

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF ST. LOUIS

SIXTH JUDICIAL DISTRICT

State of Minnesota,

File No. 69DU-CR-15-1363

Plaintiff,

vs.

COURT'S ORDER
DENYING MOTION TO
RECONSIDER

Dennis Ivan Yellow,

Defendant.

The above-entitled matter came on Defendant's motion to reconsider. Specifically, the Defense asked the Court to reconsider its August 15, 2016 order denying the Defendant's motion to exclude the opinions of a BCA scientist for lack of foundational reliability. The motion was based on a September 2016 report from the President's Council of Advisors on Science and Technology (PCAST), concerning forensic science in criminal courts. The Court, having reviewed the PCAST Report, as well as the detailed submissions of both sides, hereby issues the following:

ORDERS:

1. Defendant's motion to reconsider is hereby denied.
2. The matter remains on for pretrial and trial on the dates previously scheduled.

3. The attached Memorandum of Law is incorporated herein by reference.

BY THE COURT:

Eric L. Hylden

MEMORANDUM OF LAW

On August 15, 2016, this Court issued a decision in which it denied Defendant's motion to exclude the testimony of BCA Forensic Scientist Michelle Pearlson on the basis that her opinions lacked foundational reliability under Minn.R.Evid. 702. The Court did not come to that decision lightly. The Court conducted a three-day evidentiary hearing, and reviewed hundreds of pages of supporting data, analysis and argument on this issue. The Court did its best to address it, and ultimately denied the motion.

After the Court's decision came out, PCAST issued a report to the President entitled, "Forensic Science in Criminal Courts: Ensuring Scientific Validity of Feature Comparison Methods." The executive summary of the report explains that it:

"...begins with a review of previous studies relating to forensic practice and Federal actions currently underway to strengthen forensic science: discusses the role of scientific validity within the legal system; explains the criteria by which the scientific validity of forensic feature comparison methods can be judged; applies those criteria to six such methods in detail and reviews

an evaluation by others of a seventh method; and offers recommendations on Federal actions that could be taken to strengthen forensic science and promote its more rigorous use in the courtroom.”

With regard to DNA analysis of complex mixture samples, the report flatly states, “PCAST finds that subjective analysis of complex DNA mixtures has not been established to be foundationally valid and is not a reliable methodology.”

Naturally, the parties to this case have differing views regarding the import of the PCAST Report. Defendant asserts it is an important development, and should encourage this Court to reconsider its prior decision on foundational reliability. The Prosecution finds fault with the PCAST Report itself and with those who put it together. Both sides have submitted decisions from other courts which have weighed in on the debate already.

Having read the entire PCAST Report, and in particular the section on complex mixture analysis, the Court sees no reason to reconsider the August 15, 2016 order. The PCAST Report essentially reiterates the Defense’s position regarding foundational reliability of complex mixture analysis. The Defense did an excellent job of stating this position through the testimony of Dr. Word, the cross-examination of Dr. Hoogendoorn and their detailed critique of Ms. Pearlson’s opinions. The Defense made excellent argument on foundational reliability, but in the end **the Court determined that this was a matter of the weight**

to be given to the evidence, rather than its admissibility. The Court found that the opinions met the standard for foundational reliability, and nothing in the PCAST Report changes that finding. Finding a different way to express the same position does not persuade the Court that different action ought to be taken. Under these circumstances, the motion for reconsideration must be denied.

The case remains on for pretrial and trial as previously scheduled. If there is anything the Court can do to assist in resolution, it is happy to do so.

ELH