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NO. 69003-5-1

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

M.P.,

Appellant.

REC'D

MAY 28 2013

King County Prosecutor
Appellate Unit

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR KING COUNTY, JUVENILE
DIVISION

The Honorable J. Wesley Saint Clair, Judge

BRIEF OF APPELLANT

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A. ASSIGNMENTS OF ERROR

1. The trial court erred in denying a defense motion for a pretrial hearing to determine the admissibility of the State's latent fingerprint evidence under Frye.¹

2. Because there is not general acceptance of the underlying theory and technique used in latent print examinations, the trial court erred when it permitted the State's print examiners to testify that M.P. was the source of latent prints found at the crime scenes.

3. The print examiners' testimony also violated ER 702.

Issues Pertaining to Assignments of Error

1. Prior to trial, the State indicated its intent to offer expert evidence that M.P. left latent prints found at the scenes of two Residential Burglaries. Based on recent developments – including a report by the National Academy of Sciences, a highly publicized misidentification by the FBI in an international terrorism case, and the work of well-respected research scientists – there is now a significant dispute among qualified experts regarding the scientific validity and reliability of latent print analysis in its current form. Did the trial court err when it refused to hold a Frye hearing?

¹ Frye v. United States, 293 F. 1013, 34 A.L.R. 145 (1923).

2. Given the significant debate on this subject, did the trial court err under Frye when it permitted the State to introduce the fingerprint test results?

3. Testimony indicating the latent prints matched appellant's known prints is neither generally accepted under Frye nor helpful under ER 702 without supporting statistics indicating the frequency with which one would expect to find such a match. Even assuming some aspects of latent fingerprint analysis are generally accepted, did the trial court err when it permitted testimony without those statistics or any other language revealing current limitations in the science?

B. STATEMENT OF THE CASE

The King County Prosecutor's Office charged M.P. with Residential Burglary in two cases. In case 12-8-00038-9, M.P. was accused of unlawfully entering Jennifer Pritchard's home on October 20, 2011. CP 19-20. In case 12-8-00040-1, M.P. was accused of unlawfully entering David Brunelle's home on October 24, 2011. CP 1-2. In each case, latent fingerprints found at the scene were the only evidence linking M.P. to the crime. CP 2, 20.

M.P. moved for a Frye hearing and to exclude the State's fingerprint identification evidence because there is not general

agreement within the relevant scientific community that latent fingerprint analysis accurately or reliably identifies the source of a particular print. CP 98-251. The defense also moved to exclude the evidence under ER 702 and 703. CP 43.

The State opposed the motions, arguing there was no need for a Frye hearing because the defense had failed to present any evidence seriously questioning the general acceptance of fingerprint identification methods. CP 291-313. After argument, and based on the parties' written submissions, the Honorable J. Wesley Saint Clair denied the request for a Frye hearing and rejected the defense arguments under ER 702 and 703. 1RP² 4-25, 51-53; CP 34-37.

At trial, Jennifer Pritchard testified that she left home for a couple hours on the afternoon of October 20, 2011. When she returned, she discovered a dining room window was open and someone had gone through personal items inside her home and stolen her jewelry. 2RP 7-14. A responding officer located and lifted a partial latent print on the window. 3RP 205-207. Seattle Police Department Latent Print Examiner Kelli Anderson testified

² This brief refers to the verbatim report of proceedings as follows: 1RP – May 21 and June 4, 2012; 2RP – June 5, 2012; 3RP – June 11, 2012; 4RP – June 12 and June 28, 2012.

that, after comparing the partial latent print to a set of known prints from M.P., the latent print “was positive to the known print” of M.P.’s left thumb. 3RP 131.

David Brunelle testified that he arrived home around 9:20 p.m. the evening of October 24, 2011, and discovered that someone had entered and ransacked his home. A window on the back of the home had been broken, and a number of items, including electronics and jewelry, had been taken. 1RP 116-121. A responding officer located and lifted partial latent prints on pieces of the broken window. 3RP 27-37, 47-52. Seattle Police Department Latent Print Examiner Betty Newlin testified that, after comparing the partial latent prints to a set of known prints from M.P., she “identified” one latent print “to the right index finger” of M.P. 3RP 230. She “identified” a second latent print “to the left thumb.” 3RP 231.

Judge Saint Clair found M.P. guilty and imposed 30 days’ detention in each case (with electronic home monitoring after 7 days). CP 9-10, 63-64, 67-69, 283-285. M.P. timely filed his Notices of Appeal. CP 15-18, 286-289.

C. ARGUMENT

THE TRIAL COURT ERRED WHEN IT ADMITTED FINGERPRINT IDENTIFICATION EVIDENCE WITHOUT A SUFFICIENT SHOWING UNDER FRYE AND ER 702.

Washington has adopted the Frye standard for the admissibility of novel scientific evidence. Frye, 293 F. at 1014; State v. Copeland, 130 Wn.2d 244, 261, 922 P.2d 1304 (1996). Under that standard, scientific evidence is admissible only if it has achieved general acceptance within the relevant scientific community. Frye, 293 F. at 1014. The proposed evidence must be “based on established scientific methodology.” State v. Cauthron, 120 Wn.2d 879, 889, 846 P.2d 502 (1993). “If there is a significant dispute between qualified experts as to the validity of scientific evidence, it may not be admitted.” Id. at 887. Where general acceptance is reasonably disputed, the proponent of the evidence must establish acceptance by a preponderance of the evidence. State v. Kunze, 97 Wn. App. 832, 853, 988 P.2d 977 (1999), review denied, 140 Wn.2d 1022, 10 P.3d 404 (2000).

The Frye inquiry involves two questions: (1) whether the underlying theory is generally accepted in the appropriate scientific community and (2) whether the technique used to implement that theory is also generally accepted. Cauthron, 120 Wn.2d at 889.

The underlying theory relevant to this case is that all latent fingerprint impressions are unique to the person who left them and can be matched – and only matched – to that person. The technique used to implement that theory is the ACE-V method of fingerprint identification. For the reasons discussed below, there is significant disagreement on both theory and technique.

1. Background

Fingerprint identification evidence has been used in American courts for more than a century. The first appellate decision discussing the admission of such evidence appears to be People v. Jennings, 252 Ill. 534, 96 N.E. 1077 (1911). Noting that fingerprint identification dated back to ancient Egypt, and citing then existing “standard authorities on scientific subjects,” the Jennings court upheld the admission of fingerprint identification evidence because “experience has shown it to be reliable.” Jennings, 96 N.E. at 1081. In fact, there was little scientific proof establishing reliability. See Jennifer L. Mnookin, Fingerprint Evidence In An Age of DNA Profiling, 67 Brooklyn L. Rev. 13 (2001) (tracing the rapid and unscrutinized acceptance of fingerprint evidence). Nonetheless, by 1938, the Washington Supreme Court declared that “[i]dentification of individuals by

means of comparison of fingerprints is generally accepted in this and other states.” State v. Johnson, 194 Wash. 438, 442, 78 P.2d 561 (1938).

First described in 1959, print examiners currently use the ACE-V method of fingerprint comparison. CP 141; Huber, R.A. Expert Witness, Criminal Law Quarterly (1959-1960) 2:276-296. ACE-V involves four steps: Analysis, Comparison, Evaluation, and Verification. CP 141-142.

During the analysis stage, the examiner “determines whether the latent print contains enough quality and quantity of information to compare to exemplar prints without serious risk of error.” CP 141. The examiner also notes ridges and other features that might be used for the comparison stage. CP 142.

During the comparison stage, the examiner looks at the first several ridges and features in the latent to determine if they are also present in the same locations on the exemplar print. If their presence is confirmed, the examiner makes additional comparisons at other locations on the prints. If there is no corresponding match, the individual who made the exemplar print is excluded. If, however, the examiner concludes that differences in the prints are

attributable merely to "distortion," the examiner proceeds to evaluation. CP 142.

During the evaluation stage, the examiner assesses the amount of similarity between the two impressions and determines whether it is sufficient to make an identification. If insufficient, the examiner enters a conclusion of "insufficient" or "inconclusive." CP 142.

The verification stage is done in one of two ways. Typically, it is non-blind, and another examiner simply ratifies the work and known conclusion of the first examiner. When done blindly, the second examiner repeats the entire ACE process without knowledge it has been done before or the result. CP 142.

Despite largely unchallenged acceptance, fingerprint comparisons generally and ACE-V specifically finally clashed with 21st century scientific standards in light of two events in particular: (1) the FBI's highly publicized misidentification in the Brandon Mayfield case and (2) a 2009 report from the National Academy of Sciences.

2. The Mayfield Misidentification

Following the March 2004 terrorist bombing of trains in Madrid, Spain, the Spanish National Police (SNP) sought the FBI's

assistance in identifying a latent fingerprint found on a plastic bag containing detonators. A Review of the FBI's Handling of the Brandon Mayfield Case, U.S. Department of Justice, Office of the Inspector General, at 1 (March 2006) (hereinafter "OIG Report")³. Using its Integrated Automated Fingerprint Identification System (IAFIS), the FBI generated a list of possible candidates that included Brandon Mayfield, an Oregon attorney. OIG Report, at 1.

Following a detailed side-by-side comparison of Mayfield's known prints and the latent print found on the bag, an FBI expert fingerprint examiner concluded that Mayfield was the source of the latent print. OIG Report, at 1. This conclusion was verified twice – first by another FBI examiner and then by the FBI's Unit Chief. OIG Report, at 2. When the SNP looked at Mayfield's prints, it concluded he was not a match. The FBI defended its identifications, however, and the SNP indicated it would reexamine Mayfield's prints. OIG Report, at 2. Mayfield was arrested. Thereafter, a United States District Court Judge appointed an independent expert to review the FBI's fingerprint identifications.

³ The complete report can be found at <http://www.justice.gov/oig/special/s0601/final.pdf>.

That expert concurred with the three FBI experts – the latent print belonged to Brandon Mayfield. OIG Report, at 3.

All four United States examiners were wrong. The same day the independent expert submitted his report, the SNP concluded that the latent print belonged to an Algerian national named Ouhnane Daoud. After reviewing Daoud's prints, the FBI withdrew its identifications of Mayfield. OIG Report, at 3. This was an epic and highly embarrassing blunder, publicly revealing deficiencies in latent print science, and triggering the Department of Justice investigation that produced the OIG Report.

Ultimately, the OIG concluded the misidentification of Mayfield was the result of several factors: (1) many similarities between the latent print and Mayfield's known fingerprint, (2) examiner bias (having found several similar features, examiners began to see other similarities that simply were not there); (3) faulty reliance on extremely tiny details (examiners confused distortions in the latent print for corresponding features in Mayfield's print and ignored or discounted conflicting features); (4) inadequate explanations for differences (examiners' explanations for differences in the prints were either unjustified or, while individually plausible, cumulatively required too many rationalizations to

support an identification); (5) examiners failed to consider the “limited clarity” of the latent print, which undermined the quality of any called similarity at a particular point; and (6) overconfidence in results, which prevented the FBI from exploring whether it had erred after the SNP questioned its conclusions. OIG Report, at 6-10.

The OIG also identified other factors that may have contributed to the misidentification of Mayfield. The FBI does not require agreement at a predetermined minimum number of characteristics on the prints. Rather than employ a numerical standard, the FBI merely “emphasizes the expert examiner’s assessment of the quality of agreement as well as the quantity.” OIG Report, at 10. The OIG encouraged the FBI to research and develop more objective criteria for fingerprint identifications. OIG Report, at 10. Moreover, the examiners who verified the initial identification were already aware that an identification had been made, possibly tainting their own conclusions. The OIG believed procedures should be improved “to assure that verifications involve complete and independent examinations.” OIG Report, at 10-11. The OIG recommended that future verifications be conducted blindly (without prior knowledge of the result). OIG Report, at 14.

3. The NRC Report

A year after the Mayfield fiasco, Congress authorized the National Academy of Sciences to create a Forensic Science Committee tasked with studying various scientific disciplines. National Research Council Report, Strengthening Forensic Science in the United States: A Path Forward, at 1-2 (Feb. 2009) (hereinafter "NRC Report").⁴

In addition to examining what it labeled "analytical evidence" (i.e., DNA, chemicals, serology), the NRC examined "pattern/experience evidence," which includes firearms, bite marks, and fingerprint evidence. NRC Report, at 3. The Committee discovered problems relating to the interpretation of forensic evidence generally:

Often in criminal prosecutions . . . forensic evidence is offered to support conclusions about "individualization" (sometimes referred to as "matching" a specimen to a particular individual or other source) or about classification of the source of the specimen into one of several categories. With the exception of nuclear DNA analysis, however, no

⁴ The National Research Council ("NRC"), which serves as the working arm of the NAS, conducted the study. The complete report can be found at <http://www.nap.edu/catalog/12589.html>. Moreover, pertinent portions of the report can be found in this record at CP 623-719. The NRC and NAS should be familiar to this Court, since their reports in the 1990s guided this state's eventual acceptance under Frye of the admission of DNA typing and statistical evidence. See Copeland, 130 Wn.2d at 262-277.

forensic method has been rigorously shown to have the capacity to consistently, and with a high degree of certainty, demonstrate a connection between evidence and a specific individual or source. In terms of scientific basis, the analytically based disciplines generally hold a notable edge over disciplines based on expert interpretation. . . .

NRC Report, at 7.

The Committee also found that, while there is more research available for fingerprints than some other interpretive disciplines, “there is a notable dearth of peer-reviewed, published studies establishing the scientific bases and validity of many forensic methods,” specifically noting “the lack of scientific validation of fingerprint identification methods.” NRC Report, at 7-8 and n.7. The Committee also focused on the problem of observer variability and bias in “forensic disciplines that rely on subjective assessments of matching characteristics.” NRC Report, at 8. Once again citing fingerprint identifications, the Committee called on these disciplines to develop “rigorous protocols to guide these subjective interpretations and pursue equally rigorous research and evaluation programs.” NRC Report, at 8 and n.8.

DNA evidence in particular had provided the impetus for examining the other forensic sciences. DNA is precise, reliable, and accurate. The discovery of hundreds of wrongful convictions

using DNA simultaneously exposed reliance on faulty forensic sciences that may have contributed to the convictions. NRC Report, at 41-42. Indeed, the NRC found that some of these non-DNA forensic tests do not meet the fundamental requirements of science:

Even fingerprint analysis has been called into question. For nearly a century, fingerprint examiners have been comparing partial latent fingerprints found at crime scenes to inked fingerprints taken directly from suspects. Fingerprint identifications have been viewed as an exact means of associating a suspect with a crime scene print and rarely were questioned. Recently, however, the scientific foundation of the fingerprint field has been questioned, and the suggestion has been made that latent fingerprint identification may not be as reliable as previously assumed. The question is less a matter of whether each person's fingerprints are permanent and unique – uniqueness is commonly assumed – and more a matter of whether one can determine with adequate reliability that the finger that left an imperfect impression at a crime scene is the same finger that left an impression (with different imperfections) in a file of fingerprints. In October 2007, Baltimore County Circuit Judge Susan M. Souder refused to allow a fingerprint analyst to testify that a latent print was made by the defendant in a death penalty trial. In her ruling, Judge Souder found the traditional method of fingerprint analysis to be “a subjective, untested, unverifiable identification procedure that purports to be infallible.”⁵

NRC Report, at 43 (footnotes omitted).

The Committee also addressed the use of forensic evidence in courts of law:

Two very important questions should underlie the law's admission of and reliance upon forensic evidence in criminal trials: (1) the extent to which a particular forensic discipline is founded on a reliable scientific methodology that gives it the capacity to accurately analyze evidence and report findings and (2) the extent to which practitioners in a particular forensic discipline rely on human interpretation that could be tainted by error, the threat of bias, or the absence of sound operational procedures and robust performance standards. These questions are significant. Thus, it matters a great deal whether an expert is qualified to testify about forensic evidence and whether the evidence is sufficiently reliable to merit a fact finder's reliance on the truth that it purports to support. Unfortunately, these important questions do not always produce satisfactory answers in judicial decisions pertaining to the admissibility of forensic science evidence proffered in criminal trials.

NRC Report, at 641.

Expounding further on judicial acceptance of non-DNA forensic sciences, the NRC stated, "The bottom line is simple: In a number of forensic science disciplines, forensic science professionals have yet to establish either the validity of their approach or the accuracy of their conclusions, and courts have been utterly ineffective in addressing this problem." NRC Report,

⁵ The referenced case is State of Maryland v. Bryan Rose, Case No. K06-545 (Balt. County Cir. Ct. Oct. 19, 2007), a copy of which can be found in this record at CP 573-604.

at 53. And, regarding fingerprints specifically, the NRC noted that, “[o]ver the years, the courts have admitted fingerprint evidence, even though this evidence has ‘made its way into the courtroom without empirical validation of the underlying theory and/or its particular application.’” NRC Report, at 102 (quoting M.A. Berger, Procedural paradigms for applying the *Daubert* test, 78 Minn. L. Rev. 1345, 1354 (1994)). The NRC noted that some courts appear to assume, without justification, that fingerprint evidence is irrefutable and that the error rate for comparisons is “essentially zero.” NRC Report, at 102-104. The NRC cited the Brandon Mayfield and Bryan Rose cases in cautioning against such unverified assumptions. NRC Report, at 104-106.

In a section of the Report devoted exclusively to “friction ridge analysis,” the NRC discusses the ACE-V method in some detail, but defers to an article written by Drs. Lyn and Ralph Haber – the defense experts in M.P.’s case – for a “more complete description of the steps of ACE-V and an analysis of its limitations.” NRC Report, at 138-139. The NRC noted that, because ACE-V “does not specify particular measurements or a standard test protocol,” it is inherently subjective and the outcome is not necessarily repeatable from examiner to examiner. NRC Report, at

139. The NRC noted recent research revealing that “experienced examiners do not necessarily agree with even their own past conclusions when the examination is presented in a different context some time later.” NRC Report, at 139.

The NRC contrasted the subjectivity of the ACE-V method to DNA analysis, which permits precise and accurate statistical calculations based on predetermined and specified loci:

By contrast, before examining two fingerprints, one cannot say a priori which features should be compared. Features are selected during the comparison phase of ACE-V, when a fingerprint examiner identifies which features are common to the two impressions and are clear enough to be evaluated. Because a feature that was helpful during a previous comparison might not exist on these prints or might not have been captured in the latent impression, the process does not allow one to stipulate specific measurements in advance, as is done for a DNA analysis. Moreover, a small stretching of distance between two fingerprint features, or a twisting of angles, can result from either a difference between the fingers that left the prints or from distortions from the impression process. For these reasons, population statistics for fingerprints have not been developed, and friction ridge analysis relies on subjective judgments by the examiner. Little research has been directed toward developing population statistics, although more would be feasible.

NRC Report, at 139-140 (footnotes omitted).

Regarding the reporting of results, the NRC noted that examiners are actively discouraged from testifying in terms of the probability of a match. Examiners report an “individualization” or “identification” when they are confident two different sources could not have produced the latent and exemplar prints. NRC Report, at 141-142. The NRC noted the call for “a greater degree of epistemological humility” given “the general lack of validity testing for fingerprinting; the relative dearth of difficult proficiency tests; the lack of a statistically valid model of fingerprinting; and the lack of validated standards for declaring a match.” NRC Report, at 142 (quoting J.L. Mnookin, The validity of latent fingerprint identification: Confessions of a fingerprinting moderate. Law, Probability and Risk 7:127 (2008)).

In a section entitled “Summary Assessment,” the NRC recognized it is plausible that a comparison of two impressions can lead to an accurate assessment they came from a common source. NRC Report, at 142. But the NRC was critical of ACE-V:

ACE-V provides a broadly stated framework for conducting friction ridge analyses. However, this framework is not specific enough to qualify as a validated method for this type of analysis. ACE-V does not guard against bias; is too broad to ensure repeatability and transparency; and does not guarantee that two analysts following it will obtain the

same results. For these reasons, merely following the steps of ACE-V does not imply that one is proceeding in a scientific manner or producing reliable results. A recent paper by Haber and Haber presents a thorough analysis of the ACE-V method and its scientific validity. Their conclusion is unambiguous: "We have reviewed available scientific evidence of the validity of the ACE-V method and found none."

NRC Report, at 142-143 (footnotes omitted). The NRC recommended better documentation and research in a number of areas critical to the assumptions on which ACE-V relies. NRC Report, at 143-145.

4. Drs. Lyn and Ralph Haber

Drs. Lyn and Ralph Haber provided a 37-page affidavit in support of the defense motions. CP 137-173. The Drs. Haber are research scientists specializing in the evaluation of forensic identifications. CP 138. Both are trained in latent print examinations and have lectured, testified, and written extensively on the subject. CP 138-139, 177, 219, 247-250. Their 2009 book, entitled "Challenges to Fingerprints," discusses in detail the deficiencies in forensic fingerprint comparison and suggests specific remedial research experiments. CP 138. Both have testified before Congress and, as just discussed, both are

repeatedly cited in the NRC Report. CP 247; NRC Report, at 138-139, 142-143, 144.

The Habers distinguish between friction ridge *skin* on fingers – assumed to be unique to each individual – and the *patterns* left by friction ridge skin on fingers. These patterns are distorted by the pressures applied to a surface and the natural flexibility of skin, which change the widths of ridges and grooves and their relative distances from each other. CP 140-141. Fluid on the skin or surface on which the print is deposited, the presence of dirt, and the process used to lift a latent print also alter the patterns. CP 141. Thus, every friction ridge impression differs from every other friction ridge impression from the same source and differs from the friction ridge skin that made the impression. CP 141.

After describing the ACE-V method, the Habers discuss the concepts of validity and reliability, two scientific prerequisites. Validity refers to the accuracy of a latent print examiner's conclusion that a latent print and an exemplar print are from the same source. CP 142. In order to determine accuracy, one must know the true source of the latent print (referred to as "ground truth"). Validity cannot be demonstrated through normal casework because the true donor of the latent print is not known. Rather, we

only know the examiner's opinion about the source of that print.
CP 142.

Reliability refers to consistency of a method. "If highly trained and experienced examiners applied the ACE method to compare a large number of latent-exemplar pairs and they all reached the same conclusion about each pair, ACE would be shown to be a reliable method. Also, if the same examiners sometime later compared the same latent-exemplar pairs using the ACE method, and each examiner reached the same conclusion about each pair as she had previously, ACE would be shown to be reliable." CP 142-143.

Based on these principles, the Habers conclude "that comparison of friction ridge impressions does not meet tenants of science." CP 143. Their opinions, and the bases for them, are divided into seven sections, each summarized immediately below.

(i) Relevant scientific community

The relevant scientific community for assessing whether the ACE-V method is generally accepted includes both research scientists trained to evaluate the validity of the method and latent print examiners trained in the method. Each group brings different knowledge, training, and skills to the assessment. CP 144-145.

The Habers note that, while latent print examiners have often claimed in court and in print that the ACE-V method is accepted as valid, they have relied on non-scientific evidence to support this claim. For example, examiners have cited to the 100-year history of judicial acceptance. But blind acceptance does not establish validity. CP 145. Nor does the examiners' asserted confidence correlate to validity, and there is no support for examiners' claims that all mistakes are attributable to human error rather than methodology. CP 145-146. Verification also does not establish validity because, so long as that verification is non-blind (i.e., the verifier knows there has been an identification), there is significant risk of bias. CP 146. There have been greater than 30 cases in which two or more examiners testified to an identification later discovered to be erroneous. And, without "ground truth," it is impossible to know how many other cases also involve mistaken identifications. CP 146-147.

(ii) Assumptions untested

The Habers do not challenge the assumptions that friction ridge skin is unique and permanent. CP 147. But examiners compare friction ridge *impressions*, not actual skin, and the profession has failed to recognize this distinction. CP 147. None of the leading fingerprint texts address the assumptions underlying impression comparisons; i.e. that all print impressions on exemplars and all latent print impressions are unique to and matchable only to the true donor. CP 148. Nor have these assumptions been substantiated by experimental studies, a deficiency expressly noted in the NRC Report. CP 148-149.

In fact, the research evidence that does exist contradicts these assumptions. CP 149-150. For example, in exemplar to exemplar comparisons (made from the same finger) and using an automated search system, 25% of the time the system either failed to identify the correct individual as the most likely match (4%) or omitted that individual entirely from the list of top ten possible candidates (21%). CP 149. And in a comparison of latent to exemplar prints from the same finger, the latent was confusable with exemplars from different donor fingers 30% of the time. CP

149-150. The Mayfield case, and the 30 other documented erroneous identifications, confirms this happens. CP 150.

The Habers indicate that, at best, a conclusion of “identification” currently supports “only a probability statement that there is some chance the donor of the exemplar is also the donor of the latent print.” CP 149.

(iii) Without objective measurements and standards, ACE-V Is not A scientific method

The Habers note the absence of objective measurements or objective standards for the analysis, comparison, and evaluation stages of ACE-V. These are “intrinsic requirements for any scientific method.” CP 155. Instead, examiners employ a series of subjective measures for each stage. CP 151-153. Moreover, the verification step adds no measure of confidence because it is non-blind. CP 151.

So long as there is an absence of objective standards, the examiners’ subjective conclusions are not justified. CP 153-154. Another problem with their conclusions is the absence of standard language to describe them. Examiners previously were trained to testify to an “absolute” identification. Shortly after criticism in the NRC Report, however, they were told not to assert 100% infallibility

or any other probability, but were not provided alternative language. CP 154. The Habers indicate that an “identification” currently might mean “consistent with,” but even this definition fails to address how many other exemplars would also be consistent with a latent print. CP 155.

- (iv) Published experiments fail to demonstrate validity or reliability of ACE-V

Having already demonstrated that empirical evidence contradicts the uniqueness assumptions underlying ACE-V, the Habers also demonstrate that empirical research to date fails to demonstrate that ACE-V is valid or reliable. CP 155.

Most of the research on friction ridge analysis has not even sought to assess the validity of the ACE-V method. However, to the extent these studies reveal pertinent information, they show poor validity and poor reliability. CP 156-158. In addition, the studies have certain attributes that make inferences to actual casework improper. For example, examiners in the studies were specifically selected based on a particular skill level (often unusually high), studies used samples atypical of those in actual cases, all the studies involved an already identified suspect (for actual casework, this figure is estimated at 50%), all or a high

proportion of the latent prints had an available matching exemplar (in casework, 99% of latents are of no value or result in an exclusion), and the working environment was better than that found in labs (no penalty for mistakes and few or no interruptions or pressure). CP 158-159.

(v) Current proficiency tests not useful

For current proficiency tests, an examiner is asked to conclude whether a source for one or more known prints is also the source of an unknown latent print. Since ground truth is known (the actual identify of the latent print source), the examiner can be scored for accuracy. Unfortunately, however, the results of these tests do not permit generalization to casework, either. CP 159.

The Collaborative Testing Services, the largest U.S. provider of proficiency tests, explicitly denies its test results can be used to measure the profession's performance accuracy. CP 160. These tests suffer some of the same deficiencies as the study's just discussed – they do not mirror real world comparisons in several significant ways. CP 160. The test also does not differentiate between skilled and unskilled examiners. On average, examiners' scores far exceed 90% correct; with so little variation, the test is not informative regarding proficiency. CP 160. The test also uses

incorrect conclusion categories, the validity and reliability of the tests themselves have never been reported, and the scores are artificially inflated because some examiners worked together in groups to produce results. CP 161-162.

(vi) Poor bias protection and the absence of standardized quality control procedures

The Habers also address the role of bias in fingerprint analysis. “The fingerprint profession has failed to require the laboratory to maintain quality controls to prevent bias, controls that are an assumed standard in other governmental assessment programs such as drugs, environmental hazards, and transportation safety. The purpose of bias control is to prevent a decrease in examiner accuracy of perception, measurement and judgment.” CP 162.

The contribution of bias to erroneous conclusions is well documented, was mentioned as a possible contributing factor in the Brandon Mayfield case, and has been demonstrated in research on fingerprints. CP 162. Biasing information includes knowledge that another examiner has already made an identification for a print (non-blind verification). Studies reveal that biasing information leads examiners to change their previous conclusions and

increases the probability of an erroneous identification. CP 162-163. For ACE-V, examiners are exposed to bias at every stage of the process. CP 163-165.

The Habers also note the absence of mandatory quality controls, regulations, and standards for friction ridge analysis in crime labs and the absence of education, experience, and training standards for friction ridge examiners. CP 165-167.

(vii) Conclusions

In summary, the Habers conclude that friction ridge prints must be distinguished from friction ridge skin (currently, the profession does not); the uniqueness assumptions for friction ridge prints fail; the ACE-V method is neither valid nor reliable and currently lacks objective measurements and standards; there are no adequate proficiency tests; ACE-V is subject to bias, and the latent print profession suffers from an absence of adequate standards and quality controls; and whether a suspect will be identified under ACE-V depends on the happenstance of which examiner receives the case. CP 167-168.

5. Dr. Ralph Haber's Trial Testimony

Dr. Ralph Haber also testified at trial.⁶ 1RP 62. Dr. Haber discussed his educational and professional credentials, including his extensive work in fingerprint science. 1RP 62-70. His testimony largely mirrored the content of the affidavit he and his wife submitted prior to trial. He discussed the ACE-V method, noting in M.P.'s cases the absence of detailed information in the examiners' reports regarding the specific methods used [1RP 73-94]; discussed the inadequacy of current proficiency testing [1RP 94-97]; discussed how the available research shows that examiners are inconsistent in their results, an opinion "shared by all of the research scientists who have looked at these experiments" [1RP 98-104]; discussed the impact of bias, noting that the "verifications" in M.P.'s case were done by examiners who already knew the prior results [1RP 104-112]; and discussed the inadequacies of the most recent research studies [1RP 112-115].

⁶ Although this testimony followed Judge Saint Clair's Frye ruling, it is properly considered in evaluating general acceptance. See State v. Jones, 130 Wn.2d 302, 307, 922 P.2d 806 (1996) (for Frye inquiry, even materials outside record may be considered on appeal).

Dr. Haber also testified extensively about the Brandon Mayfield case, pointing out that four of the nation's most elite fingerprint examiners had incorrectly identified Mayfield using the ACE-V method. 1RP 122-127, 138. He described their mistake as typical. 1RP 123. A similar mistake was made in another high profile case in Scotland. 1RP 127-129. He again referenced the many known U.S. cases where an examiner had incorrectly declared a match, noting that in all but one of these cases a second examiner had verified the match and in some of the cases multiple examiners had verified it. 1RP 130. Expanding the pool of cases to the United States and England, there have been more than a 100 incidents where examiners made an incorrect identification. 1RP 130-131.

Dr. Haber also discussed the NAS/NRC Report, noting it had been prepared by the most prestigious scientists in the world. 1RP 133-134. Although the Report was released in 2009, virtually none of its recommendations have been implemented. 1RP 135-136. There still are no studies assessing the error rates associated with ACE-V. 1RP 139-141. Examiners were told to stop the practice of testifying to absolute certainty. RP 137-138. Examiners had also previously been told to stop using a numerical point system to chart

similarities between two prints, but they were given no other standard to measure their results, leaving it to the subjectivity of the particular examiner. 1RP 137, 143-144.

Dr. Haber criticized Judge Saint Clair for denying the defense Frye motion. He testified that there should be a hearing in which qualified experts can testify to why ACE-V is good or bad science, including an expert (beyond just the print examiners) who can defend the method using scientific criteria. 1RP 142. Dr. Haber warned that, without a court rejecting this evidence under Frye, there is no incentive for the profession to do the research necessary to develop valid methods. 1RP 158-159.

6. The State's Evidence In Opposition To A Frye Hearing

In attempting to avoid a Frye hearing, the State submitted affidavits from multiple latent print examiners. The affidavits are largely identical in content. Thus, a discussion of one summarizes the others.

The first is by Kelli Anderson, who analyzed the partial latent print in the Pritchard case. CP 334. Ms. Anderson has an Associate's Degree in Criminal Justice from the Texarkana Community College and works as an examiner for the Seattle

Police Department. CP 322. In her affidavit, Ms. Anderson describes the fundamentals of friction ridge analysis [CP 323-326], reviews the ACE-V methodology and its use in the Seattle Police Department Lab [CP 326-328, 333-334], and asserts that ACE-V is generally accepted [CP 327, 330-331, 333].

Regarding the NRC Report, Ms. Anderson cites a written statement from the Honorable Harry Edwards, Chair of the NRC Committee, indicating the Report was not intended to be a law reform proposal. CP 329. Ms. Anderson also criticizes the National Academy of Sciences because the NRC Report “failed to recognize the quality assurance measures that the proper application of ACE-V can provide.” CP 329.

Concerning error rates, Ms. Anderson asserts that she has personally researched many of the 30 documented cases of identification error and concludes most were due to “misinterpretation of data” and not a problem in methodology. CP 331. She indicates that several studies suggest the rate of error for fingerprint identifications is “exceptionally low.” CP 331. Ms. Anderson also distinguishes State of Maryland v. Bryan Rose, arguing the exclusion of fingerprint evidence in that case was only

warranted under the particular facts and it has no broader application. CP 332.

Similar affidavits were submitted by Connie Toda (who did the non-blind verification of Ms. Anderson's conclusions in the Pritchard case) [CP 340-351]; Amanda Poast (who examined the partial latent prints in the Brunelle case) [CP 376-386]; and Betty Newlin (who did the non-blind verification of Ms. Poast's conclusions in the Brunelle case) [CP 356-367].

The State also submitted an affidavit from Michelle Triplett, who had no direct involvement in M.P.'s case. While much of her affidavit simply parrots the language of the other affidavits, Ms. Triplett's professional background and experience exceed that of the other print examiners. She has served on the Scientific Working Group for Friction Ridge Analysis, Study, and Technology (SWGFAST), which sets the standards for friction ridge comparisons, and chaired the International Association of Identification's (IAI's) Probability Model Research Committee, tasked with reviewing the validation of potential fingerprint statistical models. She has published a book for print examiners and frequently presents on the ACE-V method. CP 396-397.

Among other documents, the State also submitted rulings denying Frye motions in four prior King County cases [CP 468-491], two studies published in 2006 addressing error rates for examiners [CP 605-610], and the statement of the Honorable Harry Edwards [CP 611-621].

7. Judge Saint Clair Erred In Denying a Frye Hearing and Admitting The State's Fingerprint Evidence

Even where the Washington Supreme Court has previously determined a scientific theory or principle has achieved general acceptance, "trial courts must still undertake the Frye analysis if one party produces new evidence which seriously questions the continued general acceptance or lack of acceptance as to that theory within the relevant scientific community." Cauthron, 120 Wn.2d at 888 n.3. As previously noted, based on little scientific proof, the Washington Supreme Court declared fingerprint analysis generally accepted in 1938. See Johnson, 194 Wash. at 442; Jennifer L. Mnookin, Fingerprint Evidence In An Age of DNA Profiling, 67 Brooklyn L. Rev. 13 (2001). Examined under 21st Century scientific principles and practices, new evidence seriously questions that decision.

The analysis in Judge Saint Clair's ruling denying the Frye hearing is extremely thin. In finding ACE-V generally accepted, he cites an unpublished order from a district court judge in Southern California. CP 35 (citing U.S. v. Love, 2011 WL 2173644 (S.D. Cal. 2011)). Incredibly, he finds the NRC Report has not discredited ACE-V. CP 35. And he adopts the ruling of another Superior Court Judge in a different case. CP 35.

The unpublished order in Love is weak authority. The district court assessed the admissibility of a latent print examiner's testimony under Daubert,⁷ a standard our Supreme Court expressly rejected. Love, at *1; Copeland, 130 Wn.2d at 261. The only witness in Love to testify on the issue was from the FBI; the defense offered no witnesses. Love, at *1.

⁷ Daubert v. Merrell Dow Pharmaceuticals, 509 U.S. 579, 113 S. Ct. 2786, 125 L. Ed. 2d 469 (1999). Under Daubert, general acceptance is simply one consideration among many for admissibility of scientific evidence. Copeland, 130 Wn.2d at 257-258 (citing Daubert, 509 U.S. at 593-594).

Moreover, the Love court actually *declined* to find the ACE-V methodology generally accepted within the broader relevant scientific community. Instead, noting acceptance by *some* relevant communities (identified as “forensic science” and law enforcement), the court merely indicated this limited acceptance “at least weakly supports the admission of latent fingerprint evidence.” Love, at *8. As to broader acceptance, the court acknowledged the NRC Report “does demonstrate some hesitancy in accepting latent fingerprint analysis on the part of the broader scientific community.” Love, at *8.

Judge Saint Clair’s reliance on another King County Superior Court judge’s decision denying a Frye hearing is also misguided. That decision – by Judge Regina Cahan in State v. Le – involves a very different record. Neither Dr. Lyn Haber nor Dr. Ralph Haber presented evidence in the case (or any of the other King County cases for which the State attached decisions in M.P.’s case). See CP 480-483. Moreover, the only expert mentioned in Judge Cahan’s order is a Dr. Simon Cole, described as a “social scientist” and rejected as falling outside the relevant scientific community in two of the State’s attached King County decisions. See CP 472-473, 481, 489-490. None of the other King County

Judges had a record, or arguments based on that record, as extensive as that in M.P.'s case.

In any event, this Court's review under Frye is de novo. Cauthron, 120 Wn.2d at 887. This Court is not in any way bound by Judge Saint Clair's conclusions. In conducting its review, this Court may consider authorities outside the record, including scientific literature and decisions from other jurisdictions. The emphasis, however, always remains on what scientists think. Id. at 887-888. As previously discussed, Frye requires general acceptance of both the underlying theory and the technique used to implement that theory. Id. at 889.

The underlying theory is that all latent fingerprint impressions are unique to the person who left them and can be matched, and only matched, to that person. The technique used to implement that theory is the ACE-V method of fingerprint identification. There is significant disagreement on both. Indeed, the NRC Report expressly notes that, "Over the years, the courts have admitted fingerprint evidence, even though this evidence has 'made its way into the courtroom without empirical validation of the underlying theory and/or its particular application.'" NRC Report, at 102 (quoting

M.A. Berger, Procedural paradigms for applying the Daubert test, 78 Minn. L. Rev. 1345, 1354 (1994)).

Regarding theory, the evidence submitted by Drs. Lyn and Ralph Haber establish that research scientists dispute the assumptions that all fingerprint impressions are unique and matchable only to the true source. This is to be distinguished from the assumption that all friction ridge skin is unique to the individual. Currently, there are no studies demonstrating the uniqueness of friction ridge impressions, which are subject to a multitude of variables that change the prints, including pressure, skin flexibility, surface material, moisture, and substances used to observe and preserve them. In fact, current research contradicts the relevant assumptions. CP 140-141, 147-150. Thus, there is not yet general scientific acceptance of the theory behind latent fingerprint identifications.

Regarding technique, there is a significant dispute surrounding ACE-V. As explained by the Habers, there is a total absence of any scientific studies demonstrating the technique's validity or its reliability, both of which are scientific prerequisites. CP 142-143. The NRC recognized this absence in its Report. NRC Report, at 7-8 n.7. Moreover, in addition to noting the

absence of empirical validation for fingerprint comparison techniques, the NRC found that, with the exception of nuclear DNA analysis, “no forensic method has been rigorously shown to have the capacity to consistently, and with a high degree of certainty, demonstrate a connection between evidence and a specific individual or source.” NRC Report, at 7.

Indeed, the NRC’s ultimate assessment of ACE-V is worth repeating:

ACE-V provides a broadly stated framework for conducting friction ridge analyses. However, this framework is not specific enough to qualify as a validated method for this type of analysis. ACE-V does not guard against bias; is too broad to ensure repeatability and transparency; and does not guarantee that two analysts following it will obtain the same results. For these reasons, merely following the steps of ACE-V does not imply that one is proceeding in a scientific manner or producing reliable results. A recent paper by Haber and Haber presents a thorough analysis of the ACE-V method and its scientific validity. Their conclusion is unambiguous: “We have reviewed available scientific evidence of the validity of the ACE-V method and found none.”

NRC Report, at 142-143 (footnotes omitted).⁸

⁸ The United States Supreme Court has cited the NRC Report to refute the notion that the testimony of forensic examiners should be accorded any special presumption of reliability. Melendez-Diaz v. Massachusetts, 557 U.S. 305, 319-320, 129 S. Ct. 2527, 174 L. Ed. 2d 314 (2009). The Court noted “problems of subjectivity, bias, and unreliability of common forensic tests such as latent fingerprint analysis” Id. at 320-321.

Whereas none of the judges in the other King County cases relied upon by the State in M.P.'s case had the benefit of the Habers' testimony on ACE-V, Dr. Ralph Haber was the lead defense expert in Maryland v. Rose. 1RP 146. In that case, after a full Frye hearing, the court noted the State's primary argument was that "history favors acceptance of latent print identifications" because print identifications had been admitted in courts for nearly a century. CP 594. Despite this historical record, the court recognized its duty to look at these identifications anew "where science reveals that previously accepted methods are not proved reliable." CP 595.

The Rose court found that, while past acceptance was a legitimate consideration, courts had begun accepting fingerprint evidence with little scrutiny and their acceptance did not establish the method's reliability. CP 596-597. The Mayfield case, and others in which we now know faulty identifications were made, establish the method is imperfect. CP 597. And other forms of evidence, once thought to be even more credible than fingerprints, are now considered absurd today. CP 598. The court noted that ACE-V can be tested, but to date there simply have been no studies indicating "how likely it is that partial prints taken from a

crime scene will be a match for only one set of fingerprints in the world.” CP 598.

Among other criticisms, the Rose court found that there were no established error rates associated with ACE-V and no objective universal standards governing ACE-V that establish its reliability. CP 600-601. Moreover, any verification of a called “match” is not truly independent because the reviewer is usually a colleague or supervisor in the same lab and already aware of the initial conclusion. CP 602. In excluding the fingerprint evidence, the Rose court concluded “that ACE-V was the type of procedure Frye was intended to banish, that is, a subjective, untested, unverifiable identification procedure that purports to be infallible.” CP 603.

This Court should find that neither the theory (all fingerprint impressions are unique and matchable only to the true source) nor the technique (ACE-V) is generally accepted under Frye. But there is an additional issue: is there general acceptance regarding how to express the results of ACE-V testing in a manner helpful to the trier of fact?

This issue is reminiscent of the statistical issues in DNA evidence. In 1993, in Cauthron, the Washington Supreme Court

found that use of the product rule to estimate genetic profile frequencies had not yet gained general scientific acceptance. Copeland, 130 Wn.2d at 266; Cauthron, 120 Wn.2d at 905-06. Without general acceptance concerning population frequencies, expert testimony that a DNA sample “matched” a defendant’s DNA was not based on a generally accepted scientific theory under Frye and was not helpful to the trier of fact under ER 702.⁹ Cauthron, 120 Wn.2d at 906-08. Following Cauthron, extensive research was conducted to settle the controversy over use of the product rule. Copeland, 130 Wn.2d at 267-270.

⁹ ER 702 addresses expert testimony and provides:

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.

Similarly, outside of DNA, the NRC Report noted in criminal cases the opinions of forensic examiners that there had been an “individuation” or “match” between a piece of evidence and a suspect. NRC Report, at 7. “[A] conclusion of individualization implies that the evidence originated from that source, to the exclusion of all other possible sources,” but “uniqueness requires measurements of objective attributes, data collected on the population frequency of variation in these attributes, testing of attribute independence, and calculations of the probability that different objects share a common set of observable attributes.” NRC Report, 43-44.

Good, solid science involves “protections against bias and overstatement” and “interpretation conducted within the constraints of what the science will allow.” NRC Report, at 113. The NRC found that terminology (e.g. “match,” “consistent with,” “identical”) has “a profound effect on how the trier of fact in a criminal or civil matter perceives and evaluates scientific evidence.” NRC Report, at 21. Courtroom testimony “must include clear characterizations of the limitations of the analyses, including measures of uncertainty in reported results and associated estimated probabilities where possible.” NRC Report, at 21.

As noted by the NRC, latent print examiners are actively discouraged from discussing the probability of a match and, instead, simply report an “individuation” or “identification” when they are confident a latent and exemplar print came from the same person. NRC Report, at 141-142. The NRC recognized that, in contrast to DNA evidence, “population statistics for fingerprints have not been developed, and . . . [l]ittle research has been directed toward developing population statistics, although more would be feasible.” NRC Report, at 139-140.

Importantly, even the friction ridge examination profession now concedes the possibility of similar impressions coming from different individuals and the role of statistical probabilities in examiners’ conclusions. In 2010, the IAI conceded that “[f]riction ridge skin impressions can display varying levels of commonality (pattern type, ridge flow) in appearance with other impressions which do not derive from the same source” and noted that examiners are ethically bound to state any limitations of their conclusions. See IAI Resolution 2010-18 (passed July 16, 2010).¹⁰ The IAI also rescinded its prior ban on using probability estimates for friction ridge analysis and now permits examiners to use

¹⁰ Resolution 2010-8 is attached to this brief as an appendix.

“mathematically based models that have been accepted as valid by the IAI in partnership with the relevant scientific community.”¹¹ Id.

The Habers indicated that currently an “identification” might mean “consistent with,” but even this definition fails to address how many other exemplar’s would also be consistent with the latent print. CP 155. At best, a conclusion of “identification” currently supports “only a probability statement that there is some chance the donor of the exemplar is also the donor of the latent print.” CP 149.

Unfortunately, Kelli Anderson and Betty Newlin were not so limited in their testimony concerning the evidence in M.P.’s case. In the Pritchard case, Anderson testified that the lone partial latent print “was positive to the known print” of M.P.’s left thumb. 3RP 131. And in the Brunelle case, Newlin testified that she “identified” one latent print “to the right index finger” of M.P. and “identified” a second latent print “to the left thumb.” 3RP 231.

¹¹ It does not appear the IAI has yet identified a mathematical model it finds acceptable. Research revealed none.

Both opinions imply, without limitation, that M.P. was the source of the prints to the exclusion of anyone else. This goes well beyond the current, accepted state of the science and was not helpful (rather, it was misleading) to the trier of fact under ER 702.

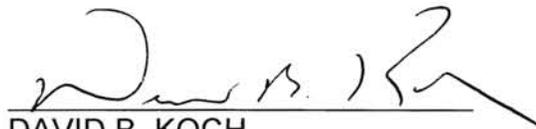
D. CONCLUSION

The trial court erred in denying the defense request for a Frye hearing, erred when it found the State's evidence generally accepted, and erred when it allowed admission of the print examiners' declarations of a match under Frye and ER 702. Reversal is required.

DATED this 28th day of May 2013.

Respectfully submitted,

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APPENDIX

IAI RESOLUTION 2010-18

Passed July 16, 2010

WHEREAS, the members of the International Association for Identification assembled at their 95th International Educational Conference in Spokane, Washington on July 16, 2010 wish to change the official position of the Association related to Friction Ridge Examinations based on advances in the science and scientific research, **and**

WHEREAS, the members wish to acknowledge the need for continual research on new and innovative methods and the application thereof, **and**

WHEREAS, The Standardization II Review Committee was created and had been charged with the responsibility of reviewing Resolution 1979-7 and of 1980-5. The IAI recognizes that the testimony and reporting restrictions which had been enacted in good faith in Resolution 1979-7 and 1980-5 are not consistent with advancements since their passage.

They read in part as follows:

Resolution 1979-7:

“THEREFORE BE IT RESOLVED that any member, officer or certified latent print examiner who provides oral or written reports, or gives testimony of possible, probable or likely friction ridge identification shall be deemed to be engaged in conduct unbecoming such member, officer or certified latent print examiner as described in Article XVII, Section 5, of the constitution of the International Association for Identification, and charges may be brought under such conditions set forth in Article XVI, Section 5, of the constitution. If such member be a certified latent print examiner, his conduct and status shall be reconsidered by the Latent Print Certification Board....”

Resolution 1980-5: (Amending Resolution 1979-7)

“THEREFORE BE IT RESOLVED that any member, officer or certified latent print examiner who **initiates or volunteers** oral or written reports, **or testimony** of possible, probable or likely friction ridge identification, **or who, when required in a judicial proceeding to provide such reports or testimony, does not qualify it with a statement that the print in question could be that of someone else**, shall be deemed to be engaged in conduct unbecoming such member,....”

Therefore be it

RESOLVED that, based upon the results of a multi-year study by the Standardization II Review Committee, the IAI hereby recognizes the following:

1. For over a century, the examination and comparison of human friction ridge skin impressions have been used to determine the specific source of those impressions.

2. The practice of this form of comparative analysis by trained and competent examiners has been shown, through experience and study, to be reliable with rare occurrences of error.
3. This reliability and extremely low occurrences of error have afforded friction ridge skin evidence a high degree of value and importance when used in the forensic arena.
4. It is the responsibility of forensic experts to offer a clear and unambiguous presentation of their conclusions.
5. Friction ridge skin impressions can display varying levels of commonality (pattern type, ridge flow) in appearance with other impressions which do not derive from the same source.
6. Friction ridge skin impressions can share class characteristics (pattern type, ridge flow) and any associations based on these criteria require, ethically and professionally, that the examiner clearly state any limitations of their conclusions.
7. The use of mathematically based models to assess the associative value of the evidence may provide a scientifically sound basis for supporting the examiner's opinion. Examiners shall only use mathematically based models that have been accepted as valid by the IAI in partnership with the relevant scientific community and in which they have been trained to competency.
8. Mathematically based models may not be used as the sole determinant when concluding that friction ridge impressions share a common source. The use of mathematically based models does not relieve the examiner of responsibility for their expert opinion.

Due in part to the aforementioned statements recognized by the IAI, ***Therefore,***

be it further

RESOLVED, that Resolution 1979-7 and Resolution 1980-5 are hereby rescinded.

and be it further

RESOLVED, that a copy of this resolution be published in the Association's official publication.

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON)	
)	
Respondent,)	
)	
vs.)	COA NO. 69003-5-1
)	
MICHAEL PIGOTT,)	
)	
Appellant.)	

DECLARATION OF SERVICE

I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 28TH DAY OF MAY, 2013, I CAUSED A TRUE AND CORRECT COPY OF THE **BRIEF OF APPELLANT** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

[X] MICHAEL PIGOTT
6020 S. 127TH PLACE
SEATTLE, WA 98178

SIGNED IN SEATTLE WASHINGTON, THIS 28TH DAY OF MAY, 2013.

x *Patrick Mayovsky*

FILED
COURT OF APPEALS DIV 1
STATE OF WASHINGTON
2013 MAY 28 PM 4:15