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|  | PAULINO DURÁN PUBLIC DEFENDER  700 H Street, Suite 0270  Sacramento, CA 95814  (916) 874-6411  David Lynch  Assistant Public Defender  DNA Attorney for Brandon Stribling  SUPERIOR COURT OF CALIFOR | IA, COUNTY OF SACRAMENTO |
|  | PEOPLE OF THE STATE OF CALIFORNIA  Plaintiff,  vs.  BRANDON STRIBLING,  Defendant. | Case No.: 11F06401  Department No. TBA  REPLY TO PEOPLE’S OPPOSITION TO MOTION TO COMPEL DNA DATABASE SEARCH AND TESTING |

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18 INTRODUCTION

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1. In this case, there is a real danger of a miscarriage of justice. The defense merely
2. asks that the Court ensure that the Sacramento County District Attorney’s Crime Lab fulfill 22

its obligation to seek justice.

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1 FACTUAL BASIS

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

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1. suggestive field show-up[1](#_bookmark0) and the fact that he was located very close to items associated
2. with the crime[2](#_bookmark1) – stolen property and a sweatshirt worn by the perpetrator. 6
3. The defense requested that this sweatshirt, Item MA-1, be tested for DNA by
4. Forensic Analytical Sciences. Their testing revealed that DNA was present on: 9
5.  The outside front bottom of the left pocket of the sweatshirt
6.  The inside left edge of the hood near the collar area (where the wearer’s 12

mouth would contact the sweatshirt)

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14  The inside left cuff area 15

1. All three of these areas had DNA that was consistent with an unknown male. (See Exhibit
2. A – report by Forensic Analytical Sciences.) 18
3. The major contributor profile from the outside front pocket was a full profile and
4. would match only approximately 1 in several quintillion persons. It was attributed to 21

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1 Even very shortly after the crime, the witness was not able to identify Mr. Stribling as a perpetrator. Thereafter,

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the police ordered Mr. Stribling to put on a sweatshirt that was known to have been worn by the robber. Only at this

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point did the witness identify Mr. Stribling. An eyewitness expert will opine that this suggestive procedure renders

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the ultimate identification extremely unreliable.

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2 Contrary to suggestions in the People’s Opposition, Mr. Stribling was not hiding but was merely walking in a

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public parking lot near to where the sweatshirt and stolen property were found.

* 1. “Unknown Male #1.” The major contributor profile from the inside edge of the hood near
  2. the collar was an almost complete profile that was consistent with being from “Unknown 3

1. Male #1.” That profile would match only approximately 1 in several hundred thousand
2. persons. The contributor from the inside cuff was likewise consistent with being from
3. “Unknown Male #1.” In other words, the person with the profile of “Unknown Male #1” 7
4. would match the results from all three of these areas on the sweatshirt.
5. Mr. Stribling is excluded as having contributed any of the DNA to any of the 10

locations tested on this sweatshirt. Although possible, it is unlikely that a person could

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1. have worn this sweatshirt while committing a home invasion robbery and not left
2. appreciable amounts of their DNA on the inside cuff and collar of this sweatshirt. In fact, 14

the defense has often argued in other cases that the particular defendant’s DNA on an item

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1. worn or handled by the perpetrator could be unrelated to the crime. The defense argument
2. has repeatedly been that the true perpetrator left no DNA and the particular defendant was
3. unfortunate enough to have worn or handled the item on an unrelated occasion. Laboratory 19
4. analysts have consistently testified that, although this is technically possible, it is most
5. unlikely. Accordingly, the results are evidence that Mr. Stribling was not one of the robbers
6. and that “Unknown Male #1” was. In addition, finding the same DNA at the three separate 23
7. places rules out the possibility this was the responding officer’s DNA.
8. Clearly, had there been no leads in the case, the Sacramento District Attorney’s 26

Crime Lab would have tested the sweatshirt, obtained these three consistent profiles from

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28 it, and entered the profile into CODIS. It is disingenuous to claim that the sweatshirt has

1. “no evidentiary value.” (Opp. Brief 6:8.) A CODIS search should be conducted for
2. “Unknown Male #1” and, also for the major contributor that appears in the Sacramento 3
3. District Attorney’s Crime Lab results from the second sweatshirt, Item JL-1.
4. The People suggest that the third party culpability argument exists no matter who 6

matches the profile. (Opp. Brief 3:5-9.) However, it does matter who “Unknown Male

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1. #1” is. Knowing who this man is will allow the defense to interview that person as to their
2. whereabouts and involvement, allow for a photographic line-up to be shown to the victim, 10

allow comparison of other crimes he has perpetrated under Evidence Code section 1101(b),

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1. and allow investigation to further link this person to the robbery. Leaving the person as
2. “Unknown” allows for jurors to dismiss the DNA as unrelated. In fact, this is exactly what 14

the People have invited this court to do. If the donor of this profile remains “Unknown,”

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1. valuable exculpatory information will be lost to the defense. The defense would put all its
2. resources into determining the identity of this person. However, it is impossible for the
3. defense to do so; for the prosecution, it is a simple matter of uploading the profile to search 19
4. CODIS.
5. There is no dispute about the findings by Forensic Analytical Sciences. They follow 22
6. all the required national and international quality assurance standards and have been
7. accredited by Forensic Quality Services. (See Exhibit B – Certification of Accreditation.)
8. Nor is there any dispute that the Sacramento County District Attorney’s Crime Lab could, 26

on its own volition, repeat the testing and upload the profile to search CODIS. The only

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* 1. dispute is whether the lab can lawfully perform the search and thus whether his Court can
  2. order it. The relevant law and arguments will be set forth below. 3

1. LAW AND ARGUMENT
2. Background 6

There are three general levels of offender databases. There is a National DNA

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1. Indexing System (“NDIS”) under the auspices of the F.B.I., a State DNA Indexing System
2. (“SDIS”) run by the California Department of Justice, and a Local DNA Indexing System 10

(“LDIS”) managed by this county’s crime laboratory. The Combined DNA Indexing

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1. System (“CODIS”) is the specific name given to the system created and managed by the
2. F.B.I. It is comprised of offender profiles collected by federal agencies and entered into 14

NDIS, but also incorporates the offender profiles collected by the various state agencies

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1. that are contained in their SDIS databases. In other words, CODIS has data from NDIS
2. plus every state’s SDIS. 18
3. Different laws and regulations apply to the various levels. The local databases have
4. the most autonomy, whereas the SDIS and NDIS systems are more regulated by statute.
5. (Penal Code section 297(e) (“Nothing … precludes local law enforcement DNA 22
6. laboratories from maintaining local forensic databases …”)) For example, the SDIS is
7. governed by state laws in Penal Code section 295 et seq., while the NDIS is governed by
8. federal laws in 42 U.S.C. sections 13701-14223. 26

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* 1. The purposes of the databases will be furthered by a search for “Unknown
  2. Male #1”
  3. The purposes of the DNA databases will be enhanced by a database search.
  4. California’s SDIS was created for “expeditious and accurate detection and prosecution of 5

individuals responsible for … violent crimes.” (Penal Code section 295(c).) This is what

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1. the defense is seeking. Should the profile be found to match a person with an alibi or who
2. does not match the description of the perpetrators, then the jurors will be able to disregard 9

the DNA, accurately knowing it is unrelated, and focus on Mr. Stribling’s guilt. Should it

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1. match a person who is linked to the crime in other ways, then the jurors will be able to
2. more accurately determine that it is this man who is likely the perpetrator. Both outcomes
3. resulting from the search enhance accuracy of the prosecution for this crime. 14
4. In addition, the search will be consistent with another goal of the databases,
5. “exonerating the innocent.” (Penal Code section 295(b)(1); see also subsection (c) 17
6. (purpose includes “exclusion of suspects”).)
7. “The government also has an interest in ensuring that innocent persons are
8. not needlessly investigated – to say nothing of convicted – of crimes they did not commit. DNA testing unquestionably furthers these interests. The ability
9. to match DNA profiles derioved from crime scene evidence to DNA profiles
10. in an existing data bank can enable law enforcement personnel to solve crimes expeditiously and prevent needless interference with the privacy
11. interests of innocent persons.”
12. (*People v. Travis* (2006) 139 Cal.App.4th 1271, 1285 (upholding database statutes against 25
13. 4th Amendment challenge).) Here, whatever the result, the search will accomplish this
14. goal – either it will identify and exclude “Unknown Male #1” or it will help exonerate Mr.
15. Stribling.
    1. The prosecution argues that the result of the search will be of “unknown probative
    2. value.” (Opp. Brief 9:19-23.) To the contrary, without the search, an accurate 3
16. determination of the probative value of the DNA finding may be difficult. The
17. prosecution’s proposal leaves room for both sides to argue a vastly different significance
18. of “Unknown Male #1,” whereas performing the search will remove that ambiguity and 7
19. assist the trier of fact in determining its impact. The trial should be a search for the truth,
20. not gamesmanship to create confusion. 10

There is no requirement that “Unknown Male #1” be proved to be the

1. perpetrator
2. The California Department of Justice runs California’s SDIS, under the direction of 13
3. law that it shall “analyze … store … and compare … DNA forensic identification profiles
4. … to … known and evidentiary specimens and samples from crime scenes or criminal
5. investigations.” (Penal Code section 295.1(c)(2).) The law imposes no requirement or 17
6. limitation regarding which crime scene evidence can be compared to the database and
7. which cannot. Specifically, there is no requirement that the evidentiary specimens from
8. the crime scene be known or guaranteed to be from the perpetrator. 21
9. The prosecution argues that a search of the NDIS cannot occur because there is a
10. requirement that the lab can “only offer those alleles that are attributed to the putative 24

perpetrator(s).” (Opp. Brief 8:25 – 9:6.) As explained above, that is exactly what the

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26 defense is seeking, as “Unknown Male #1” is as putative a perpetrator as any other 27

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1. unknown profile that is uploaded for searching each and every day.[3](#_bookmark2) Moreover, the cited
2. language more fully states that the lab can:

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1. only offer those alleles that are attributed to the putative perpetrator(s). Alleles derived from forensic profiles that are unambiguously attributed to a
2. victim or individual other than the perpetrator(s), such as, but not limited to
3. a husband or boyfriend, shall not be offered to NDIS.
4. ([http://www.nlada.org/Defender/forensics/for\_lib/Documents/1132070952.06/RF\_GN\_1](http://www.nlada.org/Defender/forensics/for_lib/Documents/1132070952.06/RF_GN_13_NDIS_Data_Standards%252005_31_05.pdf)
5. [3\_NDIS\_Data\_Standards%252005\_31\_05.pdf](http://www.nlada.org/Defender/forensics/for_lib/Documents/1132070952.06/RF_GN_13_NDIS_Data_Standards%252005_31_05.pdf)) This language is clearly meant to preclude 9
6. searches of known (“unambiguous”) non-perpetrators, such as husbands or boyfriends. It
7. is certainly not a requirement that a determination be made that the searched profile is
8. definitely, or even most likely, from a perpetrator. Regardless, even if such a limitation 13
9. exists, it is a CODIS requirement only and does not extend to a search of the SDIS or LDIS.
10. The restriction on profiles developed by private labs can be
11. avoided
12. There is a legitimate legal obstacle to using the profile obtained by testing at
13. Forensic Analytical Sciences. It is neither one of the “laboratories of the Department of 19

Justice” or a “public law enforcement crime laborator[y]” under Penal Code section

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1. 297(a)(1) and (2). (Opp. Brief 6:1-23.) However, Forensic Analytical Sciences could fall
2. under the exception laid out in Penal Code section 297(3)(b). Forensic Analytical Sciences
3. does “meet state and federal requirements, including the FBI Quality Assurance 24
4. Standards,” and is “accredited by an organization approved by the NDIS procedures
5. board.” (*Ibid*.) (See Exhibit C – Declaration of Natalie Caponera.) In fact, Forensic 27

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3 The qualifier ‘putative’ merely means ‘supposed’ or ‘assumed.’

* 1. Analytical Sciences has previously been approved to perform testing for CODIS by the
  2. Contra Costa Crime Lab. The only additional hurdle would be for the Sacramento District 3

1. Attorney’s Crime Lab to “conduct the quality assessment and review required by the FBI
2. Quality Assurance Standards.” (*Ibid*.) This Court can and should order such a review and
3. then there would be no barrier to a search of the databases. 7
4. In the alternative, the Court could order the Sacramento County Crime Lab to retest
5. the areas with the DNA of “Unknown Male #1.” Thereafter, there would be no barrier to 10

a database search.

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1. There is no violation of privacy safeguards
2. Neither of these requests violates Penal Code section 299.5(f) as asserted. (Opp. 14

Brief 11:21 – 12:1.) The defense is not seeking to be given the “DNA sample” or to be

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1. told the “DNA profile” of any person found to match. (*Ibid*.) The sample itself and the
2. profile need not be disclosed to Forensic Analytical Sciences, to defense counsel, or to 18

anyone outside law enforcement. Rather, the defense is simply asking that the name and

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20 biographical information of the person that matches the sweatshirt profile be disclosed.

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Moreover, the purpose of the cited section 299.5 is merely to deter and punish

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1. offender DNA profiles being used for anything “other than criminal identification or
2. exclusion purposes.” (Penal Code section 299.5(i)(1)(A) and (B) and (i)(2)(A).) That is
3. the sole purpose for which the defense would use the information. 26
4. Alternatively, there can be no dispute that the name and biographical information
5. of “Unknown Male #1” could be provided to the prosecution and/or the Sacramento
6. District Attorney’s Crime Lab who would have uploaded the profile for searching. The
7. prosecution is entitled to that information under Penal Code section 299.5(f) or (h). In fact, 3
8. the lab can even “publicly disclose the fact of a DNA profile match” and/or “the name of
9. the person identified by the DNA match.” (Penal Code section 299.5(i)(3).) 6

CONCLUSION

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1. Accordingly, the defense asks the Court to order that the Sacramento District
2. Attorney and/or its Crime Lab:

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11  Conduct a search of CODIS, and/or 12

* Conduct a search of SDIS, and/or

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14  Conduct a search of the lab’s LDIS, or 15

1.  Retest the three areas where there exists the DNA of “Unknown Male #1”
2. and thereafter conduct the above searches of any resulting profile. 18
3. All of the above requests fall within the confines of law. Of course, the defense
4. seeks the search under both statutory authority and Constitutional requirements. No
5. statute can abridge the Court’s power to compel the laboratory to provide Constitutionally- 22
6. required information to a criminal defendant. “The aim of discovery is the ascertainment
7. of truth – which is the aim of the court.” (*People v. York* (1980) 108 Cal.App.3d 779, 791.) 25

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1 DATED: Respectfully submitted, 2

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1. David Lynch
2. Assistant Public Defender

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1. EXHIBIT A

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