

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS - PART 23

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COUNTY OF KINGS, NY

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THE PEOPLE OF THE STATE OF NEW YORK,

DECISION & ORDER
INDICTMENT #8852/2000

-v-

JAMES HYATT,

HON. MICHAEL J. BRENNAN
DATED: OCTOBER 10, 2001

DEFENDANT,
-----X

Hon. Charles J. Hynes

By: Caryn J. Stepner, Esq.

Hillary Shaeffer, Esq. - People

Robert Zuss, Esq.,

The Legal Aid Society - Defense

On October 4, 2001, this Court conducted a Pre-Trial, "Fyre Hearing", to determine whether in its discretion it would permit Dr. Simon Cole to testify as an expert witness for the defense. New York follows the legal standard of admissibility know as the Frye rule, under which scientific evidence is admissible a trial only if the procedure and results are generally accepted as reliable in the scientific community. Frye v. U.S., 54 App.D.C. 46, 293 F. 1013 People v. Wesley, 83 N.Y.2d 417, 633 N.E.2d 451, 611 N.Y.S.2d 97.

FINDINGS OF FACT

The indictment in this case charges the Defendant, James Hyatt with burglary in the second and third degree as well as several lesser charges. It is alleged by the People that on September 18, 2000, the complaining witness in this case, Eva Denes, left her residence in Brooklyn prior to 9:00 A.M. at which time the location was locked and secure. When she

returned at approximately 4:45 P.M. she observed the location to be in disarray , a rear window having been opened. Upon inspection she noticed jewelry and other personal property to be missing from her residence.

It is further alleged that latent fingerprints were lifted from a container inside the location by Police Officer Drewali Bey of the Brooklyn North Evidence Collection Team. Latent Fingerprint Technician Detective Robert Otero, of the Brooklyn Latent Fingerprint Squad matched the lifted prints with those of the Defendant which were in the N.Y.P.D.'s files. The Defendant was then arrested and charged with the crimes alleged in this indictment.

In this matter, the defense has proffered Dr. Simon Cole as an expert witness. Dr. Cole's educational background includes a Bachelor's Degree in History from Princeton, and a PHD. in Science and Technology Studies from Cornell University. His PHD. dissertation dealt with the history of fingerprinting and why people believe fingerprinting evidence. He currently is employed as a visiting professor at Cornell University. He has published a book on the subject of fingerprint evidence and several peer review and magazine articles on the subject of fingerprint evidence. He considers himself an expert in the Sociology and History of Science and Technology.

Dr. Cole's basic premise is that the scientific underpinning for the acceptance of fingerprint evidence by the court is suspect. He bases his conclusion upon a review and research into legal histories, professional literature, books, articles, field work in police labs and

discussions with defense attorneys. He cites a series of tests conducted by the CTI (Collaborative Testing Service) a private testing service from 1995 to 2001 where false positive (misidentification) rates ranged from 20% to 3%. Dr. Cole also testified concerning the National Institute of Justice's request for Grant proposals (RFP) in the area of fingerprint evidence to show that the area was suspect. He also names several college and graduate professors who agree with his premise that fingerprint comparison is not a science and of unknown reliability.

Under cross examination Dr. Cole conceded he is not a scientist in the traditional sense of the word but a historian and a social scientist. He also indicated he had not examined the actual fingerprints in this case and was aware a latent print examiner hired by the defense had examined such prints and found a match. Dr. Cole testified that he is not qualified to give an opinion on a fingerprint comparison and that his knowledge as to how latent fingerprints are examined and compared is minimal and obtained from professional literature. Dr. Cole conceded that his theories haven't been sufficiently tested to know whether they could be considered science but rather his opinion is based on scholarly research. Finally Dr. Cole admitted he has never been accepted as an expert in this area in either the State or Federal Courts and that his views were not generally accepted in the mainstream scientific community.

After Dr. Cole's testimony the Court took judicial notice that fingerprint identification has long been recognized and accepted by all courts in the United States and that expert testimony concerning its use is always admissible provided the proffered witness is indeed qualified as an expert in the field.

CONCLUSIONS OF LAW

Admission of expert testimony is a determination made in the trial court's discretion. People v. Mooney, 76 N.Y.2d 827, 560 N.Y.S.2d 115 (1990). The Frye Rule is a two pronged test. The party offering the expert testimony must not only lay a foundation for the testimony but also qualify the expert as such. This foundation must be based on scientific evidence where both procedure and results are generally accepted as reliable in the scientific community. Frye v. U.S., 54 App.D.C. 46 293 F.1013, This is still the standard in New York. People v. Wesley, 83 N.Y.2d 417, 633 N.E.2d 451, 611 N.Y.S.2d 97 (1994).

Here in its discretion and with a view towards the guidance of People v. Lee, 96 N.Y.2d 157, 750 N.E.2d 63, 726 N.Y.S.2d 361 (decided May 8, 2001) the court held a pre-trial "Frye hearing" to resolve this issue. In determining whether Dr. Cole's testimony concerning the latent fingerprint evidence in this case was properly admissible, the Court must focus its attention on whether his theory or conclusions has been accepted as reliable by the relevant scientific community Wesley at 454. In Frye at 1014 the court stated: "*the thing from which the deduction is made must be sufficiently established to have gained general acceptance in the particular field in which it belongs*" (emphasis added). It is incumbent upon the proponent of expert scientific testimony to lay a proper foundation establishing that the processes and methods employed by the expert in formulating his or her opinions adhere to the accepted standards of reliability within the field. People v. Wilson, 133 AD2d 179, 518 NYS2d 690. In this matter, the methodology or

“the thing” from which Dr. Cole’s deductions are made are anecdotal and second hand rather than scientific. The record is devoid of any evidence that Dr. Cole possesses any more than a elementary knowledge of latent fingerprint collection and comparison. His approach to this issue is historical in nature and can hardly be viewed as generally accepted as reliable in the relevant scientific community as required by Frye (supra). Dr. Cole’s proposed attack on the scientific underpinning of fingerprint identification is more in the nature of the roll of an advocate or historian and not as an expert, U.S. v. Rincon, 28F.3d 921, 9th Cir. (1994). His testimony would neither be relevant to the issues in this case nor assist the jurors who as triers of fact might be in need of specialized information.

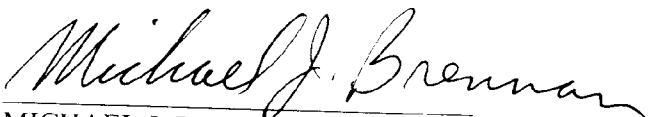
“Skeptics are involved in many aspects of solving society’s problems from a rational perspective. Yet few realize the insidious and negative effect our legal system can have on the establishment and propagation of logic and science. From the Scopes trial to silicone breast implant litigation, some courts have demeaned science and promoted junk science. The system must be changed. By incorporating a standardized policy with adherence to stringent rules regarding the admission of scientific evidence most of these results can be avoided. Junk Science and the Law by John E. Dodes, Skeptical Enquirer, p. 31. Vol. 25 No. 4, July/August 2001”.

Even applying the Federal Courts Daubert Standard what Dr. Cole has offered here is “junk science”. Daubert v. Merrell Dow Pharmaceuticals, 509 U.S. 579, 113 S.Ct. 2786. To take the crown away from the heavyweight champ you must decisively out score or knock him out. Going twelve (12) rounds will just not do. What Dr. Cole has offered here is interesting but too lacking in scientific method to even bloody the field of fingerprint analysis as a generally accepted scientific discipline.

For these reasons the Court precludes Dr. Cole from testifying as an expert in this case.

This constitutes the Decision and Order of this Court.

SO ORDERED:



MICHAEL J. BRENNAN,
JUSTICE, SUPREME COURT