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SUPERIOR COURT OF THE STATE OF CALIFORNIA,
IN AND FOR THE COUNTY OF SANTA CLARA

PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff,

vs.

ANTOLIN GARCIA-TORRES,
Defendant.

Case No.: 213515

PEOPLE'S RESPONSE TO DEFENDANT'S SUPPLEMENTAL BRIEF MOTION TO SUPPRESS

INTRODUCTION

Antolin Garcia-Torres (hereafter, "Defendant") filed a supplemental brief to his motion to suppress in which he argues that the California DNA database is unreasonable under the Fourth Amendment based upon an acceptance threshold set within the California database as of September 1, 2016.

The collection of Defendant's DNA following his felony arrest under the California DNA Act was lawful as resolved by *Maryland v. King* (2013) 133 S. Ct. 1958. Defendant fails to show how the acceptance threshold set in September 1, 2016, impacts the constitutionality of Defendant's DNA collection in 2010. Nor does he show any misuse within the system, let alone a deficiency that would impact the constitutionality of the database.

Therefore, for the reasons discussed below, as well as the evidence and argument that will be presented at the hearing, Defendant's motion should be denied.

STATEMENT OF LAW AND ARGUMENT

I.

THE COLLECTION OF DEFENDANT'S DNA UNDER THE CALIFORNIA DNA ACT FOLLOWING HIS 2010 FELONY ARREST WAS REASONABLE UNDER THE FOURTH AMENDMENT.

At the outset, it must be reiterated that the search under the Fourth Amendment was the collection of Defendant's DNA in 2010 after his arrest for a felony.[1] This fact becomes muddled within the supplemental brief as the defense discusses the 2016 removal of a DNA profile that was recovered from Sierra LaMar's jeans and uploaded into CODIS in 2012. Neither the uploading of the DNA profile recovered from the victim's jeans in 2012, nor the removal of this same sample in 2016, impact the constitutionality of the collection of Defendant's DNA six years ago.

First, Defendant argues that the California DNA database is applied in a way that was not contemplated in *Maryland v. King* (2013) 133 S. Ct. 1958 (*King*) or *Haskell v. Harris,* 669 F.3d 1049, 1062 (9th Cir. 2012) (*Haskell*). This is incorrect. Defendant's argument is premised upon a mischaracterization of the Court's definition of DNA "identification" as discussed at length within *King* and *Haskell.*

As articulated in *King*, although the information within the CODIS database is useful only for the testing of human identity,[2] the identification of an individual is not simply limited to a

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[1] See *King, supra,* 133 S. Ct. 1958: "*[T]he search effected by the buccal swab....* falls within the category of cases this Court has analyzed by reference to the proposition that the "touchstone of the Fourth Amendment is reasonableness, not individualized suspicion." (*Id.* at p. 1970, emphasis added.); "It can be agreed that using a buccal swab on the inner tissues of a person's cheek in order to obtain DNA samples is a search. " (*Id.* at pp. 1968-69.); "A buccal swab...involves but a light touch on the inside of the cheek; and although it can be deemed a search within the body of the arrestee, it requires no "surgical intrusions beneath the skin.' " (*Id.* at p. 1969.)

[2] "The CODIS loci are from the non-protein coding junk regions of DNA, and are not known to have any association with a genetic disease or any other genetic predisposition. Thus, the information in the database is only useful for human identity testing." (*King, supra,* 133 S. Ct. at p.1968, internal citations omitted.)

determination of that person's true name. Quite to the contrary, *King* goes into great detail to explain that identification includes knowing an arrestee's criminal history and linking an arrestee to other crimes. "An individual's identity is more than just his name or Social Security number, and the government's interest in identification goes beyond ensuring that the proper name is typed on the indictment." (*Id.* at p. 1971.) Accordingly, "[a] suspect's criminal history is a critical part of his identity that officers should know when processing him for detention." (*Id.* at p. 1971.) "Knowing that the defendant is wanted for a previous violent crime based on DNA identification is especially probative of the court's consideration of "the danger of the defendant to the alleged victim, another person, or the community.' " (*Id.* at p. 1973.)

The *King* Court goes further to address that the collection of DNA from felony arrestees will assist in bail determinations, as one released can have bail revoked should they be matched to a violent crime. (*King, supra,* 133 S. Ct. at p. 1974.) The DNA sample may also identify the arrestee as the true perpetrator of a crime, thereby freeing one wrongfully imprisoned for the offense. (*Ibid.*)

Similarly, in *Haskell,* the Court explained that the government interests served by the California DNA Act included "identifying arrestees, solving past crimes, preventing future crime, and exonerating the innocent." (*Haskell v. Harris, supra,* 669 F.3d at p. 1062, on reh'g en banc, 745 F.3d 1269 (9th Cir. 2014).) To that end, " '[i]dentification' encompasses not merely a person's name, but also other crimes to which the individual is linked." (*Id.* at p. 1062.)

This understanding of the purpose served by DNA identification —as stated in both *King* and *Haskell*—demonstrates why Defendant's argument regarding DNA and AFIS is similarly

flawed. Fingerprints from arrestees are compared to prints recovered from crime scenes and vice versa. [3] Both courts recognized that the collection of DNA, like fingerprints, can assist in identifying whether an arrestee has committed other crimes by matching their sample to those recovered from a crime scene.

> A DNA profile is useful to the police because it gives them a form of identification to search the records already in their valid possession. In this respect the use of DNA for identification is no different than matching an arrestee's face to a wanted poster of a previously unidentified suspect; or matching tattoos to known gang symbols to reveal a criminal affiliation; *or matching the arrestee's fingerprints to those recovered from a crime scene.*

(*King, supra*, 133 S. Ct. at p. 1972, emphasis added.) "When an arrestee's DNA profile is uploaded into CODIS, it is compared to the DNA samples collected from crime scenes." (*Harris, supra,* 669 F.3d at p. 1052.) Therefore, "[t]he collection and use of DNA for identification purposes is substantially identical to a law enforcement officer obtaining an arrestee's fingerprints to determine whether he is implicated in another crime." (*Id.* at p. 1063.) "Given the minimal amount of information contained in a DNA profile, we are persuaded that DNA, as collected and used under the 2004 Amendment, is substantially indistinguishable from traditional fingerprinting as a means of identifying arrestees and, incidentally, tying arrestees to criminal investigations." (*Id.* at pp. 1059-60.) Notably, "DNA is more often left at crime scenes than fingerprints, thus enhancing DNA's investigative efficacy…" (*Id.* at p. 1060.)

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[3] *See* Bureau of Forensic Services, Cal. Dep't of Justice, FAQ: Effects of the All Adult Arrestee Provision. https://oag.ca.gov/bfs/prop69/faqs [last visited on October 11, 2016]:

> If there is no identification confirmation of the arrestee to prior prints, the fingerprint images are automatically added to the State's ALPS (Automated Latent Prints System) division of the AFIS for identification of the arrestee through search/comparisons to latent prints from unsolved crimes.
>
> In addition, new incoming latent prints from unsolved crimes are routinely searched against arrestee booking prints, regardless of the arrest disposition (e.g., whether or not the arrestee ultimately was convicted of the offense) in the Automated Latent Print System (ALPS) database.

There is no ambiguity. Both *King* and *Haskell* recognized the lack of distinction between DNA and fingerprint collection for identifying an arrestee. The identifying purpose of a post-felony arrest DNA sample includes identifying "who the person really is," which includes knowing what they have done by matching that sample to evidence recovered at crime scenes. (*King, supra*, at p. 133 S. Ct. at p. 1974.) Thus, the collection and analysis of fingerprints and forensic identification DNA database samples are similar components of a constitutional booking process, and both involve "making a computerized comparison" of the arrestee's identification information to that contained in the electronic databases of unsolved crimes. (*Id.* at pp. 1971-72.)

Second, Defendant's argument regarding the privacy interests of those individuals dispositioned as a non-match is without merit. The California DNA databank does not violate privacy rights. (See *People v. Travis* (2006) 139 Cal. App.4th 1271; see also *Alfaro v. Terhune* (2002) 98 Cal. App. 4th 492.) Furthermore, Defendant has failed to articulate how he can assert privacy rights, or a reasonable expectation privacy, on behalf of these *unknown* individuals. These individuals are truly unknown. The identification [name and CII number] of a candidate match is not released, unless that profile is determined to be a "hit." [4] Lastly, *King* recognized that the use and disclosure restrictions within CODIS sufficiently protected arrestee privacy interests. (*King, supra,* 133 S. Ct. at pp. 1979-80.)

Third, Defendant's claim that California has allowed "misuse" of the database is incorrect. For this fallacy, Defendant relies upon an email stating that as of September 1, 2016, there was a change in the acceptance threshold within the California database. Even assuming *arguendo* that a change in the acceptance threshold as of September 1, 2016, has any relevance to the constitutionality of the Defendant's post-felony arrest DNA collection in 2010, there is no

[4] Pursuant to Evidence Code section 452(d), the People respectfully request that this Court take judicial notice of the Declaration of Brooke Barloewen, attached the to the People's Response to Motion to Compel Discovery of DNA (CODIS) Evidence, filed in this matter on March 1, 2016.

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evidence of "misuse" within the email. For that matter, the defense has failed to show how their speculations would rise to the level of "misuse" of the database given the holding in *King* and the purpose served in DNA identification. The DNA Act imposes clear statutory limitations and protections; there is no evidence of misuse within California. (*Harris, supra,* 669 F.3d at p. 1061; see also, Penal Code sections 295.1(a), 295.2, 299.5(i)(1)(A), 299.5(i)(2)(A).)

Accordingly, Defendant's motion should be denied.

CONCLUSION

For all the foregoing reasons, and based on additional evidence and oral argument that will be presented at the hearing, the People respectfully request that the motion to suppress be denied.

Date: October 11, 2016

Respectfully submitted,

JEFFREY F. ROSEN, DISTRICT ATTORNEY

By 

Dana Veazey
Deputy District Attorney

PROOF OF SERVICE

STATE OF CALIFORNIA) People v. ANTOLIN GARCIA TORRES
) ss.
COUNTY OF SANTA CLARA) Docket No. 213515

I am employed in the County of Santa Clara, State of California. I am over the age of eighteen years, and not a party to the above-entitled action. My business address is: Office of the District Attorney, 70 West Hedding Street, West Wing, San Jose, CA 95110

On October 11, 2016, I served the following documents upon the interested parties in this action by the method(s) indicated below:

PEOPLE'S RESPONSE TO DEFENDANT'S SUPPLEMENTAL BRIEF MOTION TO SUPPRESS

[ ] BY FIRST CLASS MAIL: by placing a true copy thereof, enclosed in a sealed envelope, for postage and deposit with the U.S. Postal Service on the same date it is submitted for mailing, and addressed as follows:

[X] BY PERSONAL DELIVERY: by causing a true copy thereof to be hand-carried to the recipient at the address indicated:

HAND DELIVERED IN COURT BY DDA DANA VEAZEY TO:
Alfonso Lopez
Brian Matthews
Bicka Barlow

[ ] BY FACSIMILE TRANSMISSION: by faxing a true copy thereof to the recipient at the facsimile number indicated:

[ ] BY COUNTY PONY MAIL: by placing a true copy thereof, enclosed in a sealed envelope, addressed as follows:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on October 11, 2016, at San Jose, California.

Tanya Gomez

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