

U. S. DISTRICT COURT
N. D. OF N. Y.
FILED

MAR 25 2002

AT _____ O'CLOCK _____ M
LAWRENCE K. BAERMAN, Clerk
UTICA

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

vs

01-CR-411

JAMES BROTEN, et al.,

Defendants.

APPEARANCES:

HON. JOSEPH A. PAVONE, ESQ.
United States Attorney
Northern District of New York
445 Broadway
Albany, NY 12207

OF COUNSEL:

ROBERT STORCH, ESQ.
Asst. United States Attorney
DAVID M. GRABLE, ESQ.
Asst. United States Attorney

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KENT B. SPROTBERY, ESQ.

DAVID N. HURD
United States District Judge

MEMORANDUM DECISION AND ORDER

I. INTRODUCTION

James Broten ("defendant") brings this motion to exclude the government's latent fingerprint identification evidence and the government's handwriting analysis evidence.

Defendant also requests a Daubert hearing on both issues.

II. DISCUSSION

A. Fingerprint Identification Evidence

In defendant's memorandum of law in support of his motion, he relies heavily on United States v. Liera Plaza, 2002 WL 27305 (E.D. Pa. Jan. 7, 2002), the only recorded

judicial decision limiting the admissibility of expert fingerprint testimony based on reliability concerns under Federal Rule of Evidence 702. However, on March 13, 2002, the Llera Plaza Court issued an order vacating its earlier decision, and holding that the government's expert fingerprint identification evidence is admissible under Rule 702. United States v. Llera Plaza, 2002 WL 389163 (E.D.Pa. March 13, 2002).

B. Handwriting Analysis Evidence

Defendant also moves to exclude expert handwriting analysis evidence. However, such evidence will be admitted as is consistent with the holdings of the Second Circuit. See, e.g., United States v. Wilson, 441 F.2d 655 (2d Cir. 1971)(admitting opinion of handwriting expert); United States v. Buck, No. 84 Cr. 220-CSH, 1987 WL 19300 (S.D.N.Y. Oct. 28, 1987)(stating that the number of cases which have admitted expert handwriting opinions is probative of the reliability of those opinions).

III. CONCLUSION

Accordingly, defendant's motion to preclude the government's latent fingerprint identification evidence and the government's handwriting analysis evidence is DENIED. Defendant's motion for a Daubert hearing is also DENIED.

IT IS SO ORDERED.


United States District Judge

Dated: March 25, 2002
Utica, New York.