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IN THE CIRCUIT COURT OF THE 11th JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

CASE NO.: F00-15001

JUDGE DAVID H. YOUNG

STATE OF FLORIDA,
Plaintiff,

v.

RAUL PINO

FILED FOR RECORD
2005 MAR 23 PM 12:36
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DADE COUNTY, FLA.
CIRCUIT CRIMINAL MTS

**ORDER DENYING STATE'S MOTION TO EXCLUDE DEFENSE
EXPERT OPINION UNDER FRYE TEST**

THIS CAUSE came before the Court on the State's motion for a Frye hearing (see Frye v. United States, 293 F. 1013 (D.C. Cir 1923)), challenging the expert opinion of Dr. Albert H. Lyter III regarding his 'relative ink dating analysis' of the "Garcia ledger." This Court reviewed the extensive legal memoranda of the parties and considered all the evidence garnered from the Frye hearing conducted on November 23, 2004. The Court was otherwise fully advised in the premises and makes the following findings of fact:

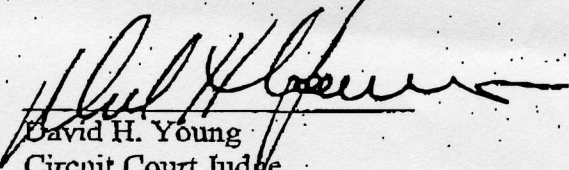
1. In Frye, the Supreme Court set up a test to determine whether or not new evidence obtained by scientific techniques are generally accepted in the scientific community. The acceptance of scientific evidence must not be used in a jurisprudential setting until the scientific community tests the underlying principles, theories and techniques. In this case, the question is whether the relative ink dating analysis of the "Garcia ledger" by Dr. Lyter has passed the Frye test.
2. The Frye hearing was conducted because this is a case of first impression in the State of Florida.
3. The expert testimony of Dr. Lyter concerning his opinion on his relative ink dating analysis will assist the Court in making the initial decision as to trustworthiness and, if necessary, assist the jury to understand and evaluate the weight the jury should give the "Garcia ledger," which are material issues of fact critically important to the parties.

4. The scientific principles used in this case were first developed thirty (30) years ago by agents of the United States Treasury Department. In fact, not only Dr. Lyter, but the State's expert witness, Dr. Antonio Cantu, were involved in developing those scientific principles which are the subject of this Frye hearing.
5. The State's challenge to Dr. Lyter's expert opinion goes to its weight and not its admissibility.
6. The testimony of Senior Crime Lab Analyst, Karen Smith, of the Florida Department of Law Enforcement was quite persuasive. She testified that Dr. Lyter was the pre-eminent expert in the scientific field of relative ink dating. She also testified that there has been a general scientific acceptance of the methods and procedures employed by Dr. Lyter in the instant case.

Based upon the above finding of fact and the full record of the Frye hearing, this Court hereby:

ORDERS AND ADJUDGES that the State's motion to exclude the expert testimony of Dr. Lyter based upon his relative ink dating analysis of the "Garcia ledger" is hereby DENIED. The methods and procedures employed by Dr. Lyter meet the Frye standard by having gained general acceptance by the relevant scientific community in this field.

DONE AND ORDERED this 22nd day of March, 2005 in
Miami-Dade County, Florida.


David H. Young
Circuit Court Judge

c: Assistant State Attorneys John Perikles and Howard Rosen
Neil M. Nameroff, Esq.
Milton Hirsch, Esq.