

UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA,)	
)	
)	
v.)	CRIMINAL No. 00-98-01 (CCC)
)	
JOSÉ ARIEL CRUZ-RIVERA,)	
)	
DEFENDANT)	

**ORDER ON DEFENDANT’S MOTION TO EXCLUDE
FINGERPRINT IDENTIFICATION EVIDENCE**

The defendant seeks to exclude expert testimony concerning fingerprint identification. Originally his motion focused on the general “science” or lack thereof in the practice of fingerprint identification. Mot. Requesting Exclusion of the Fingerprint Evid. (Feb. 23, 2001). Later, after obtaining the Puerto Rico Police operations manual and the individual examiner’s notes, he supplemented his motion to attack specifically the Puerto Rico Police fingerprint identification procedures. Mot. to Annex Add’l Evid. to Mot. Requesting Fingerprint Evid. & Request for Evid. Hr’g (Oct. 22, 2001).

Insofar as the motion is a general attack on the science or technique of fingerprint identification, the motion is **DENIED**. Magistrate Judge Arenas has recently denied just such a motion in this District. United States v. Martinez-Cintron, 136 F. Supp.2d 17 (D.P.R. 2001). Moreover, in two extremely detailed treatments of the law and data concerning fingerprint identification, here and abroad, Judge Pollak of the Eastern District of Pennsylvania has upheld the admissibility of such expert testimony following the principles of Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993), and Kumho Tire Co., Ltd. v. Carmichael, 526 U.S. 137 (1999). United States v. Llera

Plaza, Cr. Nos. 98-362-10, 98-362-11, 98-362-12, 2002 WL 389163 (E.D. Pa. Mar. 13, 2002), vacating and superseding on reconsideration 179 F. Supp.2d 492 (E.D. Pa. 2002).¹ It is unnecessary to revisit the topic after such a thorough treatment, and the question of admissibility of the general technique should not vary from district to district in any event. Unless and until Judge Pollak's thorough treatment is reversed on appeal, it is law that should be followed.

Whether the principles for sound fingerprint identification analysis laid out in Judge Pollak's opinion have been followed in a particular identification is a separate question. Here, the critical police witness was unavailable at the scheduled evidentiary hearing because he was testifying at other trials. As a visiting judge about to leave the jurisdiction, I must therefore return that question to the Magistrate Judge originally assigned to the motion for the testimony. I observe the following, however. The ultimate question is the following: can the defendant establish that the Puerto Rico Police fingerprint identification practices followed in this case are so deficient under the standards described by Judge Pollak that the testimony must be excluded altogether; or is this simply a matter for cross-examination so that the jury can assess how much weight to give to the purported identification in this case?

¹ In his first opinion, Judge Pollack took judicial notice that fingerprints are unique and permanent, and stated that he would allow examiners to testify about similarities and differences, but *not* to testify that a particular print was or was not a match. Llera Plaza, 179 F. Supp.2d 492. In his second opinion after further evidence and analysis, he concluded that expert opinion testimony on the ultimate question was admissible. Llera Plaza, 2002 WL at * 22.

SO ORDERED.

DATED THIS 27TH DAY OF MARCH, 2002

D. BROCK HORNBY
UNITED STATES CHIEF DISTRICT JUDGE
DISTRICT OF MAINE
SITTING BY DESIGNATION

U.S. District Court
Puerto Rico (San Juan)
Criminal Docket For Case #: 00-CR-98-ALL

JOSE ARIEL CRUZ-RIVERA (1)
aka
Petete
Sealed Defendant 1
defendant

JUAN F. MATOS-DE-JUAN, ESQ.
Federal Public Defender's Office
259 Franklin D. Roosevelt Avenue
San Juan, PR 00918-2305
ph 787.281.4899 fx 787.281.4922

U.S. ATTORNEYS:

JARED M. LOPEZ, ESQ.
U.S. Attorney's Office
Federal Bldg. Room 452
150 Carlos Chardon Avenue
San Juan, PR 00918-1714
ph 787.766.5326 fx 787.282.1813