

STATE OF MINNESOTA
COUNTY OF MILLE LACS

IN DISTRICT COURT
SEVENTH JUDICIAL DISTRICT

State of Minnesota,

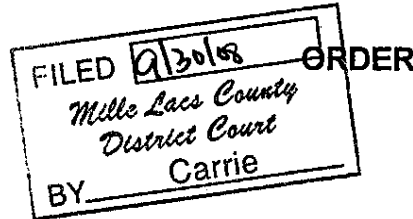
Court File No. 48-CR-07-2336

Plaintiff,

v.

Jeremy Jason Hull,

Defendant.



The above entitled matter came on for a *Frye-Mack* hearing before the Honorable Steven A. Anderson at the Mille Lacs County Courthouse, Milaca, Minnesota on August 28, 2008. Eric Schieferdecker, Assistant Attorney General, and Noah A. Cashman, Assistant Attorney General, appeared on behalf of the State. Andrew Northrup, Assistant Public Defender, and Gregory B. Davis, Assistant Public Defender, appeared with and on behalf of the defendant. The defendant had previously filed a Motion In Limine seeking to exclude fingerprint evidence at trial.

Upon review of all the files and proceedings herein, the Court makes the following:

ORDER

1. Defendant's Motion to Exclude Fingerprint Analysis is **DENIED**.
2. The offered memorandum is hereby incorporated by reference and made part of the Order.

DATED: 9/30/08

BY THE COURT

A handwritten signature in black ink, appearing to read "Steven A. Anderson".

Steven A. Anderson
Judge of District Court

MEMORANDUM

On August 28, 2008, the above-entitled matter came on for a *Frye-Mack* hearing. The *Frye-Mack* test has two prongs. Under the first prong, "a novel scientific technique that produces evidence to be admitted at trial must be shown to be generally accepted within the relevant scientific community." State v. Roman Nose, 649 N.W.2d 815 (Minn. 2002). Under the second prong, the particular evidence derived from the technique and used in an individual case must have a foundation that is scientifically reliable. Id. (citing Goeb v. Tharaldson, 615 N.W.2d 800 (Minn. 2000)). "Put another way, the *Frye-Mack* standard asks first whether experts in the field widely share the view that the results of scientific testing are scientifically reliable, and second, whether the laboratory conducting the tests in the individual case complied with appropriate standards and controls." Id. (citing State v. Jobe, 486 N.W.2d 407 (Minn. 1992)).

At the start of the hearing, the State moved that the issues at the hearing be limited to the second prong of the *Frye-Mack* standard. The Minnesota Supreme Court has recognized that fingerprint identification evidence is "not a novel or emerging type of scientific evidence" and is routinely used to prove that a particular person was present at a particular place or did a specific act. State v. Hodgson, 512 N.W.2d 95, 98 (Minn. 1994). For that reason, the Court granted the State's motion to limit the issues at the hearing to the second prong of the *Frye-Mack* standard. Therefore, the issue before the Court is whether the laboratory conducting the tests in this case complied with the appropriate standards and controls.

Joshua W. Bergeron, a Certified Latent Print Examiner (CLPE), certified by the International Association of Identification (IAI) since 2001, was called as an expert witness by the State. In order to become a CLPE, Bergeron was involved in a multi-year process involving extensive competency testing. Bergeron testified that he has completed 200 to 300 ACE-V examinations per year since he began his employment with the Bureau of Criminal Apprehension (BCA). He has a Bachelor of Arts in Chemistry, and studied forensic quantitative analysis in the masters program at Iowa State University. He also teaches basic and advanced latent print courses and has conducted research and validation studies regarding various methods used in latent print examination.

Bergeron testified that the Minnesota BCA is an accredited crime laboratory and is evaluated every five years. The BCA is accredited by the American Society of Crime Laboratory Directors (ASCLD) and has been accredited since 1994. In addition, latent print examiners such as himself undergo proficiency testing by an outside agency on an ongoing yearly basis.

The BCA uses standard Methods of Analysis (MLP's) when analyzing a print and use the ACE-V methodology which is an acronym for analysis, comparison, evaluation, and verification. According to the MLP, this process is a quantitative and qualitative examination of the ridge detail present in the friction ridge impressions, resulting in a conclusion of identification, exclusion or inconclusive. Bergeron testified that all of the standards and guidelines were followed when analyzing the fingerprint evidence in this matter.

Glenn Langenburg also testified as an expert witness for the State. He has been a CLPE since 2003 and is the lead technical scientist for the BCA Latent Print Laboratory, has a Bachelor of Science in Forensic Science, a Master's of Science in Analytical Chemistry, and is a PhD. candidate at the University of Lausanne, Switzerland in forensic science.

The State's third expert witness was Dr. Cedric Neumann. Dr. Neumann received his PhD. in forensic science (magna cum laude) from the Ecole des Sciences Criminelles, University of Lausanne Switzerland. He has both a Master's of Science and a Bachelor of Science from the same University. Dr. Neumann is a Senior Forensic Scientist and the scientific manager of R&D Statistics and Interpretation for the Forensic Science Service in Birmingham, United Kingdom. Dr. Neumann testified that he is currently completing a validity study to assess the accuracy of a statistical model of the ACE-V method used by the BCA. He stated that this model will give statistical probability figures for fingerprint evidence similar to what is now seen in the field of DNA.

The defense called Dr. Simon Cole as their expert witness. Dr. Cole is a professor in the School of Social Ecology and testified at the hearing that he is not an expert on fingerprint identification and is not a CLPE. Dr. Cole testified that he had never done research on latent prints and has never done a validation study.

The Court finds the testimony of Joshua Bergeron, Glenn Langenburg and Dr. Cedric Neumann more credible than that of Dr. Cole. Dr. Cole testified that he is not a certified latent print examiner and he has never done research on actual latent prints nor has he done a validation study. He is a law professor who has read the literature. The State's experts convinced the Court that the procedures used at the BCA are reliable and adequately ensure that the chances of an improper identification are small.

The Court agrees with Dr. Cole that further studies relating to validity should be conducted. However, his testimony was not persuasive given the fact that he has never performed research in the actual field while the State's witnesses provided to the Court studies which had been performed providing some validation to latent print examination.

The second prong of the *Frye-Mack* standard asks whether the laboratory conducting the tests in the individual case complied with appropriate standards and controls. The defense did not challenge the compliance of the BCA with the appropriate standards and controls and did not provide any evidence that the BCA failed to comply with those standards and controls. The State's expert who examined the prints established that he and others at the BCA followed all of the applicable standards and controls when performing their examinations. The State's experts also testified that the latent print identifications were verified by other independent examiners as well.

The Court finds that fingerprint analysis is reliable and the examination in this matter complied with appropriate standards and controls. The Court denies the defendant's Motion In Limine and the fingerprint analysis will be allowed to be admitted into evidence.