

# Appendix 1

## Court Rulings and Legal Precedence

### Historical Court Ruling on Fingerprint evidence

During a late eighteen hundred murder trial in Allahabad, India, where the accused's print in blood was found near the victim's body, the accused "pleaded an alibi". The judge disposed of it in these words:

*In this land of lies, an ounce of good circumstance is worth many pounds of oral evidence, and even if, instead of two, 200 swore they had sat in a circle round the accused from 6 p.m. to 6 a.m. it would be nothing in my mind compared with the unexplained bloody thumb print.*

*Finger-Print Evidence*  
*Dept. of the Navy, 1920*

The first courts to acknowledge fingerprint evidence were in India, a possession of England and under English Common Law.

***Emperor v. Sahdeo 3 Nagpur, L.Rep. 1, (India) (1904)*** "The court calls into use the well established fact that, so far as human experience goes, there are no two human beings in the world who exactly resemble one another in every single detail. — The papillary ridges presented by the surface of the skin on the palms of the hand and soles of the feet, have been ascertained to be the most important of anthropological data. — By those who have made a study of the subject, — there has never been found any case in which the pattern made by one finger exactly resembled the pattern made by any other finger of the same or any other hand . On the contrary, the one may readily be differentiated from all others by comparison."

***Parker v. Rex, (Australia) 14 C.L.R. 681; 3 B.R.C. 68 (1912)*** "The fact of the individuality of the corrugations of the skin on the fingers of the human hand is now so generally recognized as to require very little if any evidence of it. — A fingerprint is therefore in reality an unforgeable signature."

## **Pre-Daubert Rulings**

### **Appellate Court Rulings on Fingerprint Evidence**

**1<sup>st</sup> Appellate rulings affirming the admissibility of latent print evidence in the United States on fingerprints, palm prints, and sole (footprints).**

*People v. Jennings* 252 Ill. 534, 96 N.E. 1077 (1911) “We are disposed to hold from the evidence and the writings we have referred to on this subject, that there is a scientific basis for the system of finger-print identification, and that the courts are justified in admitting this class of evidence; that this method of identification is in such general and common use that the courts can not refuse to take judicial notice of it...”

*State v. Kuhn*, 42 Nev. 195, 175 Pac. 190 (1918) 1<sup>st</sup> Court to affirm the use of palm print evidence. “There is no basic difference between fingerprints and palm prints”

*Commonwealth v. Bartollini*, 299 Mass. 503, 13 N.E. 2<sup>nd</sup> 382, cert. denied 304 U.S. 562 (1938)

“There is ample evidence that footprints, like fingerprints remain constant throughout life and furnish an adequate and reliable means of identification.”

*Grice v. State*, 142 Tex. Crim. 4, 151 S.W. 2 211 (1941) First appellate court taking judicial notice of the uniqueness of fingerprints, the Court stated: “It has occurred to us that instead of the state being called upon to offer proof that no two finger prints are alike, it may now be considered in order for those taking the opposite view to assume the burden of proving their position.”

### **United States Supreme Court**

*Hayes v. Florida*, 470 U.S. 811 (1985)

--- “that fingerprinting is an inherently more reliable and effective crime-solving mechanism than other types of evidence such as lineups and confessions”.

## California Supreme Court

The California Supreme Court has repeatedly held that fingerprints are the strongest evidence of identification and are generally sufficient by themselves to identify the perpetrator of the crime.

*People v. Andrews* (1989) 49 Cal 3d 200,201

*People v. Johnson* (1988) 47 Cal 3d 576,601

*People v. Gardner* (1969) 71 Cal 2d 843,849

*People v. Riser* (1956) 47 Cal.2d 566, 589

*People v. Adamson* (1946) 27 Cal 2d 478,495

## Federal Appellate Rulings prior to Daubert

*Gibson v. Collins*, 947 F.2d 780, 785 (5th Cir. 1991)

Fingerprint evidence by itself may be sufficient to support a jury's guilty verdict

*United States v. Bush*, 749 F.2d 1227 (7th Cir. 1984), *cert. denied*, 470 U.S. 1058, 105 S.Ct. 1771, 84 L.Ed.2d 831 (1985)

Prints found inside a crime can provide “proof beyond a reasonable doubt” of guilt

## Post Daubert Appellate Court Rulings on Fingerprints

### Massachusetts Supreme Court

*Commonwealth v. Patterson*, 445 Mass. 626; 840 N.E. 2d 12 (2005). Affirmed the admissibility of latent print identification, the ACE-V process, and was the first Court to define the “relevant Scientific Community” for latent prints as the Latent Print Examiners themselves.

## **New Hampshire Supreme Court**

***New Hampshire v. Richard Langill*, 157 N.H. 77, 945 2d 1 (2008)** Affirmed the use of latent print evidence and the ACE-V process — “[F]ederal courts have [also] found ACE-V to be reliable under Daubert, while noting that verification in the ACE-V may not be blinded.” *United States v. Mahone*, 453 F.3d 68, 72 (1<sup>st</sup> Cir. 2006) (citations omitted). While we acknowledge that a small number of misidentification cases using ACE-V methodology do exist, it is undisputed that ACE-V methodology has been reliably applied in countless cases without the use of blind verification”.

## **Utah Supreme Court**

***State v. Quintana*, 2004 UT App. 418 (Utah Ct. App. Nov. 12, 2004).** ***Admissibility affirmed.*** The Utah Supreme Court – clearly indicated (in Hamilton) that fingerprint evidence is not “subject to reliability problems” -- In light of Hamilton and a longstanding reliance on fingerprint evidence, the trial court did not abuse its discretion when it admitted the fingerprint expert’s testimony.

## **Federal Appeals Court Decisions Post Daubert**

***United States v. Rashaun Gee*, No. 10-CF-1494 (DC Cir. 2012)** **Affirmed Trial Court ruling** that the 2009 NAS Report, “Strengthening Forensic Science in the United States: A Path Forward”, is not a “learned treatise” and cannot be read or quoted as a learned treatise. The report does not accurately reflect the views of the relevant scientific community as related to fingerprint evidence.

***United States v. Pena*, 586 F. 3d 105 (1<sup>st</sup> Cir. 2009)** Affirmed conviction with no need for a Daubert hearing on fingerprint evidence. “- courts have nonetheless found that most of the Daubert factors support admitting latent fingerprint evidence obtained pursuant to the ACE/V method.”

***United States v. Mahone*, 453 F. 3d. 68, 71 (1<sup>st</sup> Cir. 2006)** **Admissibility affirmed;**

“The district court did not abuse its discretion. Numerous courts have found expert testimony on fingerprint identification based on the ACE-V method to be sufficiently reliable under Daubert.”

***United States v. Mitchell*, 365 F.3d 215 (3<sup>d</sup> Cir. 2004).** ***Admissibility affirmed; exclusions affirmed.*** Fingerprint identification satisfies standards for reliability established in *Daubert* and *Kumho Tire*. "[T]his case does not announce a categorical rule that latent fingerprint identification evidence is admissible in this Circuit, though we trust that the foregoing [extensive] discussion provides strong guidance." District court properly excluded trial testimony on whether fingerprint evidence is scientific because such testimony would not assist trier of fact.

***United States v. Crisp*, 324 F.3d 261 (4<sup>th</sup> Cir. 2003)** ***Admissibility affirmed.*** Defendant says scientific validation of fingerprinting is weak, and points out that no study has shown individual human fingerprints to be unique. But no study has shown otherwise either, and technique has long enjoyed general acceptance in forensic community. Moreover, fingerprint evidence has been employed in court since 1911. Standards governing technique's application do exist, and other courts have credited testimony that error rate is low. Further research would be welcome, but meanwhile, to bar use of this bedrock forensic identifier is unwarranted. Cross-examination can test foundations and reliability of testimony from fingerprint experts.

***United States v. John*, 597 F. 3d 263 (5<sup>th</sup> Cir. 2010)** No *Daubert* hearing needed for fingerprint evidence. "in most cases, absent novel challenges, fingerprint evidence is sufficiently reliable to satisfy Rule 702 and *Daubert*." Circuit Court noted that fingerprints have been tested in the adversarial system for over a century and been routinely subject to peer review with a low error rate, at 275. Court also noted that there is no case law requiring a blind verification, that challenges to the testing and accuracy of the results goes to the weight of the evidence, not the admissibility.

***United States v. Sullivan*, 246 F. Supp. 2d 700, U.S. App. LEXIS 28073 (6<sup>th</sup> Cir. 2005)** Unpublished. ***Admissibility Affirmed*** . ACE/V Fingerprint evidence passes *Daubert*

***United States v. George*, 363 F.3d 666 (7<sup>th</sup> Cir. 2004).** ***Admissibility affirmed.*** Seventh Circuit has previously held that fingerprint identification is generally accepted, has low rate of error, and can be objectively tested. As for defendant's complaint that identification was unreliable because based on partial prints, issue of whether prints match is best left to trier of fact.

***United States v. Havvard, 260 F.3d 597 (7<sup>th</sup> Cir 2001). Admissibility affirmed.*** Fingerprinting passes *Daubert* muster. Results are objective, capable of testing, and have low error rate. Method has been subjected to "peer review" via adversary system for 100 years.

***United States v. Rogers No. 01-4455 (4<sup>th</sup> Cir. Dec. 20, 2001) (unpublished).*** While Rogers contends the underlying theory of fingerprinting evidence, that all fingerprints are unique, is untested and unproven, the Government's expert testified to the existence of numerous studies supporting this conclusion. Further, Rogers cites no evidence suggesting that fingerprint evidence is unreliable. To the extent that fingerprint analysis involves some measure of subjective interpretation by the examiner, the possibility of error was mitigated in this case by having two experts independently review the evidence. And although Rogers also claims no uniform standards exist to pinpoint exactly when a fingerprint match can be declared, such standards do exist through professional training, peer review, presentation of conflicting evidence and double checking, which is standard operating procedure with latent print examiners. Every circuit addressing the issue of fingerprint identification admissibility both before and after *Daubert* has held fingerprint evidence admissible, and many courts have even refused to conduct evidentiary hearings on the issue.

***United States v. Janis, 387 F.3d 682 (8<sup>th</sup> Cir. 2004). Admissibility confirmed.*** Defendant did not challenge reliability at trial. District court nevertheless made reliability determination. Fingerprint evidence is generally accepted.

***United States v. Collins, No. 02-3353 (8<sup>th</sup> Cir. Aug. 25, 2003). Admissibility affirmed.*** Defendant did not object at trial, fingerprint identification is generally accepted, and district court did not commit plain error.

***United States v. Hernandez, 299 F.3d 984 (8<sup>th</sup> Cir. 2002) Admissibility affirmed.*** Fingerprint evidence is admissible, subject to court oversight, and in this case, testimony did not determine outcome.

***United States v. Spotted Elk, 548 F. 3d 641 (8<sup>th</sup> Cir. 2008).*** Fingerprint evidence and analysis is generally accepted. No error in failing to conduct a *Daubert* hearing. Witness had extensive training and experience.

***Nelson Acosta-Roque v. Eric H. Holder Jr.* No. 11-70705 (9<sup>th</sup> Cir. Oct 24, 2012) Unpublished.** “When, as here, the fingerprints “were exemplars taken under controlled circumstances and were complete, not fragmented,” fingerprints evidence is in fact highly reliable.”

***United States v. Rojas-Torres*, No. 02-30338 (9<sup>th</sup> Cir. June 9, 2003)** (unpublished), ***Admissibility affirmed***. Defendant argues that fingerprint evidence does not satisfy *Daubert's* requirements for scientific reliability. District court conducted *Daubert* hearing and weighed relevant *Daubert* factors. No abuse of discretion.

***United States v. Navarro-Fletes*, No. 01-30247 (9<sup>th</sup> Cir. Oct. 24, 2002)** (unpublished). District court admits fingerprint testimony in criminal case over defendant's objections. ***Admissibility affirmed***. District court properly considered *Daubert* factors and permissibly determined that fingerprinting passes muster. Nor did lower court err in finding fingerprint expert qualified. She had twelve years' experience identifying thousands of prints, as well as suitable training.

***United States v. Ambriz-Vasquez*, No. 01-10144 (9<sup>th</sup> Cir. May 2, 2002)** unpublished). ***Admissibility affirmed***. Defendant's first objection falsely assumes that district courts may not take judicial notice of reliability of fingerprint analysis. It would be unduly onerous to require *Daubert* hearings every time defendants object to fingerprinting, and Ninth Circuit has previously held that district courts do not commit clear error in admitting fingerprint evidence without first conducting *Daubert* hearings. As for qualifications, agent had extensive coursework and experience. Defendant had ample opportunity to impeach agent's testimony at trial.

***United States v. Sanchez-Birruetta*, No. 04-30150 (9<sup>th</sup> Cir. Mar. 18, 2005)** (unpublished). In criminal prosecution, government relies on expert testimony from fingerprint identification specialist. Jury convicts. ***Admissibility affirmed***. Defendant says FBI's solicitation of new research on reliability of fingerprint identification establishes that existing research does not validate its reliability. But validity of existing studies on which expert relied was not called into question by FBI solicitation. Moreover, expert's comparison was between two sets of rolled prints, and such comparisons are more reliable than comparisons involving partial prints.

***United States v. Turner*, 285 F.3d 909 (10<sup>th</sup> Cir. 2002).** District court rejects criminal defendant's *Daubert* challenge to prosecution's fingerprint evidence without conducting *Daubert* hearing, believing fingerprint identification to constitute example of evidence whose reliability "is properly taken for granted" under *Kumho*. ***Conviction affirmed.*** More detailed findings by district court would have been desirable, but any error was harmless.

***United States v. Baines*, 573 F. 3d 979, (10<sup>th</sup> Cir. 2009)** **Affirmed** the trial judge's admission of fingerprint expert evidence, noted that the *Daubert* factors are a flexible inquiry and not all factors will be pertinent to every case. Fingerprint evidence satisfied some *Daubert* factors and not others.

***United States v. Calderon-Segura*, 512 F. 3d 1103 (9<sup>th</sup> Cir. 2008)** "Given the familiar subject matter [expert testimony regarding fingerprint identification] and the defense's failure to show cause for questioning the evidentiary reliability of exemplar fingerprint identification methods, this is just the sort of routine case where evidentiary reliability was properly taken for granted."

***United States v. Ward*, No. 03-6005 (10<sup>th</sup> Cir. Apr. 29, 2004)** (unpublished). Criminal defendants object to admission of expert fingerprint evidence at trial. District court overrules objection and jury convicts. ***Admissibility affirmed.*** Defendant here raises same argument that Tenth Circuit rejected when it was raised by defendant in *United States v. Turner*, 285 F.3d 909 (10<sup>th</sup> Cir. 2002) [infra]. Any error in admitting fingerprint testimony was harmless in light of overwhelming evidence against defendant.

***United States v. Abreu*, 406 F. 3d 1304 (11<sup>th</sup> Cir. 2005)** "This court has not published an opinion regarding fingerprint evidence under *Daubert*. Other Circuits, however, have found that fingerprint evidence is sufficiently reliable and meets the standards of FRE 702. We agree with the decisions of our sister circuits and hold that fingerprint evidence admitted in this case satisfied *Daubert*."



## California Appellate Court Rulings

***People v. O.D* (2013) 221 Cal. App. 4th 1001; 164 Cal. Rptr. 3d 578; 2013 Cal. App. LEXIS 960**

Kelly/frye does not apply to palm prints “We are aware of no decision that has excluded fingerprint-comparison evidence on the basis that it is either unreliable or no longer generally accepted. Decisions from other jurisdictions have uniformly rejected the argument that the National Academy of Sciences report warrants exclusion of fingerprint-comparison evidence.”

***People v. Figueroa* (1992) 2 Cal App. 4th 1584, 1588,**

“The California Supreme Court has repeatedly emphasized that fingerprints are the strongest evidence of identity and ordinarily are sufficient by themselves to identify the perpetrator of the crime.”

***People v. Farnam* (2002) 28 Cal.4th 107, 160.** Kelly does not apply to fingerprints “where "a procedure isolates physical evidence whose existence, appearance, nature, and meaning are obvious to the senses of a layperson, the reliability of the process in producing that result is equally apparent and need not be debated under the standards of *Kelly, supra*, 17 Cal.3d 24.” --the prosecution relied on a long-established technique-fingerprint comparison performed by fingerprint experts-to show the jury that defendant's fingerprints matched those found at the Mar residence. Accordingly, the trial court did not err under *Kelly* when it admitted Erwin's testimony.”

***People v. Francisco Fuentes Verdeja*, G039534, Forth Appellate District, 2009 Cal. App. Unpub. LEXIS 307**

The trial court properly refused to give special jury instructions for fingerprint evidence .

***People v. Eliseo Morales*, G041995, Forth Appellate District (UnPub) 2010**  
No special jury instruction needed for fingerprint evidence.

***People v. Bryant*, (2005) No. C046082, WL 1744971 (Cal. App. 3 Dist.)  
Unpublished Affirmed, no Kelly Hearing needed for fingerprint evidence,  
Limiting Dr. Coles expert testimony, Refusal to give special jury instructions.**

***People v. Bakker*, (2010) No. C061706. (Cal. App. 3 Dist.) Unpublished**

“*Kelly/Frye* only applies to that limited class of expert testimony which is based, in whole or in part, on a technique, process, or theory which is *new* to science and, even more so, the law.” (Henderson, *supra*, at p. 776.) It bears repeating — *Kelly* applies to a technique which is new. Fingerprint identification testimony is not new, having been accepted for about 100 years. (*People v. Jennings* (1911) 252 Ill. 534 [96 N.E. 1077] (*Jennings*).)

***People v. Lugo*, (2009) No. B208806 (Cal. App. 2 Dist.) Unpublished**

**Affirmed** refusing to appoint Dr. Simon Cole as an expert witness, no *Kelly* needed for fingerprints, *Daubert* does not apply to California