

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT KANSAS CITY
Division 15

STATE OF MISSOURI,

Plaintiff,

vs.

Case No. CR1999-03841

ISAIAH B. STAPLES,

Defendant.

ORDER

Defendant filed a Motion to Exclude Evidence Created by a Novel Scientific Methodology Currently Lacking General Scientific Acceptance on July 28, 2000. I met briefly on August 1 with Ted Hunt, Assistant Prosecuting Attorney, and Randy Schlegel, Assistant Public Defender, regarding this motion. The State suggested that no Frye hearing was required. *Frye v. United States*, 293F 1013 (D.C. Cir 1923).

Defendant wants to challenge DNA evidence which the State has developed. Defendant concedes that DNA evidence obtained by the RFLP method is admissible in Missouri. **State v. Davis, 814 SW2d 593 (Mo banc**

1991)

State v. Hoff, 904 SW2d 56 (Mo.App. S.D. 1995) holds that DNA evidence using the PCR method is admissible in Missouri.

The issue here is the State's use of a different methodology under the PCR heading. This methodology was developed by Perkins-Elmer, now Applied Biosystems, and is referred to as a PCR/STR system.

State v. Stout, 478 SW2d 368 (Mo 1972) holds that for a scientific technique to be used as a source of evidence, it must have gained general acceptance in the field in which it belongs. In that case, the Court held that neutron activation analysis of blood had not gained such acceptance and was not admissible. This testing was refused, although at the time, identification of blood could be done in other ways, and neutron activation analysis had been approved for the identification of hair. The question in **Stout** was whether the technique had moved from the experimental to the generally acceptable. That is the issue here. The fact that other types of DNA testing have been approved does not reduce this to an issue of the manner of testing which is solely a credibility and weight issue for the jury.

On November 9 and 10, 2000, a hearing was held on this issue. Plaintiff was represented by Ted Hunt and Robin Threlkeld. Defendant was

present in person and was represented by Randy Schlegel.

The State produced two witnesses, Lisa Dowler and Dr. Bruce Budowle.

Ms. Dowler is the DNA technical Leader at the Regional Crime Lab in Kansas City, Mo. That laboratory began using the Perkins-Elmer (P/E) testing system in 1998. They were validating that system while continuing to use the RFLP system for their day-to-day work. After validation, they stopped using the RFLP method.

Ms. Dowler testified most forensic labs use PCR/STR testing (Polymerase Chain Reaction/Short Tandem Repeat). She testified the P/E equipment and primers are widely used. She testified the system, the equipment, and the primers her lab are using are generally accepted in the forensic and scientific community. She was an impressive and credible witness. Her testimony alone would be sufficient to find the P/E, PCR/STR system to be appropriate for the development of admissible evidence.

Bruce Budowle, PhD, is one of two Senior Scientists for the FBI. He has been with the FBI for 17 years and 8 months. His credentials are very impressive. He was literally one of the people who began the use of DNA for forensic purposes in this country. He testified that the FBI Lab uses the

P/E system used at the local lab. The FBI validated this system before it started using it. He testified the P/E system is widely used in the United States and is generally accepted as reliable in the scientific community. He was a credible witness, and his testimony alone would be enough to deny defendant's motion.

Defendant produced Donald Riley, PhD, a scientist with the University of Washington. Dr. Riley also does a substantial amount of consultation with defendants, challenging both DNA systems and the DNA work in specific cases. He testified to various objections he has regarding the P/E, PCR/STR system. He did not testify that the system is not generally accepted in the scientific community. His testimony was credible, but does not defeat the testimony of the State's witnesses. If I were required to believe one set of witnesses and not the other, I would believe the State's witnesses.

I do not think that is a problem, however. The State's witnesses testified the P/E PCR/STR system is generally accepted in the scientific community, and defendant's evidence does not diminish that testimony. It is not necessary that the entire scientific community accept the system.

Defendant's motion is **DENIED**.

Both attorneys did an excellent job of preparing and presenting this evidence.

Becoming educated in this area cannot be easy. I applaud their efforts.

Date: 11-15-00


PRESTON DEAN, Judge

Copies mailed to:

Ted Hunt, APA
Randy Schlegel, APD
CRIM REC
JAIL

CAROL TUCKER, J.A.A.