

COUNTY COURT: ORANGE COUNTY  
STATE OF NEW YORK

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THE PEOPLE OF THE STATE OF NEW YORK,

-against-

IND. NO. 2024-052

**DECISION AND ORDER**

EDWARD HOLLEY,

Defendant.

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KIM, H.

Defendant, EDWARD HOLLEY, is charged in this indictment with the crime of **MURDER IN THE SECOND DEGREE**, a class A-1 felony, in violation of section 125.25, subdivision 1, of the Penal Law of the State of New York. The trial of this matter is currently scheduled for March 3, 2025.

Defendant submits the instant motion seeking an order to preclude all evidence and testimony with respect to the DNA analysis conducted in this case using the TrueAllele probabilistic genotyping software or, in the alternative, an order granting a hearing on the admissibility of such evidence pursuant to *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923). Defendant contends that the analysis conducted and results generated in the case fall outside the scope of what the relevant scientific community generally accepts as reliable.

The People oppose the motion, asserting that a *Frye* hearing is not required as New York State courts, including the Court of Appeals in *People v. Wakefield*, 38 N.Y.3d 367 (2022), have ratified the use of True Allele, holding that it met the test of general acceptance and reliability, and therefore admissibility under *Frye*. They argue that there is no distinguishing factor from the present matter and *Wakefield*, and thus, the evidence generated by the use of TrueAllele is

admissible in the present matter, without conducting a *Frye* hearing.

The Court, having considered the following papers:

-Defendant's Notice of Motion, Affirmation in Support, and accompanying exhibits A-Y, submitted by Eli D. Siems, Esq.;

-People's Affirmation in Opposition, Memorandum of Law, and accompanying exhibits 1-7, submitted by Special District Attorney Julia D. Cornachio, Esq.;

-Defendant's Reply Affirmation to the People's Opposition, submitted by Eli D. Siems, Esq.;

-People's Sur-Reply Affirmation and annexed exhibits 1-7, submitted by Special District Attorney Julia D. Cornachio, Esq.;

hereby determines defendant's motion in the following manner.

The present matter involves the analysis of DNA evidence by Cybergenetics, a private company that utilizes a software program called TrueAllele Casework System. TrueAllele is a probabilistic genotyping software (PGS) which takes data generated by a laboratory and "proposes possibilities for what different genotypes can be." *People v. Wakefield*, 175 AD3d 158, 162 (3d Dept. 2019), *aff'd*, *People v. Wakefield*, 38 N.Y.3d 367 (2022). It uses a probabilistic genotyping approach to generate a statistical likelihood ratio of a DNA genotype. *Wakefield*, 38 N.Y.3d at 372. TrueAllele was utilized in the instant matter and analyzed genetic evidence, *inter alia*, DNA recovered from the victim's cellphone and the backseat of the victim's car to defendant and produced a likelihood ratio of defendant's DNA matching the DNA recovered from the phone and backseat.

Defendant, in the instant matter, seeks the preclusion of any evidence generated by TrueAllele, arguing that the analysis and results by TrueAllele are not generally accepted by the scientific community as reliable.

The standard for admissibility of certain scientific evidence at trial as set forth in *Frye v. United States*, *supra*, “is whether the accepted techniques, when properly performed, generate results accepted as reliable within the scientific community generally.” *People v. Wesley*, 83 N.Y.2d 417, 422 (1994). “General acceptance by the relevant scientific community, however, does not require that the procedure be ‘unanimously indorsed’”. *Wakefield*, 38 N.Y.3d at 380, citing *Wesley*, 83 N.Y.2d at 423. In determining whether a scientific methodology meets the *Frye* standard, courts should be “counting scientists’ votes,” and not “verifying the soundness of a scientific conclusion.” *Wesley*, 83 N.Y.2d at 439. “A court need not hold a *Frye* hearing where it can rely upon previous rulings in other court proceedings as an aid in determining the admissibility of the proffered testimony....” *People v. LeGrand*, 8 N.Y.3d 449, 458 (2007).

In *People v. Wakefield*, defendant challenged the use of DNA evidence generated by TrueAllele, arguing that the scientific evidence was novel and analyzed data that fell below the thresholds incorporated in standard practice by DNA laboratories. See *People v. Wakefield*, 47 Misc.3d 850 (NY Sup.Ct., Feb. 9, 2015). The trial court, after conducting a *Frye* hearing, held that Cybergenetics TrueAllele Casework was generally accepted within the scientific community under the *Frye* standard and permitted the DNA evidence to be introduced at trial. *Id.*

The Appellate Division affirmed the trial court’s determination, *People v. Wakefield*, 175 A.D.3d 158 (3d Dept. 2019) and thereafter, the Court of Appeals upheld the ruling, holding that TrueAllele’s methodology “has been generally accepted in the relevant scientific community based on the empirical evidence of its validity, as demonstrated by multiple validation studies, including collaborative studies, peer-reviewed publications in scientific journals and its use in other jurisdictions. The empirical studies demonstrated TrueAllele’s reliability, by deriving reproducible and accurate results from the interpretation of known DNA samples.” *Wakefield*, 38

N.Y.3d at 381. Specifically, the Court noted:

As to general acceptance of the continuous probabilistic genotyping system, the testimony of the People's witnesses established that probabilistic genotyping methods have been recognized by the relevant scientific community such as SWGDAM, the American National Standards Institute and the National Institute of Standards and Technology (NIST) as a valid approach to DNA interpretation—including the fully continuous probabilistic genotyping approach used by TrueAllele. The mathematical and scientific principles underlying the system (MCMC and Bayes' theorem) are well-established ... TrueAllele Casework has been the subject of numerous peer-reviewed published articles in scientific journals. The TrueAllele Casework System had also undergone approximately 25 validation studies—one involving samples created by NIST... Four validation studies were conducted independently by laboratories.

*Wakefield*, 38 N.Y.3d at 375-376.

While defendant concedes with the holding in *Wakefield*, that TrueAllele's scientific methodology is found to be generally accepted in the relevant scientific community. However, defendant argues that his present challenge is distinguishable from *Wakefield*. Defendant asserts that the analysis conducted and results generated by TrueAllele in this matter fall outside the scope of what the relevant scientific community accepted as reliable in *Wakefield*. Defendant contends that the Court in *Wakefield* contemplated the type of challenge presented in the instant motion.

In distinguishing *Wakefield*, defendant initially argues that the TrueAllele analysis in this case is not reliable because the DNA mixtures were more complex as they consisted of three (3) or more contributors and were of very low DNA template quantities. Though defendant correctly asserts factual differences between the samples in *Wakefield* and here, the *Wakefield* Court considered the use of TrueAllele beyond the limited scenario argued by defendant. In affirming the trial court's determination, the Court noted the testimony of Jay Caponera who conducted two (2) independent validation studies by the New York State Police Laboratory, "using complex

mixtures of up to four contributors and varying amounts of DNA, including low template samples.” *Wakefield*, 38 N.Y.3d at 376. Citing to numerous validation studies, including those conducted by Caponera, the Court affirmed the determination that TrueAllele’s methodology was generally accepted in the relevant scientific community. Defendant’s assertions are therefore not supported in existing authority.

Defendant further argues that *Wakefield* is distinguishable as it did not address the analysis of mixtures with low DNA template quantities. This argument is equally unavailing. Defendant alleges that DNA is categorized as having low template quantities “when the total amount of genetic material falls below a certain level (generally 200 picograms)”. (See *Defendant Affirmation in Support*, ¶ 90). Here, the two (2) samples at issue concerning the victim’s cell phone and the back seat of her car, are cited by defendant at levels of 625 picograms and .21 nanograms (equivalent of 210 picograms), respectively. As such, they do not fall within the parameters of low template quantities, even by defendant’s stated standards. In any event, the *Wakefield* Court noted “[t]he validation studies established that TrueAllele generated accurate and reproducible results with as little as 15.6 picograms of DNA. Below that level and with more complex mixtures, more variation was found in the results.” *Wakefield*, 38 N.Y.3d at 376, fn. 6; see also *People v. Wilson*, (Chemung County Ct., May 1, 2019, Baker, J. indictment No.2013-331), (testimony of Jay Caponera of the New York State Police Forensic Investigation Center concerning two (2) validation studies involved low template analysis of DNA and four-person mixtures, both of which referenced peer-reviewed publications including those from 2004, 2011 and 2013, validating the sensitivity, accuracy, reproducibility and specificity of TrueAllele).

Contrary to defendant’s assertions, there is no distinction between the methodology considered by the *Wakefield* Court and the DNA analysis conducted in the present matter.



document how TrueAllele complies with the standard.” *Anderson*, 2023 WL 3510823, \*10.

Though defendant argues that different validation requirements are necessary, the Court is satisfied through ample citations to numerous validation studies referenced in *Wakefield*, supplied by the People, and further addressed in various rulings throughout the country, that TrueAllele has been validated to ascertain its reliability. *See also State v. Carter*, (Cuyahoga County, OH., Common Pleas, May 30, 2024, Burnside, J., Case No. CR-21-660657), (finding that Cybergenetics provided documentation to show their compliance with standards of SWGDAM and American National Standards Board); *Wilson*, *supra*, (validation studies conducted relative to TrueAllele’s reproducibility, accuracy and specificity); *State v. Fair*, (King County, WA., Superior Court, Jan. 12, 2017, Spearman, J. No. 10-1-09274-5 SEA), (noting that since 2009, 34 validation studies have been conducted by Cybergenetics and other forensic scientists to establish the reliability of TrueAllele); *State v. Shaw*, (Cuyahoga County, OH., Common Pleas, October 9, 2014, Clancy, J., Case No CR-13-575691), (finding that TrueAllele has been validated and there are five (5) published peer-reviewed validation papers at that time on the TrueAllele Casework System). To the extent that defendant’s experts disagree, such differences can be explored through cross-examination at the time of trial as such testimony goes to the weight of the evidence, rather than to questions of its admissibility, given defendant’s conceded general acceptance of the methodology employed by TrueAllele.

As to defendant’s remaining arguments, that the likelihood ratio (LR) generated by TrueAllele falls below the threshold that is generally accepted as reliable and the analytical method used by the analyst in the case is disavowed by some members of the relevant scientific community, these arguments address the weight of the evidence, not its admissibility. Notably, as to a low LR, defendant does not challenge the method in calculating the LR. Rather, defendant

addresses the evidentiary value of a low LR. Further, as noted by the People, “TrueAllele computes accurate LR values, however large or small. TrueAllele also computes accurate error rates. An error rate provides a meaningful frequency context to the trier of fact, providing evidential weight.” See *People’s MOL in Opposition*, p. 13. The Court is mindful that in determining whether a scientific methodology meets the *Frye* standard, it is not for the courts to verify the soundness of a scientific conclusion. *Wesley*, 83 N.Y.2d at 439. Further, a *Frye* inquiry as to whether scientific technique is generally accepted as reliable by scientific community is separate and distinct from an inquiry as to whether technique was appropriately employed in a particular case. Thus, the evidentiary value of a low LR or whether the analyst should have taken other steps in their analysis are properly matters for consideration by the jury, as finder of fact at trial, and is not appropriate for resolution by this Court in the context of a *Frye* admissibility analysis.

Finally, in addition to seeking the preclusion of all results generated by TrueAllele, defendant moves to exclude all analysis conducted on sample 423OC because the M-VAC extraction tool utilized to collect the mixture represents novel technology. Assuming that the principles set forth in *Frye* are applicable to the present issue, although as the proponent of the M-VAC evidence, the People bear the ultimate burden of establishing general acceptance within the relevant scientific field, defendant, as the party seeking to challenge such evidence, bears the initial burden of showing that there is a question as to the methodology employed. *Collins v. Rinaldi*, 79 Misc.3d 1215(A), \*6, (Dutchess Cty. Sup. Ct., June 23, 2023). Here, defendant in a conclusory fashion, asserts that the use of M-VAC has not been established as being generally accepted. Defendant provides no further specificity as to how the technology may be deficient and provides no expert affidavit to raise a question of fact to its reliance. The only facts asserted relative to M-

VAC is that it collected one of the DNA mixtures presently at issue. It is irrefutable that M-VAC played no role in the analysis performed by Cybergenetics using the TrueAllele software. It appears to the Court that it is a collection method and does not produce any evaluative analysis. There are no allegations that the DNA collected is affected in any manner. Indeed, the only deficiency noted is defendant's assertion that it was only capable of collecting small amounts of DNA, an issue previously addressed. To that end, infirmities in the collection and analysis of evidence not affecting its trustworthiness go to the weight of the evidence, not its admissibility. *Wesley*, 83 N.Y.2d at 436. (Kaye, Ch.J., concurring in result). Defendant's motion to exclude M-VAC evidence on the grounds asserted is therefore summarily denied.


In summary, a review of the cases in which the general acceptance of TrueAllele has been challenged reveals that the vast majority of the trial court decisions rendered on that issue favor the admission of TrueAllele evidence and that it is generally accepted as reliable in the forensic scientific community. Moreover, the Court of Appeals in *Wakefield, supra*, has determined the admissibility of such evidence and this Court is bound by its holding. Despite defendant's attempts to carve out an exception to precedent, it is clear that the holding in *Wakefield* applies to the present matter. This Court is satisfied that Cybergenetics TrueAllele Casework Software has been sufficiently shown to be generally accepted as reliable in the forensic scientific community, under the circumstances existing the instant matter, rendering a *Frye* hearing unnecessary as a precondition to the admission of such evidence at trial. Defendant's motion for preclusion and/or for a *Frye* hearing is therefore denied in its entirety.



The above constitutes the Decision and Order of the Court.

Dated: Goshen, New York  
February 11, 2025

ENTER



HON. HYUN CHIN KIM  
COUNTY COURT JUDGE

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