

NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

STEVEN SCOTT WELLS – Petitioner

vs.

STATE OF CALIFORNIA –Respondent

ON PETITION FOR A WRIT OF CERTIORARI
TO THE CALIFORNIA FOURTH DISTRICT COURT OF APPEAL
DIVISION ONE

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Does a fingerprint expert's testimony that two fingerprints "match" have any evidentiary value if the expert provides no explanation for that conclusion and admits that there is "no way" that anyone else can review the evidentiary basis for the conclusion?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINION BELOW

The opinion of the California Fourth District Court of Appeal, Division One, the highest state court to address the merits of the question presented, appears at Appendix A to this petition.

JURISDICTION

The California Supreme Court denied discretionary review of the direct appeal on August 29, 2018, and the denial appears at Appendix B to this petition. This petition is filed within 90 days of the court’s order, and is timely pursuant to Rule 13.1 of this Court. The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Amendment XIV: “. . . nor shall any State deprive any person of life, liberty, or property, without due process of law; . . . ”

STATEMENT OF THE CASE

On June 28, 2017, the San Diego County District Attorney filed an amended information accusing appellant of robbery, with the additional allegation that appellant used a dangerous or deadly weapon in the commission of the offense, that appellant had suffered a prior “strike” conviction (Cal. Penal Code, §§ 667, subds. (b)-(i), 1170.12), and that this prior conviction was also for a “serious felony” (§ 667, subd. (a)).

On June 27, 2017, the jury convicted appellant and found true the allegation related to the use of a dangerous or deadly weapon. A court trial purely on the question of whether appellant was the same person listed in the documents related to the prior conviction took place on June 27, 2017, with the court finding that appellant was the person named in those documents. The following day, the jury found true the allegation related to the prior conviction. (CT 104; 4RT 362.)

On July 27, 2017, the court sentenced appellant to 12 years, eight months in prison. Appellant’s direct appeal from this conviction was affirmed on Jun 14, 2018. His petition for discretionary review was summarily denied by the California Supreme Court on August 29, 2018.

REASONS FOR GRANTING THE PETITION

This petition raises the question whether an expert's conclusions about a fingerprint match have any evidentiary value in the absence of an explanation as to how that conclusion was reached.

The fingerprint testimony presented by the prosecution to establish that petitioner was the same person who had suffered a prior "strike" and "serious felony" conviction was totally conclusory, containing no information that would have permitted the court to evaluate the expert's reasoning and none of the facts upon which the expert purportedly relied. Indeed, the expert admitted that there was "no way" her reasoning could be evaluated by anybody else.

In California, the rule is that when expert testimony is "purely conclusory because unaccompanied by a reasoned explanation connecting the factual predicates to the ultimate conclusion, *that opinion has no evidentiary value* because an 'expert opinion is worth no more than the reasons upon which it rests.' " *Jennings v. Palomar Pomerado Health Systems, Inc.* 114 Cal.App.4th 1108, 1117 (2003), quoting *Kelley v. Trunk* 66 Cal.App.4th 519, 523–525 (1998), emphasis added. This Court should reach an analogous holding and conclude that the due process rights of


defendants are violated by the use of expert testimony that is offered simply as a conclusion, with no explanation provided as to how the conclusion was reached.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be granted.

DATED: November 26, 2018

Respectfully submitted,



ALEX COOLMAN
Attorney for Steven Scott Wells

**APPENDIX A: OPINION OF THE CALIFORNIA COURT OF
APPEAL, FOURTH APPELLATE DISTRICT, DIVISION ONE**

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

STEVEN SCOTT WELLS,

Defendant and Appellant.

D072602

(Super. Ct. No. SCN371403)

APPEAL from a judgment of the Superior Court of San Diego County, David G. Brown, Judge. Affirmed.

Alex Coolman, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Melissa Mandel, Meredith White and Genevieve Herbert, Deputy Attorneys General, for Plaintiff and Respondent.

I

INTRODUCTION

A jury convicted Steven Scott Wells of robbery (Pen. Code, § 211) and found true an allegation he personally used a deadly weapon (a screwdriver) to commit the offense (*id.*, § 12022, subd. (b)(1)). The court then found Wells was the defendant in a prior attempted residential burglary case from another county and, after reviewing the record of conviction from the case, the jury found true an allegation Wells was convicted in the case. The conviction qualified as a prior serious felony conviction (*id.*, §§ 667, subd. (a)(1), 1192.7) and a prior strike conviction (*id.*, §§ 667, subds. (b)-(i), 1170.12). The court sentenced Wells to 12 years in prison.¹

Wells appeals, contending there was insufficient evidence to support the prior conviction finding because there was insufficient evidence he was the defendant in the out-of-county case. He also contends his trial counsel provided ineffective assistance by failing to object to inadmissible testimony from the investigative technician who compared his booking fingerprints in this case to the booking fingerprints of the defendant in the out-of-county case.

We conclude the investigative technician's opinion that Wells's booking thumbprint in this case matched the booking thumbprint of the defendant in the out-of-county case provided substantial evidence Wells was the defendant in the out-of-county

¹ The court also sentenced him to a consecutive term of eight months for violating probation in another case.

case. We further conclude Wells has failed to establish his trial counsel did not have a rational, tactical purpose for failing to object to the claimed inadmissible testimony. We, therefore, affirm the judgment.

II

BACKGROUND

A

Wells walked out of a pharmacy store with a 30-count package of beer without paying for it. The store's assistant manager followed Wells outside and asked him to return the beer. When Wells refused, the assistant manager swiped at the package to keep Wells from taking it. The package fell to the ground and broke open. Wells picked up four or five cans and then pulled out a screwdriver from his pocket. He held the screwdriver in his fist with the top pointed at the assistant manager. He told the assistant manager to go back inside the store and he fled with the cans he picked up off the ground.

B

When Wells was arrested in this case, he was booked under the name "Steven Scott Schultz" with a birthdate of October 23, 1985. At two later arraignments, he confirmed his true name was Steven Scott Wells and his true birthdate was August 21, 1985. The defendant in the out-of-county case was charged under the name "Steven Wentz Wells," signed a guilty plea form under the name "Steven Wells," and claimed his birthdate was August 21, 1985.

An investigative technician from the district attorney's office testified she compared the booking fingerprints from this case to the booking fingerprints from the

out-of-county case using the ACE-V (Analysis, Comparison, Evaluation, and Verification) methodology. She first determined the fingerprints were of sufficient quality and clarity to compare. Then, she compared and evaluated only the thumbprints and determined they had at least 12 common characteristics. Consequently, she opined the two sets of fingerprints were from the same person.

Had the investigative technician been the first to compare the fingerprints, the fingerprints would have gone to a second investigative technician for verification. In this instance, she was the verifier. The verification was not a blind verification. The fingerprints came to her with initials from the first investigative technician, indicating the first investigative technician found they matched. Nonetheless, she approached the comparison as if she were the first person to receive the fingerprints and she compared a different finger than the first investigative technician.

The investigative technician did not keep notes of how many common characteristics she found, but she never opines that fingerprints match unless they share at least 12 common characteristics because she wants to be 100 percent certain of the match. She also did not mark any of the common characteristics she found. Consequently, no one would be able to look at her work and see exactly what common characteristics she found.

III

DISCUSSION

A

Wells contends there was insufficient evidence to support a finding he was the defendant who suffered the prior out-of-county conviction. We review the court's identity finding for substantial evidence. (*People v. Saez* (2015) 237 Cal.App.4th 1177, 1190.)

Here, the court's identity finding was supported by the testimony of the investigative technician who compared Wells's booking thumbprints from this case to the booking thumbprints from the defendant in the out-of-county case and opined the thumbprints matched. The evidence was corroborated by Wells's true birthdate, which matches the birthdate of the defendant in the out-of-county case. However, even absent corroboration, fingerprint comparison evidence provides strong evidence of identity and is usually sufficient by itself to identify a defendant. (*People v. Johnson* (1988) 47 Cal.3d 576, 601.)

Wells asserts we should discount the investigative technician's opinion because it was purely conclusory. We disagree with this characterization. The investigative technician explained her education, training, and experience; the methodology she used to determine whether the thumbprints matched; the uniqueness of fingerprints; and her minimum threshold for determining a match. This testimony provided an adequate foundation for the investigative technician's opinion. (See *People v. Rivas* (2015) 238 Cal.App.4th 967, 981 (*Rivas*) [testimony by a trained fingerprint analyst explaining the

process she used to compare fingerprints and reach a conclusion provides an adequate foundation for fingerprint comparison evidence].)

Although the investigative technician did not write any notes about her examination or mark the specific common characteristics she found, this did not preclude Wells from challenging her opinion. "A defendant may respond to fingerprint evidence by challenging the training of the fingerprint expert ..., by challenging the process by which the fingerprint expert made the comparison ..., or by showing that the fingerprints do not match, either by calling the defense's own expert or simply showing the [trier of fact] where they do not match" (*Rivas, supra*, 238 Cal.App.4th at p. 978.)

The absence of notes and marks also did not mandate a finding in Wells's favor. Rather, the absence of notes and marks went to the weight and credibility of the investigative technician's opinion. We do not reweigh evidence or reevaluate the credibility of witnesses on appeal. (*People v. Reed* (2018) 4 Cal.5th 989, 1006–1007.)

B

Wells next contends his trial counsel provided ineffective assistance by failing to object to the investigative technician's testimony about her role as a verifier of another investigative technician's findings, as the other investigative technician's findings were inadmissible hearsay under *People v. Sanchez* (2016) 63 Cal.4th 665. Assuming, without deciding, the testimony was inadmissible under the *Sanchez* case, we are not persuaded the failure to object requires reversal of the prior conviction findings for several reasons.

First, most of the testimony on this point was elicited by defense counsel, not the People. Second, we may not reverse a court's judgment for ineffective assistance of

counsel unless there is affirmative evidence in the record showing counsel had no rational tactical purpose for counsel's claimed action or omission. (*People v. Mickel* (2016) 2 Cal.5th 181, 198.) Wells has not identified any such affirmative evidence. Finally, defense counsel's rational, tactical purpose for not objecting to the testimony was readily apparent from his questions and arguments: he was trying to establish the investigative technician's opinion was tainted by her coworker's earlier determination. While the tactic was ultimately unsuccessful, the lack of success did not render the tactic irrational.

IV

DISPOSITION

The judgment is affirmed.

McCONNELL, P. J.

WE CONCUR:

O'ROURKE, J.

DATO, J.

KEVIN J. LANE, Clerk of the Court of Appeal, Fourth Appellate District, State of California, does hereby Certify that the preceding is a true and correct copy of the Original of this document/order/opinion filed in this Court, as shown by the records of my office.

WITNESS, my hand and the Seal of this Court.



06/14/2018

KEVIN J. LANE, CLERK

By  Deputy Clerk

**APPENDIX B: CALIFORNIA SUPREME COURT'S DENIAL OF
DISCRETIONARY REVIEW**

Court of Appeal, Fourth Appellate District, Division One - No. D072602

AUG 29 2018

Jorge Navarrete C

S250138

Deputy

IN THE SUPREME COURT OF CALIFORNIA

En Banc

THE PEOPLE, Plaintiff and Respondent,

v.

STEVEN SCOTT WELLS, Defendant and Appellant.

The petition for review is denied.

CANTIL-SAKAUYE

Chief Justice