Article Title: State of Maryland vs Anthony LAMONT

Origin: State of Maryland, Howard Circuit Court

Date Published: 2008-03-26

Author: Judge Dennis SWEENEY

Article's Subject Matter:

This was the Judge's decision for an application by Defense, to exclude Fingerprint Evidence based on a Frye Challenge. Defense argued against the evidence and the expert stating ACE-V not scientific enough. Judges decision was for the State, advising that the evidence could be allowed, but did state limitations of what could be testified to, by the expert.

Key Points in Article

- **Defense claimed that the ACE-V methodology not scientific**
- **No error rates reported in the scientific community for fingerprints**
- **No notes or documentation had been provided by expert (bench notes)**
- **Court concedes there are valid issues with ACE-V**
- **Court stated there should be constraints in the testimony proffered by the expert**
    1. **He can say it (latent) closely or exactly matches the defendants**
    2. **He can point out the similarities and differences (if any)**
    3. **Cannot state 'no other person could have a similar number of matching points'**
    4. **Cannot state the probability or lack of probability of similar prints on different persons (no research done on this)**

Fallacies and Issues

- This is a start of what seems to be a trend by courts to limit what the expert can say on the stand regarding fingerprints and their identification. (Ie no two persons can have the same fingerprints).
- The issue with no notes or documented examination, alludes to Bench Notes, which the RCMP has a standard ensuring they are done.
- Error rates are still being explored as a possible research item.

STATE OF MARYLAND	*	**IN THE**
VS.	*	**CIRCUIT COURT**
LAMONT ANTHONY JOHNSON	*	**FOR HOWARD COUNTY**
Defendant	*	**Criminal Case No. 07-47108**

* * * * *

ORDER

Upon consideration of the Defendant's Motion to Exclude Testimony of Forensic Fingerprint Examiner and All Fingerprint Evidence and the State's Response thereto, it is this 26th day of March, 2008

ORDERED that the Defendant's Motion to exclude the State's fingerprint evidence is hereby DENIED ~~and it is further~~ except to the extent that the opinion testimony will be limited as set forth in the memorandum filed this date and it is further

ORDERED that any request by the Defendant for a Frye-Reed hearing is hereby DENIED.

JUDGE

ENTERED
MAR 27 2008
CLERK, CIRCUIT COURT
HOWARD COUNTY

TRUE TEST COPY:
Margaret D. Lynyard
CLERK

RECEIVED
MAR 27 2008
HOWARD COUNTY
STATE'S ATTORNEY'S OFFICE

STATE OF MARYLAND	*	IN THE
vs.	*	CIRCUIT COURT FOR
LAMONT ANTHONY JOHNSON	*	HOWARD COUNTY
Defendant	*	Case No. 13-K-07-47108

* * * * * * * * * * * * * *

MEMORANDUM

Before the Court is the Motion To Exclude Testimony of Forensic Fingerprint Examiner and All Fingerprint Evidence filed by the Defendant, Lamont Anthony Johnson. The Defendant was indicted on February 21, 2007, and charged with burglary in the first degree, theft, and malicious destruction of property.

The State has responded with a memorandum that included an affidavit of the examiner, the examiner's resume, and other material pertaining to the issue before the Court. A hearing was held on the motion on March 24, 2008. After hearing arguments from counsel, the Court requested a detailed proffer from the State as to the nature of the testimony it would present at trial and reserved the right to take additional testimony, if necessary, before resolving the issue.

The Defendant's motion is filed under Maryland Rule 5-702, and it argues that under the standards of *Frye v. United States*, 293 F. 1013 (D.C.Cir. 1923) and *Reed v. State*, 283 Md. 374 (1978) that the State can not establish the reliability of the so-called "ACE-V" technique used in fingerprint analysis in this case.

In Paragraph 8 of the motion, the Defendant asserts that the *Frye-Reed* standard is not satisfied when the ACE-V technique is used

> since (a) the determination was subjective; (b) there are no minimum number of matching points or other objective criteria; (c) no notes are required and so there is no documentation of the expert's report; (d) matches are made with absolute certainty, exceeding the certainty of DNA testing; (e) no testing or verification by independent means; (f) no meaning (sic) peer review; and (g) no error rate quantified.

The Defendant seeks to have excluded "any [and] all testimony by the forensic fingerprint examiner".

The State responded, saying that the examiner's testimony is admissible under *Frye-Reed* and Maryland Rule 5-702. The State contends that there is no need to hold a full-blown *Frye-Reed* hearing since fingerprint testimony of the type it seeks to introduce is routinely allowed in Maryland courts and that this has been the practice for well over 50 years. The State further contends that any problems with the ACE-V technique, while appropriate to cross-examination, are not such that they should lead to the exclusion of relevant evidence that could be of assistance to the jury.

The State's Proffer:

The State has submitted the following proffer of what it

expects to prove at trial as well as testimony of the witnesses regarding fingerprint identification:

1. Officer Edwards Collins would testify that he was a patrol officer on duty on June 18, 2006. At approximately 11:33 p.m., he was dispatched to 5677 Phelps Luck Drive in Howard County, Maryland, for a report of a breaking and entering at that location. Officer Collins made contact with the homeowners, Kenya Warfield and Andrew Jenkins. Thereafter he entered the residence and found no one inside. Officer Collins noted what looked to be pry marks on the front door. Officer Collins also noted that the kitchen window on the first floor of the residence was pushed in and that the screen covering the window had been cut and removed. Officer Collins also observed that a good deal of ransacking had occurred with the home. Photos in support of Officer Collins's testimony will be offered into evidence;
2. Kenya Warfield would testify that she lived at 5677 Phelps Luck Drive in June of 2006 with Andrew Jenkins and her son. Ms. Warfield lived there for

three years prior to the burglary. She would describe the home as an end-unit town home with a public sidewalk to the front and side of the house. Ms. Warfield would testify that on June 16, 2006, she and Mr. Jenkins left the town house for a trip to the Pocono's and no one else had access to the house. Ms. Warfield locked all the doors and windows upon her departure from the home. Ms. Warfield, Mr. Jenkins and her son all arrived home late at night on June 18, 2006. Initially Ms. Warfield noted that the outside porch light was off. This light was never off. Ms. Warfield could see that an upstairs hallway light was on, and she was sure that all lights inside the home were off before leaving. Mr. Jenkins tried to use a key to open the front door but the door would not open. Using a cell phone, Ms. Warfield could see pry marks around the door; marks that were not there when she left on June 16.

Ms. Warfield then noticed that the kitchen window was knocked out and the screen had been cut. Both were intact when she left on June 16. Mr. Jenkins went inside the residence through the window opening. After contacting

911, Mr. Jenkins was told to get out of the house and the police arrived five minutes later. Ms. Warfield watched as the police officer also went in through the window opening. After the police walked through the residence and forced open the front door, they let Ms. Warfield in. She noted that the back rear sliding glass door was open. This door was secured when she left on June 16.

Ms. Warfield would testify that at the time she washed the windows of her town house approximately once a month. Furthermore, Ms. Warfield would testify that no repair work was completed on her home close in time to the burglary.

Ms. Warfield found that most of the closets in the home were ransacked as well as the bedrooms. She found that jewelry, a Playstation and games, a camcorder, a shotgun and United States Currency, which were all present in the home before she left on June 16, were missing.

Finally, Ms. Warfield would testify that she does not know Lamont Johnson.

Photographs would be offered into evidence in support of Ms. Warfield's testimony.

3. Jim Roeder would testify that he works for the Howard County Police Department as a crime scene technician. Mr.

Roeder would testify that he worked for the Baltimore County Police Department in this same capacity. Mr. Roeder has extensive training in crime scene analysis and evidence collection to include latent fingerprint recovery. Mr. Roeder would testify that he was called to 5977 Phelps Luck Drive on June 19, 2006 at approximately 1:45 a.m. Mr. Roeder observed that the first floor window leading into the home's kitchen was pushed in and lying on the kitchen floor, exterior side up. Mr. Roeder also observed that the window was located behind a bush blocking it from view almost completely. He also noted that the window was located approximately twenty to thirty feet from the public sidewalk. Mr. Roeder saw that the screen that covered the window was cut off and lying on the ground outside the window.

In addition to photographing the scene, Mr. Roeder processed several locations for latent fingerprints. In particular, Mr. Roeder processed the exterior of the kitchen window that had been pushed in. Mr. Roeder dusted the glass using black powder. Mr. Roeder would testify that he has been trained in finding and lifting latent fingerprints using black powder. Mr. Roeder would also testify that he is familiar with fingerprints and

why black powder is used in their recovery. When he found what he determined to be usable fingerprints, he used plastic tape to lift the powdered prints. He then placed the tape on white cardboard cards. Mr. Roeder signed the back of the latent fingerprints and noted the location of recovery on the back of the card as well. Mr. Roeder's recovery of the latent fingerprints occurred at the crime scene. Photographs and the actual latent fingerprints recovered from the crime scene would be offered into evidence in support of Mr. Roeder's testimony.

4. Allen Hafner would be called and qualified as an expert in fingerprint analysis and identification. Mr. Hafner would testify that he is employed by the Howard County Police Department, first as a sworn officer from 1972 to 1995, then as a fingerprint examiner since 1998. In his current position he is called out to process crime scenes from time to time - a duty for which he is trained - but his primary duties revolve around comparing latent and known fingerprints and processing items for latent prints. Mr. Hafner also teaches at the police academy on latent print recovery and crime scene processing.

Mr. Hafner would testify that his training in the field of fingerprint examination and identification consists of the Federal Bureau of Investigation's latent print school and its advanced print school. Mr. Hafner has also attended training on the identification of palm prints and distorted latent prints. At the beginning of his career Mr. Hafner was tutored by crime lab director Robert Bartley. He also attends two fingerprint identification conferences per year sponsored by the International Association for Identification - Chesapeake Division.

Mr. Hafner is certified as a senior crime scene analyst and has been continuously since 1990. That certification includes latent print examination. He is also a member of and certified by the International Association for Identification and has held a seat on that organization's Board of Directors. Mr. Hafner has been qualified as an expert in fingerprint examination and identification in state and federal court over thirty times and a court has never failed to recognize him as such when offered.

Mr. Hafner would explain what fingerprint identification entails to include definitions of "latent" prints, "rolled" or known prints and "partial" prints. Mr. Hafner

would explain how a person's fingerprints are rolled using ink. Mr. Hafner would then demonstrate that for the jury by rolling the Defendant's fingerprints in court. Mr. Hafner would testify that fingerprints are unique to every person, even identical twins. Furthermore, although Mr. Hafner has compared thousands of fingerprints and read literature concerning thousands more comparisons, he has never seen two people with matching fingerprints and none have ever been reported in the literature.

Mr. Hafner would testify that he first looks at the latent print to determine whether it is of sufficient quality to enable him to continue with the examination. In this case two of the latent prints lifted by Mr. Roeder were of good quality. Mr. Hafner would also explain that the term "partial print" is used to explain anything but a fully rolled inked print. Mr. Hafner would then testify that he moves on to making a comparison between the latent and rolled print using a magnifier. Mr. Hafner would testify that he places the fingerprints side-by-side and looks at specific points on the print. If Mr. Hafner observes any difference, the prints are declared not to be a match. If there is enough

correspondence after his examination, then, based on his training and experience, he can say the fingerprint was made by the provider of the rolled print. Mr. Hafner would lead the jury through this using the latent prints offered into evidence during the course of Mr. Roeder's testimony and the rolled print of the Defendant taken in the courtroom.[1]

Mr. Hafner would testify that the method he utilizes during the examination of the latent prints in this case is the only technique used in fingerprint examination and identification. Furthermore, Mr. Hafner would testify that this method is used not only by fingerprint examiners in law enforcement but fingerprint examiners in other fields as well.

Mr. Hafner would testify that there are thirteen points in common between one of the latent fingerprints recovered in this case and the Defendant's rolled print. Mr. Hafner would testify that there are twenty-two points

[1] In the proffer presented by the Assistant State's Attorney and confirmed in a telephone communication with the Court's law clerk, the suggestion is made that before the jury, the State will seek to have Mr. Hafner leave the witness stand and then and there obtain the Defendant's set of fingerprints directly from his person. This is said to be a demonstration for the jury of the techniques employed. While this unusual -- indeed bizarre -- plan is not before the Court at this point, the Court mentions it so that the trial judge understands that this judge has in no way in this ruling approved, condoned, or blessed the proposed demonstration.

in common between another of the recovered latent fingerprints and the Defendant's rolled print. Most importantly, there are no differences between the latent prints and the Defendant's rolled print. He would also testify that the latent fingerprints are different fingers but next to one another on one hand. Furthermore, Mr. Hafner would testify that based on his examination of the latent and rolled print, he was able to form an opinion within a reasonable degree of scientific certainty as to the identity of the person that left the latent print on the window of 5677 Phelps Luck Drive. His opinion is that the latent fingerprint is that of the Defendant.

Mr. Hafner would testify that any comparison he makes, whether resulting in a match or not, is submitted to Robert Bartley, crime lab director at the Howard County Police Department, for verification. Mr. Bartley is not told of Mr. Hafner's opinion and, utilizing the same methodology, forms his own opinion as to the source of the latent fingerprints. If Mr. Hafner believes that the latent and rolled prints are a match but Mr. Bartley disagrees, the reasons why are discussed and a match cannot be declared. If Mr. Hafner believes a match exists

and Mr. Bartley does as well, then a match can be declared.

Discussion:

Defendant's counsel candidly admits that his motion was initiated after the decision of the Circuit Court for Baltimore County in *State v. Rose*, Case No. K-06-0545 (Circuit Court for Balt. Co., Oct. 19, 2007), which held that testimony purporting that any latent fingerprint in the case was that of the defendant would not be allowed. In that case, the court noted that it was adjudicating a death penalty case and that "death is different". Relying heavily on the infamous misidentification of an individual in an international terrorist case, the *Brandon Mayfield* case, and a report prepared by the Federal Department of Justice Office of Inspector General in response to that incident as well as expert testimony, the court concluded that it could not permit the testimony concerning latent fingerprint identification that the State sought to produce.

Maryland Rule 5-702, upon which the Defendant herein relies, provides as follows:

> Expert testimony may be admitted, in the form of an opinion or otherwise, if the court determines that the testimony will assist the trier of fact to understand the evidence or to determine a fact in issue. In making that determination, the court shall determine (1) whether the witness is qualified as an expert

> by knowledge, skill, experience, training, or education, (2) the appropriateness of the expert testimony on the particular subject, and (3) whether a sufficient factual basis exists to support the expert testimony.

From the evidence before the Court, there is no question that the State's proposed expert ,Allen Hafner, is qualified as an expert by his knowledge, experience, training and education. Mr. Hafner has been examining fingerprints since 1985 as a Howard County Police Officer, and since 1998 as a fingerprint examiner with that Department. He has been qualified as an expert witness in the field of forensic fingerprint examination and identification some thirty times in State and federal courts, and has appeared as an expert before the undersigned in past cases.

The Court finds that the testimony is appropriate on the subject of the Defendant's guilt since the latent fingerprint is the link the State alleges between the break-in alleged in this case and this Defendant. It is directly relevant and, indeed, without it and the testimony related to it, the State concedes that it would not have a case to make.

The Court must also consider whether there is a sufficient factual basis to support the expert testimony. Defendant asserts that the ACE-V methodology used by Mr. Hafner is fatally flawed and that any testimony based on that analysis is also tainted. The Defendant requests that Mr. Hafner be barred from the stand as a

witness for the State.

Defendant's theory flies in the face of consistent acceptance of fingerprint testimony by the courts of this State. As early as a death penalty case in 1944, the Court of Appeals, in rejecting an argument that fingerprint evidence of the identity of the Defendant was not authentic, took judicial notice of the fact "that use of fingerprints (to identify a person) is an infallible means of identification." *Murphy v. State*, 184 Md. 70, 85-86 (1944).

In 1950, the Court of Appeals found that a thumb print on a flashlight that linked a co-defendant to the scene of a breaking-and-entering was "not only proper evidence but strong evidence to connect these traversers [the two co-defendants] with the crime." *Debinski v. State*, 194 Md.355,359 (1950).

In *Breeding v. State*, 220 Md. 193 (1959), the State produced expert testimony that a fingerprint matching that of the victim was found on the window, or air vent, on the right side of the defendant's car. The defendant objected to the admission of this latent print as "not sufficiently definite". *Id.* at 199. The court held that the objection went to the weight of the evidence rather than its admissibility

In *McNeil v. State*, 227 Md.298 (1961), a police officer testified that he found a partially-empty beer bottle beside the safe from which he obtained a fingerprint. An expert testified

that this fingerprint was that of the accused and that it had been left on the bottle not more than 18 hours prior to the time of the criminal offense. The court upheld the admission of such testimony.

In the pivotal case of *Reed v. Maryland*, 283 Md. 374 (1978), which adopted the so-called *Frye-Reed* test that still applies in Maryland, the court was by then so accepting of fingerprint identification evidence that it stated:

> On occasion, the validity and reliability of a scientific technique may be so broadly and generally accepted in the scientific community that a trial court may take judicial notice of its reliability. Such is commonly the case today with regard to ballistics tests, fingerprint identification, blood tests and the like.

Id. at 380.

It is of note that the dissent in *Reed* authored by Judge Marvin Smith contains a detailed analysis of the legal history of fingerprint testimony being accepted in the courts, beginning with *People v. Jennings*, 96 N.E. 1077 (Ill. 1911) and continuing up to Maryland's recognition of the testimony in the *Murphy v. State* case cited above. 283 Md. 386-389.

It thus appears that the Court of Appeals has long embraced the use of fingerprint identification evidence, including the use of latent prints, and that its routine use has become so non-

controversial that it is hard to find modern reported cases in Maryland where the issue of admissibility has even been raised. It should also be noted that in the Maryland cases where fingerprint identification evidence was allowed, there was apparently no elaborate system of analysis and verification by the examiners. In most cases, it appears that the person presenting the fingerprint-related testimony was a police officer on the local force who had some on-the-job experience in examining latent prints.

To resurrect the issue of admissibility, the defendant in the *Rose* case and the Defendant before the Court in this case have focused in on the ACE-V method of latent print identification that is the standard technique used by state and federal agencies performing fingerprint identification. The ACE-V process consist of four sequential steps: (1) Analysis; (2) Comparison; (3) Evaluation; and (4) Verification. This process is a step-by-step one that allows those performing the process to end up with a conclusion of identification or exclusion, or a determination that is inconclusive. The verification step has one or more examiners determining if they agree or disagree with the original examiner.[2]

Defendant alludes to the alleged problems with the process

---

[2] A detailed description of the ACE-V method and its origins can be found in *Commonwealth v. Patterson*, 840 N.E. 2d 12, 15-18 (Mass. 2005).

that are pointed out in the *Rose* decision and in the report of Office of the Inspector General of the Department of Justice in its report on the *Mayfield* case. As this Court sees it, none of the alleged problems are of such a nature that those examiners who employ the process should be prevented from testifying as to the examination they conducted and the conclusions that were reached.

There is no doubt that the ACE-V process could be improved by, for example, using verification examiners who are not co-employees of the original examiners. But the fact that a procedure or process could be improved does not entitle the Court to bar the current examiners from providing testimony that would be useful to the trier of fact. The perfect should not become the enemy of the good. See, *United States v. Llena-Plaza*, 188 F. Supp. 549, 572 (E.D. Pa. 2002).

The majority of courts that have considered these issues have allowed the admission of latent fingerprint evidence and the opinion evidence to support it. For example, the U.S. Court of Appeals for the Fourth Circuit considered many of the same arguments and concerns raised here by the Defendant and concluded as follows:

> In sum, the district court heard testimony to the effect that the expert community has consistently vouched for the reliability of the fingerprinting identification technique over the course of decades. That evidence is

> consistent with the findings of our sister circuits, and Crisp [the appellant] offers us no reason to believe that the court abused its discretion in crediting it. The district court also heard evidence from which it was entitled to find the existence of professional standards controlling the technique's operation. These standards provide adequate assurance of consistency among fingerprint analyses. Finally, the court heard testimony that fingerprint identification has an exceedingly low rate of error, and the court was likewise within its discretion in crediting that evidence. While Crisp may be correct that further research, more searching scholarly review and the development of even more consistent professional standards is desirable, he has offered us no reason to reject outright a form of evidence that has so ably withstood the test of time.

United States v. Crisp, 324 F.3d 261,269 (2003). Other federal circuit courts of appeal have also upheld the admission of fingerprint evidence when faced with similar challenges to that made here. *United States v. Calderon-Segura*, 512 F.3d 1104 (9th Cir. 2008); *United States v. Mitchell*, 365 F.3d 215 (3rd Cir. 2004); *United States v. Hernandez*, 299 F.3d 984 (8th Cir. 2002); *United States v. Havvard*, 260 F.3d 597 (7th Cir. 2001).

Similarly, other states have generally rejected challenges to the admission of examiner testimony regarding identifications based on latent fingerprint lifts. See, 29 Am.Jur. 2d Evidence Sec. 569. Of particular note is *Commonwealth v. Patterson*, 840 N.E.2d 12 (Mass. 2005). In that case, the Supreme Court concluded that the

underlying theory and process of latent fingerprint identification, and the ACE-V method in particular, are sufficiently reliable to admit expert opinion testimony regarding the matching of a latent impression with a full fingerprint. *Id.* at 628.[3]

Defendant argues that the court should engage in a full *Frye-Reed* hearing and analysis because there have been issues raised about asserted deficiencies in the ACE-V method employed by fingerprint examiners and because in some high profile cases such as the Mayfield case errors were made by the examiners.

Frye-Reed hearings are deemed necessary when a new or novel scientific method is being presented to the courts. *Montgomery Mut. Ins. Co. v. Chesson*, 399 Md. 314, 327 (2007). The examination of latent prints and examiner testimony matching latents to known prints is not new or novel. As noted above, it is one of the earliest examples of so-called scientific evidence being admitted into evidence in American courts. As also noted above, fingerprint identification was described in the *Reed* case as being of such certainty that even at that time judicial notice could be taken of its reliability. *Reed, supra*, 283 Md. at 380. It is certainly true

[3] While upholding the usual latent fingerprint identification method, the *Patterson* court also concluded that the Commonwealth did not establish that the process could reliably be applied to so-called simultaneous impressions not capable of being individually matched to any of the fingers that supposedly made them.

that the earlier Maryland appellate cases did not specifically bless the ACE-V method, but it also seems to be the case that the ACE-V method is merely the extension, rationalization and improvement of the older methods that relied on examiner experience and judgment without the detailed step-by-step guidance now provided by ACE-V. *Patterson, supra,* note 4 at 16.

In this context of settled Maryland law and the experience in the state and federal courts of almost 100 years of fingerprint identification acceptance, this Court does not believe that it is necessary or appropriate for a trial court to reopen fingerprint identification to be treated as a novel or new scientific method demanding full *Frye-Reed* proceedings and analysis.

The Court will concede that there are potentially valid concerns raised about the ACE-V method. It is certainly an improvement over earlier more subjective methods employed by examiners in the past, but even its proponents do not claim that it has reached perfection. Critics and litigants have raised important questions, such as the potential bias of verifying examiners, the lack of a requirement that detailed notes be kept by the examiner, the lack of a criteria for declaring a match or identification, the lack of available data about error rate among examiners, and the advisability of using Level 3 details in friction ridge comparisons.

These concerns do not lack significance and should be addressed by the forensic community. The question is whether at this juncture, these imperfections should rule out examiner testimony that would be of assistance to a trier of fact or whether instead they should be factors that the trier of fact should evaluate in considering the weight to be given to the evidence. Given the acceptance of fingerprint identification testimony in Maryland by our appellate courts, the Court believes that the concerns raised should be the subject of cross-examination of the expert at trial. As earlier cases have noted, fingerprint testimony is admissible, but its ultimate acceptance should depend on the weight to be accorded to the testimony by the trier of fact. See, e.g., *Breeding v. State*, 220 Md. 193, 199 (1959). Thus, the Defendant should have ample latitude to raise his concerns with the ACE-V method in cross-examination of the State's witnesses. Of course, the Defendant can also present his own expert to counter the State's.

While the Court does not believe it should exclude the examiner's testimony about the latent print testimony, the Court does believe that constraints are warranted on the testimony as proffered. There is indication in the State's proffer that they will seek to have the expert testify that, not only do the latent prints match the Defendant's known prints but also that no other

person in the world's print could also match the latents, and that the examiner's confidence in the identification is absolute. This is a step too far based on what appears to be the currently validated science on the issue.

In the treatise, *McCormick on Evidence*, the author discusses the current state of the controversy regarding fingerprint evidence and ends up being critical of what he feels is the courts' blind acceptance of the testimony. In the conclusion to the section on fingerprint identification, the author states:

> The courts go to these extremes because, even without extensive scientific study, it seems obvious that fingerprint comparisons are probative and valuable. The difficulty lies in saying how probative and in trying to pretend that a probability is a certainty. One solution would be to allow testimony as to the matching features, but not testimony that because an individual's rolled prints match the latent prints, this person --to the exclusion of everyone else in the world-- surely is the source of the latent print. Permitting testimony as to the fact of the match but not its probabilistic implications has worked with other forms of identification evidence and one federal district court temporarily adopted this compromise for fingerprints as well. Such a resolution would have the advantage of spurring more and better research into the foundations of fingerprinting and ultimately an enhanced understanding of the statistical implications of matches of prints of varying quality and completeness.

McCormick on Evidence Sec.207 (6th ed.) (footnotes omitted).

The line drawn seems appropriate and sensible. From what the Court has read and seen, there does not seem to be a factual foundation or basis for Mr. Hafner in this case to say more than that Defendant's print closely or exactly matches the partial latent print he lifted. He can point out the similarities and the differences, if any, between the latent print and the exemplar. This Court discerns no basis in the proffer for him to express an opinion that no other person could have a similar number of matching points or what the probability or lack of probability is of the existence of such persons. If the State believes that it can present such a basis grounded in validated research, scientific studies or otherwise, to allow the witness to make that conclusion, then it can move to make such a demonstration and obtain a further ruling on the issue from the court prior to the testimony being presented.

Conclusion:

For over 50 years, the Maryland Court of Appeals has found testimony regarding latent fingerprints and their comparison with known prints to be admissible and reliable evidence. This is settled law. This Court does not discern any need to reopen the matter to a full *Frye-Reed* hearing simply because the examiner followed the ACE-V method of fingerprint analysis. The alleged flaws with the method may be the subject of cross-examination of

the State's witness, and the Defendant is free to call his own expert to refute the State's witness. The Court exercises its discretion under Maryland Rule 5-702 to limit the State's expert's opinion testimony as set out in this opinion. The State, if it chooses, may attempt to demonstrate a factual and scientific basis for the full scope of the opinion as set forth in its proffer.

March 26, 2008
Date

Dennis M. Sweeney
JUDGE

Copies Mailed 3-26-08 to:

James J. Dietrich, Esq.
Office of the State's Attorney
3450 Courthouse Drive
Ellicott City, MD 21043

William R. Buie III, Esq.
12 South Calvert Street
The Second Floor
Baltimore, MD 21202