

**FILED**  
LOS ANGELES SUPERIOR COURT  
FEB 10 2010  
JOHN A. CLARKE, EXECUTIVE OFFICER/CLERK  
BY: E. HERNANDEZ DEPUTY

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES**

PEOPLE OF THE STATE OF CALIFORNIA, ) Case No.: BA351185  
Plaintiff, ) ORDER RE: MOTION TO EXCLUDE  
v. ) FINGERPRINT EVIDENCE  
NATHANIEL GREENWOOD, )  
Defendant. )

The Court has read and considered the Defendant's motion to exclude fingerprint evidence filed on October 30, 2009, the People's opposition filed on December 2, 2009, and the Defendant's reply filed on January 12, 2010. The Court has also considered the parties' arguments offered in Court on February 1, 2010 and all relevant statutory and case law.

The Defendant's motion to exclude fingerprint evidence pursuant to *People v. Kelly* (1976) 17 Cal.3d 24 is denied.

Facts

It is alleged that on October 18, 2008, three men entered Rose Zepeda's home in the City of Los Angeles and stole safe boxes and electronic equipment. Ms. Zepeda never saw the robbers' faces, but later that day forensic specialists with the Los Angeles Police Department discovered several latent fingerprints on a windowsill and a sink in Zepeda's bathroom. A latent fingerprint examiner (LPE) with the Los Angeles Police Department compared the fingerprints

1 recovered at the crime scene to the known finger and palm prints of the defendant and  
2 determined that the latent and known fingerprints were made by the same source. This  
3 comparison was performed using the Analyze, Compare, Evaluate, and Verify (“ACE-V”)  
4 method of fingerprint analysis. The Defendant was subsequently charged with robbery in  
5 violation of Penal Code § 211.

6 At trial, the People plan to introduce the LPE’s opinion testimony that the latent and  
7 known fingerprints constituted a “match”, meaning that the two sets of fingerprints could not  
8 possibly have come from two different people. The Defendant argues that evidence of a latent  
9 fingerprint “match” is improper scientific evidence under *People v. Kelly* (1976) 17 Cal.3d 24,  
10 and moves to suppress such testimony at trial.

11 *Fingerprint Evidence is not Subject to Scrutiny under Kelly*

12 Pursuant to *Kelly* and its progeny, a party at trial who wishes to offer evidence grounded  
13 in a new scientific technique must satisfy three heightened admissibility requirements. The  
14 proponent of the evidence must demonstrate: (a) that the relied upon scientific technique has  
15 gained “general acceptance in the particular field in which it belongs”; (b) that the witness  
16 furnishing the testimony is “qualified as an expert to give opinion on the subject”, and; (c) that  
17 the correct scientific procedures were used in the case at hand. *People v. Leahy* (1994) 8 Cal.4th  
18 587, 594.

19 *Fingerprint Evidence is not “Scientific”*

20 By its very terms, however, *Kelly* only applies where “scientific techniques” are utilized  
21 to produce the evidence in question. *Kelly*, supra, at 30; *Leahy*, supra, at 593, 605 [noting that  
22 “*Kelly* is applicable only to new scientific techniques”]. The *Kelly* test is limited to “scientific  
23 techniques” because it “is intended to forestall the jury's uncritical acceptance of scientific  
24 evidence or technology that is so foreign to everyday experience as to be unusually difficult for  
25 laypersons to evaluate.” *People v. Venegas* (1998) 18 Cal.4th 17, 80. Put another way, “absent  
26 some special feature which effectively blindsides the jury, expert opinion testimony is not  
27 subject to [*Kelly*]”. *People v. Stoll* (1989) 49 Cal.3d 1136, 1157. Because fingerprint  
28

1 comparison testimony is not the sort of evidence which is “so foreign to everyday experience” as  
2 to “effectively blindsid[e] the jury”, it is not “scientific” evidence under *Kelly*.

3 Here, the Supreme Court’s analysis in *Venegas, supra*, is particularly instructive. In  
4 submitting a particular type of DNA testing to the *Kelly* standard, the Court distinguished the  
5 “foreign” and highly technical methods of comparing various base-pair sequences in DNA with  
6 “fingerprint . . . comparisons, which jurors essentially can see for themselves”. *Venegas, supra*,  
7 at 81. The High Court’s distinction between DNA and fingerprint analysis makes sense and is  
8 highly relevant to the question at hand. In fact, the Court has been even clearer on this point,  
9 noting that “jur[ies] [can] make [their] own comparisons between the latent prints found at the ...  
10 crime scene and [a] defendant’s fingerprints”. *People v. Farnam* (2002) 20 Cal.4th 107, 160  
11 [use of computerized fingerprint database was not subject to *Kelly* because ultimate identification  
12 was determined by the “long established technique—fingerprint comparison performed by  
13 fingerprint experts”].

14 Unlike more opaque procedures such as DNA analysis, fingerprint identification consists  
15 of a visual comparison of the latent fingerprint found at the crime scene and a defendant’s known  
16 fingerprint. Though the expert testimony of a trained LPE will certainly be helpful to the jury in  
17 explaining which features of the fingerprint led the examiner to the conclusion that the two prints  
18 came from the same person, a lay jury is capable of making the ultimate determination on its  
19 own. Indeed, it is obligated to do so.

20  
21 *Fingerprint Comparison Testimony is Admissible as Expert Opinion Testimony*

22 Because latent fingerprint comparison testimony is not “scientific” evidence for the  
23 purposes of *Kelly*, the proper method of determining admissibility of the proffered evidence in  
24 this case are the rules governing expert opinion testimony found in the Evidence Code. Under  
25 those rules, the LPE could easily testify about any fingerprint comparison that she conducted and  
26 detail why, given her training and experience, she believes that the fingerprint discovered at the  
27 crime scene and the Defendant’s known fingerprint come from the same source. See, e.g., Evid.  
28 Code § 801.

Conclusion

1  
2 It is well established that the *Kelly* rule was designed to control “evidence [that] could  
3 have a disproportionate impact on the jury's decision making process because of the test's  
4 scientific nature and because the jury may not understand the nature of the test or the  
5 methodology of its procedure”. *Leahy, supra*, at 607 [quoting *State v. Witte* (Kan. 1992) 836  
6 P.2d 1110, 1116]. Fingerprint comparisons, which “jurors essentially can see for themselves”  
7 (*Venegas, supra*, at 81) do not qualify for scrutiny under *Kelly*. Rather, the Defendant ought to  
8 address his concerns using the standard framework for expert opinion testimony. The LPE will  
9 not be permitted to testify that her opinion is the result of an infallible scientific process, and the  
10 Defendant is free to vigorously cross-examine the LPE on the shortcomings of the ACE-V  
11 method raised in the 2009 National Academy of Science Report entitled *Strengthening Forensic*  
12 *Science in the United States: A Path Forward*. See also Evid. Code § 721. The fingerprint  
13 identification evidence is the quintessence of expert testimony, and the Defendant’s numerous  
14 critiques of the ACE-V process go to the weight of the People’s evidence, not its admissibility.

15 Accordingly, the Defendant’s motion is denied.

16  
17  
18  
19 Dated: 2/10/10



*Patricia Schnegg*  
PATRICIA SCHNEGG  
Judge of the Superior Court

20  
21 The clerk to give notice.

**Send copy of order to:**

1 David Reinert  
2 Office of the District Attorney  
3 210 West Temple Street, Room 18-206  
4 Los Angeles, CA 90012  
5 (213) 974-7460

6 Counsel for Defendant  
7 Michale Pentz  
8 Office of the Public Defender  
9 210 West Temple Street, 19th Floor  
10 Los Angeles, CA 90012  
11 (213) 974-6589  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28