

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

<p>UNITED STATES OF AMERICA, Plaintiff, v. THOMAS JAMES ZAJAC, Defendant.</p>	<p>ORDER Case No. 2:06-cr-00811 CW Judge Clark Waddoups</p>
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This matter is before the court on Defendant Thomas James Zajac's motions to exclude testimony of forensic fingerprint examiners. A *Daubert* hearing was held on March 1, 2010 through March 4, 2010, during which testimony was taken from Bonnie Stewart ("Stewart") and Jeffrey Lewis ("Lewis") regarding fingerprint evidence that was found on bomb remnants. Initial briefing on the fingerprint evidence was completed on June 29, 2010 and the court heard oral argument on July 26, 2010.

After the court heard oral argument, it granted the United States more time to supplement the evidence regarding its fingerprint analysis in this matter. A second *Daubert* hearing was held on September 13, 2010, where the government presented additional expert testimony from Lewis and demonstrative evidence. Final oral argument occurred on September 14, 2010.

Due to the need for this ruling before trial begins on September 20, 2010, the court sets forth its order without analysis. Subsequent to trial, the court will issue a memorandum decision that more fully explains its ruling in this matter.

ORDER

The court hereby GRANTS IN PART and DENIES IN PART Zajac's motions in exclude fingerprint evidence.¹

1. Stewart may testify about her examination of the evidence and development of a latent fingerprint. Because she reached no conclusion about whether the fingerprint matched a known print, she may not testify about any matching. Nor may Stewart testify that no two people are believed to have the same print ("individualization").

2. Lewis has shown that he has specialized knowledge and experience in analyzing and matching fingerprints, which may be helpful to the jury.

3. As to the Salt Lake City fingerprint, Lewis may testify about Level 1, Level 2, and Level 3 similarities and specific markers that he has already disclosed to Zajac. He will not be allowed to present different explanations or further information that has not already been presented at the *Daubert* hearings. While the manner in which evidence is presented may vary from the *Daubert* hearing, the substantive information cannot be altered.

4. Lewis may testify about how frequently Level 1 fingerprint types appear in the population. Because no scientific evidence or data was presented about how frequently Level 2 and Level 3 minutiae appear in the population, Lewis may not testify about such information. Lewis may testify, however, that based on his experience, certain markers are more common or less common.

5. Lewis may state that in his opinion the latent fingerprint from the Salt Lake City bombing is consistent with the known print of Zajac. He may state that in his opinion the fingerprints match closely. He may identify the specific characteristics and markers in the prints that formed the

¹ Docket Nos. 55, 103, and 130.

basis of his opinion. He may not represent or otherwise indicate, however, that there is an objective basis for his opinion or that it is supported by scientific methods or scientific principles. Nor may Lewis represent or otherwise indicate the degree of probability that the fingerprints match.

6. Neither in general background testimony nor in testimony pertaining to Zajac specifically may Lewis testify about individualization or permanence.

7. As to the Hinsdale letter, Lewis identified nine prints on the envelope and adhesive. Lewis matched all prints to Zajac except the fingerprint identified as L5. Lewis only provided specific evidence about prints L2, L6, and L7. Lewis may testify about those prints, but subject to the same limitations listed above for the Salt Lake City print.

8. For prints L1, L3, L4, L8, and L9, other than testifying that he followed the same methodology for identification as he used for the other prints, no evidence was presented about Level 1, Level 2, or Level 3 details. In other words, Lewis did not provide the bases and reasons for his opinion. Because the court concludes the government was required to disclose that information to Zajac, pursuant to Rule 16(a)(1)(G) of the Federal Rules of Criminal Procedure, but did not do so, the court excludes that evidence from trial.

SO ORDERED this 16th day of September, 2010.

BY THE COURT:



Clark Waddoups
United States District Judge