*I*, *r i* e,

,. '

1. PAULINO DUR.A.N PUBLIC DEFENDER
2. 700 H Street, Suite 0270
3. Sacramento, CA 95814 (916) 874-6411

4

5 Paul Gomez

Assistant Public Defender

6

7 Attorney for BRANDON STRIBLING 8

', I.'\_) ! 1 ... : *':* ( II : u l

*JUN* 2 5 *2012*

9 SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO 10

11 PEOPLE OF THE STATE OF CALIFORNIA

12

1. Plaintiff,
2. vs.

15

BRANDON STRIBLING

16

1. Defendant.

Case No.: 11F06401

DepartmentNo. 9

NOTICE OF MOTION AND MOTION FOR DISCOVERY OF EXCULPATORY EVIDENCE

Hearing Date:

1. Trial Date: 19

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During motions in limine July 2, 2012

TO: JAN SCULLY, DISTRICT ATTORNEY FOR SACRAMENTO COUNTY

21

1. PLEASE TAKE NOTICE that during motions in limine in the trial court, or as
2. soon thereafter as the matter may be heard, in a Department *q* of the above entitled court, 24
3. defendant, Brandon Stribling, by and through his attorney, Paul Gomez, Assistant Public
4. Defender, will move the court to grant a discovery order directing the prosecution to 27

provide the requested discovery.

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* 1. (1) The defense requests that the Sacramento County District Attorney's Crime
	2. Lab run the DNA profile of "Unknown male #1." through the CODIS, the Combined

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DNA Indexing System.

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5 (2) In the alternative, the defense requests that the Sacramento County District

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Attorney's Crime run reproduce the defense's DNA tests and then run the DNA profiled

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1. of "Unknown male #1" through the CODIS system.
2. This motion is made pursuant to California Penal Code sections 1054(e), 1054.1, 10
3. 1054.5(b), relevant case law, and the due process provisions of the Constitutions of the
4. United States and the State of California. All information sought constitutes material and
5. relevant evidence to this case. 14
6. The motion for discovery will be based on this notice of motion, the memorandum
7. of points and authorities, the attached declarations, all papers and records on file in this

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action, and such oral and documentary evidence as may be presented at the hearing on

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19 this motion.

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DATED: June 2.>,2012

**@ly**

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22 **ubmitted,**

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24 **PauJGomeH**

Assistant Public Defender

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## 28

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- 2 -

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9

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

10

11

PEOPLE OF THE STATE OF

12 CALIFORNIA

13

Plaintiff,

14

1. vs.
2. BRANDON STRIBLING,
3. Defendant.

18

19

Case No.: 11F06401

Department No. 9

POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR DISCOVERY OF EXCULPATORY EVIDENCE

INTRODUCTION

1. The prosecution is required to disclose to the defendant any statements of
2. witnesses that tend to exculpate the defendant. This discovery duty extends to statements 22

by witnesses that contradict earlier statements, or provide other infonnation that tends to

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1. exculpate the defendant. The federal and state constitutional requirements underlying
2. modem discovery demand disclosure of this evidence. Furthermore, California Penal
3. Code sections 1054 et seq. explicitly require the prosecutor to disclose exculpatory 27

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* 1. statements made by witnesses. Therefore, the court should compel the requested
	2. disclosure. 3

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STATEMENT OF FACTS

5 In this case, the defendant is implicated · in the charged crimes because of a

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1. suggestive field show-up and the fact that he was located very close to items stolen
2. during the crime and a sweatshirt worn by the perpetrator, the actual robber. However,
3. DNA testing by Forensic Analytical Sciences has established that there is no DNA from 10

Mr. Stripling on the robber's sweatshirt. Instead, there is DNA from other persons,

11

1. including a known full DNA profile of a person labeled "Unknown male #1." Since the
2. DNA of"Unknown male #1" is in locations indicative of him having worn the sweatshirt, 14

it is crucial that the defense discover who this person is.

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16 While it is essentially impossible for the defense to look for this perpetrator, there 17

is information possessed by the state and its agents which would lead to discovering the

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1. identity of this person. The Sacramento County District Attorney's Crime Lab has the
2. ability to seek a search of CODIS, the Combined DNA Indexing System. The CODIS
3. database contains millions of profiles from those convicted or even simply arrested for

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1. crimes. The defense has twice asked that this search be conducted. (See Exhibits A)
2. The District Attorney and their agent, the Sacramento County District Attorney's Crime
3. Lab, have refused to conduct this search.

# 26

1. The prosecution and its agents have m their possession valuable exculpatory
2. information. The defense merely seeks to have the prosecution access the offender

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1. database to locate that exculpatory evidence. Private genetic information need not be
2. disclosed, merely the name of an offender (or offenders) who match "Unknown male # l"

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is requested.

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5 LAW AND ARGillv1ENT

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Due process requires that the prosecutor not suppress evidence favorable to the

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1. accused and, upon request, must disclose any SU(?h information to the defense. *United*
2. *States v. Agurs* (1976), 427 U.S.97; *Brady v Maryland* (1963) 373 U.S.83. See also, 10

*Mooney v. Holohan,* (1935)294 U.S. 103; *Pyle v. Kansas* (1942) 317 U.S. 213. "[T]he

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1. individual prosecutor has a duty to learn of any favorable evidence known to the others
2. acting on the government's behalf... , including the police." *(Kyles v. Whitely* (1995) 115 14

S.Ct. 1555, 1567.) To the extent the prosecutor is uncertain about the materiality of a

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1. piece of evidence, for purposes of determining whether it must be disclosed to defendant
2. under *Brady,* a prudent prosecutor will resolve doubtful questions in favor of disclosure.
3. Citing *Kyles,* the 9th Circuit held: "The prosecutor must employ whatever means are 19
4. necessary to discharge her obligation." *(United States v. Alvarez,* (9th Cir. 1996) 86 F.3d
5. 901, at 904.) In the context of this case, the "means necessary" to discharge the 22

prosecutor's duty to find exculpatory evidence is for the District Attorney's Crime Lab to

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1. support, rather than oppose, a limited order regarding searching the offender database for
2. potentially exculpatory information. In *People v. Nation* (1980) 26 Cal.3d 169, 175, the
3. California Supreme Court noted that if the prosecution suppresses evidence favorable to 27

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* 1. the accused after a specific request for that evidence, the defendant's due process rights
	2. are violated.

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1. I.
2. THE DUE PROCESS CLAUSE OF THE UNITED STATES
3. AND CALIFORNIA CONSTITUTIONS REQUIRE THAT THE DISTRICT ATTORNEY DIVULGE ANY
4. EXCULPATORY STATEMENTS MADE BY A VICTIM
5. OR WITNESS.
6. Ensuring the due process rights of the defendant is a fundamental policy of

lO modem discovery. The court, prosecutor, and defense attorney share a duty to "ensure

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that a miscarriage of justice does not occur." *(United States v. Bagley* (1985) 473 U.S.

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1. 667 [87 L.Ed.2d 481, 489.) The fountainhead case that established the constitutional
2. requirement that exculpatory evidence be disclosed is *Brady v. State of Maryland* (1963) 15

373 U.S. 83 [10 L.Ed.2d 215]. In *Brady,* the prosecution was in possession of a

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1. confession from a companion of defendant Brady. Even though the defense requested the
2. production of any extrajudicial statements made by the companion, the prosecution
3. withheld the confession until Brady had been tried, convicted, and sentenced. The United 20
4. States Supreme Court found that the prosecutor violated Brady's due process rights by
5. failing to disclose the existence of the statement:

23

We now hold that the suppression by the prosecution of evidence favorable

1. to an accused upon request violates due process where the evidence is
2. material either to guilt or punishment, irrespective of the good or bad faith
3. of the prosecution. 27 *(Id.* at p. 218.)

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* 1. In *United States v. Bagley, supra* the United States Supreme Court expanded
	2. *Brady* discovery, holding that due process is denied when the defense is denied access to

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statements that can be used to impeach witnesses. *(United States v. Bagley, supra,* 473

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1. U.S. 667 [87 L.Ed.2d 481, 490].) To prevent injustice, modem discovery law demands
2. pre-trial cooperation in the adversarial system:

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1. Society wins not only when the guilty are convicted but when criminal trials are fair; our system of justice suffers when any accused is treated
2. unfairly. An inscription on the walls of the Department of Justice states the
3. proposition candidly for the federal domain: "The United States wins its point whenever justice is done its citizens in the courts."

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*(Brady v. Maryland, supra,* 373 U.S. at p. 87.) As recently as 1995, the Supreme Court

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1. again affirmed the defendant's due process right to discovery of exculpatory evidence. In
2. *Kyles v. Whitley* (1995) 514 U.S. 419, [131 L.Ed.2d. 4901,. the court reversed the 15

defendant's murder conviction because the prosecution failed to provide the defense with

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1. contradictory statements made by an informant whose assistance was vital to
2. investigating and solving the case, and further failed to provide statements of 19

eyewitnesses who testified at the trial. The sta,tements of the witnesses tended to

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1. contradict their in court identification of the defendant as the suspect in the charged
2. offense because they contained descriptions of the suspect that differed from the 23

appearance ofKyles.

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1. The right to discovery is also protected by the due process clause of the California
2. Constitution. In 1990, the California electorate passed Proposition 115. This proposition 27

28 stated the objective of modem discovery, which was codified in Penal Code section 1054:

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1. One of the stated policies for discovery is "[t]o promote the ascertainment of truth in
2. trials by requiring timely pretrial discovery." (Pen. Code, § 1054(a).) The California 3

Supreme Court has affirmed that the ultimate goal of discovery is the ascertainment of

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5 truth:

### 6

The search for truth is not served but hindered by the concealment of

1. relevant and material evidence. Although our system of administering
2. criminal justice is adversary in nature, a trial is not a game. **Its ultimate goal is the ascertainment of the truth,** and where furtherance of the
3. adversary system comes in conflict with the ultimate goal, the adversary
4. system must give way to reasonable restraints designed to further that goal. Implementation of this policy requires recognition of a duty on the part of
5. the prosecution to disclose evidence to the defense in appropriate cases.
6. *(In re Ferguson* (1971) 5 Cal.3d 525 at 531-532, emphasis added.) 13

### II.

1. PENAL CODE SECTION 1054.1 COivlPELS
2. DISCLOSURE OF EXCULPATORY STATEi\.1:ENTS POSSESSED BYLAW ENFORCEMENT.

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Pursuant to Penal Code section 1054.1(e),' the prosecution must disclose to the

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1. defendant all "exculpatory evidence," that is in the "possession" of the prosecution
2. Evidence is in the possession of the government regardless of which branch of law 21

enforcement is actually aware of the information.

## 22

23 In *Kyles v. Whitley, supra,* 514 U.S. 419, [131 L.Ed.2d. 490].,\_ the court clearly 24

placed the burden to produce exculpatory evidence on the prosecution as a whole, not on

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1. the individual prosecutor assigned to try a particular case. The prosecutor has an
2. affirmative duty to learn of exculpatory evidence in possession of other segments of the
3. law enforcement team, and the police have a duty to advise the prosecutor of information

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1. in their possession. As the court said, "the individual prosecutor has a duty to learn of
2. any favorable evidence known to the others acting on the government's behalf in the

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case, including the police." *(Id.* at p. 507.)

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5 The prosecution "possesses" a witness's exculpatory statement even if the

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statement is not reduced to writing. In 1993, *In re Littlefield, supra* answered the

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1. question as to whether the concept of "possession" was limited to tangible evidence or
2. included information that a party was aware of. the court concluded that "possession"

### 10

included"... information that is 'reasonably accessible' to [the prosecution], such as the

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1. address of a witness that readily could be obtained through a request of the witness."
2. *(Ibid.)* Under the broad definition of "possession" adopted by *Littlefield,* the prosecutor
3. possessed any statements of the witnesses in the instant case.

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1. **A. Evidence of Third Party Culpability Is Admissible if it raises a**
2. **Reasonable Doubt as to the Defendant's Guilt.**

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The right of the accused to introduce evidence implicating a third party has been

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1. the subject of several cases decided by the California Supreme Court. In the leading case
2. of *People v. Hall* (1986) 41 Cal.3rd 826, the court set out the basic rules that govern the
3. introduction of third party culpability. The court rejected the idea that evidence of third 23
4. party culpability must meet a higher standard of relevance than other evidence in order to
5. be admissible. Evidence that a third party is responsible for the charged offense is
6. admissible if it is "capable of raising a reasonable doubt of defendant's guilt." *(Id.* at p. 27

28 833.) The evidence of another's responsibility can consist of "direct or circumstantial

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1. evidence linking the third person to the actual perpetration of the crime." *(Ibid.,* see also
2. *People v. Adams* (2004) 115 Cal.App.4th 243.) The United States Supreme Court has 3

also affirmed the right to present a defense in a criminal case includes the right to present

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1. the hearsay confession of an unavailable witness. See *Lilly v. Virginia* (1999) 527 U.S.
2. 116; *Chambers v. Mississippi (1973) 410 US. 284.*

7

1. CONCLUSION
2. California discovery law demands that the prosecutor disclose to the defense the 10

exculpatory evidence. The due process clause of the United States and California

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1. Constitutions require that the defendant be furnished with any exculpatory evidence in
2. the possession of the prosecution. The purpose of the judicial process is discovering the 14

truth, not winning cases. Therefore, it is this court's duty to compel disclosure.

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| 16 | DATED: | June | , 2012 |  |
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| 18 |  |  |  | Respectfully submitted, |
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| 20. |  |  |  | Paul GomezAssistant Public Defender |
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SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

Case No.: 11F06401

PEOPLE OF THE STATE OF CALIFORNIA

Plaintiff,

vs.

BRANDON STRIBLING,

Defendant.

Department No. 9

DECLARATION IN SUPPORT OF MOTION FOR DEFENDANT'S FORMAL DISCOVERY ORDER

I, Paul Gomez, being duly sworn, depose and say:

1. 1. I am the attorney for the defendant in the above entitled action and as such, I
2. have reviewed and am familiar with the facts of this case. 22
3. 2. I am informed and believe that an investigation of the charges alleged against
4. the defendant herein has been made by officers or agents of the Sacramento County
5. District Attorney and by other law enforcement agencies. 26

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* 1. 3. I am informed and believe that some of the officers, agents, or agencies have in
	2. their possession or under their control the materials and information described in the 3

defendant's motion for formal discovery or have easy access to the same.

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5 4. On June 1st, my co-counsel Mr. David Lynch sent an email to deputy district 6

attorney Matthew Chisholm and Ms. Nikki Sewell of the District Attorney's crime lab

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1. requesting that they run the profile of "unknown Male #1" through the CODIS sy;;tem.
2. (See exhibit A). 10
3. 5. Later that day, Ms. Sewell wrote "In order to upload a profile developed by an
4. outside laboratory, all of the Outsourcing requirements listed in DAB Quality Assurance
5. Standards Standard 17 attached must be met. This laboratory [used by the defense to test 14
6. the sweatshirt" does not outsource and uploading this profile is not something I can do."
7. (See exhibit A). 17

6. On June 11, Mr. Lynch wrote "I believe that our testing lab meets all the

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1. criteria of Standard 17 and, therefore, we renew our request to seek out the identity of a
2. potential robber in this case. Standard 17 reasonably requires that the vendor lab, 21

Forensic Analytical, must comply with the FBI Quality Assurance Standards. I can

## 22

1. assure you that Forensic Analytical does so comply, and is so accredited. The testing
2. analyst can provide you a copy of their accreditation certification, if you so request. In 25

fact, Forensic Analytical has a contract with the Contra Costa County Crime Lab to

## 26

27 provide DNA testing for CODIS searches." (See exhibit A).

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1. 7. On or about June 21, I had a telephone conversation with Mr. Chisholm where
2. he indicated his belief that the crime lab was legally barred from running the requested

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profile through the CODIS system.

4

5 · 8. The materials and information sought are necessary for the preparation of the

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defense of this case and are believed to contain exculpatory evidence.

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1. 9. The materials and information sought are within the actual or constructive
2. control of the district attorney, his officers, agents, or law enforcement agencies, are not 10
3. known to the defendant or his counsel, and cannot be examined prior to trial other than
4. by order of this court. 13

10. All requested materials and information must be provided to the defendant in

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1. advance of trial so that counsel may have sufficient time to prepare the material for trial.
2. Therefore, I respectfully request that the relief sought by defendant's motion for
3. a discovery order be granted in all respects. 18
4. I declare under penalty of perjury that the foregoing is true and correct.
5. Executed at Sacramento, California. 21

22 DATED: June;-\_.?, 2012

 */Jzm* ,

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PaulGomei:

25 Assistant PublicDefeil,T

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EXHIBIT A

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**Gomez. Paul**

**From: Sent: To:**

**Cc: Subject:**

Lynch. David

Tuesday, June 19, 2012 4:44 PM Sewell. Nikki (DA.)

Gomez. Paul

FW: Lab number 11-011045 (Victim Marie Martinez)

Ms. Sewell:

I have not heard back from you regarding our offer (below) to provide you with all the necessary documents and assurances that the testing lab, Forensic Analytical, meets all the requirements of Standard 17. As stated, the Contra Costa County Crime Lab currently performs CODIS searches on items tested by Forensic Analytical.

Please advise as to any specific concerns or objections you may have. Thank you,

David

**From:** Lynch. David

**Sent:** Monday, June 11, 2012 12:08 PM

**To:** Sewell. Nikki (DA)

**Cc:** Gomez. Paul; 'Chisholm. Matthew (DA)'

**Subject:** Lab number 11-011045 (Victim Marie Martinez) Ms. Sewell:

I understand that you have indicated an inability (under 11St andard 17") to run 11unknow n male# 1" through the CODIS database, to see if we can find the person associated with the black sweatshirt Item MA-1. I believe that our testing lab meets all the criteria of Standard 17 and, therefore, we renew our request to seek out the identity of a potential robber in this case.

Standard 17 reasonably requires that the vendor lab, Forensic Analytical, must comply with the FBI Quality Assurance Standards. I can assure you that Forensic Analytical does so comply, and is so accredited. The testing analyst can provide you a copy of their accreditation certification, if you so request. In fact, Forensic Analytical has a contract with the Contra Costa County Crime Lab *tq* provide DNA testing for CODIS searches.

If there are any questions about the findings regarding the profile of "unknown male #1," please feel free to subject the reports and data to the technical review process.

The defense will gladly provide any documentation or other information necessary to aid in this search for the identity of this person. Please advise us what we can do to assist.

Sincerely, David Lynch

**From:** Sewell. Nikki (DA)

**Sent:** Friday, June 01, 2012 2:43 PM

**To:** Chisholm. Matthew (DA)

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*(*-*{*--*.*-

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**Cc:** Rodzen. *Jeff* (DA); Viray. Joy (DA)

**Subject:** PN: Lab number 11-011045 (Victim Marie Martinez)

In order to upload a profile developed by an outside laboratory, all of the Outsourcing requirements listed in DAB Quality Assurance Standards (Standard 17 attached) must be met. This laboratory does not outsource and uploading this profile is not something I can do. '

**From:** Lynch. David [mailto:LynchD@saccounty.net]

**Sent:** Friday, June 01, 2012 12:38 PM

**To:** Sewell. Nikki (DA); Chisholm. Matthew (DA)

**Cc:** Gomez. Paul (Public Defender)

**Subject:** Lab number 11-011045 (Victim Marie Martinez) Ms. Sewell:

RE: Lab number 11-011045 (Victim Marie Martinez)

Please see the attached report regarding Forensic Analytical Sciences' DNA testing of the hooded sweatshirt (Item# MA-1). Since the sweatshirt is known to have been worn by the robber, the profile of "Unknown Male #1" is of extreme importance in the case.

As you know, the defense does not have access to the millions of offender profiles in the CODI$

database. Accordingly, the defense is asking that you perform a CODIS search using the profile of "Unknown Male #1." Any assistance or cooperation on our part will be forthcoming upon request.

We thank you in advance for your collaboration in seeking out the identity of the robber in this case.

**Sincerely, David Lynch**

David Lynch Attorney at Law

700 H Street Suite 0270

Sacramento, CA 95814

ph: (916) 874 6958

fax: (916) 874 5970

*This dccmmic* mc.1.rngi: *conrnim i11 fcwrnatic111 which may be wnf)Jcnria/* cir */m>tcctcd by rhc ar.wrncy--clic11t privilege anc//(lr r.hcwork--product Jocr.rinc and is imrnclcd sol.dy fi,r r.hc* use *cf the addl·cssec li.md obovc. /f.V(lu* arc *neither* the *imrndcd* recipicnt *nor the cmp/c1yec ,Jr agcnr. rcspo11sihlc fc1r delivering this d.:xuvnic message t:o the* intrndr:.d *rcci/,ir.nt, you* an:*l1rrcby 110U[icd r;har. C111y di.1clo.1w·c, wpying, di. trib·uti1.111* ,Jr *th,:* usi: *of th<: co11.tmt cf r.his electronic message* is *strictly fJrohibitcd. Jfyo11 haw rn:dvccl this dc:crnmic message in* crt'tJI', *immediately* not(fv *rhc scncicl- by replying ro r.liis message: and dclcr.ing rlic*

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1 ORDER GRANTING DISCOVERY

# 2

1. The defendant's motion for a discovery order having been read and considered and
2. GOOD CAUSE APPEARING,

# 5

IT IS HEREBY ORDERED that the· defendant's motion for formal discovery be

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1. GRANTED.
2. IT IS FURTHER ORDERED that this order is to be continuing through the

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1. completion of the trial so that any items granted that actually or constructively are
2. obtained by the Sacramento County District Attorney or by his investigators, agents, or
3. agencies, after the initial compliance with this order, shall be made available to defense 13
4. counsel forthwith.
5. DATED:

# 16

17 JUDGE OF THE SUPERIOR COURT

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