


SETTLED 9.10.00


MULLIGHAN J

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R v DAMON JOHN KARGER

TUESDAY, 3 OCTOBER 2000

RELATING TO P.4303 OF TRANSCRIPT

HIS HONOUR: In this matter a number of questions were identified for consideration during the pre-trial stage. They have been modified to some extent, and particularised to considerable extent during the course of the hearing, but nonetheless, the questions remain the same.

I am able to make rulings about these matters and I shall give my reasons for the rulings after the conclusion of the trial.

The first matter is whether the Perkin Elmer Profiler Plus system for DNA analysis is recognised and accepted by the relevant scientific community as reliable. In the sense that that has been particularised and considered during the course of the voir dire, I rule that it has been sufficiently recognised and accepted and that the evidence of DNA analysis in the present case undertaken by that system is admissible.

The second question is whether the proposed witness, Mr Pearman, has sufficient expertise to use the Quadruplex system and the Perkin Elmer Profiler Plus system for DNA analysis, and to assess results produced by those two systems, and thirdly, if the procedures which were adopted by him in using those systems are recognised and accepted by the relevant scientific community as reliable.

I rule that he does have sufficient expertise to use both systems and to assess results produced by them, and further, that the procedures adopted by him in using them are recognised and accepted by the relevant scientific community as reliable.

The next matter is not in order, but it relates to the validity of the databases established and used for the purpose of determining the statistical probability of some other person in the community having the same DNA profile as the accused. It has been established, to my satisfaction, that the databases to be used are valid for that purpose. I have omitted to mention Dr Buckleton. Once established to be valid, they are able to be used by him for the purpose of expressing the relevant opinions.

I rule, as to the fifth matter, that Mr Pearman and Dr Buckleton have sufficient expertise to express opinions about the validity of the databases to be proved in evidence; Mr Pearman in two respects. First, in a general sense regarding the profiling of the samples used in establishing the South Australian Profiler Plus Caucasian Database, and, secondly, with Dr Buckleton as to the statistical - if I may call it that - validity of that database, and of the National Quadruplex Database. Further, that they have sufficient expertise to correctly interpret those databases for the purpose of expressing the opinions sought to be led from them.

I will cover, in the course of my reasons, the particulars which have been advanced in support of the case for the accused at this stage of the trial. There is no need for me to repeat them at this time.

So, the consequence is that I rule that the evidence proposed to be led by the prosecution as to the results of the DNA analysis undertaken on the Profiler Plus system is admissible; that the evidence of Mr Pearman, in relation to that analysis and, also, the analysis undertaken on the Quadruplex system, is admissible; that the opinions that are sought to be led from him as to what I will call, for a shorthand expression, the statistical probability are admissible; that the databases which I have mentioned are, at the admissibility stage of the trial, found by me to be valid, and that the opinions sought to be led from Mr Pearman and Dr Buckleton are admissible.

I have found no reason to exclude any of this evidence in the exercise of discretion, and if the Crown proposes to lead the evidence, then it may be led.