

**IN THE SUPERIOR COURT OF FULTON COUNTY  
STATE OF GEORGIA**

STATE OF GEORGIA

v.

SCOTT WINFIELD DAVIS,  
Defendant.

CASE NO. 05-SC-37460

**MOTION TO INSPECT, EXAMINE AND TEST PHYSICAL EVIDENCE**

COMES NOW the Defendant Scott Winfield Davis, by and through his undersigned counsel, and respectfully moves this Court, pursuant to the Sixth, Eighth and Fourteenth Amendments to the United States Constitution, and Article I, §I, Par. I, II, XII, XIV, and XVII of the Georgia Constitution of 1938, to issue an Order compelling the State of Georgia to produce certain items of physical evidence in its possession and control, collected by the state in the investigation of this case, and possibly examined and tested by the State through its experts for inspection by defense counsel and testing by experts designated by the Defendant:

(1) Any clothing taken as evidence from the defendant or the defendant's possession.

(1a) Any and all evidence taken from any physical objects connected to any alleged offenses committed by Defendant or taken from the scene of any alleged offenses.

(2) Any and all video/audio tape recordings in the possession of the State showing any conduct of the defendant, interviews, or statements or any matters connected with this case.

(3) All notes, writing, memoranda and letters taken by the State as part of the evidence in this case.

(4) Any and all photographs, diagrams, sketches, etc., of physical evidence, or of the scene of alleged crime.

(5) All other physical evidence including blood, fibers, DNA, fingerprints taken by the State from the scene of the alleged crime or from any person or place which relates in any way to this case.

“A criminal defendant on trial for his liberty is entitled on motion timely made to have an expert of his/her choosing, bound by appropriate safeguards imposed by the court, examine critical evidence whose nature is subject to varying expert opinion.” Pervis v. State, 181 Ga. App. 613, 615 (1987); See Sable v. State, 248 Ga. 10 (1981); Patterson v. State, 238 Ga. 204 (1977); Williams v. State, 251 Ga. 749 (2) (1983).

Under the provisions of the Georgia Constitution 1983, Article 1, Section 1, paragraph 14, and Article 1, Section 1, paragraph 12, Defendant is entitled to the benefit of counsel.

Under the provisions of the Georgia Constitution 1983, Article 1, Section 1, paragraph 12, Defendant is entitled to the benefit of counsel.

Under the provisions of the Georgia Constitution 1983, Article 1, Section 1, paragraph 1, Defendant is not to be denied life or liberty without “due Process of law”.

Under the provisions of the Sixth Amendment of the United States Constitution made applicable to the states through the due process clause of the Fourteenth Amendment of the United States Constitution, Defendants are entitled to the assistance of counsel.

The denial of the right of the Defendant to have his own expert conduct an independent examination of critical evidence in the possession of the state will deprive Defendant of his rights under the due process clause of the state and federal constitutions referred to above in that his counsel will not be able to adequately prepare for the trial of this case.

WHEREFORE, Defendant prays:

(A) That the District Attorney be ordered to produce all the items of physical evidence described herein and to allow the Defendant’s counsel, and the Defendant’s experts, the right to inspect and conduct a scientific test, and photograph said item at a specific time and place to be fixed by the Court;

(B) That the time set for inspection, testing and photographing of the items requested by Defendant’s counsel, and Defendant’s experts, be at a reasonable time in advance of trial;

(C) That the Court enter an Order requiring the District Attorney’s Office

to make continuing disclosure of all additional items of physical evidence  
obtained by the State concerning the charges against the Defendant;

This \_\_\_\_ day of November, 2005.

Respectfully submitted,

FINESTONE & MORRIS  
Attorneys for Defendant

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**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true and correct copy of the within and foregoing "MOTION TO INSPECT, EXAMINE AND TEST PHYSICAL EVIDENCE" upon counsel, by depositing said copy in the United States Mail with adequate postage thereon addressed as follows:

Ms. Sheila Ross  
Assistant District Attorney  
3<sup>rd</sup> Floor  
Fulton County Courthouse  
136 Pryor Street, S.W.  
Atlanta, Georgia 30303

This 30<sup>th</sup> day of November, 2005.

\_\_\_\_\_  
BRUCE H. MORRIS