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892 P.2d 281
Gregory LINDSEY, Petitioner,
v.
The PEOPLE of the State of Colorado, Respondent.
No. 93SC167.
Supreme Court of Colorado,
En Banc.
March 6, 1995.
Rehearing Denied April 3, 1995.

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David F. Vela, Colorado State Public Defender, and Martin Gerra, Deputy State Public Defender, Denver, for petitioner.

Gale A. Norton, Atty. Gen., Stephen K. ErkenBrack, Chief Deputy Atty. Gen., Timothy M. Tymkovich, Sol. Gen., and Deborah Isenberg Pratt, Asst. Atty. Gen., Crim. Enforcement Section, Denver, for respondent.

Chief Justice ROVIRA delivered the Opinion of the Court.

We granted certiorari in *People v. Lindsey*, 868 P.2d 1085 (Colo.App.1993), to consider whether, in view of this court's decision in *Fishback v. People*, 851 P.2d 884 (Colo.1993), the court of appeals erred in holding that the techniques employed to calculate the statistical frequency of a declared match in a Deoxyribonucleic Acid (DNA) typing case related to the weight of the evidence and not to its admissibility. Petitioner advances three reasons for reversal: (1) that at the time the DNA evidence was offered there was significant scientific disagreement concerning the validity of the statistical techniques employed; (2) that the district court heard expert testimony regarding the disagreement; and finally (3) that the disagreement has not been resolved but has become more pronounced. We hold that the evidence was properly admitted and affirm the court of appeals.

I. FACTUAL AND PROCEDURAL BACKGROUND

The defendant, Gregory Lindsey (Lindsey), was convicted of first degree sexual assault, second degree burglary, and four habitual criminal counts. At trial, the court allowed the People to introduce evidence that the defendant's DNA matched DNA samples taken from seminal fluid obtained by medical examination of the victim following the assault. The court also allowed expert testimony regarding the probability that the defendant's DNA profile would match a DNA profile obtained from a randomly selected African American individual. Lindsey argues that the trial court improperly admitted the DNA evidence because the procedure used to compute the statistical probability of a random DNA profile match was not generally accepted by the scientific community when the trial court ruled that the evidence was admissible.

A. Facts

On February 16, 1988, a man wearing a mask broke into a woman's Colorado Springs home and sexually assaulted her. She did not look at her attacker who identified himself as a "black man". She told police she believed the man who attacked her lived next door because the two men living next door were tall and powerfully built, similar to her attacker. Lindsey, in fact, lived next door to the woman, but was not a suspect until after he was arrested in connection with sexual assault on a second woman.

The second woman was sexually assaulted in January 1988, at which time police recovered evidence from the crime scene including seminal fluid obtained from a medical examination of the woman, and from stains on her bedclothes. In May 1988, an intruder again broke into the second woman's home, and attempted to assault her, but fled when her neighbor telephoned. Lindsey was arrested after the May assault, at which time police obtained samples of his blood. In June 1988, police furnished Lindsey's blood samples together with evidence obtained at both crime scenes to Cellmark Diagnostic Corporation (Cellmark) for DNA analysis. Cellmark's report declared a match between the DNA extracted from Lindsey's blood sample and the DNA recovered from both crime scenes.

Lindsey was originally charged in a single information with sexual assault on both victims. After the court granted Lindsey's motion to sever the charges, the January 1988

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assault case was tried first. 1 At the trial of the February 1988 assault case the People's experts testified regarding the probability that Lindsey's DNA profile would match the profile of a randomly selected African American individual. The estimates ranged from one in 340 billion down to one in 21 million using more conservative frequency calculations.