

SUPERIOR COURT
OF THE
STATE OF DELAWARE

WILLIAM C. CARPENTER, JR.
JUDGE

NEW CASTLE COUNTY COURTHOUSE
500 NORTH KING STREET, SUITE 10400
WILMINGTON, DE 19801-3733
TELEPHONE (302) 255-0670

October 19, 2006

Josette Manning, Esquire
Department of Justice
820 N. French Street
Wilmington, DE 19801

Brian Bartley, Esquire
Office of the Public Defender
820 N. French Street
Wilmington, DE 19801

RE: State v. Chyanne Dabney
ID No. 0511017020

Submitted: August 30, 2006
Decided: October 19, 2006

Dear Counsel:

The Court has before it defendant's Motion in Limine filed on the eve of the previous trial date in the matter of Mr. Dabney. That trial date was continued by Judge DelPesco since the issue regarding the failure of the State to provide a statistical interpretation in its DNA report was raised the day before trial and could not be adequately addressed by the Court or the State on the morning of trial. Since this continuance decision on July 13, 2006, the State has responded to the defendant's Motion, and while not conceding that a statistical analysis was required, provided that information in its response. Since the State has now provided this information and there has been no motion or argument that the DNA testing was performed improperly, the defendant's Motion now appears to be based solely upon the State's failure to provide the statistical interpretation in a timely manner consistent with the Court's discovery order of May 19, 2006. To put this Motion in perspective, some procedural background information is needed.

The defendant was charged in a twelve-count indictment with sexual exploitation of a child, possession of child pornography, rape second degree and sexual solicitation of a child. The alleged conduct occurred in September and November of 2005 and involved the defendant's daughter when she was 12 years old. The trial was originally scheduled to begin on June 8, 2006, but since the DNA analysis had not been completed and the prosecutor was in another trial, a continuance was granted. In granting that continuance, the Court required the State to provide to the defense the DNA report in this case by June 13, 2006 and advised counsel that if it was not provided by that date, the DNA information would be excluded at trial. The defendant's new trial date was then set for July 13, 2006.

From the submissions of counsel on this issue it appears the State provided the defendant the DNA report prepared by the Medical Examiner's Office on June 2, 2006. The report concluded that the critical sample was consistent with being a mixture containing the known DNA profiles of Chyanne Dabney, the defendant, and Marlina Dabney, his daughter, and the report further indicated that a statistical analysis was not done due to the relationship between the father and daughter. It was the failure to provide this piece of information that formed the basis of the defendant's Motion in Limine.

The underpinning of the defendant's Motion is the timing requirement found in 11 *Del. C.* § 3515 and the requirements set forth in the Delaware Supreme Court case of *Nelson v. State*, 628 A.2d 69 (Del. 1993). There appears to be significant issues (not yet raised in this litigation) as to whether § 3515 is applicable to this case since the statute specifically references the RFLP method of DNA analysis and the DNA testing in this case was performed using the STR-PCR method. In addition, recent case law also raises an issue as to whether the requirements found in the *Nelson* opinion continue to be applicable regarding the DNA testing that has been advanced since the 1993 opinion. It is in this uncertain environment that the Medical Examiner's Office opined that statistical analysis was inapplicable since it was known that the samples were from a mixed source of biologically related persons.

Under these facts, the Court is not willing to find the State has intentionally violated its discovery order justifying exclusion of the DNA testing. In response to an inquiry from the Court regarding this Motion, the defendant's counsel's letter of August 30, 2006 stated:

The State suggested that questions of science required a *Daubert* hearing prior to ruling on the Defendant's motion. There are no controlling questions of science but instead the legal requirements of a speedy trial, the State's compliance with this Court's Discovery Order dated May 19, 2006 and the *Nelson* mandate that DNA evidence be stated in statistical terms when presented to the jury.

Since this appears to be the position taken by the defendant, the Court finds the State complied with its order of May 19, 2006; if a *Nelson* statistical analysis is required, it has now been provided by the State, and the facts of this case simply do not warrant dismissal for an alleged speedy trial violation. The present delay in the defendant's trial is at least partially contributable to the filing of this Motion on the eve of trial.

As such, the defendant's Motion in Limine in its present form is denied. The trial of this matter is rescheduled to November 28, 2006. If there are any additional motions concerning the DNA testing in this matter, they are to be filed by October 31, 2006.

Sincerely yours,

/s/ William C. Carpenter, Jr.
Judge William C. Carpenter, Jr.

WCCjr:twp

cc: Elizabeth Brenhoch