, and McLane, Graf, Raulerson & Middleton, Professional Association, and hereby moves for discovery relative to the urine test giving rise to the State's Second Motion to Revoke Bail.

The following discovery requests relate to an assessment of the reliability of qualitative testing for the presence or absence of designated DRUG(S) in the urine. The testing was associated with the following subject (referred to as "Client"):

Subject's Name:	Brooks, Jesse (a/k/a John Doe)
Client's Name:	Brooks, Jesse (a/k/a John Doe)
Client I.D. No.:	001646006
Specimen No.:	1357459
Collected:	12/26/07
Date Tested:	02/20/08
Specimen:	Urine
Designated DRUGS:	Benzodiazepine Cocaine metabolite Opiates 6-acetyl-morphine Buprenorphine

1) All written records, notes, and documentation relating to Client selection, Client identification, specimen collection, specimen identification-evaluation-processing-labeling as

well as specimen chain-of-possession-transport-receipt-accessioning-storage-processing, and all analyses conducted for drugs including but not limited to the following information:

Complete technical procedures describing the actual qualitative drug tests for the purpose of determining the presence or absence of the following drug(s) or drug-metabolite(s):

Drug or Drug-metabolite	Biological Specimen
Benzodiazepine	Urine
Cocaine metabolite	
Opiates	
6-acetyl-morphine	
Buprenorphine	

HEREAFTER, THESE INDIVIDUAL DRUGS OR DRUG-METABOLITES ARE REFERRED TO AS "DRUG(S)", and the use of the term DRUG(S) refers to each individual drug or drug metabolite noted above.

The descriptive materials describing the actual qualitative drug tests should include copies of all of the laboratory processes-methods-procedures-and-practices utilized in the entire process from subject selection to specimen collection and continuing to results reporting. The description of the entire drug testing process should include but not limited to the specification of equipment parameters and the maintenance of scientific equipment, the preparation and verification of chemical or test reagents-standards-and-check samples, step-by-step description or instruction of the testing process, examples of test data produced or obtained as a result of testing, criteria for the review of test data, standardization and quality assurance, and all of the administrative and analytical data related to or obtained as a result of testing the specimen, standards, controls, and blank samples. Appropriate references and evidence of the review and approval of the test procedure should also be provided.

The materials should reflect the laboratory procedures that were, in fact, used to conduct the tests noted above. If these materials differ from the approved laboratory procedure at the time the test was conducted, these differences should be described and all relevant foundation materials should be provided. If an outline or summary of the procedure was used to instruct or guide the person performing the test(s), the outline or summary should also be provided.

The materials provided also include all records and instrumental data and calculations of testing and review relating to the analysis of the Client's specimen as well as related standards, calibrators, controls, and drug-free specimens.

2) All laboratory certifications and licenses relating to the analysis of specimens for the presence of DRUG(S) in urine.

3) Names and descriptions of all of the laboratory's external quality assurance programs and surveys relating to qualitative testing for DRUG(S) in urine including but not limited to testing related to the assessment of the laboratory's ability to reliably determine the presence or absence of DRUGS in urine and a copy of the results and reports of these programs or surveys relating to qualitative testing for DRUG(S) in urine during the period from 01/01/2006 to 01/01/2008. The information provided should include a "key" or laboratory "code" that identifies the participating laboratory and the associated report of test results.

If the laboratory participated in external quality assurance programs or surveys that involved testing for the presence of DRUG(S) in urine during the period from 01/01/2006 to 01/01/2008, all of the analytical data relating to this testing including the laboratory's report of the presence of DRUG(S) should be provided.

If the laboratory did not participate in external quality assurance programs or surveys that involved qualitative testing for DRUG(S) in urine, an explicit statement to that effect should be provided as part of the response to this discovery request.

If the laboratory did not participate in external quality assurance programs or surveys that involved qualitative testing for DRUG(S) in urine but the laboratory staff or others believe that other data support or establish the reliability of qualitative testing for DRUG(S) in urine, this information should be provided.

4) Descriptions of all internal quality assurance policies and procedures used to ensure and/or establish the reliability of qualitative testing for DRUG(S) in urine and the reliability of the test results reported for an individual sample including but not limited to tests relating to the Client's report.

All related data believed to form a foundation for an assertion or opinion that the qualitative test result(s) for DRUG(S) in the Client's urine are accurate.

5) Identification of the laboratory director responsible for the day-to-day operation of the laboratory and the name(s) of the chemist(s) who analyzed the Client's urine for DRUG(S) and a summary of the education-training-experience of these individuals.

All records relating to the education-training-certification-experience of the individual(s) who conducted testing to determine the presence of DRUG(S) in the Client's urine including but not limited to an outline of the individual's training related to the performance or review or certification of test procedures and/or test results relating to the detection of DRUG(S) in urine.

6) Identification of the date(s) when the laboratory disposed of the Client's urine specimen(s), and a description of the person(s) and/or policy(ies) authorizing specimen disposal.

7) Name and address of every other laboratory that participated in the testing of the designated specimen(s) and copies of all materials relating to the specimen(s) referred and test(s) requested, the test result(s) including written report(s), and the names of individuals consulted

regarding the performance or the interpretation of these test results as well as copies of all written information relating to or resulting from testing or consultation.

8) Technical or scientific studies conducted by the laboratory relating to the occurrence or frequency of "false positive" test results or qualitative test errors associated with testing for DRUG(S) in urine.

9) The names of technical/scientific/professional organizations or agencies that have inspected the laboratory or assessed the laboratory's performance relative to the determination of the presence of DRUGS and the date of the most recent inspection as well as the results and report relating to that inspection. If inspected between 2000 and 2008, provide all descriptive information, data, results, and reports of the inspection(s) relative to the reliable determination of the presence of DRUGS in urine.

If the laboratory was not inspected, an explicit statement to that effect should be provided as part of the response to this discovery request.

If the laboratory was not inspected but the laboratory believes there is other information that supports the reliability of testing for DRUGS, that information should be provided.

10) All information relevant to an understanding of the situation-circumstances-events relating to the suspension of the laboratory's urinalysis testing at any time between 01/01/2006 and the present including but not limited to the period between January 10, 2008 and February 19, 2008.

11) All information relevant to an understanding of the situations and/or circumstances that have resulted or would result in a decision to reanalyze a urine specimens by a method different from the immunoassay method previously used to test for drugs in urine.

All information relevant to an understanding of the situations and/or circumstances when an immunoassay test for DRUG(S) is followed by reanalysis by any method including reanalysis by immunoassay, chromatographic, mass spectrometric or other method.

12) All information relating to professional-technical-or-administrative review relating to the reliability of the laboratory's performance or reporting of the presence or absence of DRUG(S) in urine during the period of time between 01/01/2004 and 01/01/2008.

13) A listing of all laboratory chromatographic and spectrometric equipment suitable for the reanalysis of DRUG(S) in urine.

14) A list and description of the circumstances that have been associated with the referral of any urine specimen for analysis by gas chromatography-mass spectrometry.

The foregoing requests are supported by a letter attached as Exhibit A from Defendant's consulting toxicologist and are necessary to establish the evidentiary reliability and scientific validity of the test results. See Baker Valley Lumber v. Ingersoll-Rand Co., 148 N.H. 609, 616-618 (2002)(adopting federal Daubert standard for admissibility of scientific evidence).

WHEREFORE, Defendant respectfully submits this Motion and requests that the Court:

- A. Order the State to comply with the discovery request herein; and
- B. Grant such other and further relief as is just and equitable.

Respectfully submitted,

JESSE BROOKS

By his attorneys,

DWYER & COLLORA, LLP

William Kettlewell, Esq.
600 Atlantic Ave.
Boston, MA 02110

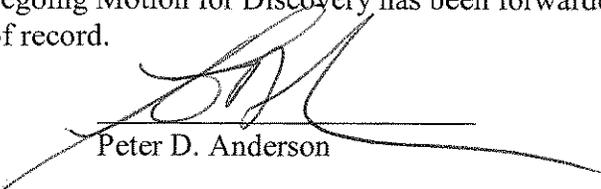
MCLANE, GRAF, RAULERSON &
MIDDLETON, PROFESSIONAL ASSOCIATION

Dated: February 28, 2008

By: 
Peter D. Anderson
900 Elm Street, P.O. Box 326
Manchester, NH 03105-0326
(603) 625-6464

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion for Discovery has been forwarded on this date, February 28, 2008, to counsel of record.


Peter D. Anderson

P & A

PAPE & ASSOCIATES, INC.

Specializing in Toxicology

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February 28, 2008

Peter D. Anderson, Esq.
McLane Firm
Manchester, NH

Fax: (603) 625-5650

Re: State of New Hampshire v. Jesse Brooks

Dear Mr. Anderson:

I have reviewed the Motion To Revoke Bail and the urine drug test results reported for Mr. Jesse Brooks. While I regret that my schedule does not allow me to testify on Friday, February 29th, I offer the following comments and suggestions.

The information contained in the report of results does not establish the reliability of those results. That information necessary to establish the reliability of the reported test results includes but is not limited to specimen collection, chain-of-possession, testing including details regarding the technical method(s), and internal and external quality assurance. The Motion and the drug test results do not provide the required details regarding these and other features that are directly related to an assessment or determination regarding the reliability of the reported results.

The information necessary to assess-support-establish the reliability of the reported results should be requested. Generally speaking, well-run laboratory are familiar with the appropriate requests for information and the response are not burdensome. In fact, organizations and agencies provide guidelines relating to the retention of these records.

The information provided with the Motion and results reports does not include a description of those features that largely control the reliability of urine drug testing.

The importance of Administrative, Technical, and Standard Operating Procedures and the related documentation has been acknowledged by the College of American Pathologists, Substance Abuse and Mental Health Services Administration, American Academy of Forensic Sciences, and the Society of Forensic Toxicology. Without adequate documentation, technical accuracy cannot be established.

I would be willing to review records and report regarding questions that might include whether or not the laboratory satisfies generally accepted good laboratory practice including the performance of forensic or medical-legal or administrative drug testing.

Brian E. Pape, Ph.D. Electronic signature witnessed by Dr. Pape

Brian E. Pape, Ph.D., BCFE, BCFM

BRIAN E. PAPE, Ph.D., BCFE, BCFM

- *Specializing in Toxicology* -

B.A. Washington University, 1966
M.S. Michigan State University, 1969
Ph.D. Michigan State University, 1974

- 1986-Present: Pape & Associates, Inc. (*Specializing in Toxicology*)
Board-certifications: Forensic Examiner, Forensic Medicine
- 1986-1997: Assoc. Prof., University of Massachusetts Medical School (*Clin. Appt.*)
- 1983-1986: Senior Assoc. Consultant, Mayo Clinic (Rochester, MN); and, Director of Toxicology, New England Toxicology Services
- 1973-1982: Faculty, Department of Pathology, U of MO School of Medicine; Assoc. Prof. of Pathology and Director of Toxicology (*Full-tenure awarded*)
- 1966-1972: Graduate Research Assistant, Pesticide Research Center, MSU, Pesticide Chemistry (M.S. and Ph.D. research) and Toxicology

Dr. Brian Pape is a consultant with Pape & Associates, specializing in toxicology and related sciences. From 1986 to 1997, he held a faculty appointment as Associate Professor of Pathology, University of Massachusetts School of Medicine.

From 1982 to 1985, he was Senior Associate Consultant for Mayo Clinic (Rochester, MN), and Director of Toxicology at New England Toxicology Services (Woburn, MA).

From 1973 to 1982, Dr. Pape was Director of Toxicology and Associate Professor in the Department of Pathology at the University of Missouri School of Medicine (Columbia, MO), where he was a member of the Emergency Room Committee, Environmental Trace Substances Research Center Advisory Committee, Committee on Pathogens-Toxins-and-Carcinogens, and Missouri Association of Crime Laboratory Directors' Technical Advisory Committee.

Dr. Pape has published more than 50 research papers, abstracts, and professional articles relating to alcohol and drugs, pesticides and toxic chemicals, analytical chemistry, forensic science, and general toxicology. He currently writes technical updates for the *Toxicology Reporter*.

He has served as a technical and expert consultant to business, labor, and governmental agencies. He has been qualified as an expert in toxicology and related sciences in District, Superior, and Federal Courts.

His expertise has been recognized by American Men and Women of Science, Who's Who in Technology Today, Who's Who in Medicine/Healthcare, and the scientific honorary Sigma Xi; and, he is a member of numerous scientific organizations.

Dr. Pape has been board-certified by the American College of Forensic Examiners (BCFE) and the American Board of Forensic Medicine (BCFM).