

1 JEFFREY F. ROSEN
District Attorney
2 DAVID R. BOYD
Deputy District Attorney
3 California State Bar No. 184614
County Government Center, West Wing
4 70 West Hedding Street
San Jose, California 95110
5 Telephone: (408)792-2968

6 Attorneys for Plaintiff

(ENDORSED)
FILED
SEP 09 2016

DAVID H. YAMASAKI
Chief Executive Officer/Clerk
Superior Court of CA County of Santa Clara
BY G. GOLBENSON DEPUTY

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

11 THE PEOPLE OF THE STATE)
OF CALIFORNIA,)

12 Plaintiff,)

13 v.)

14 ANTOLIN GARCIA-TORRES,)

15 Defendant.)
16 _____)

Criminal Case No. 213515

DATE: September 2, 2016

TIME: 1:30 PM

DEPT: 40

TIME EST.: 15 MINUTES

PEOPLE'S RESPONSE
TO GARCIA'S MOTION FOR
A CONTINUANCE UNDER PC 1050
CORRECTED COPY

18 As in the last defense motion to continue, the People do not challenge the law that the
19 defendant cites except to the extent that counsel again implies that the ABA Guidelines for the
20 Performance of Counsel in Death Penalty Cases indicates the standard for effective assistance of
21 counsel. They do not. *See Bobby v. Van Hook* (2009) 558 U.S. 4, 8 (ABA Guidelines are ““only
22 guides’ to what reasonableness means”); *In re Reno* (2012) 55 Cal.4th 428, 467 (determining some
23 of the ABA Guidelines required “much more of counsel than is required by state and federal law
24 governing ineffective assistance of counsel,” were “inconsistent” with the California Supreme
25 Court’s own standards, or recommended “a higher level of rigor than” required by the California
26 Supreme Court or the U.S. Constitution).

27 Counsel is correct, however, that upon a showing of good cause, a continuance may be
28 granted. “Continuances shall be granted only upon a showing of good cause. Neither the

1 convenience of the parties nor a stipulation of the parties is in and of itself good cause.” PC
2 §1050(e). The Legislature has found:

3 the people, the defendant, and the victims and other witnesses have the right to an
4 expeditious disposition, and to that end it shall be the duty of all courts and judicial
5 officers and of all counsel, both for the prosecution and the defense, to expedite
6 these proceedings to the greatest degree that is consistent with the ends of justice
7

8 PC §1050(a).

9 A. Continuance for Mitigation Investigation

10 This case has been a potential death penalty case since it was filed over four years ago. The
11 People indicated to the Court and counsel that we would be seeking the death penalty over two
12 years ago. While it is undoubtedly true that counsel must research a mitigation case, they have had
13 no less than two years and in actuality over four years to accomplish such a task. Even if the ABA
14 Guidelines set the standard for mitigation investigation, *People v. Doolin* (2009) 45 Cal.4th 390,
15 450, stands for the proposition that diligence of counsel is a necessary predicate to good cause.
16 Counsel’s public declaration is devoid of any facts to show diligence in this regard.

17 B. Continuance Based Upon Right to Present a Defense

18 This portion of the motion is devoid of any facts necessary to the discussion of whether
19 there is either good cause or reasonable diligence of counsel. The People will address counsels’
20 declarations, to extent they need clarification below. However, for example, the defendant sought
21 for the first time independent examination of the fiber evidence only one week ago, yet the
22 inculpatory results of the fiber examination have been in the defense’s hands since March 2013.

23 C. Continuance Based upon Propositions 62 and 66

24 In this discussion counsel cites to no case authority, whether persuasive or otherwise,
25 suggesting impending possible changes in the law are a legitimate basis for a continuance. The
26 People’s review has no found no case to support such an argument.

27 Counsel owes their client effective assistance of counsel which includes reasonable trial
28 strategies, but not clairvoyance as to what the outcome of an election might be. Effective
assistance of counsel requires dealing with the law and the facts as they are today, not as they might
be months or years from now. If such a motion were well taken, then the probability of the election

1 outcome would be a relevant factor; however, counsel pointedly fails to identify any polling data
2 to support their motion. It may not help their argument if they did.^{1/}

3 D. Counsels' Declarations

4 Below, the People will address select paragraphs of the declarations attached by counsel.
5 If there is no response or clarification to the paragraph, it is because the paragraph was redacted,
6 the paragraph asserts the opinion of counsel, the People are not in a position to address, or there
7 is no need to add any relevant facts.

8
9 DECLARATION - DEPUTY ALTERNATE DEFENDER ALFONSO LOPEZ

10 4-9. Mr. Lopez mentioned the need for independent review of the fibers for the first time
11 sometime between August 17 and August 19, 2016. Mr. Lopez did not deliver to the
12 People a description of the exact evidence he needed and the proposed order until the
13 following week, on August 24, 2016. It took a few working days with lab personnel and
14 Mr. Lopez to finalize the identification of the needed evidence and the order, which was
15 signed by this Court on August 30, 2016.

16
17 The nature of the People's fiber testing and the results have been know to the defense since
18 March 2013.

19
20 The People have addressed with defense counsel via written correspondence as early as
21 September 13, 2013, the issue of independent testing. The People addressed the issue again
22 with counsel during the evidence view last year. To date, counsel has asked for
23 independent review or testing of two categories of evidence, a single hair, and now the fiber
24 evidence. Both were requested this year.

25
26 _____
27 ^{1/} See Institute of Governmental Studies' August 18, 2016 report of polling relating to
28 Propositions 62 and 66 (<http://escholarship.org/uc/item/0hs2711d>) last accessed on September
1, 2016. It notes that a majority of "California voters oppose an effort to abolish the death
penalty [Prop 62] and strongly support a competing measure [Prop 66] to streamline procedures
in capital cases."

1 10-11. The People are aware of the basic facts of Mr. Matthews family emergency and desire this
2 Court to accommodate his personal family situation.

3
4 12. It is unknown what the defense mitigation case may encompass as there has been no
5 discovery of any mitigation evidence to date. A special circumstance was alleged in the
6 initial complaint filed on May 23, 2012. The People notified the defendant and the Court
7 on May 19, 2014 that we would be seeking death.

8
9 13. Counsel fails to articulate any legal theory upon which any motion is to be filed, much less
10 a potentially meritorious one. The idea that the DNA profile uploaded into CODIS back
11 in 2012, being removed from the system in 2016, could somehow impact his guilt, the
12 death penalty or the lawfulness under the Fourth Amendment of law enforcement's conduct
13 in collecting evidence over four years ago is without basis. A copy of the People's letter
14 that counsel alleges raises additional legal issues is attached as Exhibit 1.

15
16 DECLARATION - BICKA BARLOW

17 1-4. Absent from these paragraphs or the declaration itself is when Ms. Barlow was brought in
18 on the case or what efforts defense counsel made in these areas prior to her retention.

19
20 5. It is undoubtedly true that there is quite a bit of lab material. However, absent from Ms.
21 Barlow's declaration is how much of the lab material revealed no results at all or when the
22 voluminous material was received by the defense which would assist in evaluating their due
23 diligence.

24
25 It is not correct for Ms. Barlow to state that "we have not been provided the validation
26 studies case" She is going to file Plus The People produced the validation studies for file Plus in August 2014 The People have
27 previously referred counsel for the defense to the CD number (SO DM-517) on which this
28 discovery is present. The People have provided defense counsel with logs to assist them in their

1 tracking of discovery and indeed met with two paralegals from the Alternate Defender's Office to
2 assist them in accounting for every BATES stamped page and every compact disc produced. While
3 there have been many communications (email and telephone) over the last several years, there was
4 an exhaustive in person meeting on April 20, 2016, as well.

5
6 The People have addressed the validation studies of Identifiler Plus most recently via
7 written correspondence dated July 28, 2016 and April 19, 2016. The People are concerned
8 that Ms. Barlow would put such a statement in a sworn declaration. The People have
9 repeatedly told the defense the validation is contained on SO DM-517 and during the
10 meeting with the paralegals, there was no indication they were missing that CD or that it
11 was damaged or non-functioning. The People asked, in writing on April 19, 2016, for
12 counsel to explain why the production was missing or inadequate. With the exception of
13 Ms. Barlow's declaration, the People have heard nothing other than to request it again.

14
15 It is true that new DNA discovery was produced on July 13, 2016, but not on July 20 as in
16 Ms. Barlow's declaration. Much of this material is duplicative of the independent
17 mitochondrial testing of Sierra's hair found in the defendant's trunk that the defense
18 undertook via court order dated April 22, 2016. The People conducted the same testing
19 contemplated by that order and produced the results shortly thereafter. Despite four
20 months, the defense apparently has not completed their own testing of a different portion
21 of the same hair.

22 E. The Court Should Consider Additional Orders

23 To assist in this Court's duty under Penal Code section 1050 and the California
24 Constitution, Article I, section 28(b)(9) giving the victims the right to an expeditious disposition,
25 this Court should consider setting discovery time lines, including regular interim reviews with
26 counsel regarding meeting their investigatory targets and discovery obligations. It is apparent that
27 the defense will be attempting to mount a substantial attack on the DNA evidence in this case. It
28 is also apparent that the defense has been investigating, and will present, a mitigation defense of

1 the death penalty. The defense may have, in its sealed declarations, provided this Court with
2 objective evidence that the defense reasonably anticipates they are likely to call witnesses and
3 experts in these areas. See *In re Littlefield* (1993) 5 Cal.4th 122, 129

4 Ms. Barlow's declaration in paragraph 10 states: "The identity and reports of testifying
5 experts will be disclosed once the defense knows what they will say. It is anticipated that the
6 prosecution will need a continuance to review the material once it is ready." In the People's view,
7 it is unfathomable that the defense at this late stage is entirely unaware of what their DNA experts
8 will say with respect to any of the DNA testing to date, which is to say nothing of the other
9 undisclosed forensic issues in the case (e.g. computers, cell phones, fingerprints, death penalty
10 mitigation and/or trace).

11 It is true that the People will need adequate time to review any defense discovery. The
12 People have repeatedly requested defense discovery in this case. We sought a motion to compel
13 defense discovery pre-trial (filed March 23, 2016) which was thereafter denied, but only after a
14 closed hearing before Judge Williams where it is unknown what was said. [Vol. 24 at 370-381.]
15 The People request that this Court review the comments of counsel from that hearing and compare
16 them to the progress being made toward the goals hopefully discussed in the redacted portions of
17 the declaration in support of the instant motion as well as the motion to continue heard and denied
18 on August 1, 2016.

19
20 **CONCLUSION**

21 As in the last motion to continue, because much of the facts used to justify a continuance
22 are redacted, the People are in no position to challenge or add relevant facts. The People trust that
23 the Court will carefully evaluate each line of the redacted material in its review and order unsealed
24 those portions that are not attorney-client privilege or other confidential material that must remain
25 sealed at this time; aware that attorney work product is not a privilege and is not absolutely
26 protected from disclosure.

27 The People ask this Court to inquire when all the items counsel has listed in the declarations
28 will be completed, including the tactical decisions that impact the timing of the defense's discovery

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obligations. The People further ask the Court to proactively inquire with counsel about the progress they are making at regular intervals towards readiness. Regarding the motion to continue, the People cannot take a position on whether good cause is present until late November because so much of the defendant's motion is hidden from view. The People do agree however, that we are entitled to discovery and it is likely the vast majority of that discovery has not been produced to date.

DATED: September 1, 2016

Respectfully Submitted,
JEFFREY F. ROSEN
District Attorney

DAVID R. BOYD
Deputy District Attorney

County of Santa Clara

Office of the District Attorney

370 West Hedding Street, West Wing, 5th Floor
San Jose, California 95110
(408) 299-7400



Jeffrey F. Rosen
District Attorney

David R. Boyd
Deputy District Attorney
(408) 792-2968
dboyd@da.sccgov.org

August 30, 2016

Al Lopez
Brian Matthews
Alternate Defender's Office
675 North First Street, Suite 110
San Jose, CA 95112

Re: ANTOLIN GARCIA TORRES
Docket No. 213515

Dear Mr. Lopez:

In prior correspondence the issue of whether there have been any other candidate match profiles - from the deduced partial from 169108-5ec - dispositioned as a non-match has been discussed. Please take note that effective this week, CA SDIS has directed the removal of samples that have a moderate match estimate (MME) $< 10^5$. The sample from 169108-5ec qualifies for removal because it does exceed that figure.

This action is a result of policy being set by both NDIS and CA SDIS and is not unique to this particular sample. All samples that do not exceed the MME threshold are being removed. The District Attorney's Office has requested that the sample remain, however because it does not meet the MME threshold, it will be rejected by CA SDIS software. As a result, it will not be searched and therefore it will have to be deleted.

As of August 26, 2016, there have been no new candidate matches with respect to that profile. You have the DNA profiles of all candidate matches to date.

Sincerely,

A handwritten signature in black ink, appearing to read "David R. Boyd".

DAVID R. BOYD
Deputy District Attorney

DA Case #: 120511149

EXHIBIT 1

People's Response To Defendant's Motion to Continue Trial - 213515