

IN THE CIRCUIT COURT OF THE
17TH JUDICIAL CIRCUIT, IN AND
FOR BROWARD COUNTY, FLORIDA

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STATE OF FLORIDA,
Plaintiff,

vs.

No. 99-20176CF10A

YEHOWSHUA YISRAEL,
Defendant.

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Excerpt of the above styled cause which came
on for Defense Motion to Suppress DNA Evidence
Hearing on August 8th, 2000, at or about 6:15
o'clock p.m., before the Honorable JAMES I. COHN,
Judge of said Court, at the Broward County
Courthouse, Courtroom 5750, Fort Lauderdale,
Florida.

APPEARANCES:

STATE ATTORNEY'S OFFICE,
BY: JANINE NIXON, ESQUIRE,
Appearing on behalf of the State of Florida.

SPECIAL PUBLIC DEFENDER,
BY: MATTHEW DESTRY, ESQUIRE,
Appearing on behalf of the Defendant.

I N D E X

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DATE	PROCEEDING	PAGE
8/8/00	MOTION TO SUPPRESS EXCERPT	1 - 7
	COURT'S RULING	

WITNESSES

NONE

EXHIBITS FOR IDENTIFICATION

NONE

1 (Thereupon, the proceedings are joined in
2 progress:)

3 * * * * *

4 THE COURT: All right. By a preponderance
5 of the evidence this Court makes the following
6 mixed findings of law and fact.

7 Number one, general acceptance in the
8 relevant scientific community does not require
9 unanimity, consensus of opinion, nor even a
10 majority among the scientific community.

11 The Court cites People verses Lindsey, 892
12 Pacific Second 281, at Page 288. That is a
13 Colorado Appellate Court case decided in 1993,
14 and that was cited in Judge Hale's opinion, in
15 the People of State of Colorado verses Michael
16 Eugene Shreck.

17 General acceptance does not require even
18 substantial authority, but may exist where the
19 methodology is accepted in a reasonable,
20 inconclusive manner. Again that is Lindsey at
21 Page 288 and 289.

22 Number two, the DNA typing using the
23 Profiler Plus Kit with the 310 Genetic Analyzer
24 has now gained general acceptance by the relevant
25 scientific community and thus meets the Frye

1 standard.

2 Number three, the 310 Genetic Analyzer is
3 the most widely used instrument in the forensic
4 DNA testing community in this country today. The
5 Federal Bureau Of Investigation uses the 310
6 Genetic Analyzer.

7 Number four, the Profiler Plus Kit is the
8 most widely used kit, and the vast majority of
9 laboratories using the 310 Genetic Analyzer also
10 use the Profiler Plus Kit. Over one hundred
11 laboratories in this country currently use the
12 kit.

13 Number five, the Broward Sheriff's Office
14 conducted sufficient internal validation studies
15 to insure the accuracy of the Profiler Plus Kit
16 and the 310 Genetic Analyzer in this case.

17 Number six, the Broward Sheriff's Office has
18 never failed a proficiency test which is
19 administered twice a year.

20 Number seven, the 310 Genetic Analyzer has
21 been subjected to peer review. Over thirty
22 articles have been published dealing with the 310
23 Genetic Analyzer or comparable instrument using
24 capillary electrophoresis.

25 Number eight, the Profiler Plus has also

1 been subjected to peer review and twelve
2 published articles were submitted by the State.

3 Number nine, this Court is satisfied that
4 there are sufficient studies for adequate peer
5 review.

6 Number ten, PCR based STR testing has gained
7 general acceptance by the relevant scientific
8 community.

9 Number eleven, the STR multiplex technique
10 as employed by the Profiler Plus, has gained
11 general acceptance by the relevant scientific
12 community.

13 Number twelve, expert testimony will assist
14 the jury in understanding the evidence or in
15 determining a fact in issue.

16 Number thirteen, the Court has made findings
17 as to the qualifications of each witness tendered
18 as an expert in this case.

19 Accordingly, it is thereupon ordered and
20 adjudged that the DNA evidence offered by the
21 State is hereby found to meet the Frye standard
22 and is therefore admissible in this case.

23 Anything further?

24 MS. NIXON: No, Your Honor.

25 MR. DESTRY: No, sir.

1 THE COURT: Okay. Court is in recess until
2 eight-thirty tomorrow morning.

3 MR. DESTRY: Yes, sir.

4 (Thereupon, the excerpt is concluded.)
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1 CERTIFICATE

2 STATE OF FLORIDA)

3) SS:

4 COUNTY OF BROWARD)

5 I, GEORGE CALDWELL, JR., Shorthand Reporter
6 and Notary Public in and for the State of Florida
7 at Large, do hereby certify that I reported the
8 proceedings in the above-styled cause; that the
9 foregoing pages numbered 1 to 6 inclusive
10 constitute a true record of the excerpt of the
11 hearing as stenographically recorded by me; and
12 that this transcript was prepared under my
13 supervision.

14 I FURTHER CERTIFY that I am not an attorney,
15 or counsel of any of the parties, nor a relative
16 or employee of any attorney or counsel connected
17 with the action, nor financially interested in
18 the action.

19 WITNESS my hand in the City of Fort
20 Lauderdale, County of Broward, State of Florida
21 this 12th day of August, 2000.

22 *George Caldwell, Jr.*

23 GEORGE CALDWELL, JR., Shorthand Reporter,
24 Notary Public, State of Florida at Large



Commission expires: 5 November 2002