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IN THE THIRD JUDICIAL DISTRICT COURT  
SALT LAKE COUNTY, STATE OF UTAH

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STATE OF UTAH,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 151901809 FS
	)	
CHARLES SARGENT,	)	
	)	
Defendant.	)	Hon. Elizabeth A. Hruby-Mills
	)	

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**MOTION IN LIMINIE TO EXCLUDE THE STATE CRIME LAB'S EXPERT WITNESS  
DUE TO THE STATE'S FAILURE TO PRODUCE THE STATE CRIME LAB'S  
DOCUMENTS, NOTES, TEST RESULTS AND INTERNAL REPORTS**

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The defendant, Charles Sargent, by and through counsel, Edwin S. Wall, moves to exclude the testimony of Jennifer Monetro, the State's Forensic Science Expert.

**FACTS**

The Defense requested the State Crime Lab Records in the pending cases. The State has indicated on June 2, 2016, pursuant to the request the State identify it's witnesses for trial, the State indicated it intends to call Jennifer Monetro, a Forensic Scientist with the Utah State Crime Lab. The State Crime Lab's documents, notes, test results, and internal reports have not been produced to the defense prior to trial. Often the claim is made in Utah that the failure to produce those materials are a matter of policy with the State Crime Lab, the crime lab erroneously, as a

matter of law, requiring a GRAMA request be submitted by the prosecution for the prosecution to be able to obtain those materials and produce them in discovery. The defense has requested those materials in all of the pending cases set for trial, with the germane disclosure request by the defense being one of the following:

(D) Reports of Scientific Tests or Examinations: the substance, nature and reports of all tests and examinations conducted upon or in connection with the evidence in this case . . .

(E) Brady Material: all documents, statements, agents' reports, and tangible evidence favorable to the defendant or capable of favorable interpretation for the defendant on the issue of guilt and/or which affects the credibility of any person who may be called as a witness by the State; specifically including impeachment as well as exculpatory evidence which falls within Brady's definition of evidence favorable to the accused . . .;

*Request for Discovery.*

The facts relevant to this memorandum are supplemented by the voir dire and/or cross examination of the State Crime Lab's expert elicited from their through their in-court testimony, which is necessary to establish the existence of the materials and the policies of the State Crime Lab as to their production.

**a. The State Crime Lab Can Share the Lab's Documents, Notes, Test Results and Internal Reports with Prosecutors Without a GRAMA Request.**

The State of Utah typically asserts that the Government Records Access and Management Act ("GRAMA") precludes the State Crime Lab from turning over its "private" records to the prosecution in a criminal prosecution is disingenuous. GRAMA expressly provides the State Crime Lab may provide those records to another government entity that enforces or litigates criminal matters and the record is necessary to a proceeding or investigation. The prosecutor is under no requirement, duty or obligation to make a GRAMA request as claimed by the State

Crime Lab. In the statutory provision regarding government entities sharing records with other government entities, Utah law provides:

A governmental entity may provide a record that is private, controlled, or protected to another governmental entity, a government-managed corporation, a political subdivision, the federal government, or another state if the requesting entity:

\* \* \*

(b) enforces, litigates, or investigates civil, criminal, or administrative law, and the record is necessary to a proceeding or investigation.

**b. A Prosecutor Is Imputed with Producing the State Crime Lab’s Documents, Notes, Test Results and Internal Reports.**

A prosecutor is imputed with producing all discoverable materials in a criminal case pursuant to both state and federal constitutional law. *See, Kyles v. Whitley*, 514 U.S. 419, 434, 115 S.Ct. 1555 (1995), *State v. Bakalov*, 1999 UT 45, ¶ 30, 979 P.2d 799, 811. In *Bakalov* the Utah Supreme Court states, “[i]t is fundamental that the prosecution has a constitutional duty under both the Utah and United States Constitution to disclose material, exculpatory evidence to the defense. Suppression of evidence favorable to the defense ‘violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.’” *Id.* (citing *Brady*, 373 U.S. at 87, 83 S.Ct. 1194 and *State v. Jarrell*, 608 P.2d 218, 224 (Utah 1980)). The requirement of disclosure applies “irrespective of whether the defense requests the favorable evidence or whether the evidence is substantively exculpatory or solely for impeachment value.” *Id.* (cites omitted from the quote, but citing, *United States v. Bagley*, 473 U.S. 667, 682, 105 S.Ct. 3375, 87 L.Ed.2d 481 (1985), *State v. Carter*, 707 P.2d 656, 662 (Utah 1985); *Giglio v. United States*, 405 U.S. 150, 154-55, 92 S.Ct. 763, 31 L.Ed.2d 1045 (1972)).

**c. The State Cannot Obviate its Constitutional Obligations by Asserting it is Statutorily Exempt Pursuant to U.C.A. § 77-17-13.**

Utah's statute with regard to expert witness testimony includes a provision that states, with regard to criminal cases:

If an expert's anticipated testimony will be based in whole or part on the results of any tests or other specialized data, the party intending to call the witness shall provide to the opposing party the information upon request.

U.C.A. § 77-17-13(2).

The final provision of the statute provides where an expert witness is a government employee the State need not comply with any of the statutory requirements, including the requirement the data be produced.

This section does not apply to the use of an expert who is an employee of the state or its political subdivisions, so long as the opposing party is on reasonable notice through general discovery that the expert may be called as a witness at trial, and the witness is made available to cooperatively consult with the opposing party upon reasonable notice.

U.C.A. § 77-17-13(6).

Consulting with a state's expert does not constitute production of the documents, notes, test results or internal reports regarding the tests performed. Consultation does not provide the defense with any of the exculpatory or impeachment evidence. Moreover, the statutory provision does not obviate the State and Constitutional law that mandates production of exculpatory and impeachment materials, and imputes those materials to the prosecution for production.

**d. The Court Should Bar the State Crime Lab Expert's Testimony for Failing to Provide the Lab's Documents, Notes, Test Results and Internal Reports.**

Rule 16(g), Utah R. Crim. P. provides for sanctions when discoverable materials are not produced.

If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with this rule, the court may order such

party to permit the discovery or inspection, grant a continuance, or prohibit the party from introducing evidence not disclosed, or it may enter such other order as it deems just under the circumstances.

In this case the lab's documents, notes, test results and internal reports are too extensive and complex for a cursory or simple review by the defense. In light of the failure of the State Crime Lab's failure to produce the materials, which is endemic in Utah. The failure or belated production of the lab's materials is due a matter of policy and/or common practice with the State Crime Lab. As such, the practice should be deterred and the Court should bar the State Crime Lab's expert from giving testimony.

### CONCLUSION

The State's discloses in it's witness list on June 2,, 2016, that it intends to call a forensic scientist from the State Crime Lab for a trial beginning June 7, 2016. Yet the State has not previously provided the defendant with the State Crime Lab's documents, notes, test results, and internal reports as requested in discovery. The failure to provide the materials warrants exclusion of the State's expert. The State prosecutor's claim the State Crime Lab did not provide them with the materials, and the State Crime Lab's response that the prosecutor has to request it with a GRAMA request, is without merit. The law clearly does not require a GRAMA request, and the duty of production is imputed to the prosecutor. Any internal struggle between state offices, is not justification for the failure to produce the materials and the use of expert testimony and evidence against a defendant.

Respectfully submitted June 2, 2016.



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Edwin S. Wall,  
Attorney for the Defendant

**CERTIFICATE OF SERVICE**

I, Edwin S. Wall, hereby certify that on June 2, 2016, I served a copy of the attached upon the counsel for the Plaintiff in this matter, by hand delivery to:

Adrianna Davis, Deputy D.A.  
Salt Lake District Attorney's Office  
111 East Broadway, Suite 400  
Salt Lake City, Utah 84111



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Edwin S. Wall,  
Attorney for the Defendant

Utah Code Ann. § 77-17-13

- (1)
  - (a) If the prosecution or the defense intends to call any expert to testify in a felony case at trial or any hearing, excluding a preliminary hearing held pursuant to Rule 7 of the Utah Rules of Criminal Procedure, the party intending to call the expert shall give notice to the opposing party as soon as practicable but not less than 30 days before trial or 10 days before the hearing.
  - (b) Notice shall include the name and address of the expert, the expert's curriculum vitae, and one of the following:
    - (i) a copy of the expert's report, if one exists; or
    - (ii) a written explanation of the expert's proposed testimony sufficient to give the opposing party adequate notice to prepare to meet the testimony; and
    - (iii) a notice that the expert is available to cooperatively consult with the opposing party on reasonable notice.
  - (c) The party intending to call the expert is responsible for any fee charged by the expert for the consultation.
- (2) If an expert's anticipated testimony will be based in whole or part on the results of any tests or other specialized data, the party intending to call the witness shall provide to the opposing party the information upon request.
- (3) As soon as practicable after receipt of the expert's report or the information concerning the expert's proposed testimony, the party receiving notice shall provide to the other party notice of witnesses whom the party anticipates calling to rebut the expert's testimony, including the information required under Subsection (1)(b).
- (4)
  - (a) If the defendant or the prosecution fails to substantially comply with the requirements of this section, the opposing party shall, if necessary to prevent substantial prejudice, be entitled to a continuance of the trial or hearing sufficient to allow preparation to meet the testimony.
  - (b) If the court finds that the failure to comply with this section is the result of bad faith on the part of any party or attorney, the court shall impose appropriate sanctions. The remedy of exclusion of the expert's testimony will only apply if the court finds that a party deliberately violated the provisions of this section.
- (5)
  - (a) For purposes of this section, testimony of an expert at a preliminary hearing held pursuant to Rule 7 of the Utah Rules of Criminal Procedure constitutes notice of the expert, the expert's qualifications, and a report of the expert's proposed trial testimony as to the subject matter testified to by the expert at the preliminary hearing.
  - (b) Upon request, the party who called the expert at the preliminary hearing shall provide the opposing party with a copy of the expert's curriculum vitae as soon as practicable prior to trial or any hearing at which the expert may be called as an expert witness.
- (6) This section does not apply to the use of an expert who is an employee of the state or its political subdivisions, so long as the opposing party is on reasonable notice through general discovery that the expert may be called as a witness at trial, and the witness is made available to cooperatively consult with the opposing party upon reasonable notice.