

## 1: The Admissibility of Digital Evidence in Criminal Prosecutions

*Admissible evidence is any document, testimony, or tangible evidence used in a court of law. Evidence is typically introduced to a judge or a jury to prove a point or element in a case. Evidence is typically introduced to a judge or a jury to prove a point or element in a case.*

Definition[ edit ] In Daubert, seven members of the Court agreed on the following guidelines for admitting scientific expert testimony: Under Rule , the task of "gatekeeping", or assuring that scientific expert testimony truly proceeds from "scientific knowledge", rests on the trial judge. Concerns about expert testimony cannot be simply referred to the jury as a question of weight. A conclusion will qualify as scientific knowledge if the proponent can demonstrate that it is the product of sound "scientific methodology" derived from the scientific method. The Court defined "scientific methodology" as the process of formulating hypotheses and then conducting experiments to prove or falsify the hypothesis, and provided a set of illustrative factors i. Whether the theory or technique employed by the expert is generally accepted in the scientific community; Whether it has been subjected to peer review and publication; Whether it can be and has been tested; Whether the known or potential rate of error is acceptable; and Whether the research was conducted independent of the particular litigation or dependent on an intention to provide the proposed testimony. Testimony by Experts If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise, if 1 the testimony is based upon sufficient facts or data, 2 the testimony is the product of reliable principles and methods, and 3 the witness has applied the principles and methods reliably to the facts of the case. In , Rule was again amended to make the language clearer. The rule now reads: Use[ edit ] Although the Daubert standard is now the law in federal court and over half of the states, the Frye standard remains the law in some jurisdictions including California, Illinois, Maryland, Pennsylvania, and Washington. Even though a Daubert motion is not binding to other courts of law, if something was found untrustworthy by one court, other judges may choose to follow that precedent. In another case in which the defendant was apparently at fault for filing a motion to exclude expert testimony one week before the trial date, the district court denied the motion on that ground, but it advised the defendant that it might conduct its own voir dire of the expert in question before he testified. The defendant ultimately lost that case, following the admission of the disputed expert testimony, and ultimately failed in its appeal. History[ edit ] Prior to Daubert, relevancy in combination with the Frye test were the dominant standards for determining the admissibility of scientific evidence in Federal courts. Frye is based on a Federal Court of appeals ruling involving the admissibility of polygraph evidence. In Daubert, the Supreme Court ruled that the Frye test was superseded by the Federal Rules of Evidence , specifically Rule governing expert testimony. Rule originally stated in its entirety , If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise. According to a RAND study, post Daubert, the percentage of expert testimony by scientists that was excluded from the courtroom significantly rose. So if more experts are now being excluded, then Daubert has undoubtedly shifted the balance between plaintiffs and defendants and made it more difficult for plaintiffs to litigate successfully. These tactics can range from simply attempting to delay the case to driving up the costs of the litigation forcing settlement. In criminal cases, the prosecution has the burden of proof and uses a host of forensic science methods as evidence to prove their case. But, Daubert motions are rarely made by criminal defendants and when they do, they lose a majority of the challenges. The "Daubert" ruling furthermore admits the possible introduction of non-peer reviewed data and conclusions. This increasingly shifts the burden of scientific judgement onto judges who have not had an education which would enable them to properly evaluate such data. Supreme Court suggested that the following factors be considered: Has the technique been subject to peer review and publication? What is the known or potential rate of error? Has the technique been generally accepted within the relevant scientific community? The Supreme Court explicitly cautioned that the

Daubert list should not be regarded by judges as "a definitive checklist or test Mohan ,; [28] R. While the Court did note that: Supreme Court did list a number of factors that could be helpful in evaluating the soundness of novel science. The Quebec Court had held that greater liberality should be applied by the Court in receiving pro-defense scientific evidence in a criminal case. The absence of an agreed protocol for the validation of scientific techniques prior to their being admitted in court is entirely unsatisfactory. Judges are not well-placed to determine scientific validity without input from scientists. We recommend that one of the first tasks of the Forensic Science Advisory Council be to develop a "gate-keeping" test for expert evidence. This should be done in partnership with judges, scientists and other key players in the criminal justice system, and should build on the US Daubert test.

### 2: Admissibility of Expert Testimony in Federal and State Court | Ruskin Moscou Faltischek, P.C.

*While congressional enactments in the field of evidence have generally tended to expand admissibility beyond the scope of the common law rules, in some particular situations they have restricted the admissibility of relevant evidence.*

The following exceptions apply in a criminal case: This evidence may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident. On request by a defendant in a criminal case, the prosecutor must: A provide reasonable notice of the general nature of any such evidence that the prosecutor intends to offer at trial; and B do so before trial " or during trial if the court, for good cause, excuses lack of pretrial notice. This subdivision deals with the basic question whether character evidence should be admitted. Once the admissibility of character evidence in some form is established under this rule, reference must then be made to Rule , which follows, in order to determine the appropriate method of proof. If the character is that of a witness, see Rules and for methods of proof. Character questions arise in two fundamentally different ways. No problem of the general relevancy of character evidence is involved, and the present rule therefore has no provision on the subject. The only question relates to allowable methods of proof, as to which see Rule , immediately following. This circumstantial use of character evidence raises questions of relevancy as well as questions of allowable methods of proof. In most jurisdictions today, the circumstantial use of character is rejected but with important exceptions: This pattern is incorporated in the rule. While its basis lies more in history and experience than in logic as underlying justification can fairly be found in terms of the relative presence and absence of prejudice in the various situations. In any event, the criminal rule is so deeply imbedded in our jurisprudence as to assume almost constitutional proportions and to override doubts of the basic relevancy of the evidence. The limitation to pertinent traits of character, rather than character generally, in paragraphs 1 and 2 is in accordance with the prevailing view. A similar provision in Rule , to which reference is made in paragraph 3 , limits character evidence respecting witnesses to the trait of truthfulness or untruthfulness. The argument is made that circumstantial use of character ought to be allowed in civil cases to the same extent as in criminal cases, i. Extrinsic Policies Affecting Admissibility , Cal. Uniform Rule 47 goes farther, in that it assumes that character evidence in general satisfies the conditions of relevancy, except as provided in Uniform Rule The difficulty with expanding the use of character evidence in civil cases is set forth by the California Law Revision Commission in its ultimate rejection of Uniform Rule 47, Id. It tends to distract the trier of fact from the main question of what actually happened on the particular occasion. It subtly permits the trier of fact to reward the good man to punish the bad man because of their respective characters despite what the evidence in the case shows actually happened. It is believed that those espousing change have not met the burden of persuasion. Subdivision b deals with a specialized but important application of the general rule excluding circumstantial use of character evidence. Consistently with that rule, evidence of other crimes, wrongs, or acts is not admissible to prove character as a basis for suggesting the inference that conduct on a particular occasion was in conformity with it. However, the evidence may be offered for another purpose, such as proof of motive, opportunity, and so on, which does not fall within the prohibition. In this situation the rule does not require that the evidence be excluded. No mechanical solution is offered. The determination must be made whether the danger of undue prejudice outweighs the probative value of the evidence in view of the availability of other means of proof and other factors appropriate for making decisions of this kind under Rule Rather, it is anticipated that with respect to permissible uses for such evidence, the trial judge may exclude it only on the basis of those considerations set forth in Rule , i. No substantive change is intended. Although there are a few reported decisions on use of such evidence by the defense, see, e. The amendment to Rule b adds a pretrial notice requirement in criminal cases and is intended to reduce surprise and promote early resolution on the issue of admissibility. The notice requirement thus places Rule b in the mainstream with notice and disclosure provisions in other rules of evidence. The Rule expects that counsel for both the defense and the prosecution will submit the necessary request and information in a reasonable and timely fashion. Other than requiring pretrial notice, no specific time limits are stated in recognition that what constitutes a

reasonable request or disclosure will depend largely on the circumstances of each case. Likewise, no specific form of notice is required. The Committee considered and rejected a requirement that the notice satisfy the particularity requirements normally required of language used in a charging instrument. Instead, the Committee opted for a generalized notice provision which requires the prosecution to apprise the defense of the general nature of the evidence of extrinsic acts. The Committee does not intend that the amendment will supercede other rules of admissibility or disclosure, such as the Jencks Act, 18 U. The amendment requires the prosecution to provide notice, regardless of how it intends to use the extrinsic act evidence at trial, i. The court in its discretion may, under the facts, decide that the particular request or notice was not reasonable, either because of the lack of timeliness or completeness. Because the notice requirement serves as condition precedent to admissibility of b evidence, the offered evidence is inadmissible if the court decides that the notice requirement has not been met. Nothing in the amendment precludes the court from requiring the government to provide it with an opportunity to rule in limine on b evidence before it is offered or even mentioned during trial. When ruling in limine, the court may require the government to disclose to it the specifics of such evidence which the court must consider in determining admissibility. Nor is the amendment intended to redefine what evidence would otherwise be admissible under Rule b. Finally, the Committee does not intend through the amendment to affect the role of the court and the jury in considering such evidence. See *United States v. Committee Notes on Rules*— Amendment Rule a 1 has been amended to provide that when the accused attacks the character of an alleged victim under subdivision a 2 of this Rule, the door is opened to an attack on the same character trait of the accused. Current law does not allow the government to introduce negative character evidence as to the accused unless the accused introduces evidence of good character. If the government has evidence that the accused has a violent character, but is not allowed to offer this evidence as part of its rebuttal, the jury has only part of the information it needs for an informed assessment of the probabilities as to who was the initial aggressor. Thus, the amendment is designed to permit a more balanced presentation of character evidence when an accused chooses to attack the character of the alleged victim. The amendment does not affect the admissibility of evidence of specific acts of uncharged misconduct offered for a purpose other than proving character under Rule b. Nor does it affect the standards for proof of character by evidence of other sexual behavior or sexual offenses under Rules — By its placement in Rule a 1 , the amendment covers only proof of character by way of reputation or opinion. The Committee made the following changes to the published draft of the proposed amendment to Evidence Rule a: The Committee Note was revised to accord with this change in the text. The Committee Note was amended to accord with this change in the text. The amendment resolves the dispute in the case law over whether the exceptions in subdivisions a 1 and 2 permit the circumstantial use of character evidence in civil cases. The amendment is consistent with the original intent of the Rule, which was to prohibit the circumstantial use of character evidence in civil cases, even where closely related to criminal charges. The circumstantial use of character evidence is generally discouraged because it carries serious risks of prejudice, confusion and delay. *United States, U. Practice Under the Rules*, pp. *Illusion, Illogic, and Injustice in the Courtroom*, U. Those concerns do not apply to parties in civil cases. The amendment also clarifies that evidence otherwise admissible under Rule a 2 may nonetheless be excluded in a criminal case involving sexual misconduct. Nothing in the amendment is intended to affect the scope of Rule b. The admissibility standards of Rule b remain fully applicable to both civil and criminal cases. *Changes Made After Publication and Comments*. No changes were made to the text of the proposed amendment as released for public comment. A paragraph was added to the Committee Note to state that the amendment does not affect the use of Rule b in civil cases. *Committee Notes on Rules*— Amendment The language of Rule has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

### 3: What Is Admissible Evidence? | LegalMatch Law Library

*Certain Admissibility Issues With Testimonial Evidence* Testimonial evidence is usually the more common form of evidence, where someone takes the stand and is asked questions about a case. Because this evidence involves the statements of other people regarding certain facts, which can be tainted by poor memories or bias, there are a number of admissibility rules that apply.

In light of the recent Court of Appeals decision in *Parker v. Mobil Oil Corporation*<sup>1</sup> restating the distinction between state and federal courts on the admissibility of expert testimony, an analysis of the issue is valuable for practitioners. In *Daubert*, the Supreme Court announced that the trial court must perform a gate keeping function in determining the admissibility of expert testimony. The Supreme Court provided certain factors that would assist the lower courts in determining admissibility. These factors were intended to be flexible considerations for the trial courts. In *Amorgianos v. National Railroad Passenger Corporation*,<sup>14</sup> the Second Circuit extensively discussed the *Daubert* factors and the gate keeping function of the District Court in detail. In *Amorgianos*, the plaintiff sought recovery for injuries to his nervous system he claimed to have suffered as a result of exposure to paint fumes. He intended to offer the testimony of an industrial hygienist who would testify as to the concentration of the paint fumes. The District Court precluded this testimony on the basis that the expert failed to reliably follow his own methodology. In *Joiner*,<sup>15</sup> the Fifth Circuit affirmed the District Court's decision in *Joiner*,<sup>15</sup> *US Warner Lambert Company*, F. *City of New York*, F.

### 4: Daubert standard - Wikipedia

*ADMISSIBILITY OF SCIENTIFIC EVIDENCE* rule remains a significant issue. Examining a variety of problems that have arisen under the rule, the Article concludes that the rule.

Alberta, Canada Introduction Advances in technology have led to the use of various digital techniques in the presentation of evidence to the courts. In some cases, digital techniques have allowed the court to gain more valuable information from evidence than would otherwise have been evident. In other cases, it has allowed the court to receive evidence that it would not have been able to receive without the assistance of digital technology. Digital evidence has been presented to the courts in various areas including audio enhancement, photograph enhancement, forensic video analysis and the digital enhancement of latent fingerprints. Where digital technology adds little to the original evidence, it is rarely worth the time and effort in preparing and presenting such evidence in a digital environment. However, where digital assistance allows the court to see or hear evidence that it would not otherwise have seen or heard or where it allows the court to see or hear such evidence in a more thorough, analytical format, it is well worthwhile. There have been numerous cases over the past decade where forensic video analysis has made the difference between a justified conviction and an unjust acquittal. Equally, it has also allowed for the exoneration of defendants who might otherwise have been wrongfully convicted, a travesty we as a civilized society can ill-afford. The ability to convince the court that digital evidence is worthy of reception into the criminal process is dependent on the qualifications and competence of the tendered expert, the skill and knowledge of the prosecutor in leading such evidence and the quality of the digital evidence itself. Digital evidence has been successfully led in many jurisdictions in the United States and Canada over the past decade. New scientific techniques are subject to admissibility hearings under *Frye v. United States*, F. Circuit Court or the more restrictive federal test in *Daubert v. Merrell Dow Pharmaceuticals Inc.* The Daubert test is being utilized in a number of state jurisdictions as well. A review of case law dealing with digital evidence is instructive. *Case Law Review English v. State of Georgia*, S. A copy of the original videotape was entered as an exhibit at trial as well as a copy of the single computer enhanced image of the defendant seller. Issue Did the trial court err in admitting the computer enhanced image? Ruling The technician who produced the computer enhanced image testified as to the process used and said that it was a fair and accurate representation of what appeared in the videotape copy. Accordingly, the computer enhanced image was admissible. The conviction was upheld. An FBI Agent testified that he subjected surveillance video from one of the banks to digital image processing. This procedure sharpened the images. He further testified that he was then able to detect a mark on the face of the robber. The defence argued that the trial court erred in admitting this evidence. Issue Did the trial court err in admitting this digital analysis evidence? Ruling In a very brief ruling, the Court concluded that the trial court reasonably concluded that this evidence would assist the jury and that it was properly admitted. *State of Minnesota v. Newman*. At trial, the evidence against Newman consisted of the testimony of the cashier and a surveillance videotape which showed two men leaving the store with the baseball cards. Following the verdict of guilt, Newman moved for a new trial alleging a prosecution discovery violation. It heard evidence from a defence witness, a digital imaging technician. The trial court disagreed with this finding and denied a new trial. Issue Did the trial court err in denying the motion for a new trial? Ruling The trial court did not err in denying the motion for a new trial. Though not stated, implicit in the ruling of both the trial court and the Court of Appeals of Minnesota is the acceptance of the digital imaging evidence that was presented by the defence. *State of Arkansas*, S. The defendant contended that stills taken from the videotape should not have been admitted as they had been manipulated and that therefore the silent witness theory did not apply. The following process occurred: Ruling The Court noted at page Reliability must be the watchword in determining the admissibility of enhanced videotape and photographs, whether by computer or otherwise. The Court ruled that computer generated stills are admissible if they are verified as being reliable representations of images recorded on the original videotape. Further, the original videotape should be entered as an exhibit for the trier of fact to view. *State of Arizona v. Paxton*. The victim was the driver of the car in which Paxton was a rear seat passenger and Smaulding was

the front seat passenger. Once Paxton stopped the car, he and Smauling pulled the victim out of the car and put him in the rear hatchback. Once it became apparent that the police were focusing on Paxton and Smauling, Smauling burned the car. At trial, Paxton testified that in fact Smauling was the killer, not Paxton. He testified that the three of them had driven to a secluded spot where they smoked marijuana. The seating arrangement was the same. Paxton said that Smauling then dragged the victim from the car and dumped his body in a ditch. The State contended that the victim had removed the seat cover earlier because the straps were broken and that he was storing it in the hatchback where it became bloodstained when his body was placed there after being shot. The state tendered photographs of the car that the girlfriend had taken within three months of the murder. The photographs appeared to show that only the passenger seat had a seat cover on it. Mark Little was qualified as an expert witness. Issue Amongst other issues, Paxton argued that the evidence of Mark Little was irrelevant because it was based on photographs taken too remote in time from the murder. The Court expressed no concern with the admissibility of the forensic digital analysis of the photographs. Commonwealth of Pennsylvania v. The body of the victim was discovered on a hot day, June 12, , by a young woman who was walking down a rural dirt road. She smelled an odor, investigated and found the badly decomposed body of the victim clad in a jacket, jeans and sneakers. He concluded that the wounds would have impacted the vital organs. However, since the body was essentially skeletonized, no organs were present as they had disappeared from both decomposition and insect activity. An entomologist testified that the presence and relative maturity of insects in and around the body allowed him to estimate the approximate date of death, that being days prior to discovery. It was determined that the victim had been missing since May 24, 19 days earlier and was last seen wearing clothing similar to that found on the body. The evidence established that the victim was afraid that the defendant would hurt her and take away their child, that he was following her and that the victim and the defendant were involved in a bitter divorce and custody battle. The ATM camera photographed the location directly in front of it at ten second intervals. The next frame, taken at No other images of the woman or the car were found. This video was shot on May 24, the day the victim was last seen alive. A Chevrolet Celebrity, the same vehicle Auker was using on May 24, was placed in an identical position and captured on video. Digital image enhancement was used to clarify the images taken from the ATM video. The original video was of poor quality and contrast and lightening effects were applied to gain a more usable image. The original video frames were compared to the reenactment frames in both the enhanced and unenhanced format. A Chevrolet representative testified that the vehicles depicted in both the original and reenactment video appeared to be Chevrolet Celebrities within certain production years including that of the car Auker was proven to have been driving. It does not appear that anyone testified regarding a comparison of the woman or her clothing to that of the victim. Issue Amongst other issues, Auker argued that the comparison evidence of the video images should not have been admitted. Ruling The Court noted that expert testimony is permitted as an aid to the jury when the subject matter is distinctly related to a science, skill or occupation beyond the knowledge or experience of the average lay person. Where a witness has a reasonable pretension to specialized knowledge on a subject in issue, the witness may testify and the jury will assign the appropriate weight to that evidence. Expertise, whether gathered from formal education or by experience, is expertise. Here, the Chevrolet representative had specialized knowledge and was properly permitted to express an opinion as to the make and year of the car depicted in the video. The Court expressed no concern with the admissibility of the digital image enhancement evidence. State of Washington v. It was alleged that he had raped and murdered a woman in her apartment. Fingerprint evidence obtained at the scene was of insufficient quality to allow the latent print examiner to make a proper comparison. The examiner took the questioned exhibits to Erik Berg, an expert in enhanced digital imaging at the Tacoma Police Department. Berg generated digital images of the pieces of bed sheet. He then used computer software to filter out background patterns and colors to enhance the images so that the prints could be viewed without the background patterns and colors. This process allowed the latent print examiner to conclude that the prints belonged to Hayden. Following the practice in Washington, a Frye hearing was conducted. The trial court found that enhanced digital imaging is not novel scientific evidence to which the Frye test applies. In any event, the trial court found that the process passed the Frye test. Issue Did the trial court err in admitting the

evidence of the digitally enhanced fingerprint comparison? Ruling Berg testified in detail as to the history of digital imaging. He said that computer software improves sharpness and image contrast. Pattern and color isolation filters remove interfering colors and background patterns. This is a subtractive process in which elements are removed or reduced; nothing is added. He further testified that the software he used prevented him from adding to, changing or destroying the original image. He contrasted image enhancement, which makes what is already there more usable, with image restoration, in which things that are not already there are added based upon preconceived notions as to what the end result should look like.

### 5: Admissible evidence - Wikipedia

*The general rule in evidence is that all relevant evidence is admissible and all irrelevant evidence is inadmissible, though some countries (such as the United States and, to an extent, Australia) proscribe the prosecution from exploiting evidence obtained in violation of constitutional law, thereby rendering relevant evidence inadmissible.*

Tuesday, September 3, Expert Admissibility: Experts are expected to know what standard the court is using to determine the admissibility of expert testimony. If the case is in Federal Court, then the Daubert standard always applies. But in state court it varies. Most states have adopted Daubert 41 as of July , with the remaining governed by Frye. Here we present a brief history of the key cases affecting the admission of expert testimony and what those decisions mean for experts. The Frye standard means expert testimony is admissible if the underlying scientific principles have gained general acceptance within the relevant scientific community. This standard originated in Frye v. United States, in which the lower court ruled that the polygraph test could not be used in court because it had not received general acceptance among the scientific community. The court excluded the expert testimony relying on the polygraph results and the defendant, James Alphonzo Frye, was convicted of second degree murder. The appellate court upheld the Washington D. United States, F. This appellate court ruling became the standard governing admissibility of expert testimony in Federal criminal courts but did not find its way into Federal civil courts until the s. What Does Frye Mean for Experts? The Frye test for admissibility of expert testimony requires experts to both demonstrate expertise in their specific field of science and that their methods and theories used to support their opinions are generally accepted. The first factor is established through education, experience, and recognition as contributing to the relevant field of science. The Federal Daubert standard pronounced Dow-burt means expert testimony does not need to meet the general acceptance standard to be admissible as long as the underlying methodology is shown to be relevant and reliable. This standard was defined by the Supreme Court in its landmark decision in Daubert v. Merrell Dow Pharmaceuticals, Inc. The Supreme Court unanimously decided that the Frye test had been superseded when the Federal Rules of Evidence were updated and adopted in , and therefore, the general acceptance standard should not have been applied by the lower court Daubert v. In , Federal Rule of Evidence stated Fed. If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise. In brief, Rule is a relevance and reliability standard. It allows for the introduction of novel, sound science if it can be shown to be reliable, scientifically valid and will assist the jury the trier of fact. To assist with that determination, the Court outlined four factors or criteria to be considered when evaluating expert testimony U. Whether the theory or technique can be and has been tested; Whether the theory or technique has been subjected to peer-review and publication; Whether the theory or technique has a known or potential error rate; Whether the theory or technique has general acceptance within a relevant scientific community. The Supreme Court remanded the case to the U. What Does Daubert Mean for Experts? Under Daubert, judges determine if an expert is qualified in the relevant field same as in Frye before determining the relevance and reliability of the science. In the twenty years since Daubert, judges in federal and state courts have shown broad latitude on how they interpret and apply the Daubert criteria to expert testimony. Some judges rigidly require experts to meet all four factors, whereas other judges consider the factors to be independent of one another and make a determination as to which factors, if any, to apply. Whether in a Federal or a state court, experts may anticipate a Daubert challenge to exclude their testimony prior to trial. Therefore, it is incumbent on experts not only to demonstrate they are qualified to testify in the specific field based on their education, experience and training , but most importantly to demonstrate how the underlying methodology they employed to arrive at their expert opinions satisfies the factors listed above. Beyond Daubert The Daubert Trilogy refers to the three key cases that established precedence for how judges determine the admissibility of expert testimony. Joiner and Kumho are the two additional Supreme Court cases, decided within a few years of Daubert. Joiner, a toxic tort case concerning lung cancer from exposure to polychlorinated biphenyls PCBs. At issue was the

question of the proper standard of review for the admissibility of evidence as it related to excluding expert testimony when the outcome was summary judgment, not a trial. The court ruled that the expert failed to demonstrate how the data sufficiently supported his conclusion that Mr. The Court of Appeals for the 11th Circuit reversed, arguing the trial court should be held to a different standard when considering the admission of testimony during a summary judgment ruling. The 11th Circuit also indicated that the trial court usurped the role of the jury when it weighed the evidence instead of the trier of fact the jury. The Supreme Court reversed and held that trial court judges should not be held to a different standard when deciding on admissibility of evidence, including expert testimony, even when the result is summary judgment. This phrase is used in Daubert motions to exclude expert testimony when one party argues the gap between the data relied upon and the opinion being proffered is too great. Joiner requires experts to demonstrate their conclusions are derived from a reliable methodology rooted in scientific principles. This is normally accomplished in a detailed expert report. Carmichael, a case concerning the cause of a rear tire blowout on a minivan that overturned killing one passenger and injuring seven others. At issue was whether Daubert applied to experts other than scientists. His conclusion was supported by a visible and tactile inspection of the failed tire, and his determination that there had not been tire abuse by the owner of the vehicle. On appeal, the 11th Circuit reversed and held that the lower court erred by applying Daubert to a non-scientific expert. The main take away for experts is the need to clearly demonstrate that their methodology, reasoning and conclusions are relevant and reliable, regardless of their field of expertise. It is still important to demonstrate how the Daubert guidelines are met, regardless of whether the trial court judge ultimately holds an expert to them. Submitted by Wendy N.

### 6: MATSON & ASSOCIATES: Expert Admissibility: Frye & the Daubert Trilogy

*evidence is admissible under the general issue alone, or whether bad character must be expressly pleaded in mitigation, are questions upon which the decisions have not been quite harmonious.*

The Admissibility of Digital Photographs in Court Steven Staggs When digital imaging is considered for law enforcement, the concern of the admissibility of digital photographic evidence in court is often raised. The fact that digital photographs are more easily altered than film-based photographs is usually cited. Some even believe digital photographs are not admissible in court. This article is presented in the hope of clearing up some of the confusion and misinformation about this issue. We will begin with the rules of evidence regarding digital evidence. Rule 3 states that if data are stored in a computer or similar device, any printout or other output readable by sight, shown to reflect the data accurately, is an "original". Rule 4 states that a duplicate is a counterpart produced by the same impression as the original—by mechanical or electronic re-recording, or by other equivalent techniques which accurately reproduces the original. And Rule Admissibility of Duplicates states a duplicate is admissible to the same extent as an original unless 1 a genuine question is raised as to the authenticity of the original or 2 in the circumstances it would be unfair to admit the duplicate in lieu of the original. This means a photograph can be stored digitally in a computer, that a digital photograph stored in a computer is considered an original, and any exact copy of the digital photograph is admissible as evidence. Most states have laws that apply to digital evidence. As an example, California Evidence Code Section Images stored on video or digital media, or copies of images stored on video or digital media, shall not be rendered inadmissible by the best evidence rule. Printed representation of images stored on video or digital media shall be presumed to be accurate representations of the images that they purport to represent. Photographs as Evidence The principal requirements to admit a photograph digital or film-based into evidence are relevance and authentication. Unless the photograph is admitted by the stipulation of both parties, the party attempting to admit the photograph into evidence must be prepared to offer testimony that the photograph is an accurate representation of the scene. This usually means someone must testify that the photograph accurately portrays the scene as viewed by that witness. The SOP should include when digital imaging is used, chain of custody, image security, image enhancement, and release and availability of digital images. The SOP should not apply just to digital, but should also include film-based and video applications as well. Most importantly, preserve the original digital image. This can be done a variety of ways including saving the image file to a hard drive or recording the image file to a CD. Some agencies elect to use image security software. Digital images should be preserved in their original file formats. The saving of a file in some file formats subject the image to lossy compression. If lossy compression is used critical image information may be lost and artifacts introduced as a result of the compression process. If images are stored on a computer workstation or server, and several individuals would have access to the image files, make the files read-only for all but your evidence or photo lab staff. As an example, detectives could view any image files but they would not have rights to delete or overwrite those files. If an image is to be analyzed or enhanced the new image files created should be saved as new file names. The original file must not be replaced overwritten with a new file. Check with Your Legal Advisor When beginning a new procedure for collecting evidence or recording a crime scene, it is always prudent to check with your legal advisor. Two court decisions regarding digital images include: State of Washington vs. A homicide case was taken through a Kelly-Frye hearing in which the defense specifically objected on the grounds that the digital images were manipulated. The court authorized the use of digital imaging and the defendant was found guilty. In the Appellate Court upheld the case on appeal. State of California vs. Phillip Lee Jackson, The defense asked for a Kelly-Frye hearing, but the court ruled this unnecessary on the argument that digital processing is a readily accepted practice in forensics and that new information was not added to the image. About the Author For the past 30 years Steven Staggs has been a forensic photography instructor and has trained more than 4, crime scene technicians and investigators for police and sheriff departments, district attorney offices, and federal agencies. Steve has extensive experience in crime scene photography and identification. He has testified in superior court concerning his

crime scene, evidence, and autopsy photography and has handled high profile cases including a nationally publicized serial homicide case. Steve retired in after 32 years in law enforcement, but continues to teach forensic photography and crime scene investigations at a university in Southern California. *Crime Scene and Evidence Photography, 2nd Edition* is designed for those responsible for photography at the crime scene and in the laboratory. It may be used by law enforcement officers, investigators, crime scene technicians, and forensic scientists. It contains instructions for photographing a variety of crime scenes and various types of evidence. It is a valuable reference tool when combined with training and experience. *Crime Scene and Evidence Photography* is also a helpful resource for students and others interested in entering into the field of crime scene investigation.

### 7: The Admissibility of Digital Photographs in Court

*general rules of admissibility. The basic prerequisites of admissibility are relevance, materiality, and competence. In general, if evidence is shown to be relevant, material, and competent, and is not barred by an exclusionary rule, it is admissible.*

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