IN THE SUPREME COURT OF GUAM

THE PEOPLE OF GUAM, Petitioner, **vs.** **SUPERIOR COURT OF GUAM,** Respondent, **vs.** **BEAU BRUNEMAN,** Real Party In Interest.	Supreme Court Case No. **WRM98-005** Superior Court Case No. **CF0081-96** **OPINION**

Filed: November 20, 1998

Cite as: **1998 Guam 24**

Petition for Writ of Mandamus

Argued and Submitted on November 4, 1998

Hagåtña, Guam

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BEFORE: PETER C. SIGUENZA, Chief Justice; JANET HEALY WEEKS and BENJAMIN J. F. CRUZ, Associate Justices.

SIGUENZA, C.J.:

[1] This matter came before the court on a Petition for a Writ of Mandamus wherein the Petitioner sought relief from the trial court's exclusion of forensic hair comparison evidence in the Superior Court case of *People v. Bruneman*, CF0081-96. The Superior Court of Guam, Respondent, filed no response to the petition; however, Beau Bruneman, the Real Party in Interest, responded in objection to the petition, asserting the court does not have jurisdiction to issue a writ in this matter and even if jurisdiction does lie, the evidence should be excluded. The court, having reviewed the petition and response and hearing oral arguments, made an oral majority ruling granting the peremptory writ of mandamus directing the trial court to admit such evidence at trial. This opinion memorializes the court's oral ruling.

BACKGROUND

[2] Beau Bruneman, Defendant and Real Party in Interest (hereinafter Bruneman), was indicted on February 22, 1996 for aggravated murder pursuant to 9 GCA § 16.30(a)(1) (1993) and first degree criminal sexual conduct, as a first degree felony pursuant to 9 GCA § 25.15(a)(1) and (b) (1993). The charges arose from the death of a four-year old girl, who was raped, sodomized and asphyxiated by manual strangulation. Crime scene evidence revealed pubic hairs in the victim's bed, the trash bag in which she was placed, and in her anal vault. The hairs were analyzed by the Hair and Fibers Unit of the crime laboratory of the Federal Bureau of Investigation (FBI). The analysis yielded findings that the hairs were found to be inconsistent with those originating from the victim's

father and consistent with Bruneman. The People sought to admit such evidence and accordingly filed a motion in limine. The sequence of events which occurred in relation to the People's motion in limine is unclear. However, we can glean from the record and from oral arguments that the following occurred: the People filed a motion in limine on September 29, 1997, a hearing on that motion was held on November 14, 1997 and the matter was taken under advisement, Bruneman filed a motion to exclude the hair evidence on August 13, 1998, a further hearing was held on September 24, 1998. Jury selection began on October 8, 1998. As a result of the September 24, 1998 hearing on the issue, the trial court issued a written decision and order on October 13, 1998 excluding the hair comparison evidence. The People filed with this court an emergency motion to stay the proceedings. This court denied the motion based on a lack of jurisdiction to consider the matter on appeal. The People then brought this petition for a writ of mandamus seeking vacation of the trial courts exclusion of the forensic hair comparison evidence.

ANALYSIS

I. Jurisdiction

[3] This court has jurisdiction over original proceedings for writs pursuant to 7 GCA §§ 3107(b), 31202, 31203 and 31401 (1994). Whether a writ of mandamus should issue in a particular case is reviewed *de novo* by the court. *Guam Publications, Inc. v. Superior Court*, 1996 Guam 6, ¶ 8. "Mandamus relief is an extraordinary remedy employed in extreme situations." *Id.* at ¶ 10. (citations omitted). Such relief is only used to "confine an inferior court to a lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so." *Id.* (citations omitted). The petitioner bears the burden of justifying the issuance of a writ. *People v.*

Superior Court of Guam (Quint), 1997 Guam 7, ¶ 7. Issuance of a writ is discretionary. 7 GCA § 31401. Acknowledging that writ practice is an equitable function,

However, it is Bruneman's contention that this court lacks jurisdiction to issue a writ in this case pursuant to the statutory mandates of 7 GCA §§ 31202 and 31203. Furthermore, Bruneman seeks to have the court consider California case law as controlling on the issue because the legislative history of section 31202[1] indicates the statute was adopted from California. In support of this assertion, Bruneman calls to the court's attention cases in which appellate courts have deemed California law controlling authority on issues of statutory construction of local laws. *See United States v. Johnson*, 181 F.2d 577, 580 (9th Cir. 1950); *Roberto v. Aguon*, 519 F.2d 754, 755 (9th Cir. 1975).

[4] Based on this assertion, Bruneman cites the case of *People v. Justice Court of Oroville Judicial District, County of Butte*, 185 Cal. App.2d 256, 258-9, 8 Cal. Rptr. 176, 178 (Cal. Dist. Ct. App. 1960), wherein the court held that mandamus relief could not be employed to compel the judge to exclude or admit evidence, even if such decision was erroneous. The court reasoned that the People are only given the right to appeal in limited situations and to allow a writ to issue where no statutory authority to appeal exists would circumvent the intent of the legislature and be directly against the policy against allowing the People to appeal in criminal cases. *Id.* at 259, 8 Cal. Rptr.

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[1] § 31202. When and by What Court Issued.

It may be issued by any court, [except a commissioner's court or police court,] to any inferior tribunal, corporation, board, or person to compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station; or to compel the admission of a party to the use and enjoyment of a right or office to which he is entitled, and from which he is unlawfully precluded by such inferior tribunal, corporation, board, or person.

at 178.

[5] However, this court notes several problems with Bruneman's arguments. First of all, the court has firmly taken the position that it is not bound by decisions of the Appellate Division of the District Court of Guam or other Courts of Appeal in interpreting local law. *See People v. Quenga*, 1997 Guam 6, ¶ 13, n. 4. Secondly, although the court recognizes the general policy to limit those issues from which the People may appeal in criminal matters, case law supports the issuance of a writ of mandamus in those situations where "the trial court has acted in excess of its jurisdiction and the need for such review outweighs the risk of harassment of the accused." *People v. Superior Court of Lassen County*, 24 Cal.3d 622, 626, 596 P.2d 691, 693, 156 Cal. Rptr. 626, 628 (1979); *see also People v. Superior Court of Marin County*, 69 Cal.2d 491, 446 P.2d 138, 72 Cal. Rptr. 330 (1968) (In Bank). At the time the court in *Marin County* ruled on the issue of jurisdiction in that case, California's provision as to when a writ may issue contained language almost identical to section 31202 and the court maintained that in those extreme circumstances, where the court acts beyond its jurisdiction, it was proper for a writ to issue.[2] *Marin County*, 69 Cal.2d at 499-501, 446 P.2d at 144-5, 72 Cal. Rptr. at 336-7. In any event, the issue in the *Oroville* case was mooted with the amendment to California's statutes which allowed the People to appeal an order or judgment granting a suppression motion. *See* CA PENAL CODE § 1238(a)(7) (West 1998). Furthermore, the aforementioned case law demonstrates a shift away from strict adherence to the policy against allowing the People to seek review of erroneous decisions by carving out a very narrow exception to that rule.

[2] California Civil Procedure Code § 1085 has since been amended in 1998.

[6] Further, this court, in previously issued writs of mandamus, has gone beyond the basic framework of the statute to further define those instances when a writ may issue. *See Guam Publications*, 1996 Guam 6, ¶ 11; *Quint*, 1997 Guam 7, ¶ 8. The court may issue a writ of mandamus pursuant to section 31203 which provides as follows: "[t]he writ must be issued in all cases where there is not a plain, speedy, and adequate remedy in the ordinary course of law. It must be issued on the verified petition of the party beneficially interested." This court has adopted a list of factors, not all encompassing, which not only includes the requirements of section 31203, but also delineates those circumstances under which a writ shall lie. *See Guam Publications*, 1996 Guam 6 at ¶ 11; *Quint*, 1997 Guam 7 at ¶ 8.

[7] Therefore, we determine that this court has jurisdiction to issue the peremptory writ of mandamus in this case.

II. Standard for Issuing a Peremptory Writ of Mandamus

[8] Keeping in line with the framework of the statute, the court has previously set out the factors to be considered in determining whether a writ of mandamus shall issue. *Guam Publications*, 1996 Guam 6 at ¶ 11; *Quint*, 1997 Guam 7 at ¶ 8. The following factors shall guide the court in exercising its discretion to issue a writ of mandamus:

> 1) Whether the party seeking the writ has no other adequate means, such as direct appeal, to attain the desired relief; 2) Whether the petitioner will be damaged or prejudiced in a way not correctable on appeal; 3) Whether the court's order is clearly erroneous as a matter of law; 4) Whether the court's order is an oft-repeated error, or manifests a persistent disregard of rules; and 5) Whether the court's order raises new and important problems, or issues of law or first impression. *Guam*

> *Publications*, 1996 Guam 6, ¶ 11. These factors, however, will not relieve us of our own reasoned and independent analysis of the issues. Thus, this framework of factors is a starting point in our determination of the propriety of mandamus relief. *Id.*

Quint, 1997 Guam 7 at ¶ 8. (citation omitted).

[9] Examining the first two factors, we conclude that these are closely related in this case and both support the issuance of the writ. The petitioner has already attempted to appeal the matter in *People v. Superior Court of Guam*, CRA98-019 which the court summarily dismissed for lack of appellate jurisdiction. Additionally, were the petitioner to wait until the close of trial to attempt to appeal this matter, it is not clear that the court would, even at that time, be able to exercise jurisdiction over the appeal. *See* 8 GCA § 130.20 (1993).[3] We have held in *People v. San Nicolas*, CRA98-001[4] and in the previous rendition of this case, CRA98-019, that section 130.20 is a jurisdictional statute which will be strictly construed. Although the People may appeal the granting of a motion to suppress, they are foreclosed from appealing a denial of a motion in limine or a motion to exclude, as they involve evidentiary issues. Due to the technical nature of the

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[3](a) An appeal may be taken by the government from any of the following:

(1) An order granting a new trial.

(2) An order arresting judgment.

(3) An order made after judgment, affecting the substantial rights of the government.

(4) An order modifying the verdict on finding by reducing the degree of the offense or the punishment imposed.

(5) An order or judgment dismissing or otherwise terminating the action before the defendant has been placed in jeopardy or where the defendant has waived jeopardy.

(6) An order granting a motion to suppress evidence. This appeal may be taken prior to trial if the appeal is timely filed pursuant to § 130.40 of the Criminal Procedure Code and before the trial has commenced. Upon the timely filing of an appeal pursuant to this Subsection, the Superior Court shall stay all proceedings until the Appellate Court has acted pursuant to § 130.60 of the Criminal Procedure Code.

[4]In the *San Nicolas* case, this court denied the People's Emergency Motion To Stay the proceedings in the trial court; thereby foreclosing the People of the ability to appeal pursuant to 8 GCA § 130.20(a)(6) because the judgment appealed from was not a grant of a suppression motion.

jurisdictional statutes, which is beyond this court's control, the People are unable to raise these issues on appeal. However, the Legislature has provided this court with the ability to review, by writ, issues raised by the People not otherwise provided for in section 130.20. Therefore, the issuance of a writ is proper. As to the fourth factor, there is nothing to suggest that this is an oft-repeated error or that the trial court persistently disregards the rules. Neither does this situation present a clear problem under the fifth factor, although the issue of the admissibility of forensic hair comparison evidence is novel to this court. The crux of the analysis, therefore, rests on the third factor—whether the trial court's ruling was clearly erroneous as a matter of law.

[10] In conducting its analysis, the trial court began by applying the *Daubert* test for scientific evidence as set forth in the case of *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 113 S.Ct. 2786 (1993). The United States Supreme Court recognized that the Federal Rules of Evidence require a "trial judge [to] ensure that any and all scientific testimony or evidence admitted is not only relevant, but reliable." Thus, *Daubert* created a two-part test for determining the admissibility of scientific evidence.[5] *Id.* at 589, 113 S.Ct at 2795. However, although a two-part test is to be employed, the threshold issue remains of whether the evidence sought to be admitted is "scientific" evidence or testimony. In *Daubert*, the Court characterized the word "scientific" as being grounded "in the methods and procedures of science" and "scientific knowledge" as necessitating an inference or assertion which "must be derived by scientific method." *Id.* at 590, 113 S.Ct. at 2795.

[11] Recent case law on the issue has indicated that hair and fiber evidence does not qualify as

[5]In assessing whether the scientific evidence or testimony is reliable, the Court in *Daubert* stated that several factors would be relevant, but focused on the following: (1) whether the theory or technique is scientific knowledge that has been tested and, thus, helpful to the trier of fact; (2) whether the technique or theory has been subjected to publication and peer review; (3) the known or potential rate of error; and (4) general acceptance within the scientific community. *Id.* at 593-5, 113 S.Ct at 5796-7

"scientific" evidence or knowledge; thus falling outside the scope of the *Daubert* test. *State v. Fukusaku*, 946 P.2d 32 (Haw. 1997). In *Fukusaku*, the defendant raised the issue as to whether the court was required to conduct a pretrial hearing to determine the scientific reliability of hair comparison evidence. The trial court ruled that hair analysis did not constitute "scientific knowledge," but instead fell within the category of "technical knowledge," presenting no need for a pretrial hearing or ruling on reliability. *Id.* at 43. The Hawaii Supreme Court agreed with this determination holding that "expert testimony deals with 'technical knowledge' when it involves the mere technical application of well-established scientific principles and procedures. . . . [I]t is unnecessary to subject technical knowledge to the same type of full-scale reliability determination required for scientific knowledge." *Id.* The *Fukusaku* court went on to recognize the widespread acceptance of hair and fiber evidence among the jurisdictions. *Id.*

> The principles and procedures underlying hair and fiber evidence are overwhelmingly accepted as reliable. As one treatise notes, "[t]he cases in which courts have excluded hair evidence are so rare that they have literally amounted to only a handful of precedents. . . . In contrast to the few cases excluding hair evidence, a large body of case law reflects the courts' receptivity to hair analysis.

Id. (citations omitted).

[12] Also, Bruneman and the trial court, rely on the case of *Williamson v. Reynolds*, 904 F. Supp. 1529 (E.D. Okla. 1995), wherein the district court applied the *Daubert* test to hair comparison analysis and determined that such failed to prove scientifically reliable. The *Reynolds* court went through a lengthy discussion of the history of hair comparison analysis, noting its introduction back in the late eighteen hundreds, and then chose to conduct a *Daubert* analysis in light of its characterization of the evidence as "scientific." *Id.* at 1555. Seemingly, the court made the assumption that hair comparison evidence is scientific evidence or requires scientific knowledge

without examining the issue. Once applying the test, the court determined that hair comparison evidence failed under the *Daubert* standard. *Id.* at 1558. However, it is interesting to note that the *Reynolds* court seems to later stumble on the idea that hair comparison evidence is not scientific in nature. "Not even the 'general acceptance' standard is met, since any general acceptance seems to be among hair experts who are generally technicians testifying for the prosecution, not scientists who can objectively evaluate such evidence." *Id.* The court makes this determination at the end of its analysis, after applying the *Daubert* test. In doing so, the court begs the question as to whether this evidence classifies as scientific or technical. Additionally, although *Reynolds* was later affirmed by the Tenth Circuit, it was done so based on grounds other than the admissibility of the hair evidence. *Williamson v. Ward*, 110 F.3d 1508, 1510 (10th Cir. 1997). In fact, the Tenth Circuit specifically reversed the ruling on the issue of the hair evidence asserting that the court applied the incorrect standard in making its ruling. *Id.* at 1522-23. In *Ward*, the court held that the district court "did not perform its analysis under a due process/fundamental fairness standard. Instead, it incorrectly assessed the issue in evidentiary terms under *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 113 S.Ct. 2786, 125 L.Ed.2d 469 (1993). Because the court employed the wrong standard, we reverse its ruling that the hair analysis was inadmissible." *Id.* at 1523.[6]

[13] Finding that the *Daubert* test is inapplicable, we now turn to the question of the relevancy

[6]The fact also remains that the Court of Criminal Appeals of Oklahoma has consistently ruled that hair evidence is admissible at trial and continues to do so, even in light of *Daubert* and *Reynolds*. *See Bryan v. State*, 935 P.2d 338, 359 (Okla. Crim. App. 1997). The court followed the long-standing policy of admitting hair evidence, thereby disregarding the *Reynolds* court's rejection of the same. *Id.* Although the *Reynolds* case was addressed, the *Bryan* court determined the decision was not binding on that court and the defendant had offered "no other reason to review this ***settled area of law***." *Id.* at n. 62. (emphasis added).

and reliability of hair comparison evidence. The People's expert, FBI forensic expert Karen Lanning, testified that the hairs in question were "consistent with originating" from Bruneman. Bruneman argues, and the trial court concurred, that identification is an ultimate issue in a rape and murder case. The trial court framed the issue as "whether the methodology used by Ms. Lanning is reliable enough to be used as a means of positive identification" and concluded in the negative. *People v. Bruneman*, CF0081-96 (Decision and Order, October 13, 1998). In this respect the trial court was absolutely correct in its determination. However, the trial court committed gross error by completely misconstruing the purpose for which the forensic hair comparison evidence was being offered and in what context such is used and accepted. The identity of the murderer and rapist in this case is an ultimate issue of fact which the jury must decide. The People merely offer this evidence to indicate that the hairs found are "consistent" with Bruneman and "inconsistent" with the victim's father. The trial court's finding fault with Ms. Lanning's testimony that she cannot positively identify the hairs as being those of Bruneman is utterly inexplicable. Not only was the evidence not offered for this purpose, but for Ms. Lanning, or any other expert, to have attested to the same would have rendered her testimony wholly and uncontrovertedly inadmissible. *See* 2 D. Faigman et al., Modern Scientific Evidence: The Law and Science of Expert Testimony § 20-9.2.3, n.9 (1997) (asserting that although hair evidence can be found to be consistent with originating from a particular person, stronger opinions would be unsupportable); *State v. Suddreth,* 412 S.E.2d 126, 132 (N.C. Ct. App. 1993) (holding that "[w]hile hair analysis evidence is admissible in criminal cases under a broad scope of relevancy, '[u]nlike fingerprint evidence, however, comparative microscopy of hair is not accepted as reliable for ***positively identifying*** individuals.'") (citations omitted) (emphasis added); Miller, Procedural Bias in Forensic Science Examinations of Human Hair, 11 L. & Hum.

Behav. 157, 158 (1987); Federal Bureau of Investigation, U.S. Dep't of Justice, Microscopy of Hair: A Practical Guide and Manual 7 (1977).

[14] The jury is free to make the determination as to the weight it will give to the testimony, but admissibility here is not a question. Furthermore, the trial court's determination that the probative value of the evidence and testimony would have been outweighed by the prejudicial effect demonstrates a clear disregard for the policies and safeguards considered in 6 GCA § 403 (1995).[7] Prejudice is not an issue as most evidence presented by the People in a criminal case is prejudicial to a defendant. At issue is whether probative value is outweighed by the danger of ***unfair prejudice*** to a defendant. There are safeguards readily present and available to a defendant. He has the ability to cross-examine the expert witness and present his own expert witness. In doing so, Bruneman may focus on the issues which he raises in mistakenly arguing inadmissibility, but which go to the weight of the evidence: the high error rate, the fact that such evidence may not positively and specifically identify the defendant or anyone else, and that the evidence may also be "consistent with" a number of other persons. An overwhelming number of jurisdictions have upheld the admissibility of the same evidence, many expressly recognizing these same safeguards available to the defendant to

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[7] Based on FRE 403, the statute reads as follows:

§ 403. Exclusion of Relevant Evidence on Grounds of Prejudice, Confusion, or Waste of Time.

> Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

satisfy section 403.[8]

CONCLUSION

[15] The court reiterates the fact that writs of mandamus are to be reserved for extreme situations. *Guam Publications*, 1996 Guam 6 at ¶ 10. As such, petitions for writs shall be reviewed on an *ad hoc* case by case basis to confine writ practice in this jurisdiction. Applying the factors set forth in *Guam Publications* and *Quint* to the facts of this case, we hold the trial court's ruling was clearly erroneous in that the court erred in conducting a *Daubert* analysis of the evidence, in finding the People were attempting to use the evidence to prove positive identity, in finding that hair evidence lacks reliability because it cannot prove identity, and in failing to consider that there are strategic safeguards to protect the defendant from the possibility of unfair prejudice. It appears the trial court acted in a result-oriented manner by seeking out and relying upon a single federal habeas case from a district in Oklahoma, yet failed to recognize that the case relied upon was later overturned on the hair evidence issue. Moreover, the trial court failed to recognize that the Tenth Circuit, in overruling the district court, held that state law governed admissibility of comparative hair analysis and that Oklahoma has consistently deemed such evidence admissible.

[16] Additionally, the factors set forth in *Guam Publications* and *Quint* do not confine the court's discretion in these cases, they are but a guide and do not preclude the court from using its own

[8]A small sampling of case law post-*Daubert* include *McGregor v. State*, 885 P.2d 1366, 1381 (Okla. 1994); *State v. Marlow*, 888 S.W.2d 417, 421 (Mo. 1994); *McCarty v. State*, 904 P.2d 110, 125 (Okla. 1995); *Beam v. State*, 463 S.E.2d 347, 349 (Ga. 1995); *United States v. Matta-Ballesteros*, 71 F.3d 754, 766-7 (9th Cir. 1995); *Bryan v. State*, 935 P.2d 338, 359 (Okla. 1997); *Mollett v. State*, 939 P.2d 1, 8 (Okla. 1997); *Bolin v. State*, 960 P.2d 784, 798-9 (Nev. 1998). Other pre-*Daubert* cases depict wide acceptance of hair evidence. *See State v. Bridges*, 421 S.E.2d 806, 808-9 (N.C. 1992); *People v. Vettese*, 489 N.W.2d 514, 518-9 (Mich. 1992); *Williamson v. State*, 812 P.2d 384, 404-5 (Okla. 1991); *State v. Payne*, 402 S.E.2d 582, 595-6 (N.C. 1991); *People v. Forsha*, 542 N.Y.S.2d 847, 849 (1989).

"reasoned and independent analysis of the issues." *Quint*, 1997 Guam 7 at ¶ 8. In addition to the above factors, the court also notes the trial court's procedural mismanagement of the case, particularly the lengthy delay between the filing of the People's motion in limine and the issuance of the decision and order on the matter, which acted to escalate the extraordinary nature of the situation. Based on the foregoing, it is the determination of the court that a peremptory writ of mandamus shall issue. .

[17] Let a Peremptory Writ of Mandate issue, directing the Superior Court to vacate its order of October 13, 1998, in the case of *People v. Bruneman*, CF0081-96, and to enter a new and different order granting the admission of forensic hair comparison evidence and testimony at trial.

PETER C. SIGUENZA
Chief Justice

JANET HEALY WEEKS
Associate Justice

CRUZ, J., dissenting.

[18] I am disturbed at the analysis used by the majority in finding that this court has jurisdiction in this case. Previous decisions of this court have recognized "[m]andamus relief as an extraordinary remedy that would be used in extreme situations;" yet, the situation presented here does not evince an extreme situation to support the issuance of the writ. *Guam Publications*, 1996 Guam 6 at ¶ 10. Admittedly this court has held that we are not bound by other courts in interpreting local law. *See Quenga*, 1997 Guam 6 at ¶ 13, n. 4. We, however, should recognize that although "[r]ecent case law

demonstrates a shift away from strict adherence to the policy against allowing the People to seek review of erroneous decisions" such was derived from, as the majority stated, an "amendment to California statutes which included a statutory right to appeal for the People of an order or judgment granting a suppression motion."

[19] The People admitted at oral arguments that the lower court decision was not on a motion to suppress, though one could argue that the effect was the same, so the statutory right to appeal the granting of a motion to suppress does not apply. Inasmuch as the Legislature has not granted the People a statutory right to appeal a decision on a motion in limine, this court should have followed the *Oroville* decision.

[20] The majority opinion acknowledges that "[t]he sequence of events which occurred in relation to the People's motion in limine is unclear; however, both parties acknowledge that more than one hearing and more than one motion on the issue were heard, including a motion to exclude said evidence . . . ." This matter, having been presented to this court as an emergency Petition for Writ of Mandate, does not require that we be provided with transcripts of the hearing or hearings, the depositions discussed, the various motions in limine or motion to exclude and responsive memoranda to make an informed finding of whether the trial court abused its discretion.

[21] The majority opinion is based on its determination that the trial court erroneously decided the motion or motions. The admissibility of hair evidence and DNA evidence has not been previously addressed by this court. As such, the trial court had no bright-line directives from this court to make its decision. Without such direction from this court, the trial court's decision, even if clearly erroneous, does not rise to the level of warranting the issuance of a writ in this case.

[22] It is the humble opinion of this lone dissenter that before this court renders an opinion on whether the trial courts of Guam must admit hair sample evidence and testimony, we should have the issue thoroughly briefed. The briefs filed by both parties are woefully inadequate in this dissenter's opinion. The issues might have been better briefed in the memoranda filed below, but since no record on appeal or even excerpts of record are required in an emergency Petition for Writ of Mandate, we don't know.

[23] Writs of mandate should remain confined to extreme or extraordinary situations and should not become a standard vehicle by which the People may avoid jurisdictional problems where the Legislature clearly intended otherwise. By issuing a writ in this case, the floodgates have been open to the danger of an influx of cases whereby, although this court would statutorily lack jurisdiction, the court may be forced to overstep its jurisdictional boundaries.

BENJAMIN J. F. CRUZ
Associate Justice