

The New Hampshire State Police Forensic Laboratory has been notified that Justice Patricia C. Coffey has ruled on the Motion to Reconsider in the case of *State v. Richard Langill*. The Motion to Reconsider was filed following Coffey's decision to exclude fingerprint expert testimony after a Daubert hearing (--see "Judge Grants Motion To Exclude Latent Fingerprint Identification," *The Weekly Detail*, January 29, 2007).

Despite: 1) the State's Motion to Reconsider, 2) a sworn affidavit from the case examiner and, 3) a sworn affidavit from the lab's QA/QC Manager, Coffey ruled that there was "insufficient information to support a finding that the application (emphasis by Coffey) of the ACE-V methodology to the single latent print in this case was reliable." Thus, Coffey has affirmed her original decision and denied the State's Motion to Reconsider.

In her decision, Coffey describes the court's role as gatekeeper as assessing the reliability of the technique used by an expert to reach a given conclusion. She explains that the level of scrutiny the court applies in the reliability inquiry depends upon the complexity of the evidence involved and the impact the evidence will likely have on the trial itself (this identification of a single latent impression is the only evidence in the case). She states that fingerprint analysis is complex and the conclusion of individualization carries enormous weight. Furthermore, she writes that while the scientific reliability of the ACE-V methodology itself should not vary according to the circumstances of each case, whether the proffered witness has applied the principles and methods reliably to the facts of the case will change and requires a case by case assessment, and therefore, the court has strictly scrutinized the principles and methods in the case-at-hand.

In her ruling, Coffey outlined the administrative portion of the case examiner's notes, but it is unclear whether she considered the remaining four pages of technical notes (latent print worksheets and photographs) in the case file. Also, Coffey seemingly ruled without regard of certain facts such as: the NHSPFL is an ASCLD-LAB accredited laboratory, our SOP's are based on ASCLD and SWGFAST guidelines, our SOP's were reviewed and approved by the ASCLD inspection team, the case examiner and the verifying examiner are both IAI CLPEs, and the lab's QA/QC Manager conducted an audit of the Langill case file and found that all procedures were adhered to. Despite all of this, Coffey made the following arguments:

- There is nothing in the case notes that permits the court to assess whether the ACE-V methodology itself was conducted properly.
- The fact that the documentation submitted in support of the individualization is sufficient to satisfy the NHSPFL internal requirements, it does not assist this court in evaluating whether the principles and methods of ACE-V were reliably applied in this case.
- Without contemporaneous bench notes on the application of the ACE-V methodology, neither legal counsel nor the court can determine that a reliable comparison has actually been made.
- The examiner should have documented the application of the ACE-V methodology as extensively as practicable.

So basically, Coffey has ruled that even though 1) the lab is accredited, 2) the examiners are certified, 3) the SOPs were followed, 4) written and photographic notes were taken, and 5) the ACE-V methodology was indeed applied in this case; the court cannot determine if the ACE-V methodology was applied reliably.

In my opinion, the fact that defense counsel believes that the examiner's notes were insufficient should go towards the weight and credibility of the evidence and not the admissibility. Obviously Coffey disagrees. I am not saying that more notes could not have been taken, but rather the notes that were taken did meet the minimum requirements set forth in our protocols and generally accepted in the field (the IDU Affidavit included results from a telephone survey of forty-two forensic science laboratories representing 38 states and Canada conducted by the NHSPFL IDU). Coffey wanted to see notes that went above and beyond the minimum requirements, but is not clear on what would satiate herself.

Coffey also addressed blind verification by stating that the court would be satisfied that the analysis was reliably conducted if blind verification processes were in place. This contradicts

her claim that the written case notes were insufficient. Coffey further stated that she views blind verification not as a means of assuring the credibility of the result, but rather as a check and balance on the application of the methodology.

This ruling supports Coffey's previous decision to exclude fingerprint expert testimony and was fully expected by all legal parties. The New Hampshire Attorney General's Office now has the case and is preparing an appeal to the State Supreme Court. Optimistically, a final decision will be reached by the end of the year.

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