

FILED
STEPHEN THUNBERG
Clerk of the Superior Court
NOV 29 2001
By: K.D. STURDIVANT, Deputy

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN DIEGO

PEOPLE OF THE STATE OF CALIFORNIA,)	SCD 155728
Plaintiff,)	ORDER AFTER HEARING
v.)	
LAMONT JOHNSON,)	
Defendant.)	

THIS COURT, HAVING READ THE DEFENDANT'S "OPPOSITION TO PEOPLE'S ATTEMPT TO ADMIT mtDNA TEST RESULTS AND REQUEST FOR KELLY-FRYE HEARING RE mtDNA TESTING" AND THE PEOPLE'S "POINTS AND AUTHORITIES IN SUPPORT OF ADMISSIBILITY OF FORENSIC DNA EVIDENCE" AND AFTER AN EVIDENTIARY HEARING, FINDS AS FOLLOWS:

Defendant is charged with murder, assault on a child with force likely to produce great bodily injury or death and felony child abuse, all against victim Thomas G. (Penal Code sections 187(a), 273ab and 273a(a).) Evidence was seized at the crime scene by law enforcement, including what has been determined to be an apparent single pubic hair. The hair was sent to the Bode Technology Group in Springfield, Virginia, where tests were conducted on the hair. The method used to test the hair was forensic mitochondrial DNA testing.

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1 The defense filed a motion challenging the admission of the mitochondrial DNA (hereinafter
2 "mtDNA") test results, in addition to requesting a "*Kelly-Frye*" hearing on the issue.¹ The People filed Points
3 and Authorities supporting admission of the mtDNA evidence. A hearing was held on November 27, 2001,
4 and argument of the motion was on November 28, 2001.

5 The sole witness called at the hearing was Dr. Mitchell Holland, the Laboratory Director of Bode
6 Technology Group. Dr. Holland has been working with mtDNA testing for over a decade. The defense has
7 conceded, and the court agrees, that Dr. Holland is one of the most, if not the most, knowledgeable mtDNA
8 experts in the country. Dr. Holland testified extensively about mtDNA testing, including the procedures used,
9 the general acceptance of the testing, the inherent problems associated with the testing, the types of cases in
10 which mtDNA testing is used and the test results based on the evidence in the instant matter.

11 Dr. Holland explained that mtDNA is the genetic material found outside of the nucleus of a cell in the
12 mitochondria. This type of DNA is passed on to each succeeding generation only from one's mother. There
13 are four stages of mtDNA testing, which include the DNA extraction, PCR amplification, DNA sequencing
14 and data interpretation. According to Dr. Holland, the only part of the process that differs significantly from
15 nuclear DNA testing is the fourth step, the analysis. Dr. Holland explained that each of the procedures used
16 for mtDNA testing were accepted within the scientific community for other types of testing and that mtDNA
17 testing has been validated for use in forensic casework by the scientific community.²

18 On cross-examination, and to some extent, on direct, Dr. Holland testified regarding alleged
19 "criticisms" specific to mtDNA testing. These issues included heteroplasmy, contamination, mutation, false
20 inclusions and exclusions, subjectivity of the analysts and an inadequate database.

21 This is an issue of first impression in California. Although mtDNA testing has been accepted in four
22 other state courts for forensic use in criminal cases, there are no California cases addressing the issue.³
23 Accordingly, this court must determine whether the novel scientific testing techniques meet the requirements
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26 ¹ *People v. Kelly* (1976) 17 Cal.3d 24; *Frye v. United States* (D.C.Cir. 1923) 293 F.1013.

27 ² Dr. Holland specifically testified that he authored Court's Exhibit 2, *Mitochondrial DNA Sequence Analysis—Validation and*
28 *Use for Forensic Casework* (1999) M.M. Holland and T.J. Parsons, and did not receive any criticism from the scientific
community, which would have been the forum for such commentary. Dr. Holland further testified that he was unaware of any
publications that state that mtDNA testing is unreliable.

³ See People's P's&As, Exhibits 3, 4, 5 and 6.

1 of *Kelly-Frye*, the established test in our state.⁴ Under this test, the court must determine whether (1) the test
2 is generally accepted in the relevant scientific community; (2) the testimony is by properly qualified experts;
3 and (3) correct scientific procedures have been applied in the case before the court. *Kelly, supra*. The parties
4 agree, however, that the only issue disputed in the instant case is the first prong, whether mtDNA testing is
5 generally accepted in the scientific community.

6 The defense focuses on two arguments. First, defendant contends that the mtDNA testing
7 techniques are not scientifically accepted because of the "debate and concern" over the various issues
8 specific to mtDNA testing, as discussed above. However, this argument fails. First, Dr. Holland testified
9 that several of the concerns, including heteroplasmy and contamination, are not present in the instant case.
10 Second, there was no testimony that other theoretical concerns or criticisms exist in this case. Third, even
11 if there are theoretical issues surrounding this testing technique, they are issues that go to the weight of the
12 evidence and do not undermine the admissibility of the evidence. At this point, it appears to this court
13 that this type of DNA evidence is much more akin to circumstantial evidence, *i.e.*, including or excluding
14 a donor. Furthermore, the jury would be instructed regarding the use and value of expert testimony. *See*
15 *CALJIC 2.80. See also, State of Connecticut v. Pappas*, 256 Conn. 854, 886-887.

16 Next, defendant claims that although the testimony of Dr. Holland was uncontradicted at the
17 hearing, he is a proponent of the testing and cannot therefore be the sole expert relied on by the court.
18 However, a single qualified witness is sufficient to establish general acceptance. *People v. Allen* (1999)
19 72 Cal.App.4th 1093.

20 Based on the above, the court finds that mtDNA testing evidence shall be admissible in the instant
21 matter. The People have met their burden of showing that the test is generally accepted in the scientific
22 community through both the uncontradicted testimony of Dr. Holland and the exhibits presented in
23 support of the motion. *See*, Court's Exhibit 2 and People's Exhibit 2.

24 IT IS SO ORDERED.

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26 DATED: 11/29/01

William H. Kennedy
WILLIAM H. KENNEDY
JUDGE OF THE SUPERIOR COURT

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4 See footnote 1, *supra*.