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Supreme Court of New Jersey
DOCKET NO. 090662

STATE OF NEW JERSEY,	:	Criminal Action
Plaintiff-Petitioner,	:	On Certification Granted from a Final Order of the Superior Court of New Jersey, Appellate Division.
v.	:	
FRENCH G. LEE,	:	Sat Below: Hon. Lisa A. Firko, J.A.D. Hon. Avis Bishop-Thompson, J.A.D. Hon. Lorraine M. Augostini, J.A.D.
Defendant-Respondent.	:	

STATE'S COMBINED RESPONSE TO AMICUS BRIEFS

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PRELIMINARY STATEMENT

For years, federal and state courts have uniformly recognized that fingerprint evidence is sufficiently reliable that it is appropriately presented to the factfinder. That well-established consensus, built on this forensic method's empirical grounding and strong track record, speaks volumes. And nothing in amici's briefs provides justification to disrupt that consensus in New Jersey by forcing the State to undertake a costly and time-consuming Daubert hearing just to re-establish what is already known.

Tellingly, none of the amici dispute the existence of this longstanding judicial consensus. Nor do amici give reason to think there have been scientific developments that call this consensus into question or meaningfully undermine the technique's reliability. In fact, some amici even agree that fingerprint evidence is more reliable than most other forms of forensic evidence. And to the extent amici are critical of the technique at all, their criticisms essentially reduce to the notion that the technique has subjective portions and has a non-zero error rate—arguments that the State does not dispute, but that also do not advance the ball because complete perfection and full objectivity have never been required before admitting testimony about an expert's technique.

Amici also voice concerns about how fingerprint experts testify about their conclusions. But none of this explains why a Daubert hearing would be

necessary in this context. And the actual testimony of the fingerprint expert in this case—which did not cross the lines amici are concerned about—underscores the propriety of letting factfinders hear fingerprint testimony.

Amici's remaining arguments are unpersuasive. As the State explained in its opening brief, the trial court did not abuse its discretion when it declined to voir dire jurors about fingerprint testimony, particularly in light of the fact that the court twice gave jurors an instruction emphasizing that they did not have to credit expert testimony. Some amici express concern that some jurors might not follow the court's instructions, but that concern cannot overcome this Court's precedents, which presume jurors follow the instructions provided. And while one amicus asks this Court to rethink the model jury instructions, defendant has not pressed that request to this Court, and this appellate proceeding is not the appropriate forum for such an undertaking.

STATEMENT OF FACTS AND PROCEDURAL HISTORY[1]

The State relies on the statement of facts and procedural history set forth in its November 3, 2025, supplemental brief, and adds the following:

On December 5, 2025, the Wilson Center for Science and Justice (Wilson Center), as well as the American Civil Liberties Union of New Jersey (ACLU)

[1] These related sections are combined for this Court's convenience.

on behalf of four professors, filed motions to appear as amicus curiae, which this Court granted on December 17, 2025. (Paa1; Paa2; WCb; ACLUb). On December 9, 2025, the Innocence Project, which appeared and argued as amicus curiae before the Appellate Division, filed an amicus brief. (IPb).

LEGAL ARGUMENT

POINT I

A HEARING ON FINGERPRINT EVIDENCE IS NEITHER REQUIRED NOR WARRANTED.

The panel erred by ordering a Daubert[2] hearing on fingerprint evidence, and there is nothing in amici's briefs that undermines that conclusion. Fundamentally, State v. Olenowski, 253 N.J. 133 (2023) (Olenowski I), recognizes that a hearing is unnecessary when scientific evidence has previously been deemed reliable and the science underlying that evidence has not changed. That describes fingerprint evidence—which even some amici describe as one of the most reliable forensic methods currently in use. And amici's arguments fall flat in this case, since the testimony from the State's fingerprint expert was careful, qualified, and should assuage the kinds of concerns amici express. Amici's arguments are thus unpersuasive and this Court should reject them.

A. Courts Unanimously Approve Of Fingerprint Evidence.

As discussed in the State's supplemental brief, fingerprint-analysis

[2] Daubert v. Merrill Dow Pharmaceuticals, Inc., 507 U.S. 579 (1993).

evidence has long been accepted in New Jersey and in every other jurisdiction analyzing it. See (Psb18-21). No amicus disputes that basic history. Nor do amici identify any cases (aside from ones reversed on appeal) where a court has concluded that fingerprint evidence is so unreliable that it cannot even be presented to the factfinder. Indeed, the amicus brief filed by the ACLU on behalf of four professors expressly recognizes that "fingerprint evidence has more underlying evidence, including black box studies … and blind proficiency tests, than most forensic disciplines," (ACLUb16), and it describes fingerprint comparisons as "more reliable than most other types of forensic evidence," (ACLUb17). See also (ACLUb16-17) (giving DNA comparison as the sole example of a forensic technique that is more reliable than fingerprint evidence, while classifying numerous other forensic techniques as less reliable). And the that courts have accepted fingerprint evidence for over a century, See generally Brandon L. Garrett, Judging Fingerprint Experts, Duke L. Sch. Pub. L. & Legal Theory Series, 9-37 (2024), https://tinyurl.com/w5xsamy6 (last visited Jan. 23, 2026); National Center on Forensics, Post-PCAST Court Decisions Assessing the Admissibility of Forensic Science Evidence, https://tinyurl.com/5n6hpuhz (last visited Jan. 23, 2026), shows that anyone seeking to argue otherwise faces an extraordinarily uphill climb under any standard.

That longstanding acceptance, moreover, is grounded in a strong

empirical foundation of reliability—as the Third Circuit's thorough analysis in United States v. Mitchell, 365 F.3d 215 (3d Cir. 2004), illustrates. In Mitchell, the district court held a five-day Daubert hearing with testimony from eleven expert witnesses yielding "nearly one[-]thousand pages of testimony and a similarly voluminous array of exhibits." Id. at 220-26, 226 n.6. On appeal, the Third Circuit applied Daubert and affirmed the district court's admissibility finding. First, it found that the basic premises underlying fingerprint matching (about the uniqueness and identifiability of various fingerprint patterns) offered "testable" hypotheses. Id. at 235-38. Next, it found that the results were subject to verification and had a "very low" error rate over "many decades" of use. Id. at 238-41. The Third Circuit also noted that fingerprint evidence is "generally accepted within the forensic[-]identification community …, as demonstrated by the results of the FBI's survey of state agencies." Id. at 241.

As a result, the Third Circuit found that fingerprint evidence "clear[ly] … passes muster" under Daubert. Id. at 244. And while it declined to set "a categorical rule," the Third Circuit explicitly declined to impose a requirement for courts to hold "extensive Daubert hearings in every case involving latent fingerprint evidence." Id. at 246.[3] Instead, it explained, trial courts may limit a

[3] Mitchell also analyzed several Daubert-related factors recognized in the Third Circuit which are not delineated in New Jersey. 365 F.3d at 235, 241-44.

Daubert hearing's scope "to novel challenges to the admissibility of latent fingerprint identification evidence—or even dispens[e] with the hearing altogether if no novel challenge was raised." Ibid.; see also, e.g., United States v. Ware, 69 F.4th 830, 847-48 (11th Cir. 2023) (citing Mitchell to support reliability finding without a hearing); Commonwealth v. Honsch, 226 N.E.3d 287, 304-05 (Mass. 2024) (noting the "established" reliability of ACE-V and approving judicial notice of same).

Mitchell is also noteworthy because the court discussed many of the issues raised by amici, including that fingerprint analysis can have subjective elements, that there is a non-zero error rate, that some critics believe the field is unscientific, and that courts have sometimes relied on string citations to other court opinions. See 365 F.3d at 226-28. Mitchell nevertheless determined that fingerprint evidence was reliable after a Daubert hearing.

B. The Underlying Science Has Not Changed.

Because the reliability of fingerprint evidence is firmly established, Olenowski I requires a defendant to show that "the scientific reliability underlying [fingerprint] evidence has changed" to justify a hearing. 253 N.J. at 154. And just as defendant has failed to make such a showing, (see Psb21-27), amici likewise fail to do so. The panel below simply misconstrued this Court's guidance in concluding that a Daubert hearing was nevertheless warranted.

First, as further discussed in the State's supplemental brief, (Psb22-25), the PCAST and NAS Reports do not demonstrate that fingerprint evidence is so unreliable that it cannot go before a factfinder; instead, the reports reinforce the opposite conclusion. See Ware, 69 F.4th at 848 (finding the PCAST Report acknowledges the reliability of fingerprint evidence, and thus explaining that "[t]he science could not possibly have been so unreliable as to be inadmissible"). Some amici even seem to agree. The Wilson Center cites the PCAST Report to make the same point the Eleventh Circuit recognized in Ware—that the PCAST Report specifically states fingerprint evidence has "foundational validity." (WCb17). And the ACLU's brief on behalf of the four professors cites the NAS Report in support of the proposition that fingerprint evidence is "more reliable than most other types of forensic evidence." (See ACLUb17).

The Innocence Project's brief also does not contend that these studies mean fingerprint evidence should be shielded from factfinders. Instead, the Innocence Project emphasizes aspects from these reports showing that individual fingerprint examiners can make mistakes, and that the technique has a non-zero error rate. (IPb2-4). The State does not dispute those basic points—at the trial in this very case, the State's expert acknowledged that fingerprint analysis has subjective elements, and that it can have a non-zero error rate. (See 6T81-11 to 82-12, 99-9 to 100-20); see also Mitchell, 365 F.3d at 226-28

(acknowledging same, yet finding fingerprint evidence reliable based on voluminous record). But neither Daubert nor Olenowski I—nor any other legal authority—equates admissibility with perfection. And as the State's supplemental brief already observed, when these studies sought to quantify the technique's error rate, their estimates were better than for other techniques that this Court said have a "high accuracy rate." State v. Olenowski, 255 N.J. 529, 601 (2023) (Olenowski II); see (Psb22-25). Issues covered in the PCAST and NAS Reports are thus properly addressed, as here, through "[v]igorous cross-examination, presentation of contrary evidence, and careful instruction on the burden of proof." Daubert, 509 U.S. at 596; see also Ware, 69 F.4th at 848.

Nor does any amicus otherwise demonstrate the kind of change in the underlying science that would be legally relevant. The sole amicus to attempt such a showing was the Wilson Center, (WCb13-22), but many of its cited documents predate even the PCAST and NAS Reports, (WCb20-21). And the only articles dated later than the PCAST Report merely purport to show "[s]tatistical models for assigning probative value to fingerprint associations" and "[t]he first-ever official standards for fingerprint examination." Ibid. While those articles may have things to say about best practices for how fingerprint testimony is presented, see (WCb18-22), they implicitly concede that fingerprint evidence is reliable enough for admission at trial. So nothing about these studies

comes close to raising the kinds of reliability questions that would necessitate the time, expense, and practical difficulty of a new Daubert hearing on fingerprint evidence.[4]

C. The Actual Fingerprint Testimony In This Case Assuages The Concerns Raised By Amici.

The testimony presented in this case reinforces why there was no need for a Daubert hearing and why amici's concerns about how to present fingerprint testimony can be addressed at trial through cross-examination and jury instructions rather than through a costly, threshold Daubert hearing.

For instance, amici express concern that some individual fingerprint examiners might be unqualified. (IPb3). But at trial, the State's expert, Lieutenant Michael Wiltsey, first discussed his long career in the fingerprint-analysis field beginning in 1999, including attending trainings, participating in multiple professional organizations, and teaching courses on the subject at universities and police academies. (6T11-10 to 17-25); see also (6T18-1 to 10)

[4] This Court's recent decision in State v. Nieves, 262 N.J. 161 (2025), briefly referenced by the Innocence Project, (IPb1, 25), has no bearing here. That case, which involved so-called "shaken-baby syndrome (SBS) without impact," was examined under the "general acceptance" standard outlined in Frye v. United States, 293 F. 1013, 1014 (D.C. Cir. 1923), which this Court concluded in Olenowski I must give way to a Daubert-type standard. 253 N.J. at 151-52. In any event, this Court emphasized in Nieves what it saw as an "extraordinarily contentious" debate over "the scientific validity of SBS … without impact," 262 N.J. at 232-33—but no amicus argues there is any such debate as to fingerprint evidence.

(estimating he had examined "tens of thousands of prints" in his career). Indeed, after Lieutenant Wiltsey discussed his qualifications, and after defense counsel conducted his own voir-dire examination, defense counsel stated that he had "[n]o objection" to the court qualifying Lieutenant Wiltsey as an expert. (6T9-8 to 21-13).

Amici also worry that experts might overstate the nature of their conclusions and give jurors the impression they are stating immutable scientific fact rather than expert opinion. (IPb3). But in discussing the ACE-V method, Lieutenant Wiltsey testified that as part of the "evaluation" step, analysts state whether it is their "opinion that the two prints originated from the same source." (6T43-20 to 44-14) (emphasis added); see also, e.g., (6T66-25 to 67-4) (demonstrating method and reaching "the opinion" that the latent print matched defendant's); (6T82-13 to 15) (explaining on cross-examination that the conclusion is "an opinion" based an analyst's judgment); (6T81-11 to 82-12) (agreeing that aspects of the process are "subjective"). And elsewhere in his testimony, Lieutenant Wiltsey recognized that errors were possible. See (6T102-12 to 103-13) (addressing study "designed to determine if an error rate … could be associated with the particular examiners" who participated in that study, which defense counsel posited "could be as high as 5.4 percent"); (6T111-6 to 15) (acknowledging on redirect that errors had arisen in the research, and

also noting that "most of the studies ... stop short of the verification" step of ACE-V and that "some studies" including that step "show that that error would be caught"); (6T84-16 to 99-24) (acknowledging on cross-examination a high-profile case where fingerprint identification had yielded a false positive). And nowhere did Lieutenant Wiltsey assert (as the Innocence Project posits an expert might) that latent-print examination is "infallible," nor did he present his results with absolute certainty. (IPb14).

Lieutenant Wiltsey also addressed the contextual-bias issue mentioned by the Wilson Center. (WCb12, 21). He explained that here, the only information he knew before his analysis were the case name and the nature of the suspected crime. (6T47-9 to 20). He testified that he knew nothing about the suspect's description, had not reviewed surveillance video, and had not spoken to either Detective Burk or any other friction-ridge investigator involved in the case. (6T46-15 to 47-8). Lieutenant Wiltsey stated that this was intentional to "reduc[e] any kind of contextual bias," since it is "helpful when an examiner has limited information about the case at hand" on which that examiner is working. (6T47-21 to 48-3).

Finally, Lieutenant Wiltsey's testimony should be considered alongside the trial court's decision to issue the model jury instruction on expert testimony in both its opening and closing instructions. (4T50-21 to 52-13; 7T31-19 to 33-

10). The court thus twice made clear that it was entirely in the jury's discretion whether (and to what extent) to credit Lieutenant Wiltsey's opinion. And despite amici's concern that juries will blindly defer to forensic experts' testimony, see (ACLUb6, 8-9, 24-25); (IPb9), the presumption that jurors follow the instructions given by the court is "[o]ne of the foundations of our jury system," State v. Burns, 192 N.J. 312, 335 (2007).

POINT II

THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN CONDUCTING VOIR DIRE.

As the four professors acknowledge, "[v]oir[-]dire screening about forensic evidence could … unintentionally prime jurors to pay closer attention to the forensic evidence than they would otherwise or change how they perceive the evidence." (ACLUb23-24). That bolsters the State's point that the trial judge in this case properly exercised his discretion when he declined to ask defendant's proposed voir-dire question. See (Psb28-32).

That conclusion is also buttressed by how the trial judge instructed the jury about analyzing fingerprint evidence. As just noted, during both opening and closing instructions the court issued the model jury charges on expert testimony; he specifically noted that the instruction applied to the State's fingerprint expert. See (4T51-9 to 14; 7T32-6 to 14). That is important here, because this Court has long observed that "questions on subjects usually covered

in a court's charge should be supervised carefully and rarely allowed." State v. Manley, 54 N.J. 259, 270 (1969); see also State v. Little, 246 N.J. 402, 417, 420 (2021) (disallowing voir-dire questioning that "crosses the line from inquiry to advocacy"); State v. Lopez, 78 A.3d 773, 779-80 (R.I. 2013) (holding trial court properly exercised discretion to restrict voir dire on "reliability of eyewitness testimony" because cross-examination, closing argument, and jury instructions sufficed to inform jury). To impose fingerprint questioning at voir dire would thus overstep the jury instructions and potentially influence the jury. And it was not an abuse of discretion for the court to so conclude, even if amici would have preferred a different approach, or contend (contrary to precedent) that jurors will not follow a court's instructions.

POINT III

THERE IS NO NEED TO DECIDE IN THIS CASE WHETHER THE MODEL JURY INSTRUCTIONS SHOULD BE AMENDED.

Finally, the Innocence Project argues that this Court should develop a new model criminal jury charge specifically about fingerprint evidence. (IPb16-25). Amicus does not, however, assert that the trial court's use of the existing model charge was an abuse of discretion. Nor has any party raised that argument before this Court, which generally bars an amicus from injecting it into the case. See,

e.g., State v. J.R., 227 N.J. 393, 421 (2017).[5] In any event, the jury instructions in this case properly informed the jury about fingerprint evidence and what weight, if any, the jury was permitted to provide Lieutenant Wiltsey's testimony. See (4T51-9 to 14; 7T32-6 to 14).

If this Court is nonetheless inclined to re-examine the model jury charges, it would be appropriate to refer the matter to the Criminal Practice Committee and the Committee on Model Criminal Jury Charges (rather than a Special Adjudicator) and invite various stakeholders to offer comments. See State v. Henderson, 208 N.J. 208, 298-99 (2011). And in the appropriate forum, the State would amenable to collaborating on a new model jury instruction about fingerprint evidence.

Finally, while it is well beyond the scope of what the Court need address in this case, the Innocence Project's proposed jury instruction is misguided. Among other things, the Innocence Project proposes stating that print patterns may not be unique, that ACE-V is too broad to qualify as a validated method, and that a guilty verdict is only acceptable if the jury believes beyond a reasonable doubt that the print could only have been left at the time of the crime. In the State's view, these proposed points are either not backed by the

[5] While defendant raised a jury-instruction issue before the Appellate Division, the panel declined to make a ruling on that point, and defendant did not renew that argument in his briefing to this Court.

appropriate studies, constitute legal argument rather than jury instruction, or risk misleading or confusing the jury.

The State does, however, agree that the following points could potentially be appropriate in a hypothetical model jury instruction:

- Fingerprint testimony functions as an opinion as to whether two prints could originate from the same source. (IPb22).

- Fingerprint analysis is subjective, not infallible, and carries a risk of error. (IPb22).

- A fingerprint examiner cannot conclude that two fingerprints were from the same source and exclude all other sources. (IPb22).

- The weight given to a fingerprint identification relies on the specific credibility, believability, and expertise of the expert; the validity of the underlying theory; other witnesses' credibility; and the accuracy of the procedures underlying the collection and preservation of the print evidence. (IPb23).

- The language contained in the current model jury charge on fingerprints. (IPb23-24); see Model Jury Charges (Criminal), "Fingerprints" (rev. Jan. 6, 1992).

- Print evidence qualifies as circumstantial evidence, meaning that if a juror believes defendant's known prints match latent prints found at the scene of a crime, he or she must follow the court's instructions regarding circumstantial evidence when reaching a verdict. (IPb23).

Ultimately, however, any amendments to the model jury charge should come after an appropriate proceeding, with appropriate stakeholder input. The Court should not disturb the conviction here, which was imposed by a jury that

was properly instructed on a forensic method that has been uniformly found admissible for over a century across jurisdictions.

CONCLUSION

This Court should reverse the Appellate Division's decision.

Respectfully submitted,

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