

IN THE CIRCUIT COURT FOR STEWART COUNTY  
AT DOVER, TENNESSEE  
23<sup>RD</sup> JUDICIAL DISTRICT

STATE OF TENNESSEE,  
Plaintiff,

v.

ABDULLAH POWELL  
Defendant.

DOCKET NO: 2017-CR-155

ORDER

This cause came on to be heard December 9, 2020 on the Defendant's Amended Motion for Daubert hearing. Due to Covid-19 restrictions, the Court conducted the hearing partially by Zoom, with the Defendant participating remotely from the Dickson County jail, and partially by in person participation of Counsel and witnesses. Following the hearing the Court took the matter under advisement in order to review the multiple exhibits from the hearing, and applicable statutory and case law on the subject. Having reviewed all such material, the Court makes the following findings of fact, conclusions of law and ruling.

The present case represents the third trial arising from the murder of Donnie Cooksey on June 7, 2016, in Cumberland City, Tennessee. After multiple changes of Attorneys for the Defendant, Michael Flanagan of the Davidson County bar was retained to represent him, and has filed a motion to sever counts and the

present Daubert hearing request regarding certain DNA evidence the State seeks to introduce at trial.

Prior to the June 7, 2016 home invasion and murder of Mr. Cooksey, another resident of Cumberland City, Wanda Gilliam, was the victim of a home invasion burglary, by two masked intruders. After ransacking her home, allegedly looking for a dog, the two men left, leaving Ms. Gilliam unharmed. When Police arrived, a scarf was located in the home which Ms. Gilliam stated had come from one of the intruders. That scarf was sent to the TBI crime lab, which extracted a DNA sample. The TBI lab was unable to make a positive or conclusive correlation of the DNA on the scarf to Mr. Powell or any other individual.

Having presided over the two previous trials of Mr. Powell's co-defendants, this Court is aware the State contends that evidence exists that would prove Defendant Powell and another co-defendant allegedly entered the Gilliam home by mistake, thinking it was the Cooksey home, and two nights later, after being given better directions by another co-defendant, they did in fact enter the Cooksey home, resulting in his death. The State therefore seeks to corroborate such evidence by the expert testimony proffered at this hearing which indicates a match between the DNA on the scarf and Mr. Powell.

After hearing from Ms. Gilliam, and Officer Rick Smith who recovered the scarf from the Gilliam home, the State presented its primary witness, Dr. Mark Perlin, via Zoom. Dr. Perlin holds multiple degrees, including M.D., PhD in math and a PhD in computer science. He designed and supervised the creation of the TrueAllele system used by his company Cybergenetics to analyze the DNA sample in this case. Dr. Perlin testified at great length to explain the basis of the TrueAllele system, it's operation and the scientific and legal consideration of the system. In all, he provided some 20 exhibits in support of the TrueAllele system, including extensive and voluminous documentation of the development, methodology, validation, standards compliance, regulatory approval and admissibility rulings in both Tennessee and other jurisdictions.

Based upon this Court's review of the exhibits, the testimony of Dr. Perlin, and the application of the factors adopted by the Tennessee Supreme Court in *McDaniel v CSX Transportation, Inc.*, 955 S.W.2d 257 (Tenn.1997), and subsequent cases, the Court finds that the results of the DNA testing obtained by Cybergenetics, utilizing the TrueAllele system should be admissible in this case at trial.

This Court finds that Dr. Perlin is qualified as an expert witness, based upon his knowledge, skill, experience and training. He holds a B.A. in Chemistry, and M.D. in Medicine, a PhD In

Mathematics and a PhD in Computer Science. He testified that he spent twenty years developing the TrueAllele system and is intimately familiar with the methodology of the system. This Court finds that Dr. Perlin's qualifications authorize him to give an informed opinion upon the facts or issue for which his testimony is being proffered. *State v Stevens*, 78S.W.3d 817,834 (Tenn.2002). This Court likewise finds that the basis for Dr. Perlin's opinion, which is supported by the testing of his methodology, research and studies on the system, support his conclusions, *Id.* at p.834-35.

Further this Court finds that the testimony of Dr. Perlin, and the results of the TrueAllele genotype identification of the DNA sample in this case, meet all of the factors set forth by the Supreme Court in *McDaniel*. Based upon the evidence and documentation supplied by Dr. Perlin during the hearing, the Court finds that both the scientific evidence and methodology of the TrueAllele genotype DNA identification has been tested, and has been subject to peer review. Dr. Perlin documented the potential rate of error for the system, and provided proof that such evidence is now generally accepted in the scientific community. Lastly, Dr. Perlin documented that the research has been conducted independent of litigation, and has been utilized for both criminal prosecutions as well as the exoneration of criminal defendants.


Dr. Perlin was cross-examined regarding his qualifications, his methodology, and the factual and scientific basis for his opinions. The Defense argued that the results of the True Allele testing are simply the results of a computer program, rather than any independent testing by an expert, and on that basis object to the results and to Dr. Perlin being allowed to testify. However, in this Court's opinion, the TrueAllele system is similar to the Intoximeter which is widely used in DUI prosecutions. An Intoximeter operator simply inputs certain information, a breath sample is taken and the machine gives a result. The operator does not conduct any independent testing of the sample, yet our Appellate Courts have recognized the results of such tests to be admissible evidence. Here, the Cybergentics technician uses the DNA sample obtained by the TBI crime lab, and the TrueAllele system makes a genotype identification and comparison of the sample and gives a result. As stated by our Court, "The party proffering expert testimony need not establish that the expert testimony is correct, only that the expert testimony 'rests upon good grounds'", *State v Scott*, 275 S.W.3d 395,404 (Tenn.2009).

Based upon these facts, the Court finds that the proposed expert testimony meets the required levels of relevance and reliability set forth in *Tenn. R. Evid.* 702 and 703.

It is THEREFORE, **ORDERED**, **ADJUDGED**, and **DECREED** that

the results of the DNA testing by Cybergenetics utilizing the TrueAllele methodology shall be admissible at trial.

This the 15<sup>th</sup> day of January 2021.

  
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David D. Wolfe  
Circuit Court Judge, Div I  
23<sup>rd</sup> Judicial District

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing has been forwarded by email to:

Michael Flanagan, Esq.  
[Mikeflanagan.law@gmail.com](mailto:Mikeflanagan.law@gmail.com)

Tim Wills, Esq.  
[thewillsfirm@gmail.com](mailto:thewillsfirm@gmail.com)  
Attorneys for Defendant

W. Ray Crouch, Jr.  
District Attorney  
[wrcrouch@tndagc.org](mailto:wrcrouch@tndagc.org)

Josh Turnbow, ADA  
[jcturnbow@tndagc.org](mailto:jcturnbow@tndagc.org)

Joe Hall, ADA  
[jchall@tndagc.org](mailto:jchall@tndagc.org)

This the 15<sup>th</sup> day of January 2021.

  
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Jennifer M. Frye, J.D.  
[jennifer.frye@tncourts.gov](mailto:jennifer.frye@tncourts.gov)