UNITED STATES ARMY TRIAL JUDICIARY
FOURTH JUDICIAL CIRCUIT

UNITED STATES	)	
v.	)	
MAJ Eric B. Smith Headquarters and Headquarters Company, Troop Command, Madigan Health Care System, Tacoma, WA 98433	)	SUPPLEMENTAL REQUEST FOR DISCOVERY 13 August 2012

1. The accused, through counsel, and under Article 46, UCMJ, R.C.M. 701, M.R.E., Rule 3.8 of the Army Rules of Professional Conduct for Lawyers, and the Fifth Amendment to the U.S. Constitution, requests that the United States produce and permit the defense to inspect, copy, or photograph each of the following things which are known, or should through the exercise of due diligence be known, to the United States or its agents. Request the Prosecution notify the Defense in writing which specific items of requested information or evidence will not be provided and the reason for denial of discovery. Hereinafter, the term *Government* includes Federal, state and local governments, to the extent that such agencies are participating or have participated in the investigation of this case. The specific items requested below are examples, not limitations, of the items requested under a cited provision and the evidence requested should be disclosed even if known by a different name.

a. Materials from the agency or agencies responsible for sample collection and transportation:

(1) All field records related to evidence collection and ambient environmental conditions.

(2) Relevant training records for evidence collection personnel, including training materials.

(3) Diagrams, descriptions, or photographs of evidence at all stages: collection, packaging, storage, and transportation.

(4) Case intake and evidence control records (e.g., custody records, temporary storage documentation, laboratory analysis request forms, evidence inventory forms, shipping receipts).

b. Materials from the Tripler Army Medical Center, Forensic Toxicology Drug Testing Laboratory by any and all accrediting groups and/or agencies (e.g. ASCLD or from whatever standard accrediting group or groups) who have performed accreditation of said laboratory.

(1) Most recent ASCLD-LAB and/or other such groups, application for accreditation.

(2) The ASCLD-LAB and/or other such groups, standards that served as the basis for the lab's accreditation.

(3) Most recent Accreditation Review Report or reports.

(4) Grade computation sheets and final accreditation report or reports.

(5) If Tripler is not ASCLD-LAB accredited, the Defense request explanation and justification why Tripler is not ASCLD-LAB Accredited.

c. Materials from Tripler Army Medical Center, Forensic Toxicology Drug Testing Laboratory responsible for sample testing:

NOTE: Laboratory quality documentation provided should be the versions that were in effect at the time the subject work was performed

(1) Laboratory Quality Policies and Manual (however named).

(2) Laboratory Protocols (i.e., prescribed minimum testing for identification of cocaine or cocaine class of compounds).

(3) Laboratory technical procedures (often called Standard Operating Procedures; detailed operating procedures for each analytical method used in this subject case).

(4) Laboratory Quality Procedures (however named; implementing procedures for the quality program. e.g., internal audit procedures, training and qualification procedures, contamination control procedures, document control procedures, etc.).

Note: If formal procedures are not available, provide copies of relevant memos, instructions, or guidelines to lab personnel. Further, if formal procedures are, in fact, not available, the Defense requests explanation and justification for such an omission.

(5) Floor plan of the laboratory facility, with functional areas identified (evidence storage, sample preparation, GC-MS instrumentation, standard preparation, analyst offices).

(6) Number of laboratory staff members (number of management, technical, and support staff) assigned to work in the laboratory at the time the subject work was performed and as the lab was admittedly short handed at the time the sample was run:

(i) The normal lab complement as noted above.

(ii) The lab complement present at the time the subject sample was analyzed and any and all training that the additional laboratory workers received prior to working in the lab at this particular time.

(7) The training records of standard complement as well as training records of temporary replacements.

(8) Records of the scope and schedule for internal and external laboratory audits.

(9) Copies of internal audit reports generated during the years prior to and after the subject testing, and external audit reports received during the years prior to and after the subject testing.

(10) Inventory of laboratory capital equipment (make/model/acquisition date).

(11) Laboratory procedures for evidence sampling, including: procedures and criteria for determination of sample population, basis for development of statistical or non-statistical sampling plan, methods for assessment and achievement of homogeneity, sample reduction practices, and documentation of sampling events and decisions.

(12) Case intake and evidence control records (field-to-lab custody transfers, intra- and inter-laboratory chain of custody, evidence receipt log, assignment of laboratory identifiers, controlled storage temperature records for evidence).

(13) Statement of Qualifications or résumé for each analyst with responsibility for the subject testing (including preparation technicians and technical reviewers)[this includes all temporary personnel utilized during this particular sample acquisition and testing].

(14) Internal and external proficiency results (actual and reported results, and all relevant records, data, and correspondence) for each analyst and each method used on the subject case, for five years surrounding testing (unless the analyst has been conducting the subject testing at the laboratory for less than five years).

(15) Records demonstrating the qualifications of the responsible analyst(s) and technical reviewer in this case; include a copy of employment applications, academic transcripts, disciplinary files, training records, and personnel files (redaction of personal information from requested records is acceptable).

(16) Interim and final report(s) issued by the laboratory (including amended reports and records of informal verbal reports, as appropriate).

(17) Records of internal and external communication related to the this case, including copies of faxes, telephone record logs, internal correspondence, or any other records.

(18) Records of procurement and receipt of laboratory gloves during the year prior to the subject casework.

(19) Documentation of the disposition of tested case sample; include documentation of the interim storage condition and current status of any untested case sample.

d. For each test method, as appropriate:

(1) Records from validation studies for each method used to analyze evidence (i.e., copy of the complete validation file, including assumptions, data, results, and conclusions); if the laboratory relies on external validation, provide a reference, and a copy of the empirical verification data generated by the laboratory.

(2) Copies of bench notes, log books, communication logs, and any other records pertaining to case samples or instruments; records describing the condition of the evidence.

(3) Copies of records documenting observations, diagrams, notations, or measurements regarding case sample or testing.

(4) Records documenting any deviations from the laboratory's approved Standard Operating Procedures or Quality Manual that occurred during testing of the subject case sample.

(5) Instrument run logs for the instrument(s) used on case sample on the day(s) case sample was tested (including identification of all unknown samples and controls).

(6) Instrument tuning and calibration records (e.g., as prepared, and as determined values for initial and continuing calibrations applicable to case samples; as prepared and as determined values for second source calibration check samples; verification of internal standards) for analytical instruments used to perform subject testing.

(7) Source, preparation and usage records demonstrating traceability and shelf life for standard materials and solutions used for calibration and quality control (including unique identifications, origins, dates and details of preparation and use, composition and concentration of prepared materials, supplier certifications, shelf lives of parent and stock solutions).

(8) Documentation of the laboratory's storage conditions for the standards and controls used in the subject casework, for the period from the initial date of receipt through the date of the subject analysis; include a procedure describing practices for storing standards and controls; include a description of the materials that are collocated with standards and with unknown samples.

(9) Contemporaneous records documenting preparation of all solutions, standards, and controls used in the batch in which the subject case sample was tested.

(10) Records documenting the verification of the standards and controls used in the batch in which the subject case sample was tested; for both purchased and prepared solutions, provide verification data for testing performed prior to use.

(11) Instrument maintenance and repair records for at least three months before and after case testing.

(12) Source, preparation, and usage records for reagents and materials used during testing.

(13) Control charts used to monitor instrument or method performance during the period in which case sample was processed.

(14) Raw and processed data for each batch that included case and associated QC samples, including all data excluded by analyst. *Note: In addition to hard copies of data, a read-only copy of the electronic data is requested.*

(15) As prepared and as determined values for all blanks, replicates and controls included in batches with case sample.

(16) For quantitative analysis (as appropriate): documentation verifying compliance with calibration criteria for volumetric and gravimetric equipment (e.g., variable or fixed volume pipettes, analytical balances).

(17) Copies of nonconformance reports (however named) for issues with the potential to adversely impact the reliability of case sample or results.

(18) Records of the scope and performance of internal independent reviews (technical and administrative) of case results if so performed.

(19) Results of environmental monitoring for parameters relevant to test methods.

(20) Documentation of sampling plans and results of contamination control surveys for species relevant to test methods used in the subject case.

e. Original urine specimen and specimen bottle. The Defense requests the original urine sample and original sample container be retained in order to allow for independent examination by the Defense or a laboratory contracted by the Defense; such testing may include DNA testing to confirm the identity of the donor in addition to toxicological examination.. A specific request for disposition of the original specimen and specimen bottle will be forthcoming. At a minimum, the Defense requests this material be retained until trial on the merits.

2. Any determination of materiality in these matters is viewed by the Defense as within the province of the Defense and the Court; any question of materiality, therefore, should be brought to the attention of the Defense and decided by the Court.

3. This request is made on the grounds that the Defense cannot effectively prepare for trial without the production and inspection of the items requested.

4. Under R.C.M. 701(d), this is a continuing request for the items described above. Should the Prosecution oppose this request or any part therein, the Defense requests immediate notice thereof and the reasons for opposition.

BENJAMIN K. GRIMES
MAJ, JA
Senior Defense Counsel