

STATE OF NORTH CAROLINA
COUNTY OF DURHAM

FILED
IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. 16-000168-71

STATE OF NORTH CAROLINA

DURHAM CO. C.S.C.

v.

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TIMOTHY LEON MOORE

MOTION *IN LIMINE* TO EXCLUDE EXPERT TESTIMONY OF ADRIA GHARATI AND DR. GLENN LANGENBURG ON LATENT PRINTS OR IN THE ALTERNATIVE, TO LIMIT SUCH EXPERT TESTIMONY

TIMOTHY LEON MOORE, by and through counsel, respectfully moves this Court to exclude expert testimony related to latent fingerprint comparison in this case or, in the alternative, to limit the scope and purported level of certainty of the expert’s opinions as detailed below, under the Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution, Article I, §§ 19 and 23 of the North Carolina Constitution, N.C. Gen. Stat. 8C-702, and *State v. McGrady*, 368 N.C. 880 (2016). In support of such, defendant states as follows.

FACTS AND LAW

1. Latent prints were recovered from the decedent’s and suspect’s vehicles on April 18, 2013.
2. Durham Police Department Latent Print Examiner Rebecca Waller examined the latent prints on May 14, 2013, June 12, 2013, and June 21, 2016. Ms. Waller stated her opinions in a report dated June 29, 2016. In such report, she identified one of the latent prints found on outside of the driver’s door of the decedent’s vehicle as belonging to the left palm of Timothy Moore.
3. The same latent prints were again analyzed on December 12, 2017 by Durham Police

Department Latent Print Examiner Adria Gharati in response to a request for a “review/verification” of Ms. Waller’s opinions. Ms. Gharati agreed that the same palm print identified by Ms. Waller belonged to Mr. Moore. Ms. Gharati created a written report dated December 19, 2017.

4. Dr. Glenn Langenburg, hired by the state, examined the prints and created a third report on August 19, 2018. He also agreed that the same palm print identified by Ms. Waller and Ms. Gharati belonged to Mr. Moore.
5. N.C. Gen. Stat. § 8C-1, Rule 702(a) states

If scientific, technical or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion, or otherwise, if all of the following apply: (1) The testimony is based upon sufficient facts or data. (2) The testimony is the product of reliable principles and methods. (3) The witness has applied the principles and methods reliably to the facts of the case.

6. The North Carolina Rules of Evidence were amended in 2011 to the above iteration, such that North Carolina now follows the federal standard for the admission of expert witness testimony known as the “Daubert standard.” *McGrady*, 368 N.C. at 884. The statute can be summarized as a “three-step framework – namely, evaluating qualification, relevance, and reliability.” *Id.* at 892.
7. The State has failed to comply with requirements under North Carolina General Statute § 8C-702, *State v. McGrady*, 368 N.C. 880 (2016), and *State v. McPhaul*, 808 S.E.2d 294 (2017) (review granted, ___ N.C. ___, ___ S.E.2d ___ (May. 9, 2018)), which govern the admissibility of expert witness testimony. Any probative value such testimony may have is outweighed by its danger of misleading the jury. N.C. Rule Evid. 403.

ANALYSIS

Mr. Moore has previously challenged expert testimony of latent print examiners by written motion to exclude such testimony filed September 29, 2017. In such motion, Mr. Moore challenged the admissibility of this testimony for failing to meet the requirements of 702(a)(2), that the testimony is the product of reliable principles and methods. Mr. Moore renews his prior objections to such testimony, and requests this Court refer to the September 29, 2017 motion in conjunction with this motion for the reasons such testimony should be excluded.

Relevant to this motion, Ms. Gharati and Dr. Langenburg's testimonies should also be excluded because they have not applied the principles and methods of latent print examination reliably to the facts of the case as required by 702(a)(3).

1. The ACE-V method

According to the Durham Police Department Forensic Services Division Friction Ridge Examination Manual, the Durham Police Department employs the "ACE-V" method for Friction Ridge Examination. In the first step, "analysis" (A), the examiner purports to study the latent (unknown) print and assess the quality and quantity of detail present. National Institute of Standards and Technology (NIST), Expert Working Group on Human Factors in Latent Print Analysis, *Latent Print Examination and Human Factors: Improving the Practice through a Systems Approach* 3 (2012) [hereinafter "NIST Report"] at 3. Details might include both "class" characteristics—characteristics shared or common within certain subgroups of prints—and "individual" characteristics or "minutiae"—characteristics not known to be shared or common within subgroups. S.H. James, *Forensic Science* 4th Edition, CRC Press at 330.

The examiner then "compares" (C) the latent print to a "known" print of a suspect.¹ See

¹ If no suspect has been identified, the examiner may compare the latent print to a computer-generated list of potentially similar reference prints housed in a database of known fingerprints. PCAST Report at 89.

PCAST Report at 89. Based on his/her subjective judgment and experience, the examiner documents what s/he believes to be similarities and differences between the latent and known print(s). NIST Report at 3. To avoid contaminating the comparison stage with cognitive bias, the examiner would have to fully analyze and document the characteristics of the latent print before comparing it to any known suspect print or computer-generated list of known prints. *Id.*; PCAST Report at 99-100. The process by which an examiner fully documents the characteristics of a latent print prior to conducting the comparison is known as “linear ACE-V.” PCAST Report at 17.

Next, the examiner “evaluates” (E) what s/he views as the similarities and differences between the prints and, again based on his/her subjective judgment and experience, decides his/her level of certainty about whether the prints have a common source and, if so, how to convey his/her opinion as to whether the two come from the same source. *Id.*

Finally, in most latent print analysis, a second examiner will “verify” (V) the initial examiner’s analysis. The verification step could theoretically involve a wholly independent and “blind” comprehensive analysis of the latent print, comparison to the known prints, and evaluation by a second examiner. Unfortunately, most “verification” in common latent print examiner practice consists merely of a dependent, non-blind review, meaning that the second examiner sees the analysis and conclusions drawn by the first examiner and knows which examiner s/he is reviewing. NIST Report at 3. *See also See National Research Council of the National Academy of Sciences, Committee on Identifying the Needs of the Forensic Science Community, Strengthening Forensic Science in the United States: A Path Forward 137 (2009) [hereinafter “NAS Report (2009)”] at 138.*

2. Ms. Gharati and Dr. Langenburg’s testimonies are not valid as applied.

The state is unable to meet its burden to demonstrate that the ACE-V method was reliably applied by Ms. Gharati and Dr. Langenburg in this case. As to the issue of “validity as applied,” the PCAST Report indicated that

“From a scientific standpoint, validity as applied requires that an expert: (1) has undergone appropriate proficiency testing to ensure that he or she is capable of analyzing the full range of latent fingerprints encountered in casework and reports the results of the proficiency testing; (2) discloses whether he or she documented the features in the latent print in writing before comparing it to the known print; (3) provides a written analysis explaining the selection and comparison of the features; (4) discloses whether, when performing the examination, he or she was aware of any other facts of the case that might influence the conclusion; and (5) verifies that the latent print in the case at hand is similar in quality to the range of latent prints considered in the foundational studies.”

PCAST Report at 102.

- A. The initial examination of the latent prints in Mr. Moore’s case was conducted by an examiner who lacked the necessary knowledge, skill, experience, training or education to conduct such latent print examinations.

Mr. Moore originally challenged the testimony of Ms. Waller in a motion filed September 29, 2017. However, at a hearing on March 5, 2018, the state provided notice that it did not intend to call Ms. Waller as a witness at trial. By written order entered March 5, 2018, this Court, Honorable Osmond W. Smith, presiding, held that Mr. Moore’s challenge to Ms. Waller’s qualifications was moot and not ruled upon since the State indicated it did not intend to elicit testimony from Ms. Waller during trial. However, Ms. Waller’s initial “identification” of Mr. Moore’s palm print was known by Ms. Gharati and Dr. Langenburg during their non-blind and non-independent reviews of Ms. Waller’s initial identification. Because knowledge of such identification biased and influenced their examinations, the reliability of the initial identification is relevant. Therefore, Ms. Waller’s qualifications are relevant to the question of her ability to make a reliable identification, which in turn influenced the later examinations of Ms. Gharati and Dr. Langenburg, making those examinations unreliable as well.

During a *motion in limine* hearing on March 5, 2018, Dr. Langenburg, a witness for the State, testified as an expert witness on latent print examination and methodology. Dr. Langenburg spoke of his qualifications (“Transcript,” March 5, 2018, Tpp. 33-39) as well as the minimum qualifications and training for latent print examiners in general in place since 2010 (Tpp. 98-100, 126). Those requirements include:

- A bachelor’s degree from an accredited institution, including science-related coursework, highly recommending a degree in natural or physical science
- Certification in the field
- One-year of full time ten-print work with the majority of time spent on analysis, comparison, and evaluation
- Two or more years on full-time latent print work with the majority of the time spent on analysis, comparison and evaluation.

Ms. Waller did not possess such qualifications at the time she made the identification of Mr. Moore’s palm print in 2013. From her *Curriculum Vitae* provided as part of discovery it appears that Ms. Waller was employed as a Latent Print Examiner beginning in January 2010 and retired in November 2013. After her retirement, Ms. Waller worked as a contract employee on a part-time basis. During the time of her employment, Ms. Waller did not complete any certifications related to latent print examinations, and only completed 46 hours in training related to latent print examination. All of that training was conducted during her first year of employment as a latent print examiner, and six of those hours appear to be related to providing courtroom testimony as opposed to performing examinations. The only conferences she attended on friction ridge analysis since hired as a latent print examiner occurred in her first year. It does not appear that Ms. Waller engaged in any continuing education, gave any presentations, participated in any fellowships, published any scientific papers, or was board certified in the field. Even though Dr. Langenburg further testified that there was a “trade off” for years of experience for education, the standards requiring a bachelor’s degree were enacted in 2009/2010,

and Ms. Waller was hired as a latent print examiner in 2010 without any prior experience in latent print examinations. Therefore, at the time of Ms. Waller's employment, she did not possess the minimum requirements in in the field.

Dr. Langenburg testified during the March 5 hearing that "[t]he skill of the examiner can come into play in the accuracy of the conclusions when applying the methodology." (Tp. 47, lines 20-22). Because Ms. Waller did not possess the necessary training, skills, and education to conduct latent print examinations, her initial analysis and conclusions of the latent prints in this case were unreliable. Ms. Gharati and Dr. Langenburg did not conduct an independent, blind analysis of the same prints. Instead, they knew the conclusion and opinion held by Ms. Waller prior to their examinations. Therefore, the unreliable initial identification made by Ms. Waller also renders Ms. Gharati and Dr. Langenburg's examinations unreliable.

B. Ms. Gharati and Dr. Langenburg did not conduct an independent or blind analysis

In November 2017, Examiner Gharati was asked to conduct a "review/verification" of the latent prints involved in this case under the most recent policies and procedures requiring that verifying examinations be conducted in a manner in which the verifying examiner does not know the opinions of the original examiner. (Exhibits 1 and 2). However, despite these required protocols, Ms. Gharati knew at the time of her examination of the prints that Ms. Waller and a second verifying examiner, Ms. Angela Berry, had previously identified a latent palm print to Timothy Moore. There are methods available, however, to conduct a de novo, blind ACE-V examination. For example, the original print cards without any markings could have been scanned into a high-resolution imaging software/computer and printed on high-quality color paper for later examinations. The examiner could then conduct a blind examination of the prints without knowing the conclusions of the prior examiners. However, no such safeguards were

taken in this case. Instead, Ms. Gharati simply conducted her examination from the same prints that had the markings of the prior identification. Similarly, Dr. Langenburg was also aware of the prior identifications made by the other examiners because he was given copies of the prints that contained markings of the prior identifications.

It is particularly important that a verification be conducted in a blind fashion for a subjective and experience-based analysis, like fingerprint comparison, so that the verifying review is truly independent and not simply a rote confirmation of the work that was already done. A body of studies have shown that there are real risks of error in forensic techniques, including in fingerprint comparisons, when examiners are given contextual information, including about previous judgments by other experts. Itiel E. Dror, David Charlton, Alisa E. Peron, *Contextual Information Renders Experts Vulnerable to Making Erroneous Identifications*, 74 *Forensic Sci. Int'* 1156 (2006).

Furthermore, Ms. Gharati and Dr. Langenburg did not conduct a wholly independent analysis. This is evidenced by the fact that neither conducted a new search of the prints in Envelope 2 (prints recovered from the outside of the decedent's vehicle) in the fingerprint databases AFIS (Automated Fingerprint Identification Software) or SAFIS (State Automated Fingerprint Identification Software). When Ms. Waller examined the prints in 2013, she uploaded all of the prints into SAFIS. From there, she received a "match report," indicating that the left palm print of Timothy Leon Moore was a potential candidate for the latent print located on Envelope 2, Card 2A. Next, Ms. Waller compared and evaluated the two prints and concluded that the print on Card 2A belonged to the left palm of Timothy Moore. Rather than starting the examination anew and submitting all of the prints to the AFIS/SAFIS database, Ms. Gharati instead relied on the search that Ms. Waller had conducted of the prints from Envelope 2

in the fingerprint database and conducted the examination from those prints. Had Ms. Gharati independently ran the prints through the software in 2017, it is possible that there could have been other “matches” for Ms. Gharati to examine against the unknown latent print, instead of simply relying on Ms. Waller’s determination that Timothy Moore’s print was the best print to compare to the unknown latent print.

Similarly, Dr. Langenburg did not start fresh and run the latent prints through any databases to see if there were other potential candidates to compare the latent prints to. Instead, he was simply given the known records prints of seven people (Rakeem Montel Best, Thomas Antown Clayton, Hope Jacquese Farley, Daron Kadeem Jones, Maria Martinez, Timothy Leon Moore (aka “Marc Thompson”) and Tejuan Jontiel Taylor, Jr.). Had Dr. Langenburg independently ran the prints through the software in 2018, it is possible that there could have been other potential candidates for Dr. Langenburg to examine against the unknown latent print, instead of simply relying on Ms. Waller’s determination that Timothy Moore’s print was the best print to compare to the unknown latent print. Furthermore, Dr. Langenburg conducted a partial examination in this case, evidenced by the fact that he only examined latent prints from Envelope 2 and did not examine latent prints from Envelopes 1 or 3. Instead, he suggested only examining the prints “critical to the defendant” (Exhibit 3). As such, it is evident that Dr. Langenburg knew that the prints submitted to him were “critical to the defendant,” was aware that the print in question had already been identified as belonging to the defendant, and was biased as such.

C. Ms. Gharati failed to document her work

In his testimony, Dr. Langenburg opined that fingerprint examination and methodology is “reliable, with a caveat.” (Tp. 95, line 17). He explained the caveat as an assurance that the examination is “performed by a competent and trained expert. They need to be following

standards, and that they need to be **documenting the process in a transparent way.**” (Tp. 95, lines 19-22) (emphasis added). The PCAST found that “examiners must complete and document their analysis of a latent fingerprint *before* looking at any known fingerprint, and should separately document any additional data used during comparison and evaluation.” PCAST at 135.

Ms. Gharati failed to document her examination of the latent prints in this case in a transparent way. While her 97 page report dated December 19, 2017 states her conclusions, the facts and data that objectively support her conclusion are absent. During examinations, examiners analyze and compare the points of minutiae (the individual characteristics of the friction ridge skin) between the known print and the latent print. However, Ms. Gharati did not include documentation of the points of minutiae she found consistent between Mr. Moore’s known print and Envelope 2, Card 2A in her 97 page December 19, 2017 report. Instead, documentation of the points of minutiae was provided in discovery on August 29, 2018, in an undated 7 page PDF, suggesting that this documentation was not completed at the time of her examination in December of 2017, but was instead created more recently and after she had already completed her examination and created a report. In essence, it appears that Ms. Gharati “went back” and “showed her work”, rather than simultaneously documenting her work as she was conducting the examination. This is wholly inconsistent with requirements in North Carolina regarding expert testimony of fingerprint examinations that the examiner is able to testify as to the detail used at arriving to the conclusions in the case in question. *McPhaul*, 808 S.E.2d at 305. “[W]hen a trial court concludes that there is simply too great an analytical gap between the data and the opinion proffered, the court is not required to admit opinion evidence that is connected to existing data only by the *ipse dixit* of the expert.” *Id.* at 303-04 (internal citations omitted).

D. Conclusion

In conclusion, Ms. Gharati and Dr. Langenburg's testimonies should be excluded from Mr. Moore's trial as such testimony does not meet the requirements of Rule 702(a)(3), that the examiner applied the principles and methods reliably to the facts of the case.

3. **If not excluded entirely by this court, the expert latent print testimony must be limited.**

A. Language used by the examiner

Even if a method is foundationally valid, any expert testimony based on that method must also be foundationally valid. PCAST Report at 54. In particular, “[s]tatements claiming or implying greater certainty than demonstrated by empirical evidence are scientifically invalid.” PCAST Report at 54 (emphasis in original). Here, any statement by an expert on the stand that Mr. Moore's known print “matches” the latent print, or is the source of the latent print, is in essence a statement of absolute source attribution. *See, e.g.*, NAS Report (2009) at 141-42 (“[W]hen a latent print examiner testifies that two impressions ‘match,’ they are communicating the notion that the prints could not possibly have come from two different individuals.”). As detailed above, however, a statement that two prints could not possibly have come from two different individuals is a statement implying certainty that simply has no empirical foundation, even if one assumes that ACE-V is a generally reliable process. The stakes in allowing a latent print expert to testify to an alleged fingerprint “match” are high. Perhaps because juries view forensic testimony with unflinching trust, the use of misleading or embellished forensic expert testimony is one of the leading causes of wrongful convictions. Brandon L. Garrett, *Judging Innocence*, 108 Colum. L. Rev. 55, 83-84 (2008).

Finally, examiners should never be allowed to testify to “scientifically indefensible claims such as: ‘zero,’ ‘vanishingly small,’ ‘essentially zero,’ ‘negligible,’ ‘minimal,’ or ‘microscopic’ error rates; ‘100 percent certainty’ or proof ‘to a reasonable degree of scientific certainty;’ identification ‘to the exclusion of all other sources;’ or a chance of error so remote as to be a ‘practical impossibility.’” PCAST Report at 19. Such statements “are not scientifically valid.” *Id.* See also NAS Report (2009) at 142-43 (“claims that... [fingerprint] analyses have zero error rates are not scientifically plausible.”); National Commission on Forensic Science, *Recommendations to the Attorney General Regarding Use of the Term “Reasonable Degree of Scientific Certainty”* (Approved March 22, 2016).

<https://www.justice.gov/ncfs/file/839731/download>.

During testimony, Dr. Langenburg agreed that examiners should clearly state the limitations of their conclusions. (Tp. 120). As such, latent fingerprint examiners should at most state that they observe similarity between a latent print and a known print, and that a donor cannot be excluded as the source. Am. Ass’n for the Advancement of Sci., *Forensic Science Assessments: A Quality and Gap Analysis; Latent Fingerprint Examination* (2017) (“AAAS Report”) at 11.

B. Qualify opinion by acknowledging the level of certainty in any conclusion

If Ms. Gharati and Dr. Langenburg are allowed to testify at all, even without a statement about a “match,” their opinions about the similarities between the latent print and Mr. Moore’s known prints will be an implicit signal to the jury that these similarities must have some probative value in the case (otherwise, the judge would have presumably excluded the testimony as irrelevant). The unadorned opinion of the expert about similarities in the pair of prints, without any information about the high error rate, will leave the jury to determine for itself the

probative value of such similarities. Given lay jurors' grossly inaccurate assumptions about the false positive rate of fingerprint examiners, *see* PCAST Report at 95 n. 282 (citing a study showing that mock jurors believed the false positive rate was 1 in 5.5 million), allowing the expert testimony without an explicit qualification of the level of uncertainty would be both contrary to the requirement of foundational validity and unduly prejudicial. *See also* PCAST Report at 56 (requiring, to establish validity "as applied," that the expert report the false positive rate when testifying). In applying the Daubert standard, the court in *McGrady* ruled that North Carolina courts must now give greater weight to the dangers of unfair prejudice and misleading the jury. Specifically,

The 2011 amendment to Rule 702(a) did not change the basic structure of the inquiry under that rule. But the amendment did change the level of rigor that our courts must use to scrutinize expert testimony before admitting it. *Cf. id.* at 464, 597 S.E.2d at 690 (noting that the then-existing North Carolina approach was "decidedly less ... rigorous" than the Daubert approach). A rule governing the admission of **expert testimony** necessarily strikes a balance between competing concerns since the testimony "**can be both powerful and quite misleading" to a jury "because of the difficulty in evaluating it."** *Daubert*, 509 U.S. at 595, 113 S.Ct. 2786 (quoting Jack B. Weinstein, Rule 702 of the Federal Rules of Evidence is Sound; It Should Not Be Amended, 138 F.R.D. 631, 632 (1991)). The interpretation we gave to Rule 702(a) in *Howerton* **struck one such balance; the Daubert standard, now incorporated into North Carolina law, strikes another.**

McGrady, 368 N.C. at 892 (emphasis added).

Therefore, if their testimony is permitted, Ms. Gharati and Dr. Langenburg must be required to inform jurors and qualify their opinion that "(1) only two properly designed studies of the accuracy of latent fingerprint analysis have been conducted and (2) these studies found false positive rates that could be as high as 1 in 306 in one study and 1 in 18 in the other study." This would appropriately inform jurors that errors occur at detectable frequencies, allowing them to weigh the probative value of the evidence. PCAST Report at 96.

C. Omit reference to Automated Fingerprint Identification System (AFIS) and/or State

Automated Fingerprint Identification System (SAFIS).

AFIS and SAFIS are databases containing large numbers of known prints from various sources, most namely when a person is arrested and then fingerprinted. The system uses image-recognition algorithms to generate a list of potential candidates that share similar fingerprint features. Then, the examiner manually compares the latent print to the fingerprints from the closest candidate matches generated by the computer by studying selected features and then comes to a subjective decision as to whether they are similar enough to declare a proposed identification.” PCAST report at 89.

Mention of using this system to help identify the latent print should be excluded under N.C. R. Evid. 403 for two reasons. First, its mention would signal to the jury that Mr. Moore’s fingerprints were “in the system” because he had prior arrests. Second, and perhaps more dangerously, mention of the program may improperly convey to the jury that the computer, and not the examiner, identified Mr. Moore’s palm print as belonging to the latent print. The prejudicial effect of this testimony outweighs any probative value. As Dr. Langenburg testified to during the March 5 hearing, agreed upon language by prosecutors and defense attorneys in his experience is that the prints were “compared against fingerprint records that are stored as a matter of course of business in your agency.” (Tp. 131).

D. Omit reference to the “verification” process absent testimony of the verification examiner

Ms. Gharati and Dr. Langenburg must be excluded from providing any testimony that another examiner verified the latent print as belonging to Mr. Moore during the verification process. Allowing such testimony would violate Mr. Moore’s rights confrontation rights under the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and and *Crawford v. Washington*, 541 U.S. 36, 37, 124 S. Ct. 1354, 1356, 158 L. Ed. 2d 177 (2004).

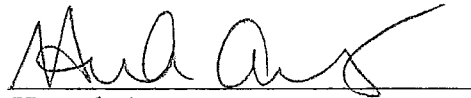
E. Limit testimony to opinions stated in the report

Pursuant to N.C. Gen. Stat § 15A-902(a), Ms. Gharati and Dr. Langenburg's testimonies must be limited to those opinions provided in discovery to Mr. Moore.

CONCLUSION

For the reasons stated above, this Court should exclude the State's proffered latent print expert testimony or, in the alternative, limit and qualify it in the manner discussed above.

Respectfully submitted, this the 29 day of August, 2018.



Hannah Autry
Staff Attorney
Center for Death Penalty Litigation
123 W. Main St., Suite 700
Durham, NC 27701
(919) 956-9545, ext. 126
Counsel for Defendant

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that the undersigned attorney served a copy of the foregoing Motion on the State of North Carolina by hand delivery:

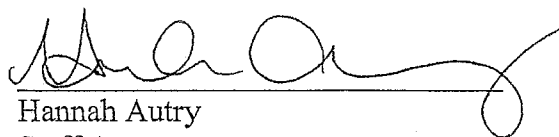
Assistant District Attorney James P. Dornfried
Durham County District Attorney's Office
501 South Dillard St., 8th Floor
Durham, NC 27701

By first-class mail to:

Attorneys Butch Williams and Jonathan Trapp
Attorneys for Defendant Rakeem Best
3200 Croasdaile Drive, Suite 604
Durham, NC 27705
Courtesy copy via email to jonathanwtrapp@gmail.com

Attorney Jonathan Wilson II
Attorney for Defendant Rakeem Best
P.O. Box 14841
Durham, NC 27709
Courtesy copy via email to wilson@jwilsonpllc.com

This, the 29 day of August, 2018.



Hannah Autry
Staff Attorney
Center for Death Penalty Litigation
123 W. Main Street, Suite 700
Durham, NC 27701
(919) 956-9545, ext. 126

EXHIBIT 1

Communications With Adria Gharati (potential expert witness-fingerprint analysis)

On Nov 29, 2017 Adria Gharati (hereinafter referred to as AG) called Assistant District Attorney James Dornfried (hereinafter JD) on his cellphone. JD was on another call at the time of AG's call and missed said call. JD called AG back upon completion of said call. AG indicated that she had a question but that she had received an answer from another source. JD asked for verification of the present policies and procedures related to fingerprint analysis. Specifically, JD asked if the present policy required a review/verification of all potential latent lifts as opposed to only those for which a match was made by the initial fingerprint analyst. AG answered in the affirmative. JD asked also asked if the prior policies and procedures only required a review/verification of those potential latent lifts for which a match was made by the initial fingerprint analyst. AG answered in the affirmation. JD indicated that he had an older case where an review/verification occurred under the previous policy/procedures and inquired as to whether a review/verification could be conducted on said case in which the review/verification adhered to the present policies/procedures. AG answered yes. JD asked if this could be done prior to the holidays at the end of the year. AG indicated that the size of the case file would effect how long it would take to complete a review/verification. JD indicated that he had a homicide coming up in February. AG indicated that she was aware of the case JD was talking about because she assisted the defense in making copies of items in the forensic file. AG also indicated that if this was the same case that she thought she could get it done by the end of the year. JD indicated that he would send a request to the forensic unit setting forth a request for an analysis to be performed.

On Dec 7 2017 JD was at the forensic unit meeting with Rebecca Waller. (A memo has been prepared detailing the interaction with Waller) JD saw AG while he was at the forensic unit. JD asked if the worked requested had been completed. AG indicated that she had not received a request to perform an examination. JD attempted to resend the request, however, there was no wireless internet connection. The request was resubmitted within 24 hours. AG asked if there would be a Daubert issue in this case and JD answered in the affirmative. AG suggested that JD consider contacting the FBI regarding potential reference material that may assist in the Daubert challenge.



AG called JD in mid-December and made an inquiry as to the scope of the review/verification. Specifically, AG inquired whether the review/verification examination that was requested included the latent lifts recovered through the investigation AND the analysis/comparison of the 10 print cards concerning Marc Thompson and Timothy Moore. JD indicated that she should do what she normally does, and asked what would normally be done. AG indicated that a request for review/verification would address all the prints in the forensic file which would include not only the latent lifts but also the comparison of the 10 print cards because they are part of the forensic file.

At the latter part of December, AG called JD. AG wanted to know whether a particular examiner at the forensic unit should conduct the verification of AG's work. (JD was not at work at this time and did not make note of the identity of this potential verifying examiner) JD indicated that he would not become involved in that decision. AG indicated that the reason for her inquiry was because this individual was scheduled for a medical procedure towards the end of January and will be out of work recuperating. This medical leave would make this person unavailable to testify while she was recuperating, and AG didn't know if JD intended to call this person as a witness. JD indicated that although the trial was set to begin the week Feb 12, JD thought that between jury selection, opening statements, and the testimony of other witnesses JD intended to call prior to call a fingerprint expert, JD did not think that a fingerprint

expert would be called at trial prior to the end of February and most likely would be called to testify in March. AG indicated that based on that time frame, the medical leave would not be an issue.

On January 30, 2018 AG contacted JD. A copy of the defendant's motion to exclude fingerprint evidence had previously been sent to the forensic unit for their review. AG inquired as to the date when said motion would be heard. JD indicated he did not have a firm date. AG indicated that she would like to meet and discuss the motion prior to the hearing. JD agreed. AG inquired about whether JD would be seeking testimony from an expert within the Durham forensic unit, or an expert unaffiliated with said forensic unit, or multiple experts. JD indicated that a decision in that regards had not been made

EXHIBIT 2

	Durham Police Department Forensic Services Division Request for Forensic Services			
	Document ID: FSD-9	Issuing Authority: FSD Manager	Version: 120115	

IR #: 13-011486	Incident Type: Homicide	Date of request: 11/29/17
Requestor name: James Dornfried	Officer <input type="checkbox"/> ADA <input checked="" type="checkbox"/>	Contact phone #: 9198083302

- Latent Print Processing
 Latent Print Comparison
 Firearms Examination
 Video Retrieval/Analysis
 Digital Forensics Exam (*cell phone, computer, etc.*)
 Copy of Latent Print Cards (*DA use only*)
 Crime Scene Photo/Video CD
 Other (*Please describe below*)

Subject Name	DOB:	SID # (required for comparison)

Items to be examined	
Item #:	Description:
All latent lifts	Test
***	Verification of latent analysis. Analysis previously completed and verified. Policy/procedures as to verification have been modified under current policy/procedure. It is requesting ADA's understanding that the prior policy/guidelines related to verification only addressed identified prints; however, the current policy/procedure requires that a verification involve the analysis of all latent lifts.

Special Instructions/requests:

Click HERE Submit to Forensics

FSD use only		
Date Received: 11/29/17	Assigned to: A. Charahi #22124	Date: 12/17/17
Notes/comments:		

Any request for scientific examination submitted to the Forensic Services Division will be analyzed employing standard testing methods as specified within the individual discipline protocols.

EXHIBIT 3

Hall, Emily F.

From: Dornfried, James P.
Sent: Monday, July 23, 2018 5:49 PM
To: Hall, Emily F.
Subject: FW: Latent comparison - Durham NC
Attachments: EFS Fee Schedule_201800720.pdf

From: glenn@eliteforensicservices.com [mailto:glenn@eliteforensicservices.com]
Sent: Friday, July 20, 2018 2:24 PM
To: Dornfried, James P. <James.P.Dornfried@nccourts.org>
Subject: RE: Latent comparison - Durham NC

Yeah, I don't think I did ever send a fee schedule before since it was just a "per day" approach for the testimony. You may want to decide if I am going to work just specific latent prints in this case (limiting my role to key latent print conclusion relevant to the defendant) or doing more/all the comparison work again. Adria seemed to indicate this case had a lot of suspects and a fair number of latents. I just estimated it for 1-3 latents, but from experience if it has upwards of 20 latent prints and 5+ suspects it can take closer to 30 hours.

For a big homicide case in Florida I recently worked, that was the approach: just focus on these 5 that were critical to the defendant and let the local examiner handle questions on the remaining latents/comparisons/process/AFIS/developing lifting etc. I just came into to present ACE-V on the critical latents.

Anyway, here is my generic fee schedule. As it says, I can work with fee caps and can find a way to work out a budget, hours, etc. based on the needs of the client.

Have a good weekend! (PS-you looked good on the Staircase documentary! Good cross-examination!)

g.

Glenn Langenburg, Ph.D.
 Elite Forensic Services, LLC
 Saint Paul, Minnesota, USA

----- Original Message -----

Subject: RE: Latent comparison - Durham NC
From: "Dornfried, James P." <James.P.Dornfried@nccourts.org>
Date: Fri, July 20, 2018 9:42 am
To: Glenn Langenburg <glenn@eliteforensicservices.com>

Glenn,
 Could you send me you rate schedule. I can't locate the last one received and I want to secure a court order for your fees in advance.
 Thanks
 Jim

From: Glenn Langenburg [mailto:glenn@eliteforensicservices.com]
Sent: Wednesday, July 18, 2018 8:22 PM