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NO. 26959

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee, v.
RAYMOND MEDEIROS, Defendant-Appellant

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CRIMINAL NO. 02-1-2061)

NORMA T. YARA
CLERK APPELLATE COURTS
STATE OF HAWAII

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SUMMARY DISPOSITION ORDER

(By: Burns, C.J., Foley and Nakamura, JJ.)

On December 27, 2001, at approximately 3:45 p.m., the residence of Olive Doo (Olive) was burglarized. Defendant-Appellant Raymond C. Medeiros (Medeiros) was arrested on February 28, 2002, charged with Burglary in the First Degree of Olive's residence, and tried by a jury.

Honolulu Police Department (HPD) Officer William Littleton (Officer Littleton) testified that he arrived at Olive's home on December 27, 2001 at approximately 5:00 p.m. and "dusted" for fingerprints on "the entry and exit point[s] where the suspect came in[,] on various doors inside the house, and on several items that were inside a cardboard box found in Olive's kitchen. Officer Littleton testified that he "got nine cards with the prints, about 13 sets of prints on the nine cards" and that exhibit no. 19 "is the latent fingerprint card that [he] placed the fingerprints lifted from one of the items on."

HPD Officer Carl Inouye (Officer Inouye) testified that on April 27, 2001, he made a set of the inked fingerprints of Medeiros on a fingerprint card that [Medeiros] "sign[ed] off on[.]" When it was offered in evidence as exhibit no. 18, counsel for Medeiros stated, "That particular document can go

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into evidence but has to be redacted. The top part needs to be cut off. The bottom part shows the actual prints, the top part is an OBTS [Offender Based Tracking System] report." A redacted copy was admitted into evidence.

Upon examination by counsel for the State of Hawai'i (the State), Lenora Ishihara (Ishihara) testified, in relevant part, as follows:

A. I'm currently employed with the [HPD] as a fingerprint identification technician.

Q. Okay. And as a fingerprint identification technician, what function do you perform?

A. I do latent and fingerprint comparisons.

Q. How long have you been a fingerprint technician?

A. Four years.

. . . .

Q. Have you received training in the science of fingerprinting?

A. Yes, I have.

. . . .

A. I've had formal classroom training on the basics of fingerprints as well as advance ridgeology, but most of my training has been on the job under our technicians.

Q. And how much on-the-job training have you received?

A. I worked for the [HPD] for ten years, so throughout that time I would say maybe about two years.

Q. And . . . could you describe the various fingerprinting work that you've done over the course of your career?

A. I started off as a clerk dealing with taking fingerprints.

Q. Okay. And how long ago would that have been?

A. That will be in 1994. And in 1996 I became a fingerprint classifier, which does ten-print verification. And then in 2000 I became a technician.

Q. And what's the difference between a technician and a classifier?

A. The technician basically deals with the latents.

Q. And what is a latent?

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A. A latent is a partial print that's left by chance, it's not seen by the naked eye and it needs to be developed in order to be seen.

Q. And how is that different from an inked print?

A. An inked print is usually a print taken in a controlled area and can be identified to a particular . . . individual.

Q. Have you been qualified as a fingerprint expert in a court of law?

A. Yes.

Q. Where have you been qualified as an expert?

A. In the state of Hawai'i.

During a bench conference following the above testimony, counsel for Medeiros contended that Ishihara was not qualified to be an expert witness, arguing that "[Ishihara]'s gotten some kind of classroom training, I don't know where, FBI training, things like that, on-the-job training. I don't recall ever having her as a witness in a fingerprint case. I don't know her qualifications. I don't have a CV [curriculum vitae] of her, how much the classroom work is, where, whether she's certified in any way, shape or form, any kind of certifications[.]" Counsel for Medeiros requested the opportunity to further question Ishihara about her qualifications. The court responded "You can go into that on cross. [Ishihara] may testify." Counsel for the State then continued questioning Ishihara as follows:

Q. What is a fingerprint?

A. A fingerprint is an impression made by -- . . . -- friction ridges.

Q. And what are friction ridges?

A. Friction ridges are raised lines that are found on the hands and feet.

Q. What anatomical function do friction ridges perform?

A. They basically aid us in grabbing and holding onto things.

Q. And could you describe the function that friction ridges serve in personal identification?

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A. Friction ridges are not always one continuous line. They could split into two ridges, which is what we call a bifurcation, they could come back together again, this is called an island or enclosure, they could come to an abrupt stop, which is a ridge ending. They also are fragmented into short ridges or really short ridges which will appear to be dots. These are all characteristics of a ridge and no two persons will have the same characteristics in a particular order in a particular location on the hands and feet.

Q. Okay. Could you briefly describe or give us the historical background on the use of fingerprints for identification purposes?

A. Fingerprinting has been used for at least a hundred years in -- in the United States. It's not only used for judicial application but it's also used in the medical field where . . . babies, they print their feet. It's also used for natural disasters where we try to identify the deceased. And also in the art community. So it's pretty well-known and accepted by a lot of people in - in the community.

When counsel for the State asked the court to qualify Ishihara as an expert witness, counsel for Medeiros requested and was granted an opportunity to further question Ishihara. During that voir dire examination, Ishihara testified that her basic classroom work in "ridgeology" was done at the Hawai'i Criminal Justice Data Center in Honolulu, her advance classroom work was done with the Sacramento Police Department (SPD) in California, and she had a diploma or certificate for ridgeology from the SPD. Ishihara further testified that she did not receive any "FBI [United States Federal Bureau of Investigation] identification training," did not know if the SPD "had any kind of national accreditation," did not "have any kind of certification with any national or international group," and had not been assigned "any kind of error rate or proficiency" for her work in fingerprinting. Over the objection of counsel for Medeiros, the court permitted Ishihara to testify as a fingerprint expert.

Exhibit no. 22 is a copy of Medeiros' fingerprint exemplar taken when he was arrested in this case. Counsel for Medeiros objected to the court's admission of exhibit no. 22 into

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evidence, arguing that there was a lack of foundation because only hearsay evidence was provided to show "who took the print[.]" The court disagreed.

On April 27, 2001, the police obtained Medeiros' fingerprints on a fingerprint card. Exhibit no. 18 is a copy of that inked fingerprint card. The exhibit was redacted of all information indicating why the card was made.

Exhibit no. 20 is a side by side view of an enlarged copy of two fingerprints: (1) exhibit no. 18, and (2) exhibit no. 22. Ishihara used exhibit no. 20 to show how she compared the two fingerprints. Asserting a lack of authentication, counsel for Medeiros objected to the admission of exhibit no. 20 into evidence. The court disagreed. Using exhibit no. 20, Ishihara testified that "[i]t's pretty safe to say that these two prints were made by the same individual, which was the left ring finger of Mr. Medeiros."

Counsel for Medeiros requested that State's Exhibit 20 be barred from the jury room to ensure that the jurors did not attempt to perform their own analysis of the similarities between the prints. The court denied the request, subject to a cautionary instruction to the jury. In its jury instructions, the court stated, "As to State's Exhibit 20, you may not conduct experiments or attempt to gather any information not presented by way of testimony."

Medeiros did not testify. In closing argument to the jury, counsel for Medeiros advised the jury that "[i]t's up to you to decide whether someone is an expert. It's up to you to decide whether the opinion is a valid opinion[,]" argued that

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"Ishihara is not an expert[,]" and challenged the reliability of Ishihara's fingerprint match.

On June 28, 2004, a jury found Medeiros guilty as charged. On October 19, 2004, the court sentenced Medeiros to a term of ten years, concurrent with any other term he was serving, less credited time served from September 26, 2002, and ordered him to pay \$50.00 restitution.

In accordance with Hawai'i Rules of Appellate Procedure Rule 35 (2006), and after carefully reviewing the record and the briefs submitted by the parties, and duly considering and analyzing the law relevant to the arguments and issues raised, we decide the points on appeal as follows:

1. Medeiros contends that the court erred when it qualified Ishihara as an expert in fingerprint comparison and identification. He argues that "[t]he State failed to establish that Ms. Ishihara possessed the knowledge, skill, experience, education or training that qualified her as an expert in the field of fingerprint comparison and identification." In light of State v. Toyomura, 80 Hawai'i 8, 26 n. 19, 904 P.2d 893, 911 n. 19 (1995), we disagree.

2. Medeiros contends that the court erred when it admitted exhibits nos. 20 and 22 into evidence because the State failed to call a witness who had personal knowledge about the taking of the fingerprint in exhibit no. 22. We conclude that the record supports the admission of these two exhibits into evidence.

3. Medeiros contends that the court plainly erred when, notwithstanding Hawaii Rules of Evidence Rule 104(c), it

did not require the examination of Ishihara to determine whether she was qualified as an expert to be conducted out of the hearing of the jury. He states that had the trial court done this, counsel for "Medeiros would have been able to candidly question Ms. Ishihara without concern about the resulting prejudice and ultimately the totality of her lack of the qualifications would have been exposed." We disagree. The record clearly establishes that counsel for Medeiros wanted the jury to hear Ishihara testify about her qualifications so that she could argue to the jury that Ishihara's testimony about the fingerprint match was unreliable.

4. Ishihara testified that she used the ACE-V (Analysis, Comparison, Evaluation and Verification) to determine the match of fingerprints. Medeiros contends that the court plainly erred when it admitted Ishihara's testimony notwithstanding the fact that her analysis of fingerprints in this case was not reliable because it failed to comport with the standards of the ACE-V analysis. He argues, in the opening brief, as follows:

The ACE-V analysis consists of three (3) levels of examination and verification of the identification. The first level is a broad overview of the fingerprints. The second level compares the general characteristics between the finger prints (i.e. bifurcations, short ridges, islands and dots). The third level involves microscopic measurement and comparison of ridges and pores.

It is clear from Ms. Ishihara's testimony that she did not properly examine the fingerprints. In her analysis, Ms. Ishihara skipped levels one and three and partially engaged in level two analysis. . . ."

(record citations omitted). We disagree. This argument pertains to the weight of the evidence, not to its admissibility.

5. Medeiros contends that the court plainly erred when it admitted exhibit no. 18 into evidence. He argues that exhibit

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no. 18 was irrelevant and overwhelmingly prejudicial against him. Medeiros states, "It appears that the only reason Exhibit 18 was introduced was to mislead the jury into believing that [he] was convicted or arrested prior to this case." He does not, however, explain how exhibit no. 18 would cause the jury to believe that he was previously convicted or arrested. The police officer who made the fingerprint card testified that the Police Department keeps "fingerprint records for things like driver's licenses." Moreover, if there was any prejudice, it was caused by the testimony about exhibit no. 18 prior to its admission into evidence, not by the admission of exhibit no. 18 into evidence.

Therefore, IT IS HEREBY ORDERED that the October 19, 2004 Judgment is affirmed.

DATED: Honolulu, Hawai'i, May 5, 2006.

On the briefs:

Taryn R. Tomasa,
Deputy Public Defender
for Defendant-Appellant.


Chief Judge

Stephen K. Tsushima,
Deputy Prosecuting Attorney
for Plaintiff-Appellee.


Associate Judge


Associate Judge