In the Supreme Court of the State of California

THE PEOPLE OF THE STATE OF CALIFORNIA, **Plaintiff and Respondent,** **v.** **PAUL WESLEY BAKER,** **Defendant and Appellant.**	**CAPITAL CASE** Case No. S170280

Los Angeles County Superior Court
Case No. LA045977
The Honorable Susan M. Speer, Judge

RESPONDENT'S SUPPLEMENTAL REPLY BRIEF

XAVIER BECERRA
Attorney General of California
LANCE E. WINTERS
Chief Assistant Attorney General
SUSAN SULLIVAN. PITHEY
Senior Assistant Attorney General
SCOTT A. TARYLE
Supervising Deputy Attorney General
E. CARLOS DOMINGUEZ
Deputy Attorney General
State Bar No. 241097
300 South Spring Street, Suite 1702
Los Angeles, CA 90013
Telephone: (213) 269-6120
Fax: (916) 731-2122
Email: DocketingLAAWT@doj.ca.gov
Carlos.Dominguez@doj.ca.gov
Attorneys for Plaintiff and Respondent

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page

CASES

STATUTES

OTHER AUTHORITIES

ARGUMENT

Contrary to appellant's arguments in his Supplemental brief, Dr. Rick Staub's testimony did not contravene this Court's decision in *People v. Sanchez* (2016) 63 Cal.4th 665. His testimony consisted of general background information in his area of expertise – the operations of the DNA labs – and his expert opinions, which were based on his review of the DNA reports, but which did not actually convey case-specific facts from those reports to the jury. Even if any case-specific facts were conveyed, they were independently proven by the reports themselves, which were properly admitted into evidence as business records. Moreover, the DNA reports were not testimonial hearsay for confrontation clause purposes, and appellant was not prejudiced.

A. The DNA Reports Are Nontestimonial

Appellant contends that the DNA reports were testimonial for purposes of the confrontation clause. He relies on out-of-circuit authority for the proposition that the purpose of the DNA tests was to obtain evidence against him and that those same reports were prepared with the required degree of formality and solemnity. (App. Supp. Brief at 10-15.) Those cases are nonbinding and unpersuasive, and this Court's precedent does not support either claim.

First, a mere signature on the reports, lacking any kind of sworn statement, by an analyst who conducted the DNA tests, falls short of the testimonial laboratory certificates in *Melendez-Diaz*, which were sworn before a notary, and in *Bullcoming*,

which were formalized in a signed document that specifically referred to court rules providing for their admissibility in court. (*Melendez-Diaz v. Massachusetts* (2009) 557 U.S. 305, 309; *Bullcoming v. New Mexico* (2010) 564 U.S. 647, 664-665.) This Court's own precedent also indicates that the DNA reports lack the requisite degree of formality and solemnity. (See *People v. Dungo* (2012) 55 Cal.4th 608, 620 [unsworn autopsy report not testimonial because it lacked formality]; *People v. Lopez* (2012) 55 Cal.4th 569 [notation linking defendant's name to blood sample lacked the formality required to be a testimonial statement].)

Second, regarding the primary purpose of the DNA tests, it would be difficult to draw a distinction in cases where a suspect had yet to be found, and cases like this one, where a suspect had been found. (See *Williams v. Illinois* (2012) 567 U.S. 50, 114 (conc. opn. of Thomas, J.) [rejecting the plurality's conclusion the laboratory report was not testimonial because it was prepared mainly to find a yet-unidentified rapist].) The purpose of DNA tests is the same in both circumstances, *i.e.*, to compare DNA in accordance with established protocols. (*Id.* at p. 2244 (plur. opn. of Alito, J.) ["when the work of a lab is divided up in such a way [that numerous technicians work on each DNA profile,] it is likely that the sole purpose of each technician is simply to perform his or her task in accordance with accepted procedures"].)

The Court of Appeal's decision in *People v. Barba* (2013) 215 Cal.App.4th 712, is instructive. There, a DNA laboratory director testified to the results of testing performed by an analyst not employed by the laboratory. The witness had reviewed the

analyst's test documentation, and then drew independent conclusions "based on her own expertise and training." (*Id.* at p. 718.) Four DNA test reports prepared by the absent analyst were also received into evidence. (*Id.* at p. 719.) The Court of Appeal held that there was no confrontation clause violation because the absent analyst's reports lacked a "primary purpose" that would render them testimonial. (*Id.* at pp. 742-743.) This was because: "(1) they were generated by a lab technician pursuant to standardized procedures; (2) even though Barba had been charged with the crime, lab technicians . . . have no idea what their results might show, and DNA testing is routinely used to inculpate or exonerate those charged with crimes; and (3) the accusatory opinions came from [the] expert witness [], who was subject to vigorous cross-examination." (*Id.* at p. 742.) The same is true in this case, and therefore, like in *Barba*, the primary purpose requirement has not been satisfied.

Thus, none of the expert testimony violated the confrontation clause.

B. Dr. Staub's Opinion Testimony Was Proper Under *Sanchez*

Appellant also argues that Dr. Staub's testimony violated *Sanchez* because he "related factual statements in the DNA reports prepared by others for the truth of the matter asserted." (App. Supp. Brief at 15-18.) Appellant, however, fails to cite any part of the record or testimony at trial. To the contrary, Dr. Staub did not relate case-specific *facts* which had not been

independently proven,[1] but properly testified to his expert *opinions*, *based* on data from the reports (which were, themselves, admitted into evidence). As this Court held, "[a]ny expert may still *rely* on hearsay in forming an opinion, and may tell the jury *in general terms* that he did so." (*Sanchez, supra*, 63 Cal.4th at p. 685, italics in original.) Throughout trial, the prosecutor asked whether, in Dr. Staub's expert *opinion*, the DNA derived from samples were a match to appellant's DNA. In his own opinion, Dr. Staub answered in the affirmative (20RT 3473) and in the negative (20RT 3472). The record is replete with other instances of Dr. Staub offering his own opinion based on the DNA reports. (See, e.g., 20RT 3460, 3468, 3483-3484, 3489, 3495, 3519, 3522-3536, 3552, 3577, 3589-3592.)

As explained in the supplemental brief, Dr. Staub's opinion and general background testimony were admissible under *Sanchez*. To the extent he relayed any case-specific facts that were not his opinion, those facts were independently proven by other admissible evidence – the reports themselves – which were properly admitted under the business record exception. (Resp. Supp. Brief at 9-14.)

---

[1] "What an expert cannot do is relate as true case-specific facts asserted in hearsay statements, *unless they are independently proven by competent evidence* or are covered by a hearsay exception." (*Sanchez, supra*, 63 Cal.4th at p. 686, italics added and original italics omitted.)

C. Even Without Dr. Staub's Testimony, Overwhelming Evidence Established Appellant's Guilt In the Rape and Murder

Finally, appellant argues that he was prejudiced by the introduction of Dr. Staub's testimony. He argues that prejudice is shown by the jury requesting that portions of Dr. Staub's testimony be re-read, by the prosecutor's comments during closing argument emphasizing Dr. Staub's testimony and DNA reports, by the effect of DNA evidence on the jury, and the weight of expert testimony. (App. Supp. Brief at 20-26.) However, as in his other briefs, appellant glosses over Pollard's DNA testimony and ignores the other evidence that overwhelmingly established his guilt in the rape and murder of Judy Palmer. Pollard testified that she found appellant's DNA on cigarettes, and his sperm on a blanket and towel booties found at the crime scene. She also testified that DNA from the victim's fingernail clippings and cuttings from the victim's underwear were consistent with appellant's DNA. In an attempt to explain away this DNA evidence, appellant speculates it was the result of a previous consensual sexual encounter. (App. Supp. Brief at 24; AOB at 227.) But speculation is not evidence, and the evidence at trial does not support this inference. (Evid. Code, § 600 [an inference is a deduction of fact that may logically and "reasonably" be drawn from another fact]; *People v. Redmond* (1969) 71 Cal.2d 745, 755 [discussing the difference between speculation and a reasonable inference].) Unrebutted evidence established that the victim ended the relationship over a month before the crimes, had him arrested, and even obtained a restraining order against

him. In fact, given the violent nature of the crimes, the scratches on appellant's face at the time he bragged about breaking into her apartment and raping her readily explain – and lead to a reasonable inference – to why his DNA was found in the victim's fingernail clippings.

Nevertheless, as the prosecutor argued in closing argument, "[e]ven without [DNA] evidence, as compelling as you may find it, you can easily, easily convict this defendant." (45RT 7133.) Appellant, however, calls the non-DNA evidence "weak," "lacking," and "mixed, uncertain." (App. Supp. Brief at 24.) Still, the jury had evidence of appellant's intent to hurt the victim, her fear of being killed, the planning of the crime, the cover up and disposal of the body, the items linking appellant to the scene of the crime, and the powerful testimony from other women he had raped and abused. Together, this evidence overwhelming established appellant's guilt in the murder and rape of Judy Palmer, and any allegedly case-specific hearsay testimony by Dr. Staub concerning the DNA reports was harmless under either standard. (See, e.g., *People v. Penunuri* (2018) 5 Cal.5th 126, 158 [erroneously admitted evidence "added little if anything to the properly admitted evidence"]; *People v. Leon* (2015) 61 Cal.4th 569, 604 [evidence was irrelevant]; *People v. Rutterschmidt* (2012) 55 Cal.4th at p. 661 [evidence of guilt was overwhelming].)[2]

---

[2] In passing, appellant argues that Dr. Staub's testimony also prejudiced the burglary conviction because the prosecutor argued that burglary "could be based on entry 'with the intention

CONCLUSION

Accordingly, respondent respectfully requests that the judgment be affirmed.

Dated: June 17, 2020

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
LANCE E. WINTERS
Chief Assistant Attorney General
SUSAN SULLIVAN PITHEY
Senior Assistant Attorney General
SCOTT A. TARYLE
Supervising Deputy Attorney General

/S/ E. CARLOS DOMINGUEZ
E. CARLOS DOMINGUEZ
Deputy Attorney General
Attorneys for Respondent

ECD:lz
LA2009505317

---

to commit rape.'" (App. Supp. Brief at 22.) Even setting aside the overwhelming evidence discussed above that established the rape, the jury was instructed with CALCRIM No. 1700, which defined burglary as an entry with the intent to "commit theft or rape or sexual penetration of a foreign object or forcible sodomy" and did not require jury unanimity on "which one of those crimes he intended." (6CT 1383.) The prosecutor also correctly told the jury that the burglary conviction could, alternatively, be based on a theft, which the evidence at trial also established. (45RT 7199-7200; RB 121-122.) Thus, even if this Court finds Dr. Staub's testimony prejudicial, the burglary conviction should still stand.

CERTIFICATE OF COMPLIANCE

I certify that the attached **RESPONDENT'S SUPPLEMENTAL REPLY BRIEF** uses a 13-point Century Schoolbook font and contains 1,431 words.

Dated: June 17, 2020

XAVIER BECERRA
Attorney General of California
LANCE E. WINTERS
Chief Assistant Attorney General
SUSAN SULLIVAN PITHEY
Senior Assistant Attorney General
SCOTT A. TARYLE
Supervising Deputy Attorney General

/S/ E. CARLOS DOMINGUEZ
E. CARLOS DOMINGUEZ
Deputy Attorney General
Attorneys for the People

ECD:lz

DECLARATION OF ELECTRONIC SERVICE AND
SERVICE BY U.S. MAIL

Case Name: People of the State of California v. Paul W. Baker
No.: S170280

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collecting and processing electronic and physical correspondence. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business. Correspondence that is submitted electronically is transmitted using the TrueFiling electronic filing system. Participants who are registered with TrueFiling will be served electronically. Participants in this case who are not registered with TrueFiling will receive hard copies of said correspondence through the mail via the United States Postal Service or a commercial carrier.

On June 17, 2020, I electronically served the attached RESPONDENT'S SUPPLEMENTAL REPLY BRIEF by transmitting a true copy via this Court's TrueFiling system. Because one or more of the participants in this case have not registered with the Court's TrueFiling system or are unable to receive electronic correspondence, on June 17, 2020, I placed a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 300 South Spring Street, Suite 1702, Los Angeles, CA 90013, addressed as follows:

John F. Schuck Esquire
Law Offices of John F. Schuck
E-mail: schuckappeal@hotmail.com

California Appellate Project
101 Second Street, Suite 600
San Francisco, CA 94105-3672
By U.S. Mail

Gretchen Ford and Nicole Flood
Deputy District Attorneys
Los Angeles County District Attorney's Office
E-mail: gford@da.lacounty.gov
E-mail: nflood@da.lacounty.gov

Clerk of the Court
Honorable Susan M. Speer, Judge
Los Angeles County Superior Court
Northwest District
Van Nuys Courthouse West
14400 Erwin St. Mall, Dept. V
Van Nuys, CA 91401
By U.S. Mail

Governor's Office
Legal Affairs Secretary
State Capitol, First Floor
Sacramento, CA 95814
By U.S. Mail

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on June 17, 2020, at Los Angeles, California.

Lupe Zavala	/s/ Lupe Zavala
Declarant	Signature

LA2009505317
63354994

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **PEOPLE v. BAKER (PAUL WESLEY)**
Case Number: **S170280**
Lower Court Case Number:

1. At the time of service I was at least 18 years of age and not a party to this legal action.

2. My email address used to e-serve: **carlos.dominguez@doj.ca.gov**

3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

Filing Type	Document Title
REPLY	BakerSupplRespBrief

Service Recipients:

Person Served	Email Address	Type	Date / Time
Guadalupe Zavala CA Attorney General's Office - Los Angeles	guadalupe.zavala@doj.ca.gov	e-Serve	6/17/2020 7:58:01 AM
Office Office Of The Attorney General Court Added	docketinglaawt@doj.ca.gov	e-Serve	6/17/2020 7:58:01 AM
John Schuck Court Added 96111	schuckappeal@hotmail.com	e-Serve	6/17/2020 7:58:01 AM
Attorney Attorney General - Los Angeles Office E. Carlos Dominguez, Deputy Attorney General 241097	carlos.dominguez@doj.ca.gov	e-Serve	6/17/2020 7:58:01 AM
Gretchen Ford	gford@da.lacounty.gov	e-Serve	6/17/2020 7:58:01 AM
Nicole Flood	nflood@da.lacounty.gov	e-Serve	6/17/2020 7:58:01 AM

This proof of service was automatically created, submitted and signed on my behalf through my agreements with TrueFiling and its contents are true to the best of my information, knowledge, and belief.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

6/17/2020
Date

/s/Guadalupe Zavala

Signature

Dominguez, Carlos (241097)

Last Name, First Name (PNum)

CA Attorney General's Office - Los Angeles

Law Firm