

IN THE COURT OF COMMON PLEAS  
OF LUZERNE COUNTY

COMMONWEALTH OF PENNSYLVANIA

v.

ANTHONY JOSPEH SPUDIS

CRIMINAL DIVISION

1305 OF 2018

CLERK OF COURTS CRIMINAL  
LUZ CNTY OCT21 '21 PM4:21

ORDER

AND NOW, the 20 day of October, 2021, after a hearing on Defendant's *Motion to Compel Additional Discovery* and the Commonwealth's *Motion to Quash Defense Motion to Compel Additional Discovery*, wherein Defendant, Anthony Spudis, Robert Sauerman, Esquire, on behalf of the Defendant, and Daniel Zola, Esquire and Gerry Scott, Esquire, on behalf of the Commonwealth appeared, and for the reasons set forth in the attached Opinion, **IT IS HEREBY ORDERED AND DECREED** that the Commonwealth's motion to quash is **GRANTED** and the Defendant's motion to compel is **DENIED**.

The Clerk of Courts is directed to enter this Order of Record and to mail a copy of this Order to all counsel of record or, if unrepresented, to each party pursuant to Pa.R.Crim.P. 114.

BY THE COURT,



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POLACHEK GARTLEY, J.

LUZ CNTY CRIM DIVISION  
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**OPINION**

Tina Polachek Gartley, Judge

CLERK OF COURTS CRIMINAL  
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**BACKGROUND**

On April 12, 2021, Defendant filed a Motion to Compel Additional Discovery seeking information reading information from TrueAllele, a software program owned and developed by Cybergenics, Inc., a private, third-party company utilized by the Commonwealth to perform a DNA analysis of evidence recovered at the crime scene after Pennsylvania State Police analysis could not provide a match. Specifically, the defense is seeking the source code for the TrueAllele software that was used to perform a DNA combination analysis.

On May 14, 2021, the Commonwealth filed a Motion to Quash Defendant's Motion to Compel Additional Discovery on the basis that it has already complied with its discovery obligations; the request demonstrates the Defendant's lack of understanding of the nature of the discovery already provided; and the request needlessly infringes upon Cybergenic's proprietary rights in TrueAllele "source code."

A hearing on the motions was held on September 15, 2021. The defense called Christian Westring who was offered as an expert in DNA analysis. The Commonwealth called Dr. Mark Perlin who was offered as an expert in computer science, math,

medicine, and probabilistic genotyping software. Dr. Perlin is a shareholder in Cybergenics which owns TrueAllele.

## DISCUSSION

Under Pa.R.Crim.P. Rule 573(B)(2)(a), upon a defendant's motion for pretrial discovery, the trial court "may order the Commonwealth to allow the defendant's attorney to inspect and copy or photograph" certain requested items (enumerated in the Rule) "upon a showing that they are material to the preparation of the defense, and that the request is reasonable." Within the enumerated list of items a defendant may request is "any other evidence specifically identified by the defendant, provided the defendant can additionally establish that its disclosure would be in the interests of justice." Pa.R.Crim.P. 573(B)(2)(a)(iv).

*Commonwealth v. Snell*, 811 8.2d 581, 591 (Pa.Super. 2002), appeal denied, 820 A.2d 163 (Pa. 2003) (case citation omitted).

In *Comonwealth v. Foley*, 38 A.3d 882 (Pa.Super. 2012), the court addressed the use of TrueAllele to interpret data collected at a crime scene. In *Foley*, the defendant challenged the admission of Dr. Perlin's testimony for three reasons:

1. "as of the date of the pre-trial hearing, no forensic laboratory in the United States used Perlin's TrueAllele method in analyzing mixed sample of DNA for forensic purposes";
2. "the TrueAllele system had never been used in a court of law in any jurisdiction in the United States in a mixed DNA sample to give a likelihood ratio"; and
3. no outside scientist can replicate or validate Dr. Perlin's methodology because his software is proprietary.

The court rejected the defendant's first claim stating "it does not amount to a showing of 'novelty' because or does not show a 'legitimate dispute regarding the reliability of the expert's conclusions.'" 38 A.3d at 889. The court further noted that the defendant understated the use of TrueAllele software citing its use by New York State, Allegheny County and in reanalyzing all of the data and re-matching it using TrueAllele

methods from the 18,000 victim remains and 3000 missing people following the September 11 attack on the World Trade Center. The court also noted that the United Kingdom's Forensic Science Services uses TrueAllele to analyze crime scene evidence and build the UK National Database, the largest of its kind in the world. *Id.*

The court rejected the defendant's second argument because a lack of prior use in court does not prove novelty. "The Commonwealth's 'continued adherence to the *Frye* test is based upon its interest in having judges be guided by scientists when assessing the reliability of a scientific method, and not the other way around.'" *Id.* A court will find novelty only where there is a dispute among scientists, not based on use in previous court proceedings. *Id.*

With respect to the defendant's third point, that no outside scientist can replicate or validate Dr. Perlin's methodology because his software is proprietary, the court held that scientists can validate the reliability of a computerized process even without the "source code" underlying that process. *Id.*

TrueAllele is proprietary software; it would not be possible to market TrueAllele if it were available for free. Nevertheless, TrueAllele has been tested and validated in peer-reviewed studies. One study used laboratory-generated DNA samples and found that quantitative analysis performed by TrueAllele was much more sensitive than qualitative analysis such as that performed by the FBI. A recent paper entitled "Validating TrueAllele DNA Mixture Interpretation" used DNA samples from actual cases and reached similar results. The study "validated the TrueAllele genetic calculator for DNA mixture interpretation" and found that "[w]hen a victim reference was available, the computer was four and a half orders of magnitude more efficacious than human review." Both of these papers were published in peer-reviewed journals; thus the contents were reviewed by other scholars in the field.

In conclusion, the court found there was no legitimate dispute over Dr. Perlin's methodology. 38 A.3d 890.

Dr. Perlin testified that TrueAllele has been validated by 42 validation studies, 8 of which were in peer-reviewed journals since *Foley* was decided. Ten crime labs in the United States use TrueAllele for DNA analysis, reports generated by Cybergenics using TrueAllele software have been used in 45 states and over 100 trials, and the software has exonerated 10 innocent people.

Based on *Foley*, wherein the court found the disclosure of TrueAllele's source code is unnecessary to test its reliability, TrueAllele has been tested and validated without the release of the source code, and there is no legitimate dispute over Dr. Perlin's methodology, as well as the credible testimony of record, the Court finds that the Defendant has failed to prove that the source code is material to the preparation of his defense and that the request for the source code is reasonable.

## **CONCLUSION**

For the reasons discussed herein, the Defendant's motion to compel is denied and the Commonwealth's motion to quash is granted.

**END OF OPINION**