

## Santa Cruz coffee shop rape arrest hinged on state DNA lab

By STEPHEN BAXTER -- Santa Cruz Sentinel

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RICHMOND - It was the strands of hair collected from a trash can. It was the DNA collected from the coffee shop near the Santa Cruz Harbor where a 23-year-old barista was raped at knife point before dawn in March 2008, authorities said.

Perhaps above all it was criminalists at the state Department of Justice laboratory in Richmond who broke the case open for Santa Cruz police and led to a 21-year-old man's arrest three years after a rape and robbery that rocked the harbor community.

Days after police arrested Elvis Lorenzo Garcia on March 11, they described how a state crime lab used DNA from Garcia's father to find the suspect and eventually match his DNA to DNA found at the crime scene. The arrest was only the second in California to use the DNA of a suspect's family member, and supporters of the technique said it illustrated its merits.

"It's used to catch predators who would have otherwise gone undetected," said John Tonkyn, criminalist supervisor at the Jan Bashinski DNA Laboratory in Richmond.

"The main thing is it's a brand new tool. We've only been doing it for about 1 1/2 years."

Tonkyn said the Santa Cruz case was one of few that have met the lab leaders' narrow criteria for crimes that warrant family DNA searches. The crime must be serious, among other things, which includes murder and rape.

Just before 6 a.m. on March 19, 2008, a 23-year-old barista was preparing to open the Kind Grind Coffee Shop steps from the harbor beach at 2222 E. Cliff Drive.

She had her back to the unlocked door. She turned around and saw a man inside the shop wearing a black hooded sweatshirt with the hood up, according to court records and police.

The man showed a knife and demanded to know where the money was kept, prosecutors wrote in their criminal complaint. He held the knife to her throat and ordered her around, eventually forcing her into a kitchen where he "brutally" raped her, police and prosecutors said.

He then forced her inside a walk-in refrigerator and freezer and tried to barricade the door, police said. He put a table and other items in front of it, prosecutors said.

The man took a small amount of cash from the register, as well as the woman's cellphone and another phone in the shop to delay her from calling police, prosecutors said. She eventually escaped from the refrigerator and found help, prosecutors said.

As Santa Cruz police and investigators from the District Attorney's Office looked at the crime

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scene that morning, they promised each other that they would solve the case.

"The attack tore the fabric of our community," Police Chief Kevin Vogel said recently.

The crime rattled residents and merchants around the harbor, and meetings were held to discuss safety. A reward fund was established and authorities released a sketch of the suspect to gather information. The shop started opening later in the morning..

Police said shortly after the crime that a knife and a blue shirt were collected as evidence, but it is unclear if DNA was collected from those items. DNA samples can come from a strand of hair, blood, semen or saliva.

Police submitted DNA to the crime laboratory in Richmond for testing, but there was no match with a DNA profile in its system, police said.

After months of investigation, police sent a request to run the DNA pattern against the DNA of potential family members of the suspect.

### A RARE TEST

The lab in Richmond is a modern, beige building off of Interstate 580 that was once an office of Pixar Animation Studios.

Its overhaul in 2001 cost about \$20 million, and equipment in the lab is worth more than \$4.5 million, representatives said. Lab leaders said they receive many requests for familial DNA requests, and they have formal meetings to discuss their merits, said Tonkyn, of the lab.

The crimes have to be serious - such as a murder or rape - and the police must have exhausted all other leads in their case. Lab leaders said police also must believe the suspect is still a danger to the community and there must be a commitment to prosecute the eventual suspect.

"It's not something we do routinely," Tonkyn said.

Like a fingerprint, DNA is essentially a unique code of a person's makeup that is carried in every cell in every human. Lab workers, called criminalists, can take microscopic amounts of DNA, amplify them a billion fold to reveal their code and enter them in a computer system.

A drop of blood on the head of a pin can be tested and amplified, Tonkyn said.

The criminalists wear blue lab coats and gloves to handle the equipment, taking care not to contaminate anything.

The DNA searches hone in on 15 markers and repeating elements called "short tandem repeats" that can indicate matches. Essentially, that information is transferred to software that runs the pattern against a database of 1.7 million DNA profiles in the state.

The difference with a traditional DNA search and a familial DNA search is that the goal of a familial search is to find a match with a suspect's family member who they know is not a suspect in the crime. It is nearly always a brother or father of a suspect.

If a match is found, the California lab takes an

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extra step of comparing the short tandem repeats of the Y chromosome - which should be an exact match between a father and son or between brothers.

Criminalists work on a case from start to finish, and they typically know the background of the case as they research it.

"We do good work here," said one senior criminalist at the lab. She asked that her name not be used because she testifies in cases.

### NEW CASES

There have been a total of two matches using the system since the lab began familial DNA testing. The Santa Cruz harbor case is the second in the state to match and result in an arrest.

The first match was used in the Los Angeles case of the Grim Sleeper, a suspected serial killer who is being prosecuted for 10 murders from 1985 to 2007. On Tuesday, prosecutors linked Lonnie Franklin Jr. - a 58-year-old mechanic accused in the crimes - to up to eight more murders.

Franklin has been called the Grim Sleeper because there was a gap in the suspected slayings, but police said this week that they are closing that gap with new evidence. Franklin pleaded not guilty, and a grand jury recently determined that there was enough evidence for a trial. A trial date has not yet been set.

Jeff Rosell, the Santa Cruz County prosecutor in the harbor case, said that case may or may not have a bearing on the harbor case.

Other states, including Virginia and Colorado, also have used familial DNA in crime solving, and it has been used in the United Kingdom for at least six years. The Santa Cruz search was the 13th time California had used familial DNA since approved in 2008.

In Garcia's case, criminalists at the lab hit a match in November 2010 - two years after police requested a familial DNA search.

Garcia's father, Lorenzo, had been convicted of felony vehicle theft in Southern California, and his DNA profile was in the state database.

Katrina Rogers, a Santa Cruz police investigator who worked on the harbor case, said she was "elated" when she received word of the match.

Police said they began to track Elvis Lorenzo Garcia, who lived in the Seabright area and worked as a machinist on the 2200 block of Delaware Avenue on the Westside of Santa Cruz. Police said they searched through his garbage for clues, and eventually found a hair net and a Gatorade bottle that contained his DNA.

It matched evidence collected at the coffee shop back in 2008, said Deputy Chief Steve Clark.

Based on that evidence, police obtained warrants to search and arrest Garcia, Clark said.

Garcia was arrested at his workplace on March 11 - the day a tsunami from a Japanese earthquake sunk boats in Santa Cruz Harbor - steps from the coffee shop crime scene.

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"They were arresting him in the midst of the tsunami stuff that was going on," Clark said a few days after his arrest.

Jerry Vinluan, Elvis Garcia's public defender, did not return a call seeking comment Friday.

### PRIVACY CONCERNS

Because familial DNA in criminal cases is a new frontier in the law, privacy advocates like the American Civil Liberties Union have reservations with the way its investigative techniques are used.

Law enforcement agencies in California can collect swab samples of suspects arrested on suspicion of felonies, and that data is in the state database regardless of whether they are convicted. That database is used for traditional DNA searches, but familial DNA searches only involve convicted felons, state lab leaders said.

ACLU attorneys sued the state in federal court in 2009. Among other things, they argued that collecting DNA of people arrested on suspicion of felonies violated their privacy. The case finished in court in summer 2010, but a federal judge has not yet handed down a decision, said Michael Risher, a staff attorney with ACLU of Northern California.

Risher said Friday that his organization's position is that there should be more oversight into familial DNA procedures.

The DNA of convicted felons is only used in the state lab's familial DNA tests, but the problem is that it could violate the rights of people who have no felony records - such as Elvis Garcia.

Rather than have familial DNA testing done at the discretion of the laboratory leaders, Risher said a judge's order should be required before a familial DNA search can be made.

He said if a judge's order is needed for search

and seizure, then it ought to be required for searching a person's DNA code - let alone the DNA of family members.

"We're talking about the privacy of innocent people," Risher said. "It's not just your privacy that you're sacrificing, it's your family and all of your close relatives. What about his mom or brothers?" Risher said.

When the state Legislature authorized the DNA database years ago, it did not envision familial DNA tests to be used, Risher said. Records should be kept on how often police request familial DNA searches and how often they lead to convictions, he said.

"Familial DNA searching is something that effects hundreds of thousands of people a year. We'd like to see the Legislature address it," Risher said.

Tonkyn, of the state lab, said its leaders try to balance privacy concerns with the victim's right to justice.

"The concerns about privacy are theoretical, but the results are real," Tonkyn said. "We take the release of a person's name very seriously."

Similarly, Santa Cruz police said because familial

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DNA cases are new, the stakes are high.

Deputy Chief Clark said police have always had an incentive to arrest the right person for the sake of the suspect's rights and because they don't want the true culprit to commit more crimes.

"We want to be absolutely sure that we have the right person," Clark said.

Clark said after Garcia's arrest police swabbed his cheek for DNA, and that it was tested and matched DNA from the crime scene. A jury ultimately will decide Elvis Garcia's innocence or guilt. He is due in Santa Cruz County Superior Court April 26 to set a date for a preliminary hearing, according to court records.

Garcia has pleaded not guilty to all charges, including sexual penetration by force, sodomy, aggravated kidnapping, sexual battery, commercial burglary and use of a deadly weapon, according to court records. He faces multiple life terms if convicted.

Jeff Rosell, the Santa Cruz County assistant district attorney who is prosecuting the case, said he believes the procedures used in the case were valid, but he could say no more because of the pending trial.

"I think the use of familial DNA in this case was absolutely appropriate," Rosell said.



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