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STATE OF MINNESOTA DISTRICT COURT  
COUNTY OF HENNEPIN FOURTH JUDICIAL DISTRICT

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STATE OF MINNESOTA, SIP No. 02040491

Plaintiff,

vs

FRYE-MACK RULINGS

Milous Temple,

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

**A P P E A R A N C E S**

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

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

Court Reporter: Pamela Smith Bodley

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.  
21 Dated: April 15, 2005

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