

STATE OF MINNESOTA
COUNTY OF HENNEPIN COUNTY

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

STATE OF MINNESOTA,

Plaintiff,

vs.

File Nos:
02096915
04031951

PAUL JEROME JOHNSON,

Defendant,

and

GERALD DONALD GRANT,

Defendant.

ORDER

The above-entitled matters came before Judge Steven A. Pihlaja on August 16, 2004, on Defendants' Motion to Dismiss, request for a Frye-Mack hearing and request to discover the Minnesota Offender Database and the National CODIS Database. The cases were consolidated for purposes of this hearing upon agreement of the parties.

Appearances were as follows:

The Defendants, Paul Jerome Johnson and Gerald Donald Gant, were present and were represented by counsel, Assistant Hennepin County Public Defender's Paul Maravigli and Paul Schneck, respectively. Assistant Hennepin County Public Defender Patrick Sullivan was also present.

Assistant Hennepin County Attorney Steven Redding appeared on behalf of the State of Minnesota.

Based upon the arguments of counsel, and all of the files, records, and submissions herein, the Court now makes the following findings:

I. STATEMENT OF FACTS

The above named Defendants' are each charged with numerous counts of Criminal Sexual Conduct in the First Degree arising from separate, unrelated incidents. Their cases were consolidated solely for purposes of the Motion to Dismiss, request for a Frye-

Mack hearing and request to discover the Minnesota Offender Database and the National CODIS Database.

Paul Jerome Johnson

On March 13, 2001 Paul Jerome Johnson pled guilty to Attempted First Degree Criminal Sexual Conduct and was sentenced to 63 months in prison. Pursuant to Minn. Stat. §609.3461 (1996) (renumbered Minn. Stat. §609.117 (2002)), Johnson was required to provide a biological specimen for DNA analysis. The specimen and the results of the analysis to be maintained by the (BCA) as provided in Minn. Stat. § 299C.155.

On October 29, 2002, the BCA notified the Minneapolis Police Sex Crimes Unit that the biological specimen taken from Johnson appeared to match a sample obtained from a sexual assault kit in a 1994 unsolved sexual assault case. Based on this information Sgt. Daniel Swalve procured a search warrant and obtained a buccal/saliva sample from Johnson while he was incarcerated at the Minnesota State Correctional Facility at Lino Lakes. The sample taken from Johnson pursuant to the search warrant was compared to Defendant's previously created DNA profile at the BCA. The two samples matched and Johnson was subsequently charged with two counts of Criminal Sexual Conduct in the First Degree.

Johnson filed a motion to suppress the blood taken upon his conviction in 2001 pursuant to Minn. Stat. §609.3461 (1996) (renumbered Minn. Stat. §609.117 (2002)), the search of the DNA database linking him to the 1994 sexual assault, and the subsequent buccal sample taken pursuant to a search warrant, as well as any fruits derived from these searches.

Gerald Donald Gant

On April 17, 2002 Gerald Donald Gant plead guilty to Theft from Person and was sentenced to 15 months in prison. While incarcerated at the Minnesota Department of Corrections St. Cloud Gant was ordered, pursuant to Minn. Stat. §609.3461 (1996) (renumbered Minn. Stat. §609.117 (2002)), to provide a biological specimen for DNA analysis. The specimen and the results of the analysis were maintained by the Bureau of Criminal Apprehension (BCA) as provided in Minn. Stat. § 299C.155.

On April 27, 2004 the Bureau of Criminal Apprehension notified the Minneapolis Police Department that during a search of the DNA database Gant's profile had shown up as a match to the sperm cell fractions of the vaginal swab taken from the victim in an unsolved 2003 sexual assault.

On April 29, 2004 the victim of the 2003 sexual assault was shown a photographic line-up which included a picture of Gant in the number 3 position. The victim was unable to eliminate Gant as one of her assailants.

On May 14, 2004, Gant was arrested at the Hennepin County Government Center. After his arrest, a buccal/saliva sample was obtained from Gant pursuant to a search warrant. Gant was subsequently charged with 3 counts of Criminal Sexual Conduct in the First Degree in connection with the 2003 sexual assault.

II. CONCLUSIONS OF LAW

For purposes of this hearing only Defendants' jointly seek a Motion to Dismiss on Fourth Amendment grounds, request a Frye-Mack hearing and request discovery of the Minnesota Offender Database and the National CODIS Database.

A. Defendants' Fourth Amendment Claims

Defendants' argue that being ordered to provide a biological specimen for DNA analysis violated their 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.

Defendants' also claim that the subsequent searches of the DNA database constituted unlawful 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 the present case, Defendants' were required to submit a blood sample pursuant to Minn. Stat. §609.3461 which directs the court to order offenders convicted of certain enumerated offenses, or an offense arising out of the same set of circumstances as an enumerated offense, to provide biological specimens for purposes of DNA analysis. As the removal and analysis of Defendants' blood pursuant Minn. Stat. §609.3461 clearly constituted a search for purposes of the Fourth Amendment of the United States Constitution and Article I, §10 of the Minnesota Constitution the question before this court is whether the searches were reasonable.

The Court must consider whether officials were justified in requiring [Defendants'] to submit to the test, and whether the means and procedures employed in taking his blood respected relevant Fourth Amendment standards of reasonableness. *Kruger v. Erickson*, 875 F.Supp583, 588 (4th Cir. 1995)(citing *Schmerber v. California*, 384 U.S. 757 (1966)). In determining the reasonableness of a search, courts must balance the need to search against the invasion which the search entails. *Id.*(citing *McDonell v. Hunter*, 809 F.2d 1302, 1307 (8th Cir. 1987)).

In *Kruger*, the petitioner, an inmate at a Minnesota Correctional Facility, argued that being ordered to provide a blood sample for DNA analysis pursuant to Minn. Stat. §609.3461 violated his right to be free from unreasonable searches and seizures. *Kruger v. Erickson*, 875 F. Supp 583 (4th Cir. 1995). The Court found officials were justified in requiring petitioner to submit to a blood test. *Id.* at 588. It reasoned that the statute authorizing the test served the legitimate governmental interest of assisting investigation and prosecution of sex crimes and that the manner in which official withdrew petitioner's blood was reasonable. *Id.*

This Court sees no reason to reach a different conclusion in the present cases. Here, defendants' had each been convicted of an offense which under Minn. Stat. §609.3461 required the court to order that they submit a biological specimen for DNA analysis. The state's interest in maintaining a DNA database to assist in the investigation and prosecution of sex crimes sufficiently outweighs whatever intrusion of privacy there is in the taking blood and analyzing it for DNA. Furthermore, blood was taken by a trained technician and was analyzed and maintained by the BCA as provided in Minn. Stat. § 299C.155.

The subsequent buccal/saliva samples obtained from Defendants' were taken pursuant to valid search warrants and were therefore legal.

Based on the foregoing, Defendants' motion to dismiss and suppress is denied.

B. Defendants' Request for a Frye-Mack Hearing

Next, Defendants' claim that they are entitled to a Frye-Mack hearing on the question of the general acceptance of the product rule to describe the significance of a match in this case.

The Minnesota Supreme Court has concluded, based on the recommendation of the National Research Council (NRC), that the product rule is the appropriate method for calculating the statistical frequency of a particular DNA profile. *State v. Bailey*, 677 N.W.2d 380 (Minn. 2004); See also *State v. Miller*, 666 N.W.2d 703 (Minn. 2003); *State v. Roman Nose*, 667 N.W.2d 386 (Minn. 2003).

Defendants' argue that a different rule should be applied when a suspect is identified from a database search then is when a suspect is identified through regular police investigation. However, Defendants' offer no argument which would cause this Court to conclude that the Product Rule as applied to these cases was new or novell and not generally accepted within the relevant scientific community. Thus, Defendants' request for a Frye-Mack hearing is denied.

C. Defendants' request for discovery of the Minnesota Offender Database and the National CODIS Database.

Finally, Defendants' argue that they are entitled to discovery of the Minnesota Offender Database and the National Combined DNA Index System (CODIS) Database. The information the Defendants' seek is part of the National DNA Index System (NDIS). Access and disclosure of DNA samples and DNA analyses in the NDIS are governed by the Violent Crime Control and Law Enforcement Act 42 U.S.C. 14132. Under 42 U.S.C. 14132(b)(3) DNA samples obtained by and DNA analysis performed at the laboratory shall be made available only:

(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 the 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.

Defendants' argue that they are entitled to discover the Minnesota Offender Database and the National Combined DNA Index System (CODIS) Database under paragraphs B, C, and D. Defendants' have failed to provide this Court with any basis under 42 U.S.C. 14132(b)(3) which would justify the Court in allowing discovery of either the Minnesota's Offender Database or the National CODIS Database nor any reason to believe disclosure of this material is necessary to protect these Defendants' right to due process.

DNA profiles in Minnesota's Offender Database as well as the National CODIS Database are barred from disclosure under the federal Violent Crime Control and Law Enforcement Act 42 U.S.C. 14132. For this reason, Defendants' request for discovery is denied.

BY THE COURT

Dated this ____ day of August 2004

Steven A. Pihlaja

Judge of District Court

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