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8 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
9 IN AND FOR THE COUNTY OF CLARK

10 STATE OF WASHINGTON,

11 Plaintiff,

12 v.

13 ROY WAYNE RUSSELL,

14 Defendant

FINDINGS OF FACT AND
CONCLUSIONS OF LAW RE:
NECESSITY OF FRYE HEARING

No. 05-1-02485-2

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16 THIS MATTER having come before the court on January 6, 2006, the State of
17 Washington represented by Deputy Prosecuting Attorney James D. Senescu and the
18 Defendant, present and represented by Defense Attorney Jeffrey D. Barrar and the
19 Court having heard the testimony of Washington State Patrol Crime Lab DNA
20 Supervisor Stephenie Winter Sermeno, as well as considering the briefing of the parties
21 and the arguments of counsel, the Court makes the following:

22 **FINDINGS OF FACT**

- 23 1. The State is seeking to introduce DNA test results involving Y Chromosome STR
24 (short tandem repeat) DNA (evidence (Y-STR DNA) in its case in chief.
25 2. The Defendant claims that the scientific theory of Y-STR DNA testing, under Frye
26 vs. United States, 54 App. D.C. 46 (1923), has not been generally accepted in
27 the scientific community and is not based upon an established scientific
28 methodology.
29 3. Y-STR DNA evidence is a PCR based type of DNA testing, and only tests the Y
chromosome.

FINDINGS AND CONCLUSIONS RE:
NECESSITY OF FRYE HEARING - 1

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4. PCR based types of DNA testing are already established in the scientific community and the appellate courts have found that they satisfy the Frye test.
 5. There is no significant dispute within the scientific community regarding the reliability of Y-STR DNA testing.
 6. The State of Washington's Washington State Patrol Crime Lab is in the process of implementing Y-STR testing in its lab's statewide, and the reason why it is not already being done currently in their labs is due to financial constraints as well as the time it takes to begin the implementation of a new type of testing.

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CONCLUSIONS OF LAW

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1. A Frye hearing is not necessary prior to admission of Y-STR DNA test results.
 2. A Frye hearing is not necessary each time new loci are involved in DNA testing.
 3. PCR based DNA systems such as Y-STR do not require a Frye hearing.
 4. Either party may make mention of the potential for admission of DNA evidence during jury selection, opening statement or during witness testimony.

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DONE in Open Court this _____ day of January, 2006.

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THE HONORABLE JOHN P. WULLE
Judge of the Superior Court

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Presented by:

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JAMES D. SENESCU, WSBA #27137
Deputy Prosecuting Attorney

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Objection noted/Presentment waived/Copy received:

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JEFFREY D. BARRAR, WSBA #18281
Attorney for Defendant