

IN THE DISTRICT COURT OF APPEAL  
FIRST DISTRICT, STATE OF FLORIDA

JAMES THOMAS,  
Appellant,

NOT FINAL UNTIL TIME EXPIRES TO  
FILE MOTION FOR REHEARING AND  
DISPOSITION THEREOF IF FILED

v.

CASE NO. 1D08-3259

STATE OF FLORIDA,  
Appellee.

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Opinion filed October 8, 2009.

An appeal from the Circuit Court for Duval County.  
Hugh A. Carithers, Judge.

Nancy A. Daniels, Public Defender, Carl S. McGinnes, Assistant Public Defender,  
Tallahassee, for Appellant.

Bill McCollum, Attorney General, Charmaine M. Millsaps, Assistant Attorney  
General, Tallahassee, for Appellee.

PER CURIAM.

Appellant challenges his conviction for second-degree murder, raising two issues on appeal: The trial court erred in admitting expert testimony over Appellant's objection that the State failed to demonstrate that the formula used to calculate the combined frequency statistics of several DNA mixtures satisfied the

Frye<sup>1</sup> test; and the trial court fundamentally erred in giving the standard jury instruction for manslaughter by act.

We affirm as to the first issue because the trial court properly found that the combined frequency analysis at issue was an extension of the product rule, which has been recognized in Florida as a generally accepted method of DNA calculations. See Butler v. State, 842 So. 2d 817, 829 (Fla. 2003) (acknowledging that Florida and other jurisdictions have accepted use of the product rule). Further, even if the trial court erred in admitting the evidence, any such error was harmless.

With regard to the second issue, we are required to reverse Appellant's conviction in light of Montgomery v. State, 34 Fla. L. Weekly D360 (Fla. 1st DCA, Feb.12, 2009).

AFFIRMED in part, REVERSED in part, and REMANDED for a new trial.

WEBSTER, LEWIS, and THOMAS, JJ., CONCUR.

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<sup>1</sup> Frye v. United States, 293 F. 1013 (D.C. Cir. 1923).