

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE

V.

DONALD COLE,
Defendant

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I. D. NO: 0 1 10 0 0 6 6 9 4

Submitted: May 28, 2002
Decided: June 26, 2002

MEMORANDUM OPINION

Upon Defendant's motion to Suppress Evidence.
Motion Denied.

GEBELEIN, J.

Defendant Donald Cole ("Cole") is charged with attempted murder first degree, robbery first degree, burglary first degree, assault first degree, carrying a concealed deadly weapon and possession of a firearm during the commission of a felony.

I. **FACTUAL BACKGROUND**

On or about the 22nd day of August, 2001, it is alleged that Donald Cole entered a dwelling, at night, intending to commit the crime of robbery therein. It is further alleged that while in the dwelling, either Cole, his companion, or both of them shot a man and assaulted one woman.

II. **DISCUSSION**

D.R.E., Rule 702 is intended to track the F.R.E., Rule 702. If testimony will "assist the trier of fact to understand the evidence or to determine a fact in issue" a witness may testify as an expert based on grounds ranging from education to experiences.¹ A trial judge has the responsibility of determining whether the expert witness' testimony meets those requirements.² In addition, the trial judge has broad latitude in determining whether expert

¹ D.R.E., Rule 702 (2002).

² *Daubert v. Dow Pharmaceuticals, Inc.*, U.S. Supr., 509 U.S. 579, 113 S.Ct. 2786, 125 L.Ed.2d 469 (1993).

testimony is reliable.³ A judge must determine whether the expert's testimony is 1) reliable and 2) relevant to the issue.⁴

The judicial "gatekeeping" role first discussed in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, has since been recognized as the guideline for admitting expert testimony in a given case. *Kumho Tire*⁵ expanded the realm of *Daubert* to include expert testimony that was not scientifically based. In *Kumho Tire* the court decided that the purpose of *Daubert* was to ensure that the expert witness' testimony was reliable whether based on scientific, or non-scientific experiences.

In *Daubert*, the United States Supreme Court laid out general observations, but not a definitive checklist in order to determine whether expert evidence is reliable.⁶ Those observations include 1) whether it can be (and has been) tested; 2) whether the theory or technique has been subjected to peer review and publication 3) whether there is a known or potential rate of error and the existence and maintenance of standards controlling the technique's

³ *Kumho Tire Company, LTD. v. Carmichael*, U.S. Supr., 526 U.S. 137, 119 S.Ct. 1167, 143 L.Ed.2d 238 (1999).

⁴ *Daubert v. Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 597 (1993)

⁵ *Kumho Tire Company, LTD. v. Carmichael*, 526 U.S. 137, 152 (1999)

operation; and 4) whether the theory or technique has been met with general acceptance in its scientific community.⁷

In terms of the first factor *Daubert* suggests a trial court should consider, fingerprint analysis is a theory that can be and has been tested. The existence of numerous studies supports the conclusion that fingerprints are unique.⁸ Also, fingerprint analysis has been subjected to, substantial peer review and publication. Through peer review, cross-examination and professional training, peers have the opportunity to examine fingerprint analysis and establish relevant standards.⁹

In terms of the third *Daubert* factor, the error rate in identifying latent fingerprints is extremely low.¹⁰ Also, an examiner's opinion can be tested by having another qualified technician compare the same prints. In that way, the potential for human errors can be prevented. The fourth *Daubert* factor is satisfied by the fact that fingerprint

⁶ 509 U.S. 579, 593 (1993).

⁷ *Id* at 593-94.

⁸ *United States v. Rogers*, 4th Cir., 2001 WL 1635494 at 1.

⁹ *United States v. Harvard*, 7th Cir., 117 F.Supp.2d 848, 854 (2000).

¹⁰ *Id* at 854.

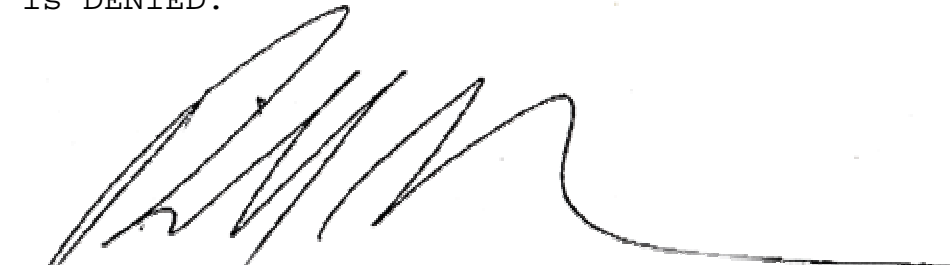
analysis has been accepted in the judicial community for close to 100 years as an approved technique.¹¹

In sum, fingerprint analysis has been tested and proven to be a reliable science-over decades for judicial purposes.¹² Technicians in the area use established principles and scientific methods approved in their field.¹³ No one has yet to find two identical fingerprints in almost 100 years.¹⁴ The reliability of latent fingerprint analysis is substantiated by its ability to meet the suggested factors set forth in Daubert.

III. CONCLUSION

For the above reasons, defendant's motion for suppression of evidence is DENIED.

IT IS SO ORDERED,



The Honorable Richard S. Gebelein

Orig: Prothonotary
cc: Daniel R. Miller
Brian J. Bartley

¹¹ *Id*

¹² *United States v. Joseph*, E.D. La., 2001, WL 515213, (May 14, 2001)

¹³ *Id*

¹⁴ *United States v. Havvard*, 117 F.Supp.2d 848, 852 (2000).