

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : No. 03-10,050
:
:
vs. : CRIMINAL
:
RICHARD WAYNE ILLES, SR., : Sixth Supplemental Omnibus
Defendant : Pretrial Motion (Count V)

O R D E R

AND NOW, this ___ day of January 2004, upon consideration of Count V of Defendant's Sixth Supplemental Omnibus Pretrial Motion, a motion in limine regarding mitochondrial DNA (mtDNA), it is ORDERED and DIRECTED as follows:

The Court has reviewed several cases from other jurisdictions and a trial court decision from Lehigh County on the issue of whether mtDNA is admissible evidence.¹ These decisions were decided under Frye, Daubert, state and federal rules of evidence, state statute and/or a combination thereof. All these decisions found mtDNA evidence admissible. The defense did not cite to any case nor did the Court find any case that found such evidence inadmissible. The Court believes it is likely the Pennsylvania appellate courts would

1 Magaletti v. State, 847 So.2d 523 (Fla.App. 2 Dist. 2003);
State v. Holtzer, 660 N.W.2d 405 (Mich. App. 2003);
People v. Ko, 757 N.Y.S.2d 561 (A.D. 1st Dept. 2003);
U.S. v. Coleman, 202 F.Supp.2d 962 (E.D.Mo. 2002);
Connecticut v. Pappas, 776 A.2d 1091 (Conn. 2001);
State v. Scott, 33 S.W.3d 746 (Tenn. 2000);
People v. Klinger, 713 N.Y.S.2d 823 (N.Y.Co.Ct. 2000);
State v. Council, 515 S.E.2d 508 (S.C. 1999);
State v. Underwood, 518 S.E.2d 231 (N.C.App. 1999);
Commonwealth v. Rorrer, 48 Lehigh 134 (1998), affirmed without published opinion 03080 PHL 98 (Pa.Super. 10/22/1999).

also find such evidence admissible. However, as there is currently no published Pennsylvania appellate court decision on this issue, the Court would like to make a record on this issue. Because this issue was raised only four business days before jury selection, the Court will permit either side to present their witnesses on this issue by telephone. Ideally, the Court would like to take such telephone testimony after jury selection, but before trial. Jury selection is scheduled to begin on January 8, 2004. The Court is hopeful that selection will be complete by January 13, 2004. Trial is scheduled to commence on January 20, 2004. Therefore, both sides should contact any witness they would like to call at a Frye hearing to inquire whether the witness could be available by telephone on January 14, 15 or 16 as the Court would anticipate holding a Frye hearing on these dates. The Court recognizes that this is short notice and, if the witnesses were not available on these dates, would consider taking their testimony at an in camera hearing after the start of trial. The Court would even be willing to hold such a hearing in the evening hours, if necessary.

By The Court,

Kenneth D. Brown, Judge

cc: Michael Dinges, Esquire (DA)
Kenneth Osokow, Esquire (ADA)
George Lepley, Esquire
Craig Miller, Esquire
Work file
Gary Weber, Esquire (Lycoming Reporter)