

CASE NO. CR 29-22-2805
2023 June 16 3:28
CLERK OF DISTRICT COURT
LATAH COUNTY p.m.
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IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

STATE OF IDAHO,
Plaintiff,

V.

BRYAN C. KOHBERGER
Defendant.

Case No. CR29-22-2805

MOTION FOR PROTECTIVE
ORDER

COMES NOW the State of Idaho, by and through the Latah County Prosecuting Attorney, and respectfully moves the Court for a protective order pursuant to I.C.R. 16(l) for information related to Investigative Genetic Genealogy. This case arises from a quadruple homicide. Law enforcement found the DNA of a potential suspect at the crime scene, and the FBI submitted the DNA to one or more publicly available genetic genealogy services to determine potential relatives of the suspect. The FBI then used common genealogical techniques to develop a family tree leading to Defendant. The State seeks to protect from disclosure the names and personal information of the hundreds of innocent relatives on the family tree, the names of the publicly available genetic genealogy services used, and certain

other information described below. The disclosure of this information is not required by Rule 16 of the Idaho Criminal Rules and should be protected from disclosure for the good cause described below, including the State's privilege to protect the identity of informers as described in Idaho Rule of Evidence 509.

FACTUAL BACKGROUND

On November 13, 2022, law enforcement found the bodies of Madison Mogen, Kaylee Goncalves, Xana Kernodle, and Ethan Chapin at 1122 King Road in Moscow, Idaho. All four victims died from apparent knife wounds. Law enforcement found a Ka-Bar knife sheath on a bed next to the bodies of Madison and Kaylee. The sheath was face down and partially under both Madison's body and the comforter on the bed. Law enforcement seized the Ka-Bar knife sheath pursuant to a search warrant. The Idaho State Police Lab in Meridian, Idaho, located DNA on the Ka-Bar knife sheath. The ISP laboratory determined the DNA came from a single source and that the source was male.

Once law enforcement had single-source DNA from the Ka-Bar knife sheath, they conducted what is called a short tandem repeat ("STR") analysis. STR DNA analysis involves looking at 20 regions within human DNA and allows law enforcement to make a direct comparison between two STR DNA profiles. Law enforcement submitted the STR DNA profile obtained from the Ka-Bar knife sheath to the Combined DNA Index System ("CODIS"), a database of STR DNA profiles from convicted offenders, arrestees, and crime scene evidence, to identify the source of the DNA. No match was found.

Unable to find a match using STR DNA analysis, law enforcement decided to use Investigative Genetic Genealogy to find a lead. Genetic genealogy allows individuals to trace

their lineage or connect with unknown family members using DNA. Typically, it involves sending a DNA sample, such as a tube of saliva, to a genetic genealogy service like Ancestry.com or 23andMe. The genetic genealogy service then creates a single nucleotide polymorphism (“SNP”) profile to use for genealogical purposes. A SNP profile is different than a STR DNA profile and is used more often for genealogical purposes.¹

The genetic genealogy service then uses an algorithm to compare the user’s SNP profile to SNP profiles submitted to the genetic genealogy service by other users to determine ancestry and potential relatives. The genetic genealogy service shares with the user a list of potential relatives and, depending on the specific genetic genealogy service, personally identifying information on those individuals, like their name, email address, and the amount of DNA the user shares with the potential relatives. The user does not receive any genetic information pertaining to other database users (i.e., users’ DNA profiles are not shared with each other).

This same process, used frequently by members of the public, can also be used by law enforcement as part of their investigation—a technique referred to as Investigative Genetic Genealogy or “IGG.” Once a publicly available genetic genealogy service shows law enforcement potential relatives of the suspect, law enforcement applies traditional investigative and genealogical methods to build a family tree in an effort to follow the tree to the suspect or a close relative of the suspect. Family trees can be used to narrow down a potential suspect based on factors such as age, gender, opportunity, known physical

¹ While an STR DNA analysis involves looking at 20 regions within human DNA, a SNP profile contains about 650,000 of the human genome’s 3.3 billion nucleotides.

characteristics of the suspect, etc.

In this case, investigators used IGG to begin the process of developing a lead to the individual who left DNA on the Ka-Bar knife sheath. The Idaho State Police utilized a private laboratory to develop a SNP profile from the DNA on the Ka-Bar knife sheath. The private laboratory started using genetic genealogy to develop a family tree, but after law enforcement decided the FBI would take over, the private laboratory ceased its efforts and sent the SNP profile to the FBI.²

The FBI uploaded the SNP profile to one or more publicly available genetic genealogy services to identify possible family members of the suspect based on shared genetic data. The FBI could then view through the genetic genealogy service's portal information regarding potential relatives of the suspect who left DNA on the Ka-Bar knife sheath. Based on information the FBI could see in the genetic genealogy service's portal, the FBI went to work building family trees of the genetic relatives to the suspect DNA left at the crime scene in an attempt to identify the contributor of the unknown DNA. The FBI built the family tree using the same tools and methods used by members of the public who wish to learn more about their ancestors. For example, the FBI consulted social media, viewed vital records such as birth and death certificates, and viewed other information already contained in the user portal for the genetic genealogy service, including unverified information submitted by other users of the genetic genealogy service. The FBI also consulted subscription-based databases available to law enforcement for information on

² For ease of reference, this motion focuses on the FBI's IGG efforts. The State is also seeking to protect the partial family tree created by the private lab, and it should be protected for the same reasons the FBI's IGG efforts should be protected.

individual people. The product of the genealogy conducted by the FBI was a family tree that contained the name, birthdate, and death date (if applicable) of hundreds of relatives as well as their familial connections between each other and the suspect: Bryan C. Kohberger. The FBI then sent to local law enforcement a tip to investigate Defendant.

The IGG process pointed law enforcement toward Defendant, but it did not provide law enforcement with substantive evidence of guilt. The FBI did not, for example, conduct a direct comparison between the SNP profile from the Ka-Bar knife sheath and Defendant's SNP profile. That type of direct comparison required the more traditional STR DNA analysis, which was conducted by the Idaho State Police, not the FBI.

Prior to the FBI's IGG efforts, the ISP laboratory developed the traditional STR DNA profile from the DNA found on the Ka-Bar knife sheath.³ After identification of Defendant, law enforcement recovered trash from the home of Defendant's parents and ISP laboratory did STR DNA analysis of items from the trash for comparison to the unknown crime scene DNA. That comparison indicated the DNA found on the trash belonged to the biological father of the individual who left the DNA on the Ka-Bar knife sheath.⁴ Pursuant to a search warrant, law enforcement then collected DNA from Defendant via a buccal swab. A traditional STR DNA comparison was done between the STR profile found on the Ka-Bar knife sheath and Defendant's DNA. The comparison showed a statistical match—

³ STR DNA analysis has been used in criminal cases for inculpatory purposes for more than 20 years. *See e.g., United States v. Beasley*, 102 F.3d 1440, 1448 (8th Cir. 1996) (“We believe the reliability of the PCR [STR] method of DNA analysis is sufficiently well established to permit the courts of this circuit to take judicial notice of it in future cases”).

⁴ STR analysis is routinely used for kinship analysis such as paternity.

specifically, the STR profile is at least 5.37 octillion times more likely to be seen if Defendant is the source than if an unrelated individual randomly selected from the general population is the source.

The genealogy conducted by the FBI resulted in a lead that pointed law enforcement to Defendant, but it did not result in the creation of many documents or records. Much of the information relied on by the FBI was only viewed through the user portal in the publicly available genetic genealogy service(s) and other investigative databases. The FBI did not download or create copies of those records. Once Defendant was in custody, the FBI removed the SNP profile from the genetic genealogy service(s) pursuant to the United States Department of Justice Interim Policy for Forensic Genetic Genealogical DNA Analysis and Searching (“DOJ Policy”).⁵ This means the FBI no longer has access to view much of the information it used to create the family tree and cannot view it again without resubmitting the SNP profile to the genetic genealogy service(s). To the State’s knowledge, the only records that reflect the FBI’s efforts to create Defendant’s family tree is the family tree itself, notes jotted down by FBI agents as they constructed the family tree, and any records created to document the removal of the SNP profile from the genetic genealogy service(s) pursuant to the DOJ Policy. The State has not seen—nor does the State possess—these records or copies of these records.

ARGUMENT

The State seeks a protective order for a narrow category of information—namely,

⁵ See DOJ Policy, effective November 1, 2019, pp.7-8 & n.28, available at <https://www.justice.gov/olp/page/file/1204386/download>.

information related to the use of IGG in this case. “Idaho Criminal Rule 16 governs discovery in criminal proceedings.” *State v. Ish*, 166 Idaho 492, 510 (2020). Rule 16 is broad, but it is not a free-for-all. The rule contemplates the exchange of discrete categories of information between the State and the defense. As relevant here, the rule contemplates the State will provide three discrete categories of information: any material or information that would tend to negate the guilt of the accused, *see* I.C.R. 16(a); any documents or objects that are material to the preparation of the defense, intended for use by the prosecutor as evidence at trial, or were obtained from the defendant or belong to the defendant, I.C.R. 16(b)(4); and reports of scientific tests or experiments, *see* I.C.R. 16(b)(5). If a defendant believes he should receive information that does not fall within one of the discrete Rule 16 categories, the rule allows the defendant to seek an order from the court for information where the defendant can show a substantial need for the information in the preparation of his case. *See* I.C.R. 16(b)(10).

Here, Defendant served on the State a request for discovery that calls for the IGG information, even though the IGG information falls outside of Rule 16, without first obtaining an order from this Court. The State now seeks—and the Court should enter—an order protecting the information related to the use of IGG in this case.

Specifically, the State seeks to protect the following information:

- The raw data related to the SNP profile and the underlying laboratory documentation related to the development of the profile, such as chain of custody forms, laboratory standard operating procedures, analyst notes, etc.
- All information related to IGG efforts in creating a family tree and identifying Defendant’s potential relatives, including the identities of the genetic genealogy service(s) and the personally identifying information

of Defendant's relatives.

The State does *not* seek to protect and has or will disclose the following information:

- A Genotype Kit Report from the private lab utilized by the Idaho State Police, which documents that a DNA test was performed.
- Information related to the STR DNA analysis conducted using the DNA recovered from the Ka-Bar knife sheath and the DNA recovered from Defendant's parents' trash.
- Information related to the STR DNA analysis conducted using the DNA recovered from the Ka-Bar knife sheath and the DNA recovered from Defendant via a buccal swab.

This Court should grant an order protecting the IGG information in this case because the IGG information does not fit into any of the discrete categories listed in Rule 16 and good cause exists to protect the information, including the need to protect the privacy of Defendant's relatives.

A. Rule 16(a) does not require the disclosure of the IGG information because the IGG information is not exculpatory.

Rule 16(a) of the Idaho Criminal Rules does not require the disclosure of the IGG information because the IGG information does not tend to negate the guilt or reduce the potential punishment of Defendant. The rule requires the State to disclose "any material or information in the prosecuting attorney's possession or control . . . that tends to negate the guilt of the accused as to the offense charged or that would tend to reduce the punishment for the offense." I.C.R. 16(a). As written, this rule largely mirrors the federal *Brady* requirement that the State produce to a criminal defendant all material exculpatory information. *See State v. Boehm*, 158 Idaho 294, 300 (Ct. App. 2015). But Rule 16(a) and *Brady* are limited to exculpatory information. They do *not* require "the prosecutor to make

a complete and detailed accounting to the defense of all police investigatory work on a case.” *State v. Horn*, 101 Idaho 192, 195 (1980) (quoting *Moore v. Illinois*, 408 U.S. 786, 795 (1972)).

While the question of whether IGG information must be disclosed as exculpatory is one of first impression in Idaho, courts outside of Idaho have correctly decided that IGG information need not be disclosed as exculpatory. *See, e.g., In the Matter of: Michael Green*, Case No. PDL20200007, Ruling on Motion to Compel Production of Discovery (Sup. Ct. Cal. Oct. 5, 2020), attached hereto as Exhibit A.

In *Green*, law enforcement used DNA recovered from the victim’s nightgown to identify the defendant as a possible suspect. *See Green*, op.2. Then they surreptitiously recovered items from the defendant’s garbage that contained DNA and found through STR DNA testing that the DNA in the defendant’s garbage matched the DNA found on the victim’s nightgown. *Id.* at 2-3. A saliva test then confirmed that the defendant’s DNA matched the DNA on the victim’s nightgown. *Id.* at 3. The defendant moved to compel the disclosure of the IGG information. *Id.* at 1. After an in-camera hearing, the court denied the motion. *Id.* at 6, 13. The court explained:

[T]he evidence that is material to [the defendant’s] guilt or innocence is the testing that followed the [IGG] investigation, which directly compared a fresh swab of [the defendant’s] DNA with the DNA profile collected from the victim’s nightgown. It is only this evidence that the People intend to present at trial. The People are not obligated to provide its preliminary search of the genealogy databases for possible matches, which is investigatory in nature and is not exculpatory or material to [the defendant’s] defense.

Id. at 11-12.

As this case illustrates, the State is not required to disclose the IGG information under

Rule 16(a) because the IGG information the State seeks to protect is not favorable to Defendant on the issues of guilt or punishment. The information provided to local law enforcement by the FBI was nothing more than a tip, a lead for local law enforcement to follow up on, should they choose to. The genealogical tip did not prove or substantiate Defendant's guilt. Rather, the tip allowed local law enforcement to focus their investigation on Defendant and obtain independent material evidence of his guilt, all of which the State has disclosed or will disclose. Specifically, with respect to DNA, an STR DNA analysis found Defendant's DNA matched the DNA collected from the Ka-Bar knife sheath. To the extent the IGG information has any relevance, the fact that it led law enforcement to Defendant means it is *inculpatory* rather than *exculpatory* in nature. Thus, Rule 16(a) does not require the disclosure of the IGG information because it is not relevant to—and certainly not favorable to the defendant on—the issues of guilt or punishment.

B. Rule 16(b)(4) does not require the disclosure of the IGG information because the IGG information does not satisfy any of the required criteria.

The nature of the IGG information is such that its disclosure is not required under Rule 16(b)(4). That rule requires the disclosure of books, papers, documents, photographs, tangible objects, and buildings or places *only* when they (1) are material to the preparation of the defense, (2) are intended for use by the prosecutor as evidence at trial, or (3) were obtained from the defendant or belong to the defendant. I.C.R. 16(b)(4). The IGG information does not satisfy any of these criteria.

First, the IGG information is not material to the preparation of the defense. Defendant is charged with killing four people, not with being related to a particular person. The mere fact that uploading the completed SNP profile into a publicly available genetic genealogy

service led law enforcement to relatives of Defendant does not affect the strength of the evidence against him. The strength of the evidence against Defendant in terms of DNA evidence depends upon the confirmatory result from the STR DNA analysis between Defendant's DNA profile and the DNA recovered from the Ka-Bar knife sheath. As explained further below, the State intends to introduce the STR DNA analysis at trial, and does *not* intend to enter any evidence pertaining to the development of a SNP profile or the tree building process for inculpatory purposes. The State has disclosed or will disclose the information it has related to the STR DNA analyses conducted in connection with this case.

The *immateriality* of the IGG information to the preparation of the defense is perhaps best understood by way of analogy. The tip that came from the IGG process is no different than other types of technology "hits" that put law enforcement on the trail of a suspect. *See United States v. Johnson*, 2011 WL 472966, at *3-4 (N.D. Ohio Oct. 7, 2011). For example, in *Johnson*, law enforcement recovered a suspect's DNA from a ballcap left at the scene of a bank robbery. *Id.* at *1. Law enforcement ran the DNA profile through CODIS, which resulted in multiple "hits" including the defendant. *Id.* A scientist narrowed down the hits to the defendant, and law enforcement confirmed it was the defendant's DNA after acquiring a buccal swab from the defendant. *Id.* The defendant moved to compel the other CODIS "hits" from the government, but the court denied his motion. *Id.* at *4. The court explained that the DNA evidence material to the defense was the direct comparison between the DNA on the hat and the DNA taken directly from the defendant: "The fact [defendant] was first identified as a possible suspect based on a database search *simply does not matter.*" *Id.* at *3-4 (emphasis added). Here, the IGG information, like the initial CODIS "hits" in *Johnson*,

is not material to the preparation of the defense because it only shows how Defendant was first identified as a possible suspect.

Moreover, the IGG information could not support an argument from Defendant that law enforcement violated his Fourth Amendment rights by entering the DNA collected from the Ka-Bar knife sheath into a genetic genealogy service. A defendant cannot prove a violation of the Fourth Amendment without first showing “he or she had a reasonable expectation of privacy in the place searched.” *State v. Mann*, 162 Idaho 36, 41, 394 P.3d 79, 84 (2017). The Ka-Bar knife sheath was abandoned at the scene, as was the DNA inside it. Defendant cannot show that he had a reasonable expectation of privacy in DNA left at the scene of a quadruple homicide or in the genetic information of his relatives, who voluntarily provided their own DNA to a genetic genealogy service. *See Piro v. State*, 146 Idaho 86, 91-93, 190 P.3d 905, 910-12 (Ct. App. 2008) (holding defendant did not have reasonable expectation of privacy in water bottle from which officers recovered DNA and observing that “this Court has found no case holding that a reasonable expectation of privacy should be determined by a suspect’s desire to keep his or her genetic identity private”). Additionally, the sheath (and Defendant’s DNA left on the sheath) were seized pursuant to a valid search warrant issued by a magistrate judge, which means the law presumes that the search was reasonable. *State v. Hutton*, 169 Idaho 756, 759-66, 503 P.3d 972, 975-82 (2022). “[W]hen a search is conducted pursuant to a warrant, the burden of proof is on the defendant to show that the search was invalid.” *Id.* at 759, 503 P.3d at 975.

Second, the State did not rely on the IGG information to establish probable cause for Defendant’s arrest, did not present the IGG information to the grand jury, and has no plans

to present the IGG information for which a protective order is sought as evidence at trial.⁶ Instead, the State has relied on and will continue to rely on the STR DNA analysis comparing Defendant's DNA to the DNA on the Ka-Bar knife sheath to establish Defendant's guilt. Again, the State has disclosed or will disclose information related to the STR DNA analyses conducted in connection with this case.

Third, the documents and tangible objects encompassed in the IGG information were not obtained from Defendant and Defendant has no property interest in them. To the extent the DNA on the Ka-Bar knife sheath once belonged to Defendant, he abandoned that DNA when he left it at the crime scene of a quadruple homicide. Defendant has never had a property interest in the records that reflect the SNP profile developed from the DNA on the Ka-Bar knife sheath, nor has he ever had a property interest in the information gathered from the genetic genealogy service(s) using the SNP profile, such as the information provided to the genetic genealogy service(s) by Defendant's relatives. In short, none of the IGG information the State seeks to protect came directly from Defendant or currently belongs to Defendant, and thus Rule 16(b)(4) does not require its disclosure.

C. Rule 16(b)(5) does not require the disclosure of the IGG information because the IGG information is not the result of a scientific test or experiment.

Rule 16 also requires the disclosure of information related to scientific experiments. But it only applies to limited information—namely, Rule 16 requires the disclosure of “results or reports . . . of scientific tests or experiments made in connection with the particular

⁶ If anything, the State would have one of the detectives testify at trial only that they received a tip pointing law enforcement to Defendant. The State reserves the right to present the IGG information at trial if the Court requires the State to disclose the IGG information to the defense.

case.” I.C.R. 16(b)(5) (emphasis added). The rule does *not* require the State to disclose what law enforcement does with the results or reports. Moreover, a process, procedure, or investigative technique is not a “scientific test[] or experiment[]” merely because it involves the comparison of information or objects or requires the use of logic or reason. *See State v. Matthews*, 108 Idaho 482, 486, 700 P.2d 104, 108 (Ct. App. 1985) (holding an officer’s comparison of two keys did not constitute a scientific test or experiment because it was “merely an observation of similarity between two keys”).

There were two types of scientific tests conducted with respect to DNA that fall within the purview of Rule 16(b)(5). First, law enforcement used STR DNA analyses to compare the DNA on the Ka-Bar knife sheath to Defendant’s father and then to Defendant. As required by Rule 16(b)(5), the State has provided the reports from those scientific tests. The State also provided other information related to the STR DNA analyses because the State plans on using that information at trial. *See, e.g.*, I.C.R. 16(b)(4). Second, the private laboratory developed the SNP profile from the DNA on the Ka-Bar knife sheath. As required by Rule 16(b)(5), the State will produce the report that documents that DNA test.

Rule 16(b)(5) does not require the State to disclose how the SNP profile was used, and the genealogy the FBI conducted based on the DNA information does not constitute a scientific test or experiment. The FBI submitted Defendant’s SNP profile to one or more genetic genealogy services and were able to view potential relatives and access unverified data added by users in the genetic genealogy service(s). Starting with those potential relatives, the FBI engaged in traditional genealogy to put together a family tree that could lead them to the suspect. Putting together the family tree required the FBI to review sources

such as social media, publicly available databases, subscription-based databases, vital records (like birth certificates), census records, and historical newspapers. None of those actions can accurately be characterized as a scientific test or experiment.

The product of the FBI's efforts was a family tree comprised of hundreds of Defendant's relatives. Put simply, the family tree created by the FBI cannot accurately be described as the "results or reports" of "scientific tests or experiments" and thus falls outside of Rule 16(b)(5).⁷

D. Good cause exists for this Court to enter an order protecting the IGG information and, if necessary, the Court should hold an in-camera hearing.

The mere fact that the IGG information does not fall within Rule 16 is reason enough for this Court to enter an order protecting the IGG information. But the State is not seeking the protection of the IGG information as an exercise in obstinance. Instead, the State seeks to protect hundreds of innocent civilians from having their personal information, including their names, birthdates, and familial connections to the defendant in a high-profile quadruple homicide from being disclosed. The disclosure of the IGG information risks harm not only to these indirect informants but also to the genetic genealogy service(s) used by the FBI and the IGG investigative technique. This Court should follow the procedure laid out by Idaho's appellate courts to determine whether the IGG information must be disclosed.

⁷ Similarly, the family tree created by the FBI cannot accurately be characterized as "reports or memoranda . . . made by a police officer or investigator." I.C.R. 16(b)(8). And the FBI has indicated that they did not create reports or memoranda as they conducted the genealogy. Even if the notes jotted down by the FBI agents or the family tree constituted reports or memoranda, as explained above, those records are not "in the possession of the prosecuting attorney." *Id.*

1. *Providing the IGG information would require the disclosure of the identity of informants and prejudice the State.*

The process used to collect IGG information required gathering information from several informants, including the genetic genealogy service(s) to which the SNP profile was submitted and, indirectly, from the relatives of Defendant who “hit” on the SNP profile. Pursuant to Rule 16, “[d]isclosure must not be required of an informant’s identity unless the informant is to be produced as a witness at a hearing or trial.” I.C.R. 16(g)(2). The State has no intent of presenting the IGG information for which a protective order is sought as evidence at trial, which means none of the IGG “informants” will be produced as witnesses at trial. The nondisclosure of this information is consistent with the State’s privilege “to refuse to disclose the identity of a person who has furnished information relating to or assisting in an investigation of a possible violation of a law to a law enforcement officer.” I.R.E. 509(a).

As a general matter, we protect the identity of informants, the U.S. Supreme Court has explained, to encourage the flow of “information concerning the commission of crimes” to law enforcement. *McGray v. Illinois*, 386 U.S. 300, 308 (1967). Such communications “are discouraged if the informer’s identity is disclosed.” *Id.* The Court’s words, written long before SNP profiles were used for investigative purposes, apply with particular force to IGG information. Both the genetic genealogy services to which law enforcement agencies submit a suspect’s SNP profile and the customers of those genetic genealogy services, who may unknowingly be related to a suspect, would be less likely to make their information available if courts start requiring the disclosure of their information in criminal cases—especially in high-profile criminal cases. *See Green*, op.11 (protecting IGG information, in

part, because “the court retains wide discretion to protect against the disclosure of information that might unduly hamper the prosecution or violate some other legitimate governmental interest”).

2. *This Court should follow the process laid out by Idaho’s appellate courts to determine whether the IGG information must be disclosed.*

Rule 16 allows this Court to enter a protective order “for good cause.” I.C.R. 16(l). If the Court finds it necessary to review evidence in-camera to decide whether disclosure is required, the rule itself allows the Court to do so. The rule expressly contemplates that, in deciding whether to enter a protective order, the Court “may permit a party to show good cause by a written statement that the court will inspect ex parte.” I.C.R. 16(l). “If relief is granted, the court must preserve and seal the entire text of the party’s statement.” I.C.R. 16(l). Thus, Rule 16, standing alone, provides this Court with the tools it needs to review evidence in camera—if the Court decides it cannot enter a protective order based on this brief alone.

Idaho’s appellate courts have further explained the process district courts should use when faced with precisely this issue: the need to protect both the State’s “interest in non-disclosure of the identity of its informers,” *McGray*, 386 U.S. at 309, and Defendant’s right to receive exculpatory information. *See, e.g., State v. Wilson*, 142 Idaho 431, 437 (Ct. App. 2006). In *Wilson*, for example, the court explained that this situation calls for a two-step process. First, “the defendant must make a threshold showing that the informant may be able to give relevant testimony.” *Wilson*, 142 Idaho at 435. If the defendant successfully makes that showing, an “*in camera* proceeding then provides an opportunity for the State to show that the informant’s knowledge is not of such relevance that disclosure should be

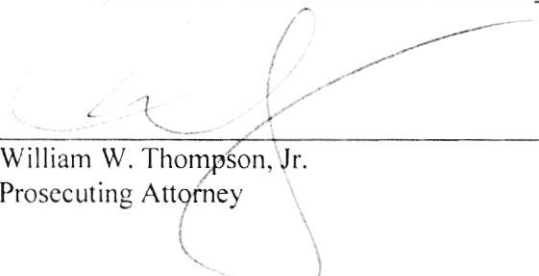
ordered.” *Id.*; see also *State v. Farlow*, 144 Idaho 444, 447, 163 P.3d 233, 236 (Ct. App. 2007) (relying on *Wilson* to explain the same two-step process: “once the trial court has concluded the defendant meets the initial threshold showing, it must then conduct the in-camera examination”). Further, the Idaho Supreme Court has confirmed that “it is desirable and proper to hold such a[n] [*in camera*] hearing before ordering or denying disclosure.” *State v. Hosey*, 132 Idaho 117, 119, 968 P.2d 212, 214 (1998).

Even if this Court finds that the IGG information falls within Rule 16, this Court should follow the guideposts that Idaho’s appellate courts have planted for the protection of informants. Defendant should first be required to establish that the IGG information is in fact relevant to the charges against him. If he can do so, this Court should allow the State to present information at an in-camera hearing for the Court to determine whether the IGG information must be disclosed. *Wilson*, 142 Idaho at 437, 128 P.3d at 974 (explaining “the *in camera* presentation ordinarily may be made in the form of affidavits” but allowing the trial court to examine witnesses as well if the trial court deems it necessary).

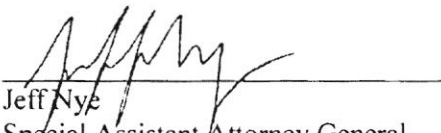
CONCLUSION

Based on the above, the State respectfully prays for the Court to enter an order protecting the IGG information from disclosure as it falls outside the purview of Rule 16. In the alternative, if the defense can establish the IGG information is in fact relevant, the State asks this Court to conduct the requisite in camera hearing for the State to present information related to the IGG information and then enter a protective order under I.C.R. 16(l) that the IGG information is not subject to discovery and need not be disclosed by the State.

RESPECTFULLY SUBMITTED this 16 day of June, 2023.



William W. Thompson, Jr.
Prosecuting Attorney



Jeff Nye
Special Assistant Attorney General

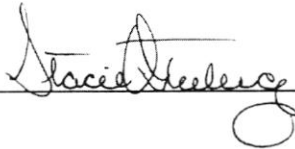
CERTIFICATE OF DELIVERY

I hereby certify that true and correct copies of the MOTION FOR PROTECTIVE ORDER was served on the following in the manner indicated below:

Anne Taylor
Attorney at Law
PO Box 9000
Coeur D Alene, ID 83816-9000

- Mailed
- E-filed & Served / E-mailed
- Faxed
- Hand Delivered

Dated this 16 day of June, 2023.



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OCT 05 2020

EL DORADO COUNTY SUPERIOR COURT
BY [Signature]
(DEPUTY CLERK)

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF EL DORADO

In the Matter of:

MICHAEL GREEN.

Case No. PDL20200007

**RULING ON MOTION TO
COMPEL PRODUCTION OF
DISCOVERY**

The motion of the Michael Green (“Green”) to compel the People to produce information related to the People’s forensic genetic genealogy (“FGG”) investigation came on regularly before the Court for hearing on September 17, 2020, before the Hon. Michael J. McLaughlin, in Department 4 of the above-captioned Court. Deputy District Attorney Jay S. Linden, Esq., appeared for the People. Deputy Public Defender Margaret Huscher, Esq., appeared for Green, who was also present in custody.

Having reviewed the moving, opposing and supplemental papers on the motion, and having heard oral argument, the Court took the matter under submission and now issues the following ruling:

Background

In genetic genealogy, a user, normally looking to trace their lineage or connect with unknown family members, sends in a DNA sample (such as a saliva sample) to a direct-to-consumer genetic database service like Ancestry.com. These

1 services provide the user with a genetic profile. The user will then upload the
2 profile obtained from their chosen service to GEDmatch, a free open-source public
3 aggregator that allows the user to match with people on many different sites, not
4 only the particular service they initially chose. GEDmatch searches for sections of
5 the user's chromosomes that match other users in the database and provides
6 usernames and contact information for any genetic matches it finds, along with an
7 estimation of how closely related the matches are. (Zabel, *The Killer Inside Us: Law, Ethics, and the Forensic Use of Family Genetics*, 24 Berkeley J. Crim. L. 47,
8 49–50 (2019).)

10 Law enforcement officers follow the same procedure in uploading DNA to
11 GEDmatch as do regular users in a FGG investigation, but instead of submitting
12 their own genetic profiles to GEDmatch, officers submit DNA recovered from an
13 unidentified crime suspect or victim, often left at a crime scene. GEDmatch then
14 reports back a list of “hits” – users who share DNA with the unidentified target.
15 Investigators examine those hits to try to ascertain the identity of the perpetrator
16 of the crime. They work from the list of hits, running information through public
17 record databases to grow family trees based on the original hits in an attempt to
18 find leads which ultimately yield their target's identity. Investigators must then
19 use other means to confirm that the DNA from the discovered target matches DNA
20 found at the scene of the crime. (*Id.*, at 50.)

21 Law enforcement in the present case obtained a mixed contributor DNA
22 sample from the nightgown of the victim, which included DNA from the victim and
23 DNA from an unidentified male. A private forensic laboratory separated the
24 unidentified male DNA and created a DNA profile of the unidentified male suspect
25 (the “DVA profile”). Law enforcement then submitted the DNA profile to
26 GEDmatch and obtained information about people who share DNA with the
27 unidentified suspect. Through its FGG investigation, law enforcement ultimately
28 identified Green as a possible suspect and surreptitiously obtained items from

1 Green's garbage that contained DNA, which DNA matched the DNA profile of the
2 unidentified male suspect. Law enforcement then obtained a search warrant,
3 arrested Green, and collected a DNA sample (saliva) from him, which matched the
4 crime source DNA profile.

5 **Parties' Contentions**

6 Green argues that he is entitled to discover "1) The Match Detail Reports and
7 Long-form Candidate Match Report for the hit(s) including partial hits and hits
8 that are dispositioned to be nonmatching (even if the laboratory has dispositioned a
9 profile as a hit); 2) data files; 3) communications with lab personnel; 4) validation
10 summaries; 5) Laboratory Personnel; 6) Unexpected Results and Corrective
11 Actions; and 7) the laboratory accreditations." (Minor's Motion to Compel, at 8:8-
12 15.) In his supplemental brief, Green describes what he seeks to discover as "the
13 *reports* that would have been generated regarding the processes used to develop
14 the [crime source] DNA profile . . . , the *number of 'matches and data related to the*
15 *matches'* between the crime source DNA and other people's DNA contained in the
16 GEDmatch or other database and the *family tree* prepared by" law enforcement.
17 (Minor's Suppl. Motion to Compel, at 3:11-15 [emphasis in original].) In minor's
18 counsel's supplemental declaration, she again argues that the list of people
19 identified through the FGG investigation as being related by DNA to Green is
20 discoverable and may lead to exculpatory evidence, and she further argues that the
21 report and other evidence of the efforts by the People's scientists to convert the
22 mixed contributor DNA sample from the victim's nightgown into a useable DNA
23 profile appropriate for uploading to GEDmatch is discoverable because there may
24 have been errors in extracting and conversion process.

25 Green asserts that this information is discoverable under Rule 5.546 of the
26 California Rules of Court, which provides for discovery in juvenile proceedings, and
27 that the information is necessary because (i) he needs to know when, where, what,
28 and how the investigation into him occurred so that he can evaluate whether the

1 delay in prosecution prejudiced his due process rights; (ii) he needs to know the
2 identity of other possible DNA matches that surfaced through the FGG
3 investigation, asserting that such information might be exculpatory and he has a
4 right to interview all persons who may have committed the crime; and (iii) the FGG
5 investigation may reveal Fourth Amendment search and seizure arguments.
6 (Minor's Suppl. Motion to Compel, at 3:16-4:26.)

7 On the other hand, the People contend they are not obligated to produce any
8 information provided by their FGG investigation because (i) the People do not
9 intend to offer any such information against Green at trial and so is not
10 discoverable under Penal Code § 1054.1, (ii) the information contains no
11 exculpatory evidence that is material to Green's guilt or innocence and is not *Brady*
12 material, and (iii) the information is protected from disclosure by the official
13 information privilege, Evidence Code, § 1040. The People assert that the relevant
14 DNA evidence is the comparison of the DNA sample from Green to the crime
15 source DNA profile.

16 The People further argue that Green's request for discovery of the FGG
17 investigation is premature and should not be considered prior to the transfer
18 hearing. They argue the standard for discovery prior to a transfer hearing in
19 juvenile court should be the same as the standard for discovery prior to a
20 preliminary hearing in criminal court. The court agrees, but this does not preclude
21 the court from considering the motion. Criminal courts have inherent authority to
22 permit pre-preliminary examination discovery. (*Clinton K. v. Superior Court* (1995)
23 37 Cal. App. 4th 1244, 1249). As preliminary hearings are the "closest relative" to a
24 Welfare and Institutions Code section 707 hearing, by analogy then juvenile courts
25 also have discretion to authorize discovery prior to a transfer hearing. (*Ibid.*)
26 However, the court should not exercise that authority unless the discovery appears
27 reasonably necessary and will not unduly delay or prolong the proceeding. (*Clinton*
28

1 K., at 1249.) The court finds that Green's motion to compel is not premature and
2 will consider the motion on its merits.

3 The burden in justifying discovery in juvenile proceedings is on the party
4 seeking disclosure. (*Ibid.*)

5 Criminal vs. Juvenile Discovery Statutes

6 Penal Code § 1054.1(f) requires that, in criminal cases, the prosecution
7 disclose to the defense, among other things, the results of physical or mental
8 examinations and scientific tests and experiments if the prosecutor intends to offer
9 same in evidence at trial. Rule 5.546(d) of the California Rules of Court provides
10 that, in juvenile proceedings, the petitioner must, after timely request, disclose to
11 the minor, as pertinent here, reports or statements of experts made regarding the
12 pending matter including results of scientific tests, experiments, or comparisons.

13 While the reciprocal discovery statutes applicable in adult criminal cases do
14 not apply to juvenile delinquency proceedings (Pen. Code § 1054(e); *Robert S. v.*
15 *Superior Court* (1992) 9 Cal. App. 4th 1417, 1420-1421), juvenile courts have
16 discretion to make reciprocal discovery orders in delinquency proceedings
17 consistent with the law governing discovery in criminal cases (*Robert S.*, 9 Cal.
18 App. 4th at 1422). Juvenile courts have the same degree of discretion as a court in a
19 criminal case to permit, upon a proper showing, discovery between the parties (*Joe*
20 *Z. v. Superior Court* (1970) 3 Cal. 3d 797, 801). Of course, juvenile courts should
21 also, then, have the same degree of discretion as a court in a criminal case to deny
22 discovery.

23 To assist in determining whether juvenile courts exceed the bounds of their
24 discretion in granting or denying discovery, appellate courts look to criminal cases
25 addressing similar issues. (*Joe Z.*, at 801.) As the parties here have cited no juvenile
26 case with discovery issues analogous to the case at bar, and the court has found none,
27 the court will also turn to criminal cases addressing similar issues for guidance,
28 discussed below.

1 **Brady Material**

2 The *Brady* [*v. Maryland* (1963) 373 U.S. 83] disclosure requirement applies to
3 juvenile delinquency proceedings as well as criminal proceedings.” (*J.E. v. Superior*
4 *Court* (2014) 223 Cal. App. 4th 1329, 1335.) To comply with *Brady*, the People must
5 disclose exculpatory and impeachment evidence that is favorable to the accused
6 and material on the issue of guilt or punishment. (*J.E.*, at 1334.)

7 **Official Information Privilege, Evid. Code § 1040**

8 Where the People assert the official information privilege, the court is
9 obligated to conduct an *in camera* review of the requested discovery to consider
10 whether there is a necessity for preserving the confidentiality of the information
11 that outweighs the necessity for disclosure in the interest of justice. (*Michael P. v.*
12 *Superior Court* (2001) 92 Cal. App. 4th 1036, 1043.)

13 With the consent of the counsel for both parties, the court held an *in camera*
14 hearing on September 18, 2020. Investigator Joe Ramsey from the office of the El
15 Dorado County District Attorney and Investigator Kirk Campbell from the office of
16 the Sacramento County District Attorney appeared at the *in camera* hearing. Mr.
17 Ramsey produced to the court his investigation binder, which included the
18 following items: DNA lab report from the Sacramento County District Attorney’s
19 office regarding DNA samples taken from Green’s garbage; audio CDs of witness
20 interviews; DMV photographs of Green; Mr. Ramsey’s written investigation
21 reports; search warrant; and Mr. Ramsey’s notes. Mr. Ramsey believed all these
22 items had been previously produced to Green.

23 There were no documents or electronic files produced specifically relating to
24 the FGG investigation, other than the DNA lab report. However, Messrs. Ramsey
25 and Campbell explained to the court the process of their FGG investigation and the
26 information saved in electronic format pertaining to the same, generally consisting
27 of information about people who were identified through GEDmatch and other
28 means as sharing DNA with Green, and the family tree developed therefrom.

1 **Discussion**

2 FGG investigation is a relatively new investigation technique. Whether
3 information developed through an FGG investigation leading to a particular
4 suspect is discoverable to the defense is a question that has not been the subject of
5 reported case law. However, there are two cases that are analogous, in the court's
6 opinion, one a reported California case from the Fifth District Court of Appeal and
7 the other an unreported case from the United States District Court for the
8 Northern District of Ohio.¹

9 In the California case, *People v. Johnson* (2006) 139 Cal.App.4th 1135, the
10 defendant, who was convicted of rape, challenged admission of DNA evidence. The
11 appellate court held that a "cold hit" from a DNA database was not subject to the
12 *Kelly-Frye*² standard of admissibility, at least when it was used merely to identify
13 a possible suspect. (*Id.*, at 1141.) A DNA profile of the perpetrator was obtained
14 from sperm cells left on the victim, which was submitted to CODIS, resulting in a
15 "hit" on the defendant, who was in prison. A DNA sample was taken from the
16 defendant, which matched the crime source DNA profile. (*Id.*, at 1143.) The
17 criminologist determined that the profile obtained from the evidence item sperm
18 fraction was estimated to occur at random in the general population in about one in
19 130 quadrillion African-Americans, one in 240 quadrillion Caucasians, and one in
20 4.3 quadrillion Hispanics. (*Ibid.*)

21 In reaching its conclusion, and as relevant to the present case, the appellate
22 court found that the database search to identify a potential suspect "merely
23 provides law enforcement with an investigative tool, not evidence of guilt." (*People*
24 *v. Johnson*, at 1150.) The court went on to hold that "the means by which a
25 particular person comes to be suspected of a crime – the reason law enforcement's
26

27 ¹ Unreported federal court cases may be cited in California as persuasive authority.
28 (*Yvanova v. New Century Mortgage Corp.* (2016) 62 Cal.4th 919, 940.

² *People v. Kelly* (1976) 17 Cal.3d 24; *Frye v. United States* (D.C.Cir.1923) 293 F. 1013.

1 investigation focuses on him – is irrelevant to the issue to be decided at trial, i.e.,
2 that person's guilt or innocence, except insofar as it provides *independent* evidence
3 of guilt or innocence.” (*Ibid.*) The court went on to say:

4 [T]he fact that here, the genetic profile from the evidence sample
5 (the perpetrator's profile) matched the profile of someone in a
6 database of criminal offenders, does not affect the strength of
7 the evidence against appellant. The strength of the evidence
8 against him (at least in terms of the DNA evidence) depends
9 upon the confirmatory match between *his* profile and that of the
10 perpetrator, and the calculation of the frequency of the
11 perpetrator's profile in the relevant population. That population
12 is the population of possible perpetrators, not the population of
13 convicted offenders whose DNA has been entered into CODIS.
14 The fact appellant was first identified as a possible suspect
15 based on a database search simply does not matter.

16 (*Id.*)³

17 The same rationale applies, in this court's opinion, where the suspect is first
18 identified through an FGG investigation using public genealogy databases. The
19 fact that GEDmatch reported a list of “hits” – users who share DNA with the crime
20 source DNA profile – does not affect the strength of the evidence against Green.
21 The strength of the evidence against Green in terms of the DNA evidence depends
22 upon the confirmatory match between his DNA profile and that of the crime source
23 DNA profile, and the calculation of the frequency of the crime source DNA profile
24 in the relevant population. The fact Green was first identified as a possible suspect
25 based on a database search does not matter.

26 The FGG investigation did not identify Green as a suspect, but rather
27 pointed law enforcement to candidates derived from the genealogy database that
28 came close to matching the crime source DNA profile. From there, law enforcement
used other investigatory tools to identify Green as a potential suspect. As stated by
the California Appellate Court:

³The appellate court analogized the DNA database search to computerized database searches for fingerprint matching, referencing *People v. Farnam* (2002) 28 Cal.4th 107. (*People v. Johnson, supra*, 139 Cal. App. 4th at 1152.)

1 [P]olice used CODIS to narrow the range of potential candidates
2 whose genetic profiles might match that of the evidence sample
3 (the perpetrator's profile), after which the prosecution relied on
4 scientifically accepted techniques to show the jury that
5 appellant's genetic profile matched that of the perpetrator, and
6 the astronomical rarity of that profile in the population of
7 possible perpetrators.

8 (*People v. Johnson*, 139 Cal. App. 4th at 1153.)

9 The case from the federal district court in Ohio applies these same principles
10 but is factually closer to the present case. In *U.S. v. Johnson* (N.D. Ohio 2011) 2011
11 WL 4729966, the defendant was indicted with one count of bank robbery. Police
12 investigating the robbery collected as evidence a baseball cap worn by the
13 perpetrator that was dropped as he fled the bank. A forensic scientist created a
14 DNA profile from DNA found on the hat, which profile was run through CODIS for
15 possible matches. After reviewing the returned "hits," the scientist determined
16 there was only one hit that could not be excluded as a potential match to the DNA
17 profile, and that belonged to the defendant. Law enforcement obtained a DNA
18 sample from the defendant, which matched the DNA from the hat. The scientist
19 then calculated the expected frequency of occurrence of the DNA profile from the
20 hat as 1 in 3,928,000 unrelated individuals. (*Id.*, at p. 1.)

21 Citing *Brady* and Rule 16 of the Federal Rules of Criminal Procedure,⁴ the
22 defendant filed a motion seeking, as does Green here, access to information
23 regarding other potential matches identified through the CODIS database,
24 identified by defendant as "Match Detail Reports." (*Ibid.*) Defendant argued the
25 reports were evidence of other suspects connected to the robbery and were, thus,
26 favorable and material to his defense. (*Id.*, at p. 2.) Defendant further argued that
27 his expert should be permitted to review the reports to determine if law
28 enforcement's scientist erred in excluding any of the potential matches. (*Ibid.*) The

⁴ Rule 16 of the Federal Rules of Criminal Procedure is sufficiently similar to Penal Code § 1054.1 to analogize *U.S. v. Johnson* to the present case. More specifically, both Rule 16(a)(1)(F) and Penal Code § 1054.1(f) require that the prosecution disclose to the defense the results of physical or mental examinations and scientific tests and experiments if the prosecutor intends to offer same in evidence at trial.

1 prosecution argued, as here, that the non-matching CODIS hits were outside the
2 scope of statutory discovery requirements and were not *Brady* material because
3 they were not exculpatory or relevant to defendant's defense. (*Ibid.*) More
4 specifically, the prosecution argued

5 that the earlier CODIS hits are an investigatory technique used
6 to find potential suspects, similar to calls to a police tip-line, and
7 are not evidence that is relevant or material to [defendant's]
8 guilt or innocence. Specifically, the Government argues that
9 evidence of other possible matches or suspects is not
10 discoverable by [defendant] unless he can demonstrate some
11 "plausible nexus" linking the other suspects to the crime.
12 Otherwise, the Government asserts whether or not other
13 possible matches exist in the CODIS database is not relevant or
14 material to [defendant's] guilt or innocence.

15 (*Id.*, at p. 3.)

16 The Ohio federal court agreed, finding that the CODIS database search
17 merely provided law enforcement with an investigative tool, not evidence of guilt,
18 citing *People v. Johnson* (2006) 139 Cal.App.4th 1135. (*U.S. v. Johnson, supra*, at p.
19 3.) The court held "that the fact that the DNA swab collected from the baseball cap
20 may inculcate someone else in the database is not exculpatory or favorable to [the
21 defendant's] defense" (*Id.*, at p. 4), citing the "strength of the evidence" passage
22 from *People v. Johnson, supra*, 139 Cal.App.4th at 1151.⁵

23 The court continued, stating: "whether or not the analyst erred at the
24 investigatory stage of his DNA analysis has no bearing on the strength of the DNA
25 evidence against [the defendant] consisting of the direct comparison of his DNA
26 with the DNA extracted from the hat." (*Ibid.*)

27 The evidence that is material to the guilt or innocence of [the
28 defendant] is the testing that followed the CODIS search, which
directly compared a fresh swab of the [the defendant's] DNA

5 The passage was previously cited: "The strength of the evidence against him (at least in terms of the DNA evidence) depends upon the confirmatory match between *his* profile and that of the perpetrator, and the calculation of the frequency of the *perpetrator's* profile in the relevant population. That population is the population of possible perpetrators, not the population of convicted offenders whose DNA has been entered into CODIS. The fact appellant was first identified as a possible suspect based on a database search simply does not matter." (*U.S. v. Johnson, supra*, at p. 4.)

1 with DNA profile collected at the crime scene. Indeed, it is only
2 this evidence that the Government intends to present at trial.
3 There is “no constitutional requirement that the prosecution
4 make a complete and detailed accounting to the defense of all
5 police investigatory work on a case.” *Moore [v. Illinois]*, 408 U.S.
6 [786,] 795 (1972). The Government has already provided [the
7 defendant] with the hat and the results of [the criminologist’s]
8 comparison of [the defendant’s] DNA with that of the sample
9 obtained from the baseball cap—nothing compels it also to
10 provide its preliminary search of the CODIS database for
11 possible matches, which is investigatory in nature and is not
12 exculpatory or material to [the] defense.

13 (*U.S. v. Johnson, supra*, at 4.)

14 The court noted that the defendant “presented no evidence that the
15 eliminated profiles can otherwise be linked to the crime he is accused of
16 committing. A mere possibility that the information might help the defense does
17 not establish that this evidence is material.” (*Ibid.*)

18 The court finds no distinction between the above analysis of CODIS database
19 searches leading law enforcement to focus on a particular person as a suspect and a
20 public genealogy database search leading law enforcement to focus on Green. The
21 analysis set forth in *People v. Johnson* and *U.S. v. Johnson* should apply with
22 equal force to these juvenile delinquency proceedings.

23 In criminal cases, the court retains wide discretion to protect against the
24 disclosure of information that might unduly hamper the prosecution or violate
25 some other legitimate governmental interest. (*Joe Z., supra*, 3 Cal. 3d at 804.) “[A]
26 defendant in a criminal case must furnish better cause for discovery than a ‘mere
27 desire for the benefit of all information which has been obtained by the People in
28 their investigation of the crime.’” (*Ibid.*) “The juvenile courts should possess a like
degree of discretion in determining the extent to which they will permit pretrial
discovery in delinquency proceedings.” (*Ibid.*)

As in the above cases, the evidence that is material to Green’s guilt or
innocence is the testing that followed the FGG investigation, which directly
compared a fresh swab of Green’s DNA with the DNA profile collected from the
victim’s nightgown. It is only this evidence that the People intend to present at

1 trial. The People are not obligated to provide its preliminary search of the
2 genealogy databases for possible matches, which is investigatory in nature and is
3 not exculpatory or material to Green's defense. Green has presented no evidence as
4 a part of his motion or supplemental filings that tend to show that the persons
5 identified through GEDmatch who share DNA with Green can otherwise be linked
6 to the crime he is accused of committing. A mere possibility that the information
7 might help the defense does not establish that this evidence is material.

8 Based on the foregoing, the court finds that the FGG investigation
9 information is not discoverable to Green under *Brady* or Penal Code § 1054.1,
10 except as follows:

11 The court finds that the following DNA evidence is discoverable as real
12 evidence and must be produced by the People to Green, to the extent it has not
13 already done so:

14 (a) Any remaining extract from the victim's nightgown containing the
15 mixture of victim and unknown male DNA;

16 (b) All reports and other information pertaining to the analysis of the raw
17 data and the scientific approaches applied by criminologists and/or private
18 forensic laboratories engaged by law enforcement to deconvolve the DNA
19 mixture to create the DNA profile of the unknown male suspect; and

20 (c) All reports of comparison of Green's DNA with that of the crime source
21 DNA profile.

22 Green has a right to have his experts conduct their own tests and review of
23 such information to prove whether the unspecified male DNA profile was reliable or
24 whether there were any errors in conversion of the mixed contributor DNA sample
25 into a useable crime source DNA profile appropriate for uploading to GEDmatch.

26 The People are not obligated to discover to Green the requested Match Detail
27 Reports, long-form Candidate Match Reports, family tree information, lists of
28


1 people identified through the FGG investigation as being related by DNA to Green,
2 or any other information from its FGG investigation except as set forth above.

3 Considering this finding, the People's argument that the FGG investigation is
4 protected from disclosure by the official information privilege is moot.

5 The motion to compel discovery of genetic genealogy information is denied, in
6 part, and granted, in part, as set forth above.

7 **IT IS SO ORDERED.**

8
9 Dated: 10/5/2020

10 
11 _____
12 Honorable Michael J. McLaughlin
13 Judge of the Superior Court

14 Michael J. McLaughlin