

1 STATE OF MINNESOTA DISTRICT COURT
2 COUNTY OF HENNEPIN FOURTH JUDICIAL DISTRICT

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4 STATE OF MINNESOTA, SIP No. 02040491
5 Plaintiff,
6 vs FRYE-MACK RULINGS
7 Milous Temple,
8 Defendant.

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10 The above-entitled matter was heard before the
11 Honorable Marilyn Brown Rosenbaum, Judge of this Court,
12 on the 14th day of April, 2005, at the Hennepin County
13 Government Center, City of Minneapolis, State of
14 Minnesota.

15 A P P E A R A N C E S

16 Steve Redding and Katherine McGiffin,
17 Assistant Hennepin County Attorneys, appeared as counsel
18 for and on behalf of the State.

19 Patrick Sullivan, Assistant Hennepin County
20 Public Defender, appeared as counsel for and on behalf
21 of the Defendant.

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24 Court Reporter: Pamela Smith Bodley

25

1 APRIL 14, 2005

2 THE COURT: Anything that anyone wants to say
3 before I rule on the hearing, which we've called a Frye
4 hearing. It may be more appropriately have been a
5 preliminary questions ruling under 104 hearing. But is
6 there anything from the State?

7 MR. REDDING: No, Your Honor.

8 THE COURT: Anything from the defense?

9 MR. SULLIVAN: No, Your Honor.

10 THE COURT: Let me make some remarks here for
11 the record.

12 First of all, of course, I granted the Defendant's
13 request for that hearing, and I have had an opportunity
14 to consider the evidence, the testimony produced at that
15 hearing, and I'm now going to rule as follows:

16 The motion of the Defendant requesting the Court to
17 suppress certain statistical probability evidence and to
18 therefore suppress the results of STR DNA testing and in
19 effect to suppress all the DNA evidence in this case is
20 denied.

21 There is not one accepted -- generally accepted
22 method by which to describe the significance of a match
23 in a cold hit case. However, although there may be
24 several opinions and approaches which can be described
25 to the jury, those will be allowed to be described to

1 the jury either through direct or cross-examination.

2 The lack of a consensus among the experts, in my
3 opinion, is not a Frye-Mack issue. However, I will for
4 Frye-Mack purposes and Goeb v. Tharaldson purposes put
5 on the record that if in the alternative it is ever
6 determined to be a Frye-Mack issue, that under the
7 two-prong test, nothing presented to this Court rises to
8 the level of a novel scientific evidence issue. And I
9 think that Frye-Mack really talks about that as the base
10 or beginning that type of hearing.

11 The State as proponent of the statistical evidence
12 has sustained its burden and has established that,
13 first, this is not a novel scientific issue; and
14 secondly, that their proposed testimony and evidence
15 would be reliable.

16 Now, dealing with this in the broader picture,
17 either as a Rule 104 issue or relevancy issue, all of
18 those types of evidentiary issues, I want to make a few
19 more remarks.

20 First of all, regardless of how the Defendant was
21 identified as a suspect, the State should be allowed to
22 produce the match and should be allowed to establish a
23 statistical frequency using either the NRC II approach,
24 including the product rule, or in addition, the evidence
25 that they propounded under the DAB report and

1 standards. And I think that's all in the record and I'm
2 not going to go over all those again. The Defendant may,
3 of course, through cross-examination or through
4 independent expert testimony present or question
5 statistical probability calculations.

6 Also, after the hearing that I've had, I've
7 concluded that the statistical probability evidence is a
8 relevancy issue and not an issue of admissibility or
9 exclusion. Therefore, I believe the statistical
10 evidence, whether as to RMP or DMP, is relevant and will
11 be allowed. Both the general population and database
12 statistics are relevant, and I'll allow the attorneys to
13 address those as they wish. The method of calculations
14 as well as the appropriateness of any calculation is
15 relevant, will aid the jury, will not confuse the jury,
16 and is probative as to the issue before the jury.

17 In the alternative, this ruling can be framed as
18 allowing a cold hit case to go forward under Minnesota
19 law and Minnesota Rules of Evidence. The State's
20 proffered statistical evidence will aid the jury in
21 assessing the State's evidence. In allowing expert
22 testimony as to RMP, the product rule is an appropriate
23 and proper method. And as I said, DMP will also be
24 allowed if proffered.

25 In addition, any reading of Defendant's motion to

1 include a request to exclude Y-STR testing due to the
2 typing methodology used by the BCA and its compliance
3 with DAB standards is denied. That was raised in some of
4 the papers. It really hasn't been addressed, but I want
5 to make sure that it was ruled on. Therefore, as I
6 said, Defendant's motion to exclude the State's DNA
7 evidence in this case, or the State's experts, must be
8 denied.

9 I want to make a few other comments. One of them is
10 about the significance of the difference between a cold
11 hit case and a probable cause case. The extreme
12 reliance placed by Defendant or Defendant's experts on
13 the significance of this difference -- and, again, I'm
14 referring to between a cold hit case and a probable
15 cause case -- seems to me to be a red herring. The cold
16 hit technique is now a part of proper investigation and,
17 in effect, is part of our element of a probable cause
18 case necessary for the State to bring these charges. So
19 I know a lot of time was spent on that and a lot of
20 energy. I think in one paragraph I can deal with that
21 issue from my point of view, and I just wanted to make a
22 record of that.

23 Now that the hearing has been held and now that the
24 Court has found there is no threshold scientific issue,
25 the Court must look for the Rules of Evidence to further

1 instruct the parties as to the Court's view of the
2 statistical evidence.

3 I want to begin at the beginning, and that's with
4 Rule 102 of the Minnesota Rules of Evidence, and that
5 provides that the rules should be construed to secure
6 fairness in administration and to promote the growth and
7 development of the law of evidence to the end that the
8 truth may be ascertained and proceedings justly
9 determined.

10 The State has its burden and after indictment must
11 be allowed to present this DNA and statistical evidence
12 to the jury.

13 Our system of the common law as viewed along with
14 the criminal codes and the rules of evidence is, I
15 believe, an elastic system which provides for growth,
16 discretion, and flexibility. Experts and attorneys --
17 and I know that's been brought up here -- can bemoan the
18 fact that a jury can't understand statistical evidence
19 or concepts of probability, but these cases must go to
20 the jury. Faith in that cumulative process and the
21 group process of the jury is necessary and I believe
22 warranted in these kinds of cases. However, for the
23 jury to properly evaluate the evidence, this Court under
24 these circumstances has to rule that more information is
25 better than less, and in addition, neither the law nor

1 science are static. They both change and evolve. And I
2 think that's clear from all the evidence that's been
3 presented in this hearing and submitted by the parties.

4 Neither the Court nor the experts can frozen in
5 time and tied to a certain Court decision made five
6 years ago or scientific theories or statements such as
7 NRC I or II while change is rapidly proceeding. And,
8 also, to me the foment of the debate that was evidenced
9 in the hearing only serves to demonstrate this. And
10 we're here on the date that we're here with what we
11 have. I know cases have been given to me. Decisions
12 have been given to me. I think it all supports the fact
13 that this is an evolving area and that we have to
14 accommodate all of that by moving ahead here.

15 I want to also deal with the issue of relevancy
16 because I know that there's going to be objections. I
17 want those to be made clear, that obviously they're all
18 being preserved. But I want to review my ruling under
19 Rule 402 and 403 of the Minnesota Rules of Evidence and
20 just rule that after hearing all that proffered expert
21 testimony, my preliminary ruling is that the expert
22 testimony as to statistical methods is relevant; it has
23 probative value, will not be unfairly prejudicial,
24 confuse, or mislead the jury.

25 I also want to deal with just the general rules as

1 to expert testimony under the Minnesota Rules of
2 Evidence. Again, I expect the attorneys to agree to
3 stipulate to expertise and limit expertise and CV
4 evidence to highlight the expertise that's necessary
5 just for these proceedings. The CVs will be marked and
6 will be exhibits that will go to the jury, and I don't
7 want to burden the record with long, long, long
8 descriptions of the CV. And once expertise has been
9 stipulated to with the CV in evidence, the testimony as
10 to DNA, Y-STR, STR statistical methodology, all of that
11 will be allowed under Rule 702. These experts will be
12 allowed to give their opinions limited only by Rule 703
13 if that's appropriate.

14 There has also been a discussion as to at least
15 either agreement as to stipulation or as to how to allow
16 the experts to address the cold hit database aspect of
17 this case, and I'll entertain any discussion of Bloom or
18 any stipulations or any offers of proof as appropriate
19 either now or again on Monday after the jury
20 questionnaires have been distributed. I know that it's
21 been addressed in, I think, in one of submissions by the
22 State, and I don't how far you've gotten on that in
23 terms of discussions. And I also want to reiterate that
24 I delete all e-mails. So please submit everything in
25 writing because I do want you to preserve a record in

1 this case that is appropriate.

2 So I'm not sure how you want to proceed here today,
3 if there's anything else you need to put on the record,
4 if you want to have some discussions because of my
5 rulings, and you if you want to discuss the issues of
6 Bloom or stipulations that were sort of tangentially, I
7 think, dealt with in the State's last submission.

8 Why don't I defer to the State first.

9 MR. REDDING: We did, and do still have, a
10 submission that I would like to make in a proper format
11 by paper to the Court, and I can do that certainly
12 within the hour.

13 THE COURT: And that's regarding either a
14 stipulation or Bloom?

15 MR. REDDING: Yes.

16 THE COURT: I call it -- the cold hit database
17 issues?

18 MR. REDDING: Right.

19 THE COURT: And then you could get that to
20 both the Court and to defense counsel, and then perhaps
21 -- how long would you need, Mr. Sullivan, to respond to
22 that? It's an issue that's been out there so I don't
23 want to take a long time with it, but I will give you
24 some time.

25 MR. SULLIVAN: Well, I don't know that we can

1 stipulate. I would like to see what he's proposing. I
2 assume he's saying that, this is what my witnesses will
3 say.

4 THE COURT: I just want to make sure that we
5 don't delay because of this issue. How long would you
6 need once you get it? Could you get something to me by
7 Monday morning?

8 MR. SULLIVAN: Certainly.

9 THE COURT: And then I can look at it. I know
10 what the issue is. I just want to make sure we have a
11 record.

12 (Which concluded the Court's ruling.)

13 (There was further discussion regarding jury
14 instructions, trial schedule, etc.)

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REPORTER'S CERTIFICATE

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I, Pamela Smith Bodley, Official Court
19 Reporter in and for the County of Hennepin, Fourth
Judicial District, State of Minnesota, do hereby certify
20 that the foregoing constitutes a full, true and correct
transcription of the stenograph notes taken by me of the
Court's Ruling in the cause noted on April 14, 2005.

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Dated: 7/20, 2005

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S/S

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