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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	Case No. 2:06-CR-811 CW
v.)	
)	
THOMAS JAMES ZAJAC,)	Hon. Clark Waddoups
)	
Defendant.)	

**DEFENDANT'S REQUESTED JURY INSTRUCTION FOR EXPERT
WITNESS TESTIMONY REGARDING FINGERPRINTS**

COMES NOW the Defendant, Thomas J. Zajac, by and through his attorneys, Deirdre A. Gorman, Esq. and Edwin S. Wall, Esq., and request the Court instruct the jury as set forth in the attached instruction as to expert witness testimony regarding fingerprints.

Respectfully submitted September 29, 2010.

/Deirdre A. Gorman/
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Attorney at Law



Edwin S. Wall, Esq.
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Attorneys for the Defendant

JURY INSTRUCTION

FINGERPRINT EXAMINER

You are about to hear the testimony of a forensic fingerprint examiner, who claims special qualification in the field of fingerprint comparison, including the comparison of partial prints or latent prints recovered from the scene with known prints obtained under controlled circumstances from individuals.

Witnesses are usually permitted to testify only as to matters within their direct experience, such as what they saw or what they did on a particular occasion. Witnesses are not generally allowed to express their opinions. However, some individuals are permitted to offer their opinions because they have acquired a skill, through their training, education or experience, that generally members of the public may not possess. Such witnesses are frequently referred to as "experts" or "expert witnesses" because their testimony may assist the jury.

Just because a witness is allowed to offer opinion testimony does not mean that you must accept his or her opinion. As with any other witness, it is up to you to decide whether you believe this testimony and wish to rely upon it. Part of that decision will depend on your judgment about whether the witness's training and experience are sufficient for the witness to give the opinion that you heard. You may also consider such factors as the information provided to the witness, and the reasoning and judgment the witness employed in coming to the conclusion that he or she testified to.

Fingerprint examiners, as a group, may develop skills not possessed by members of the general public, skills that may give rise to opinions useful to you in your deliberations. A fingerprint examiner may spend a substantial amount of time looking at latent or partial prints and comparing them with known or full prints. In the course of their work, forensic fingerprint examiners may have acquired skill in identifying significant similarities and differences between partial prints and known prints.

The Court has studied the nature of the skill claimed by the fingerprint examiner and the examination that was conducted in this case and finds it to be closer to a practical skill and is not a scientific skill, such as that which might be developed by a chemist or a physicist.

Fingerprint examination rests on the theory that no two people leave the same fingerprints due to the unique friction ridge skin on their fingers. Though widely believed to be true, this theory has not, contrary to popular belief, been scientifically proven to be true. There is no objective basis that is supported by scientific methods or scientific principles that support this theory. Rather, the opinion of a fingerprint expert is purely subjective, and based only on their own personal beliefs from their experience.

The determination that a fingerprint examiner is not a scientist does not suggest that this testimony is somehow inadequate, but does suggest that his or her opinion may be less precise, less demonstrably accurate, than someone who testified about evidence based

on validated methods with known error rates that has been shown to be reasonable and reliable.

The fingerprint examiner's testimony is his subjective opinion. It should not be considered by you as conclusive fact, but should be weighed along with all the evidence that you have heard in this case. His opinion should be treated the same as any other evidence, which means that you are free to give it the weight you believe it deserves. You may accept or disregard it in whole or in part.

In sum, fingerprint examiners may be of assistance to you. However, their skill is practical in nature, and despite anything you may hear or have heard, it does not have the demonstrable certainty.

United States v. Starzecpyzel, 880 F.Supp. 1027, 1050-51 (S.D.N.Y. 1995)

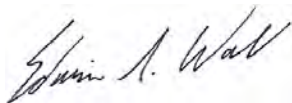
USA v. Titus Faison, 2008-C.F2-16636 (Sup. Ct. Of Columbia, Cr. Division, Felony Branch)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on September 29, 2010, a true and correct copy of the foregoing document, Defendant's Proffered Jury Instructions concerning fingerprint experts was served by CM/ECF or by mail with the United States Postal Service, First Class Mail, postage prepaid, to the following:

Carlos A. Esqueda, Esq.
Eric G. Benson, Esq.
Richard McKelvie, Esq.
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EDWIN S. WALL, P.C.

A handwritten signature in cursive script that reads "Edwin S. Wall". The signature is written in dark ink on a light-colored background.

Edwin S. Wall
Attorney at Law