

# COLLINS & ROOP

## ATTORNEYS

*Patrick J. Collins | Albert J. Roop, V*

September 30, 2014

The Honorable William C. Carpenter, Jr.  
Superior Court of Delaware  
New Castle County Courthouse  
500 North King Street, Suite 10400  
Wilmington, DE 19801

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PROTHONOTARY  
2014 SEP 30 PM 4:33

**RE: State v. Dilip Nyala, ID No. 1310000634**  
**State v. Michael Irwin, ID No. 1309012464**

Dear Judge Carpenter,

Please accept this letter as a brief reply to the State's Response to our Post Hearing Brief. For the most part we rely on our previously filed Post Hearing Brief. However, we reply to certain points made by the State as follows:

- Pages 5-6 of the Response discuss the chain of custody aspects of the Irwin evidence. The rather optimistic description of security by way of key fobs, six digit codes and the like is undone by the record in this case as well as the DOJ's own reporting. The key fobs were tied to a computer running Windows 95 that logged all entries as January 1, 1970. Robyn Quinn testified that the codes were written on a folder and the folder's location was known to everyone at CSU. Any one of the six employees listed with access to the vault, as far as we know, are potential suspects in the case, which remains unsolved. As to Irwin and other similarly situated cases, the State cannot meet its burden of establishing the chain.
- At Page 9 of the Response, the State notes, "the audit team concluded that any discrepancy between the drug evidence as collected from Irwin and as it was inspected in 2014 did not rise to the level of a criminal discrepancy..." This tautological statement proves itself by proving nothing. There was and is no definition for the term "criminal discrepancy." As the hearing revealed,

the so-called audit was conducted in the absence of any standards or basic operating procedures. This Court often questioned auditing officers and got wildly varying answers about the purpose of the audit, the discretion each auditor had, and the roles of supervisors and lead investigators. The audit, whether it was done to save prosecutions or find OCME culprits, could have been conducted by an independent team with published standards, calibrated scales, and all manner of procedural safeguards. The State chose to handle it the way it did, and those decisions did not produce meaningful results.

- At Page 11, the State asserts that a more detailed level of scrutiny on Irwin's evidence would have revealed an entry point like what was found in the Tyrone Walker case. That hopeful premise is dashed by the fact that even in the so-called discrepancy cases, there were several in which investigators were unable to ascertain how the culprits made entry.
- At Page 13, the State notes that the Irwin evidence was “not touched by any person who has been arrested.” With the investigation ongoing, that statement has a hollow ring to it. Either the State will make more arrests or they won't, but perpetrators are clearly still at large. The State cannot know, given the mess at the lab, who touched evidence. Surely the FLIMS documents are unreliable testaments to what actually occurred in any case. But with no root cause found, there is simply no way to know who had their hands on what evidence. This is not the Annie Dookhan case, the San Francisco case, or any other case in which the root cause has already been determined. Delaware has a root cause unknown condition. That fact renders the State unable to meet its burden of establishing reliability.

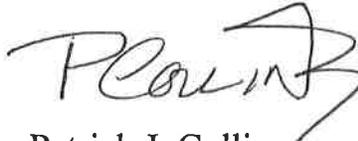
The State's overarching theme espouses a weight vs. admissibility argument, urging this Court to leave the decision in the hand of juries. That argument fails for several reasons. It is wholly appropriate to seek the exclusion of inadmissible evidence in a pretrial pleading. Moreover, the defense has met its burden of showing that evidence that was handled by CSU is unreliable and that the chain of custody has been compromised.

Finally, the State fails to address how its decision to handle these prosecutions on a case by case basis puts a heavy burden on judicial resources and jeopardizes speedy trial rights. The State appears content to let the cases play out in lengthy jury trials as the OCME saga is played out in courtroom after courtroom. We respectfully submit that this Court should not allow that to happen. An ample record has been made for this Court to rely upon in excluding the evidence as

unreliable and inadmissible. We ask this Court to do just that and grant the motions *in limine*.

We are available should Your Honor have any questions.

Respectfully,

A handwritten signature in black ink, appearing to read "P. Collins", with a stylized flourish at the end.

Patrick J. Collins

cc: Criminal Prothonotary  
Morgan Zurn, Esquire  
Joseph Grubb, Esquire  
Albert J. Roop, V  
Dilip Nyala  
Michael Irwin