

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA

v.

EARL WHITTLEY DAVIS

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\* Case number: 07cr0199 RWT  
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ORDER

Upon consideration of Defendant’s Motion To Exclude DNA Test Results and Request for *Daubert* Hearing [Paper No. 42], the oppositions and replies thereto, and the arguments of counsel presented at the hearing conducted before the undersigned on October 10, 2008, for the reasons stated in the foregoing Memorandum Opinion, it is this 16th day of March, 2009, by the United States District Court for the District of Maryland,

**ORDERED**, that Defendant’s Motion To Exclude DNA Test Results and Request for *Daubert* Hearing [Paper No. 42] is **DENIED**, subject to the following caveats:

(a) Due to the unique characteristics of DNA matches stemming from a “cold hit” in a DNA database, the Government shall only be permitted to present the statistical figure calculated via the “product rule” as an expression of the *rarity* of the profile, but not as an expression of the random match probability, i.e., the answer to the “coincidence question.”

(b) DNA evidence concerning samples N1b, N2d and K1C shall only be admitted if the Government provides reliable accompanying statistics expressing the significance of the consistency between these samples and the Defendant’s DNA profile. Provided that the Government presents an appropriate statistical analysis for these samples, the expert’s opinions that the profiles are

“consistent” or that the Defendant “cannot be excluded” are admissible.

(c) The source attribution statements concerning samples N6 and K3 are admissible. However, the Government is directed to also present, in its direct examination of its expert, the statistical information that forms the basis for the conclusion that the Defendant is the source of the evidentiary DNA sample(s).



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ROGER W. TITUS  
UNITED STATES DISTRICT JUDGE