

DEFENDANT'S DNA IN DATABASE

Introduction

Evidence of a defendant's DNA in a database may be relevant and probative. People v Wesley, 83 NY2d 417, 425 [1994] ["We hold that since DNA evidence was found to be generally accepted as reliable by the relevant scientific community and since a proper foundation was made at trial, DNA profiling evidence was properly admitted at trial"].

Additional evidence about the DNA database or the reason the defendant's DNA was in that database that may identify the defendant as having been previously convicted of a crime may constitute error. Cf. People v Meekins, 34 AD3d 843, 846 [2d Dept 2006], affd sub nom. on other grounds People v Rawlins, 10 NY3d 136 [2008] ["The defendant's contention that he was unduly prejudiced by the admission of evidence . . . that his DNA profile was maintained in a computer database is without merit. The court granted the defendant's motion during the prosecutor's opening statement to limit her comments regarding the database to exclude the use of the term "known individuals In addition, the court appropriately instructed the jury . . . not to speculate regarding how or why the defendant's DNA profile came to be part of a database of DNA profiles"]; accord People v Wiley, 50 AD3d 1546, 1547 [4th Dept 2008]. See State v McMilian, 295 SW3d 537, 540-41 [Mo Ct App 2009] [citing inter alia Meekins, the court held that "the mere fact that [the defendant's] DNA profile was present in a statewide database did not constitute an improper reference to other, uncharged crimes. . . . no mention was made of the reasons why his DNA profile was initially collected or added to the database; and testimony was solicited specifically indicating that the database includes DNA profiles of persons other than those arrested for, or convicted of, crimes"].

DNA databases, as the following instruction recognizes, may contain DNA profiles from persons who have not been accused or convicted of a crime. Those non-prejudicial reasons may be testified to, stipulated to, or otherwise explained to the jury in the following instruction.

Note: This instruction may not be necessary. Whether this instruction to the jury is necessary may depend on whether prejudicial evidence was introduced regarding the reason for the defendant's profile in a DNA database and whether a request for an instruction is made.

Instruction

You have heard testimony that the defendant's DNA profile was in a database.

Select as appropriate:

And that the database contains (specify the evidence of the non-prejudicial content).

As you may know, DNA databases contain the profiles of many people for various reasons, including for example: researching one's ancestry; or for health-related testing to determine whether a person may carry a gene associated with a disease.

So, the reason the defendant's DNA profile was in a database is irrelevant, and you are not therefore to speculate about, or otherwise consider the reason for any purpose.