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Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1725**

State of Minnesota,
Respondent,

vs.

Latrone Deshone Bailey,
Appellant.

**Filed November 25, 2019
Affirmed
Florey, Judge**

Hennepin County District Court
File No. 27-CR-17-19900

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Linda M. Freyer, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Suzanne M. Senecal-Hill, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Florey, Presiding Judge; Reyes, Judge; and Smith, Tracy M., Judge.

UNPUBLISHED OPINION

FLOREY, Judge

On appeal from the judgment of conviction for unlawful possession of a firearm, appellant argues that the district court erred in admitting the state's expert-witness

testimony because the state failed to establish the foundational reliability of the expert's "major mixture" DNA testimony. Because the district court acted within its discretion in admitting expert testimony, we affirm.

FACTS

In April 2017, Minneapolis police observed a group of men interfering with traffic. When officers attempted to make contact with the group, the men fled. One man, later identified as appellant Latrone Deshone Bailey, ran through several backyards before being apprehended. The officers searched the yards through which Bailey and the other men had run and discovered four loaded firearms. The grass in the yards was wet, but the firearms were dry. The firearms were swabbed for DNA testing. One of the guns, a Smith & Wesson .40 caliber, had an identifiable DNA profile of three or more contributors. The "major profile" was identified as a mixture of two or more contributors, which excluded "99.9999999% of the general population." Neither Bailey nor "an identified accomplice on scene" could be excluded as contributors to the major profile.

In August 2017, Bailey was charged with one count of unlawful possession of a firearm in violation of Minn. Stat. § 624.713, subd. 1(2) (2016).¹ Bailey moved to suppress the DNA-analysis results, arguing that they lacked foundational reliability and that the "major mixture" analysis was a novel scientific theory. At an omnibus hearing, the district court heard arguments from both Bailey and the state. The district court also reviewed transcripts of expert testimony presented by the parties. The district court concluded that

¹ The complaint was later amended to add an additional count for being a felon in possession, filed after July 16, 2018. Bailey was acquitted of this additional charge.

the Bureau of Criminal Apprehension (BCA) “laboratory is well recognized and is in compliance,” and that their “methods are considered reliable.” The district court noted that the BCA follows “FBI interpretation guidelines” and that “mixture interpretation conclusions or data is accepted in the scientific community.” The district court reasoned that the “major mixture” analysis is not “sufficiently separate such that we need a Frye-Mack hearing,” but rather a topic that “would certainly be valid for detailed cross-examination to cover.” The district court concluded that “mixture DNA is very well recognized” and that pursuant to Minnesota Rule of Evidence 702, “there is foundational reliability for this kind of expert testimony.” Accordingly, the district court denied Bailey’s motion to suppress the DNA-analysis result.

The case proceeded to a two-day jury trial, and Bailey was convicted of one count of being an ineligible person in possession of a firearm. The district court sentenced Bailey to a presumptive prison sentence of 60 months. This appeal follows.

D E C I S I O N

Minnesota Rule of Evidence 702 governs the admissibility of expert testimony:

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or 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. The opinion must have foundational reliability. In addition, if the opinion or evidence involves novel scientific theory, the proponent must establish that the underlying scientific evidence is generally accepted in the relevant scientific community.

“Evidentiary rulings rest within the sound discretion of the district court, and we will not reverse an evidentiary ruling absent a clear abuse of discretion.” *State v. Ali*, 855 N.W.2d 235, 249 (Minn. 2014). This includes evidentiary rulings “related to the admissibility of expert testimony.” *State v. Thao*, 875 N.W.2d 834, 840 (Minn. 2016). Whether a scientific theory is generally accepted in the relevant scientific field “is a question of law that we review de novo,” but district court determinations regarding foundational reliability “are reviewed under an abuse of discretion standard.” *Goeb v. Tharaldson*, 615 N.W.2d 800, 815 (Minn. 2000).

Bailey asserts that the district court erred by admitting expert testimony regarding the DNA-analysis results because the expert testimony lacked foundational reliability. Bailey contends that the forensic analysis concerning “major mixtures” of DNA “requires application of a different and distinct algorithm than analyzing mixtures and identifying a single DNA profile from a single major contributor” and thus that the state “was required to prove that the forensic scientist’s testimony about major mixtures was foundationally reliable.” Bailey also asserts that the state “offered no validation studies” to show that the “major mixtures” analysis leads to a reliable conclusion and contends that the BCA’s “standard operating interpretation procedures at the time make no mention of analyzing major mixtures.”

The Minnesota Supreme Court has held that the DNA Advisory Board’s “standards are the appropriate standards and procedures against which laboratories must be measured to ensure the foundational reliability of DNA testing.” *State v. Traylor*, 656 N.W.2d 885,

897 (Minn. 2003). These responsibilities were later transferred to the Scientific Working Group on DNA Analysis Methods (SWGDAM).

The SWGDAM guidelines indicate that the processes for DNA analysis are the same, regardless of whether there is a single major DNA contributor or multiple major DNA contributors to a mixture. The district court reviewed the expert testimony of Dr. Hoogendoorn, the technical leader for the DNA nuclear section at the BCA. Dr. Hoogendoorn testified that the BCA complies with SWGDAM validation and interpretation guidelines, as well as with FBI quality-assurance standards. She described the procedures for interpreting DNA mixtures and explained how the BCA complied with the standards for these procedures. Based on the BCA's compliance with both SWGDAM guidelines and FBI quality-assurance guidelines, as well as Dr. Hoogendoorn's testimony, Bailey's argument in this case that the expert testimony lacked foundational reliability is without merit, and the district court did not abuse its discretion.

Affirmed.