

STATE OF MICHIGAN 7TH JUDICIAL CIRCUIT	PARTY NOTIFICATION	CASE NO. 16-039193-FC
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Court Address
GENESEE COUNTY
COUNTY CLERK
900 S. SAGINAW
FLINT MI 48502

Court Telephone No.
810-257-3238

Mailing Date: 7/28/17

Mail To:
DAVID S. LEYTON
GENESEE COUNTY PROSECUTOR'S OFFICE
900 S SAGINAW ST
FLINT MI 48502
Jan Lunde

Judge: GEOFFREY L. NEITHERCUT

Plaintiff
PEOPLE OF MICHIGAN

v
Defendant
MARLON ANTHONY BURNS

ATTACHED IS A TRUE COPY OF THE OPINION JUDGE NEITHERCUT ISSUED REGARDING THE MOTION FOR ADMISSIBILITY OF DNA PROBABLISTIC GENOTYPING. THE NEXT DATE WILL BE A PRE-TRIAL ON 8/28/17 @ 1:30 P.M.

THIS NOTICE HAS ALSO BEEN SENT TO:
GLENN M-D COTTON

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF GENESEE

THE PEOPLE OF THE STATE
OF MICHIGAN,

Plaintiff,

CASE NO. 16-39193-FC

vs.

Honorable Geoffrey L. Neithercut

MARLON ANTHONY BURNS,

**OPINION ON PEOPLE'S MOTION
FOR PRETRIAL ORDER ON
ADMISSIBILITY OF DNA
PROBABLISTIC GENOTYPING**

Defendant,

DAVID S. LEYTON (P35086)
Prosecuting Attorney
JANICE K. RUNDLES (P29561)
Special Assistant Attorney General
Attorney for the Plaintiff
900 S. Saginaw Street
Flint, MI 48502
(810) 424-4480

GLENN M-D COTTON (P54162)
Attorney for the Defendantt
G-1173 N. Ballenger Hwy., Suite 203
Flint, MI 48504
(810) 309-9311

This matter is brought before the Court based on the People's Motion for Pre-Trial Order on Admissibility of DNA Probablistic Genotyping. Defendant is accused of multiple counts of Criminal Sexual Conduct, because the alleged victim reported that the defendant had sucked on her toes while sexually assaulting her. Swabs of her toes were taken when the CSC kit was done. Utilizing a new software program for calculating the probability of whether defendant's DNA profile was contributed to the mixture, the laboratory concluded there is very strong support for the defendant's inclusion. The new software program is called STRMix Probablistic Genotyping.

A Daubert hearing was held to determine the admissibility of the STRMix statistical method for calculating DNA profile inclusion/exclusion probabilities. The People presented three witnesses: Dr. John Buckleton, a forensic scientist and one of the developers of the STRMix software; Jeffrey Nye, who was the technical leader for the Michigan State Police laboratory when the STRMix program was purchased; and Amber Smith, the Michigan State Police forensic scientist, who analyzed the evidence in this case.

It appears defendant's objections to the admissibility of the STRMix DNA calculations is based on the argument that the scientific methodology is unreliable. The Daubert v Merrill Dow Pharmaceuticals Inc, 509 U.S. 579, 113 S. Ct. at 1297 case requires the court when considering admissibility to "focus...solely on principles and methodology,

not the conclusions they generate". MRE 702 requires the trial court to ensure that each aspect of an expert witness's proffered testimony, including the data and the methodology by which the expert draws conclusions, be reliable.

Dr. John Buckleton testified about his participation in the creation of STRMix and its implementation. STRMix is a fully continuous probabilistic genotyping software application that interprets and evaluates complex DNA mixtures. Our defendant's sample is complex, because four different contributors were found. Dr. Buckleton described the developmental validation, the peer review and the assertion that nineteen labs now use STRMix.

Jeffery Nye is now the Assistant to the Director responsible for quality assurance at the Michigan State Police Forensic Science Division. He selected STRMix after following the Scientific Working Group on DNA Analysis Methods (SWGDM) guidelines. His offices exercised a validation process before using it. He described training and testing Michigan State Police scientists, who would be using STRMix. Defendant did not challenge the validation process.

Amber Smith is a Michigan State Police Lab forensic scientist, who extracts and analyzes DNA. She described previous analysis methods. She was trained and began using STRMix in March 2016. She has participated in one hundred twenty-six cases so far. Her training and experience are adequate. Defendant appeared to challenge STRMix and not her knowledge or methods.

Daubert requires that "when evaluating the reliability of a scientific theory or technique, courts consider certain factors, including but not limited to:

- (1) Whether the theory has been tested. Dr. Buckleton and Michigan State Police forensic scientist, Jeffery Nye, well described STRMix testing.
- (2) Whether it has been published and peer reviewed. Dr. Buckleton's Curriculum Vitae (Exhibit 1) lists publications and reviews, while Mr. Nye described SWGDAM studies.
- (3) Its level of general acceptance. No evidence of rejection was presented.
- (4) Its rate of error, if known. No error was shown in this hearing.

After evaluating the testimony, methodology and evidence offered, this Court finds that evidence and testimony related to the use of STRMix satisfies the reliability criteria set forth in Daubert and MRE 702. The evidence is relevant and admissible. Therefore the People's motion on admissibility of DNA probabilistic genotyping is granted.

Dated: July 27, 2017



GEOFFREY L. NEITHERCUT (P25466)
CIRCUIT JUDGE