

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

HENRY LEE HILL aka HARRY LEE HILL,

Defendant-Appellant.

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UNPUBLISHED

May 5, 1998

Nos. 193809, 193815

Saginaw Circuit Court

LC Nos. 95-010354-FC

95-010271-FC

Before: O’Connell, P.J., and White and Bandstra, JJ.

PER CURIAM.

Following two separate jury trials, defendant was convicted of first-degree murder, MCL 750.316; MSA 28.548, possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b; MSA 28.424(2), and felonious assault, MCL 750.82; MSA 28.277.<sup>1</sup> Defendant’s conviction of felonious assault was enhanced under the fourth habitual offender provision. MCL 769.12; MSA 28.1084. Defendant appeals as of right, and we affirm.

Defendant first argues that he was denied a fair trial by the trial court’s failure to conduct a separate hearing and rule on the issue whether proper procedures were followed by LabCorp, the North Carolina laboratory that performed deoxyribonucleic acid (DNA) testing, and specifically, polymerase chain reaction (PCR) analyses,<sup>2</sup> on blood samples taken from defendant’s jeans, from defendant, and from the murder victim. Because defendant failed to preserve this issue by raising a timely and specific objection below,<sup>3</sup> it may not be considered unless the error could be decisive of the outcome. *People v Grant*, 445 Mich 535, 553; 520 NW2d 123 (1994).

In *People v Lee*, 212 Mich App 228, 281-283; 537 NW2d 233 (1995), this Court held that trial courts in Michigan may take judicial notice of the reliability of DNA testing using the polymerase chain reaction (PCR) method, provided that the prosecution shows that generally accepted laboratory procedures were followed. See also *People v McMillan*, 213 Mich App 134, 137; 539 NW2d 553 (1995).

The assistant director of the forensic testing division of LabCorp, Meghan Clement, testified at length about the safety protocol adopted by the laboratory and that the protocols were the same as those suggested in DNA kits. She testified that safeguards were built into the laboratory's protocol to insure the accuracy of testing, and described the safeguards, which were largely the same as those described with approval in *Lee, supra* at 278-279. Clement also testified that she was directly involved in performing the DNA tests. In light of this record, defendant has not shown that further inquiry might reasonably have established that generally accepted laboratory procedures were not followed.

Defendant next argues that Clement's testimony about the statistical analysis performed on the DNA test results was erroneously admitted because she was not qualified as an expert in statistical analysis. The trial court overruled defendant's objection because Clement was testifying about statistical analysis based on published studies.

MRE 702 provides:

If the court determines that recognized scientific, technical, or other specialized knowledge will assist the trier of fact to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise.

Because there is a necessary link between DNA testing and statistical analysis of the results, testimony concerning such a statistical analysis will undoubtedly assist the trier of fact. See *People v Adams*, 195 Mich App 267, 279; 489 NW2d 192 (1992); modified on other grounds 441 Mich 916 (1993). Clement testified that she was the Assistant Director of the Forensic Identity Testing Division at LabCorp and that she directed the DNA analyses performed. She testified that she trained in DNA analysis at the FBI academy in Quantico, Virginia, and that her experience also included conducting DNA analysis since late 1989, including as a visiting scientist at Quantico, in the Fort Worth medical examiner's office, and in Albuquerque, where she helped start a DNA laboratory. Ms. Clement testified that she used the product rule method of statistical analysis in this case and that it had been published.

The product rule method of DNA statistical evidence is now generally accepted in the relevant scientific community. *People v Chandler*, 211 Mich App 604, 610-611; 536 NW2d 799 (1995), overruled in part on other grounds 220 Mich App 686; 560 NW2d 360 (1997). We conclude that the trial court did not abuse its discretion in determining that Clement was qualified to testify about the results of the statistical analysis. *People v Peebles*, 216 Mich App 661, 667; 550 NW2d 589 (1996).

Defendant next argues that because he was convicted of both first-degree premeditated murder and felony murder for the killing of one person, his felony-murder conviction should be vacated. It appears that defendant was actually charged with one count of first-degree murder on two alternative theories. However, because the judgment of sentence is ambiguous, we remand for it to be modified to reflect one conviction on alternative theories, in accordance with *People v Bigelow*, \_\_\_ Mich App \_\_\_, \_\_\_ NW2d \_\_\_ (Docket No. 188900, issued April 10, 1998).

Defendant's final argument is that he is entitled to resentencing on his felonious assault conviction. We disagree. The record does not support defendant's argument that the trial court erroneously believed that it had no discretion in sentencing defendant under the habitual offender statute. The record indicates that the trial judge did understand that sentence enhancement under MCL 769.12; MSA 28.1084 is discretionary. See *People v Turski*, 436 Mich 878; 461 NW2d 366 (1990).

Affirmed, but remanded for a modification of the judgment of sentence in Docket No. 193809.

/s/ Peter D. O'Connell

/s/ Helene N. White

/s/ Richard A. Bandstra

<sup>1</sup> Defendant was also convicted of armed robbery, MCL 750.529; MSA 28.797, but that conviction was vacated by the trial court on double jeopardy grounds because the armed robbery was the felony underlying defendant's felony murder conviction.

<sup>2</sup> The lab representative testified that there are two types of DNA analysis most commonly used in forensics; restriction fragment length polymorphism (RFLP), and PCR. She testified that with RFLP, a large quantity and high quality of DNA is needed, while with the PCR technique, a much smaller quantity of DNA may be used. She testified that in this case PCR was used because of the size of the stains.

<sup>3</sup> Defendant objected on hearsay grounds. This is not sufficient to preserve the issues raised on appeal.