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**STATE OF MINNESOTA,**

File No: 04085182

Plaintiff,

vs.

**ORDER AND  
MEMORANDUM OF LAW**

**JIMMIE DALE JACKSON,**

Defendant.

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Defendant brought a Motion to Suppress the DNA Testing Results or in the alternative, seek leave to search various DNA databases in the above-entitled manner before the undersigned judge of District Court in Hennepin County, Minnesota on Friday, January 20, 2006.

Kerry Meyer, Esq. and Steven Redding, Assistant County Attorneys, C-2000, Hennepin County Government Center, Minneapolis, MN 55487 represented the State of Minnesota.

Paul Schneck, Esq. and Patrick Sullivan, Esq., Assistant Public Defenders, 317 2<sup>nd</sup> Avenue S., Suite 200, Minneapolis, MN 55401, represented the Defendant.

Based upon the files, records and proceedings herein and on the arguments of counsel, the Court makes the following decision:

**IT IS HEREBY ORDERED:**

1. Defendant's Motion to Suppress is DENIED.
2. Defendant's Motion to search alternative databases is DENIED.
3. The attached memorandum of law is incorporated as part of this order.

BY THE COURT:

Dated: January \_\_\_\_, 2006

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Francis J. Connolly  
Hennepin County District Court Judge

## MEMORANDUM OF LAW

### **I. FACTUAL BACKGROUND**

On August 19, 2000, a 17 year old girl was sexually assaulted in a park in North Minneapolis. She reported the crime to her mother who took her to a hospital and a sexual assault examination was completed. The results of the examination were sent to the Minnesota Bureau of Criminal Apprehension (BCA). The BCA discovered semen and a DNA profile of the semen was developed. The DNA profile from the semen was kept in the BCA computer and run periodically through the BCA database of convicted offenders. In December 2004, a match was found in the database. The computer listed Jimmie Dale Jackson (“Jackson”) as having the same DNA profile as the semen from the kit. A scientist checked the sample again and confirmed a match.

Jackson had been convicted of three attempted burglaries in 2003 and provided a DNA sample pursuant to Minnesota stat. §609.117. Jackson was charged with criminal sexual conduct in the first degree and a new DNA sample was taken from the defendant in February 2005. The new sample taken from Jackson also matched the sample from the sexual assault kit.

### **II. PROCEDURAL HISTORY**

Jackson now moves that this court suppress the DNA sample taken by the Department of Corrections as a result of his prior conviction, the results of the search of the DNA database allegedly matching his DNA to this crime and the subsequent blood sample taken by police. Jackson also moves to suppress the results of the DNA testing or in the alternative seeks leave to search all national criminal offender databases using the DNA pattern identified in the sample.

### **III. ANALYSIS**

#### **A. The original blood sample**

Jackson claims that the original blood sample was drawn in violation of the Fourth Amendment of the Constitution. He argues that being ordered to provide a biological specimen for DNA analysis violated his right to be free of unlawful searches and seizures under the Fourth Amendment to the United States Constitution and Article I, § 10 of the Minnesota State Constitution. The Fourth Amendment of the United States Constitution and Article I, §10 of the Minnesota Constitution guarantee that a person may not be subjected to the forced removal of blood for scientific testing in the absence of probable cause and either a search warrant authorizing the intrusion or exigent circumstances excusing the need for a search warrant. Johnson v. State, 673 N.W.2d 144, 148 (Minn. 2004)(citing In re Welfare of J.W.K., 583 N.W.2d 752, 755 (Minn. 1998).

In this present case, Defendant was required to submit a blood sample pursuant to Minnesota Stat. § 609.117 which states as follows:

Subdivision 1. Upon sentencing. If an offender has not already done so, the court shall order an offender to provide a biological specimen for the purpose of DNA analysis as defined in section 299C.155 when:

- (1) the court sentences a person charged with committing or attempting to commit a felony offense and the person is convicted of that offense or of any offense arising out of the same set of circumstances; or
- (2) the juvenile court adjudicates a person a delinquent child who is petitioned for committing or attempting to commit a felony offense and is adjudicated delinquent for that offense or any offense arising out of the same set of circumstances.

The biological specimen or the results of the analysis shall be maintained by the Bureau of Criminal Apprehension as provided in section 299C.155.

Minn. Stat. §609.117, subd. 1.

The removal and analysis of Jackson's blood did constitute a search for the purposes of the Fourth Amendment. Therefore, the Court must decide whether or not the search was reasonable. The Court must consider if the authorities were justified in requiring Jackson to submit to the test and whether the means and procedures were reasonable. Kruger v.

Erickson, 875 F.Supp. 583 (D. Minn 1995) (*citing* Schmerber v. California, 384 U.S. 757 (1966)). In determining the reasonableness of the search, the Court must balance the need to search against the invasion which the search entails. Kruger v. Erickson, 875 F.Supp. 583 (D. Minn 1995) (*citing* McDonell v. Hunter, 809 F.2d 1302, 1307 (8<sup>th</sup> Cir. 1987)).

In Kruger, the petitioner argued that being ordered to provide blood sample for DNA analysis violated his right to be free from unreasonable searches and seizures. Kruger v. Erickson, 875 F.Supp. 583 (D. Minn.1995). The Court found that officials were justified in requiring petitioner to submit to a blood test. Id. at 588. The Court reasoned that the statute served a legitimate governmental interest of assisting the investigation and prosecution of sex crimes and that the manner in which the official drew the petitioner's blood was reasonable. Id.

This case is similar to Krueger since Jackson has been convicted of an offense which under Minnesota Stat. §609.117 required the court to order him to submit a biological specimen for DNA analysis. Furthermore, the Court determines that the state's need in maintaining a DNA database to assist in the investigation and prosecution of sex crimes sufficiently outweighs the minimal amount of intrusion into Jackson's privacy.

**B. The search of the DNA database and the subsequent samples**

Jackson claims that the search of the DNA database was conducted in violation of the Fourth Amendment of the Constitution. He claims that the search of the DNA database constituted an unlawful search and seizure under the Fourth Amendment to the United States Constitution and Article I, § 10 of the Minnesota State Constitution. Jackson further claims that the subsequent bucal/saliva sample was taken in violation of the Fourth Amendment to the Constitution. However, the sample was taken pursuant to a valid court order and again the State's need for this type of database outweighs the minimal intrusion upon Jackson's privacy.

C. The constitutionality of Minn. Stat. §609.117

Jackson also claims that the alleged basis for the blood draw, Minnesota Stat. §609.117 is unconstitutional. Jackson claims that because this statute allows and requires state personnel to conduct suspicionless searches, the taking of an original blood sample from any convicted criminal is illegal.

However, as a convicted felon, the defendant does not enjoy the same expectation of privacy as do ordinary citizens. Kruger v. Erickson, 875 F.Supp. 583 (D.Minn. 1995), affirmed 77 F.3d 1071. (8<sup>th</sup> Cir. 1996). In addition, the taking of such blood samples serves a legitimate governmental interest of assisting in the investigation and prosecution of sex crimes. It is a legitimate function of the state to provide for a mandatory system aiding in the identification of persons committing crimes and thus providing for the peace and safety of its citizens. Jackson as a convicted felon simply has a lesser expectation of privacy in this instance.

D. Method of determining the match

Jackson claims that there is no generally accepted method for calculating the statistical frequency of a DNA match when the suspect is identified by a “database trawl” and this is inadmissible under the Frye standard. Jackson argues that there should be a different rule for reporting the statistical frequency of a DNA profile if the suspect is identified by a database search as opposed to by a conventional police investigation.

However, how the defendant is identified as a suspect is not relevant. The relevant question for the jury is how often you would expect to find this DNA profile in the general population. This is calculated by what is called the “product rule”. Jackson argues that the relevant question for the jury is what is the probability of finding a particular DNA profile in a database containing a certain number of DNA profiles.

The Minnesota Supreme Court has endorsed the use of the product rule. In State v.

Roman Nose, the Court stated:

While recognizing the potential impact the large numbers generated by use of the product rule may have on jurors, we also recognize that the scientific community has approved the use of the product rule for analysis of results obtained from the PCR-STR method of testing DNA, and we have continually looked to the scientific community for guidance in resolving difficult issues such as these.

State v. Roman Nose, 667 N.W.2d 386, 397 (Minn. 2003).

In addition, the Minnesota Supreme Court has stated that the standards of the DNA advisory board (“DAB”) control. In State v Traylor, the Court affirmed the determination of the trial court that the appropriate standards and controls currently in effect in the scientific community are the DAB standards. 656 N.W.2d 885 (Minn. 2003). The Court rejected the defendant’s claim that the TCGDAM guidelines were still in effect. These guidelines had been replaced by the DAB standards.

Finally, in U.S. v. Jenkins, the District of Columbia Court of Appeals recently held that “there is no debate in the relevant scientific community as to the methodology, mechanics, or mathematics underlying the various statistical formulas used to calculate significance or in the result produced under the various formulas.” U.S. v. Jenkins, 2005 WL 3434075, \*1 (D.C. Court of Appeals Dec. 15, 2005). In that case, the court overruled the trial court which stated that the methodology used in conducting a “cold hit” has not gained general acceptance in the relevant scientific community and thus could not be introduced. See, id. Thus, that Court after conducting an exhaustive review rejected the same arguments that the Defendant is making in this case.

E. Compelling the state to turn over the database

Jackson has requested an order compelling the State to turn over the database searched to identify him. Minnesota Stat. §609.117 mandates the taking of samples from certain

offenders for DNA analysis. Minnesota Stat. §299.155, subds. 3 and 4 require the BCA to establish a system to cross-reference data obtained from DNA analysis and to provide this data to law enforcement officials. The collection of DNA samples dates back to 1989.

A “cold hit” case is a case where a suspect is identified through a search of an offender DNA database. Each biological sample the BCA receives from a convicted offender is typed and the offender’s DNA is numerically coded. The profile is then placed in the BCA’s offender database. The profiles are periodically updated into the National DNA index System (NDIS). Once an offender’s DNA profile has been “flagged” by the computer as a “hit” to the profile from an unsolved case, the BCA will double check its results. Then the BCA will contact a local law enforcement agency.

A new reference biological sample is then taken from the suspect as part of a follow-up investigation. This sample is used to compare to the evidence profile to confirm or reject the initial hit from the database. The database hit thus does nothing more than contribute to the probable cause needed to obtain another blood sample from the defendant.

Jackson requested that the State provide him with the complete DNA profiles of all offenders in the Minnesota database. However, disclosure of this material is prohibited by State and Federal law. DNA profiles in the Minnesota Offender database are barred from disclosure under the provisions of the Federal DNA identification Act, 42 U.S.C. 14132(b)(3). Under that Act, disclosure of this information is only permitted for the following reasons:

- (a) to criminal justice agencies for law enforcement identification purposes;
- (b) in judicial proceedings, if otherwise admissible pursuant to applicable statutes and rules;
- (c) for criminal defense purposes, to a defendant, who shall have access to samples and analyses performed in connection with the case in which such defendant is charged, or;
- (d) if personally identifiable information is removed, for a population statistics database, for identification research and protocol development purposes, or for quality control purposes.

42 USC 14132(b)(3)

In this case, none of these permissible exceptions apply. There is not a fact situation under which DNA profiles of offenders convicted of unrelated crimes would be admissible in court. There is no relevance between the DNA profile of the defendant and the DNA profiles of several thousand individuals who are in the Minnesota DNA offender database. As for the exception dealing with criminal defense purposes, all relevant samples or analyses connected to the case have been provided to the defense.

Furthermore, disclosure of this data is prohibited by State law. Minnesota Stat. §13.03 states as follows:

Subdivision 1. Public data. All government data collected, created, received, maintained or disseminated by a government entity shall be public unless classified by statute, or temporary classification pursuant to section 13.06, or federal law, as nonpublic or protected nonpublic, or with respect to data on individuals, as private or confidential.

Minn. Stat. §13.03.

Offender DNA profiles are private under this section because they are classified as private or confidential under federal law. It is also considered to be private information under Minnesota law. Minnesota Stat. §13.87 states:

Subdivision 1. Criminal history data. (a) Definition. For purposes of this subdivision, "criminal history data" means all data maintained in criminal history records compiled by the bureau of criminal apprehension and disseminated through the criminal justice information system, including, but not limited to fingerprints, photographs, identification data, arrest data, prosecution data, criminal court data, custody and supervision data.

(b) Classification. Criminal history data maintained by agencies, political subdivisions and statewide systems are classified as private, pursuant to section 13.02, subdivision 12.....

Minn. Stat. §13.87, subd 1(a), (b).

To determine whether the private data would be discoverable under Minnesota law, two requirements must be met before the private data becomes discoverable. Minnesota Stat. §13.03, subd. 6 states:

Subd. 6. Discoverability of not public data. If a government entity opposes discovery of government data or release of data pursuant to court order on the grounds that the data are classified as not public, the party that seeks access to the data may bring before the appropriate presiding judicial officer, arbitrator, or administrative law judge an action to compel discovery or an action in the nature of an action to compel discovery.

The presiding officer shall first decide whether the data are discoverable or releasable pursuant to the rules of evidence and of criminal, civil, or administrative procedure appropriate to the action.

If the data are discoverable the presiding officer shall decide whether the benefit to the party seeking access to the data outweighs any harm to the confidentiality interests of the entity maintaining the data, or of any person who has provided the data or who is the subject of the data, or to the privacy interest of an individual identified in the data. In making the decision, the presiding officer shall consider whether notice to the subject of the data is warranted and, if warranted, what type of notice must be given. The presiding officer may fashion and issue any protective orders necessary to assure proper handling of the data by the parties. If the data are a videotape of a child victim or alleged victim alleging, explaining, denying, or describing an act of physical or sexual abuse, the presiding officer shall consider the provisions of section 611A.90, subdivision 2, paragraph (b).

Minn. Stat. §13.03, subd 6.

The first requirement before disclosure of private data can be ordered is that the court must find that the data is “discoverable or releasable pursuant to the rules of evidence and of criminal . . . procedure appropriate to that action. Minn. Stat. §13.03, subd. 6. Minnesota Rule of

Criminal Procedure 9.01 governs the disclosure obligations of the prosecution and nothing in that rule implies that DNA profiles should be disclosed. Therefore, the Court need not look to the second requirement. Nevertheless, the court will examine it briefly. The second part of the requirement states that “if the data are discoverable, the presiding officer shall decide whether the benefit to the party seeking access to the data outweighs any harm to the confidentiality interest of the agency maintaining the data.” Minn. Stat. § 13.03, subd. 6. The harm to the BCA and to the legitimate public safety interest of the citizens of the State of Minnesota clearly outweighs any possible benefit to Jackson. The harm to the BCA is the loss of the ability to participate and use the system set up by the federal government, because disclosure of this data would result in the termination of the BCA’s status as an NDIS Participating Laboratory. This would outweigh any possible benefit to Jackson in this case.

Furthermore, the data is irrelevant to the case that is being presented in this matter. The DNA evidence presented by the State at trial will be derived not from the database “hit” but from the comparison of the non-database, post-arrest reference sample. This was taken in March, 2005 and independently matched by the Minnesota BCA DNA lab. Jackson is entitled to the discovery concerning the tests, the lab and the analysts.

#### **IV. CONCLUSION**

For the reasons stated in this order, Jackson’s Motions to Suppress the DNA evidence is denied. The Court also will not provide Jackson access to the other DNA databases. Finally, under U.S. v. Jenkins, 2005 WL 3434075, \*1 (D.C. Court of Appeals Dec. 15, 2005), the methodology the state wishes to use here is clearly admissible under the Frye standard.

F.J.C.