

COUNTY COURT  
COUNTY OF ST. LAWRENCE      STATE OF NEW YORK

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THE PEOPLE OF THE STATE OF NEW YORK,

-against-

**DECISION & ORDER**

Motion to Renew and Reargue  
Admissibility of DNA Evidence

Ind. #: 2015-15

ORAL NICHOLAS HILLARY,

Defendant.

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*Mary E. Rain, District Attorney, Canton, for the People.*

*William Fitzpatrick, District Attorney, Syracuse, for the People.*

*The Legal Aid Society, New York (Jessica Goldthwaite of counsel), for the Defendant.*

*The Legal Aid Society, New York (Richard Torres of counsel), for the Defendant.*

*Dumas & Narrow, Canton (Peter Dumas of counsel), for the Defendant.*

*Emery, Celli, Brinckerhoff & Abady, New York (Earl Ward of counsel), for the Defendant.*

*Siegel, Teitelbaum & Evans, LLP, New York (Norman Siegel of counsel), for the Defendant.*

*The Legal Aid Society, New York (Clinton Hughes of counsel), for the Defendant.*

*The Bronx Defenders, New York (Adnan Omar Sultan of counsel), for the Defendant.*

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**CATENA, J.:**

By decision and order dated August 26, 2016, this court granted the defendant's motion to preclude the prosecution from calling an expert witness to testify on their direct case regarding any

conclusion reached by the use of the forensic software tool STRmix as the prosecution could not lay a foundation for the introduction of such evidence inasmuch as no internal validation studies were performed by the New York State Police crime lab for the use of STRmix on casework samples developed at the lab. This court further granted the defendant's motion to preclude the prosecution from offering expert testimony as to any statistical results obtained by using the random match probability (RMP) on the composite minor component of mixture finding the use of RMP in this case unreliable and unduly prejudicial to the defendant. The People have now made a motion to renew (*see*, CPLR 2221[e][2] ["new facts not offered on the prior motion that would change the prior determination"]) and reargue (*see*, CPLR 2221[d][2] ["matters of fact or law allegedly overlooked or misapprehended by the court"]) the admissibility of both the People's RMP report and STRmix report. The defendant opposes the motion stating that the People's offer of proof contained therein does not "add[] anything of substance which warrants reconsideration or uncovers any flaw in the Court's apprehension of law or fact" and that "two central, unassailable facts on which the Court's decision is soundly based remain: STRMix was run on a challenging sample tested by the New York State Police (NYSP) even though the lab had never conducted an internal validation of STRMix, and Dr. Buckleton says the use of the random match probability on the composite minor component of the profile is anticonservative and not fair to Mr. Hillary."

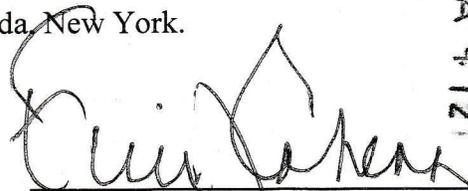
Initially, this court finds the People's complaint that they were "given no opportunity to present their evidence on the foundation issues" prior to the issuance of this court's decision and order unsupported by the record. Among other things, this court held a telephone conference on August 16, 2016, wherein the prosecution was questioned directly about internal validation and the role of the Commission of Forensic Science. Further, upon the People's request, oral argument was

held on the record concerning these issues on August 17, 2016, wherein this Court questioned the prosecution directly about the lack of internal validation of STRmix at the New York State Police crime lab and then allowed the parties to submit further papers on the matter. The prosecution availed itself of the opportunity by submitting a memorandum of law and presenting further proof on the issue in the form of, among other things, an affidavit from Dr. Buckleton dated August 18, 2016<sup>1</sup>. This court accepted the affidavit over the defendant's objection and reviewed the defendant's response to same.

After reviewing the prosecutions recent submissions, it remains undisputed that internal validation studies were never performed by the New York State Police crime lab for the use of STRmix on casework samples developed at the lab and that the New York State Commission on Forensic Science never approved STRmix for use by the New York State Police for their forensic casework (Executive Law 995-b[1]; *cf.*, *State v. Wakefield*, 47 Misc.3d 850). Finally, Dr. Buckleton remains committed to his belief that "RMP overstates the weight of evidence in this case." Motion denied.

The above constitutes the decision and order of this Court.

Signed this 8<sup>th</sup> day of September, 2016, at Fonda, New York.

  
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HON. FELIX J. CATENA  
County Court Judge

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<sup>1</sup>In his affidavit, Dr. Buckleton once again candidly admitted that "[o]ur recommendation is to validate in house. In this case that was not possible."