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EVIDENCE: "GENERAL ACCEPTANCE" AND THE ADMISSIBILITY OF SCIENTIFIC TESTIMONY

Andrews v. State, 533 So. 2d 841 (Fla. 5th D.C.A. 1988)

Defendant faced sexual battery and other charges in a burglary-rape.¹ Over defendant's objection, the state presented DNA-print evidence² identifying defendant's DNA structure as a match for a sample taken from a vaginal swab of the victim.³ Defendant appealed his subsequent conviction, contending that the trial court had abused its discretion by admitting into evidence the results of an unreliable DNA-print test.⁴ Florida's Fifth District Court of Appeal unanimously HELD, that the DNA evidence offered at trial was sufficiently relevant to be admissible under Florida's Rules of Evidence.⁵

At common law, courts admitted expert testimony when triers of fact were unlikely to correctly evaluate evidence by relying on common knowledge alone.⁶ However, the District of Columbia Circuit added a significant obstacle to the admissibility of scientific evidence in *Frye v. United States*.⁷ In *Frye*, a defendant convicted in a murder case appealed the exclusion of expert testimony based on a primitive version of the polygraph.⁸ The *Frye* court affirmed the exclusion, basing its

1. *Andrews v. State*, 533 So. 2d 841, 842 (Fla. 5th D.C.A. 1988). Defendant also faced charges of aggravated battery and armed burglary of a dwelling. *Id.*

2. *Id.* at 843. DNA, a molecule contained in every living organism in every cell having a nucleus, is the molecule that carries the body's genetic information. *Id.* at 847. Except for identical twins, everyone has a unique DNA structure. *Id.* In DNA-print testing, testers treat a DNA molecule with a reagent which recognizes sequences of elements within the molecule, and cuts at the sequences it recognizes. *Id.* at 847-48. The resulting fragments are placed in a gel which then receives a negative electric charge. *Id.* at 848. The DNA fragments also have a negative charge, causing them to run within the gel. *Id.* Large fragments cannot move as fast as smaller ones. *Id.* The DNA is then transferred to a piece of nylon membrane and exposed to a radioactive probe, so that its pattern will be susceptible to exposure on X-ray film. *Id.* The pattern on the developed film allows the researcher to "see" the subject's DNA structure. *Id.*

3. *Id.* at 843. The testers indicated that one person in 840 million would be likely to have a DNA structure matching the sample taken from the swab. *Id.*

4. *Id.* at 842-43.

5. *Id.* at 851.

6. *See Frye v. United States*, 293 F. 1013, 1014 (D.C. Cir. 1923); *see also* MCCORMICK ON EVIDENCE § 203, at 605 (E. Cleary 3d ed. 1984) (stating that in *Frye*, defendant relied on the traditional rule governing expert testimony).

7. *See Frye*, 293 F. at 1014.

8. *Id.* at 1013. This machine assessed veracity by monitoring changes in a single body function, systolic blood pressure. *Id.*

holding on the lack of general acceptance of the proto-polygraph among psychologists and physiologists.⁹ *Frye* established that expert testimony was admissible only when the principle or discovery underlying the proposed testimony had gained general acceptance in the relevant scientific community.¹⁰

Although some courts have used *Frye*'s general acceptance rule to exclude arguably reliable evidence,¹¹ general acceptance has not been uniformly applied to determine the admissibility of scientific evidence.¹² In *Coppolino v. State*,¹³ defendant appealed his murder conviction. He contended that the trial court had erroneously admitted the results of a newly developed toxicological test able to detect previously undetectable toxins in the body.¹⁴ Florida's Second District Court of Appeal upheld the admissibility of the toxicological test results.¹⁵ Although *Coppolino* referred to *Frye*,¹⁶ the court declined to overturn trial court

9. *Id.* at 1014.

10. *Id.*; see also E. IMWINKELRIED, P. GIANNELLI, F. GILLIGAN, & F. LEDERER, COURTROOM CRIMINAL EVIDENCE § 605, at 120 (1987) (stating that *Frye* imposed on proponents of scientific evidence the special burden of demonstrating that the technique at issue was generally accepted by the scientific field to which it belonged).

11. See, e.g., *United States v. Alexander*, 526 F.2d 161 (8th Cir. 1975) (upholding the exclusion of polygraph evidence on the basis of insufficient scientific acceptance); *Lindsey v. United States*, 237 F.2d 893 (9th Cir. 1956) (overturning the admission of an interview recorded while the interviewee was under the influence of sodium pentothal); *United States v. Hearst*, 412 F. Supp. 893 (N.D. Cal. 1976) (upholding the exclusion of psycholinguistic testimony due to its lack of general acceptance among psychological and scientific authorities).

12. See, e.g., *United States v. Franks*, 511 F.2d 25, 33 n.12 (6th Cir. 1975) (upholding the admission of spectrographic analysis because courts may deem reliable scientific processes to be generally accepted); *State v. Olivas*, 77 Ariz. 118, 119, 267 P.2d 893, 894 (1954) (scientific disagreement goes to the weight and not the admissibility of evidence); *People v. Allweiss*, 48 N.Y.2d 40, 49-50, 396 N.E.2d 735, 740, 421 N.Y.S.2d 341, 346 (1979) (unless an expert is called on to assess veracity, expert opinion is admissible when it can be stated with a reasonable degree of certainty); see also Giannelli, *The Admissibility of Novel Scientific Evidence: Frye v. United States, a Half-Century Later*, 80 COLUM. L. REV. 1197, 1205, 1207-21 (1980) (surveying elements of *Frye* that courts have interpreted differently).

13. 223 So. 2d 68 (Fla. 2d D.C.A. 1968).

14. *Id.* at 69. The test detected abnormal amounts of succinic acid in the body of the victim, defendant's wife. *Id.* at 70. Scientific witnesses used these results to conclude that the victim had died from an overdose of succinylcholine chloride. *Id.* at 69-70. Defendant, an anesthesiologist, had access to and familiarity with succinylcholine chloride. *Id.* at 74.

15. *Id.* at 71.

16. *Id.* at 70. *Coppolino* did not cite directly to *Frye*, but rather to a portion of *Frye* cited in *Kaminski v. State*, 63 So. 2d 339, 340 (Fla. 1953). That portion of *Frye* did not contain the crucial "general acceptance" language. Had the *Coppolino* court invoked the general acceptance standard, a finding of "no abuse of discretion" would have been much more difficult to reach. Since the trial court did not find that the toxicological test had attained general acceptance, the court would have had no apparent discretion to admit the test.

rulings on the admissibility of evidence absent a clear showing of abuse of discretion.¹⁷ *Coppolino* found no such abuse¹⁸ despite the testimony of expert witnesses who challenged the methodology and conclusions of the state's scientific witnesses.¹⁹ Courts subsequently addressing the admissibility of scientific evidence have used *Coppolino* to show courts' discretion in admitting relevant, otherwise admissible evidence even in the absence of general scientific acceptance.²⁰

Recently, courts have used a test based on the Federal Rules of Evidence²¹ to determine the admissibility of scientific evidence.²² The Third Circuit outlined this relevancy test in *United States v. Downing*.²³ In *Downing*, defendant appealed his conviction for mail fraud, wire fraud, and interstate transportation of stolen property.²⁴ Defendant contended that the trial court had improperly excluded proffered expert testimony on the unreliability of eyewitness testimony.²⁵

17. 223 So. 2d at 70-71.

18. *Id.* at 71.

19. *Id.* at 70.

20. See, e.g., *Brown v. State*, 426 So. 2d 76 (Fla. 1st D.C.A. 1983) (*Coppolino* not only rejects *Frye*, but in fact utilizes a test focusing on relevancy as the key to admissibility); *People v. Barbara*, 400 Mich. 352, 255 N.W.2d 171 (1977) (*Coppolino* held that lack of general acceptance affected the weight but not the admissibility of the evidence); *Jones v. State*, 716 S.W.2d 142 (Tex. App. 1986) (scientific evidence should be treated like any other evidence). But see *Brown v. State*, 477 So. 2d 609 (Fla. 1st D.C.A. 1985) (*Coppolino* demonstrates that Florida courts have discretion to determine whether general acceptance in the relevant scientific community exists); *People v. Alston*, 79 Misc. 2d 1077, 362 N.Y.S.2d 356 (Sup. Ct. 1974) (*Coppolino* supports the notion that scientific testimony must have gained general acceptance in the field to which it belongs to be admissible).

21. Hereinafter "Federal Rules" will be substituted for all textual references to the Federal Rules of Evidence.

22. See, e.g., *United States v. Ferri*, 778 F.2d 985, 989 (3d Cir. 1985) ("[D]istrict court committed no abuse of discretion when it determined that . . . testimony was sufficiently reliable to be admitted at trial."); *Kruse v. State*, 483 So. 2d 1383, 1385-86 (Fla. 4th D.C.A. 1986) (expert evidence is admissible despite a lack of general acceptance if the witness is qualified as an expert, and the evidence is material and helpful to the fact finder without unduly prejudicing the opposing party); *Hawthorne v. State*, 470 So. 2d 770, 774-88 (Fla. 1st D.C.A. 1985) (Ervin, C.J., concurring in part and dissenting in part) (preferred approach to admissibility of scientific evidence subsumes the general acceptance analysis into an evidence code-based inquiry focusing on relevancy); *Brown v. State*, 426 So. 2d 76, 87-88 (Fla. 1st D.C.A. 1983) (rejecting *Frye*, and stating that all evidence which is logically and legally relevant is admissible).

23. 753 F.2d 1224 (3d Cir. 1984).

24. *Id.* at 1227. Defendant was accused of participating in a scheme of fraudulent purchases for resale purposes. *Id.* Eyewitness testimony was essential to prevent acquittal. *Id.* at 1227 n.2. A dozen eyewitnesses spent between 5 and 45 minutes negotiating with defendant. *Id.* at 1244 (Dumbauld, J., concurring).

25. *Id.* at 1228.

On review, the *Downing* court noted that the Federal Rules neither incorporated nor repudiated *Frye*'s general acceptance standard,²⁶ then detailed arguments for and against such a standard.²⁷ The court found two significant flaws in the *Frye* test.²⁸ First, *Frye* is vague, lacking standards for determining general acceptance or the relevant scientific community for such acceptance.²⁹ This vagueness impedes uniform and orderly decisionmaking.³⁰ Second, *Frye* too frequently precludes relevant evidence due to a lag between scientific advances and judicial acknowledgment of their general acceptance.³¹ The court found this conservative approach to clash with the liberal standard of admissibility in the Federal Rules.³²

For these reasons, *Downing* rejected *Frye* as an independent, controlling standard of admissibility³³ and elaborated a test based on Federal Rules 702 and 403.³⁴ Under this test, the court must determine that the proffered evidence is sufficiently reliable³⁵ and material to

26. *Id.* at 1235. Although the Federal Rules contain no reference to *Frye*'s general acceptance standard, the court noted that nothing in the language of the Rules suggests disapproval of interstitial judicial rulemaking. *Id.*

27. *Id.* at 1235-37. According to the court, *Frye*'s advantages included: allowing those most knowledgeable about scientific matters to decide on the reliability of scientific procedures, filtering out unproven hypotheses in isolated experiments, and providing a method by which courts could assess the reliability of novel scientific testimony. *Id.* at 1235-36.

28. *Id.* at 1236.

29. *Id.*; see also Giannelli, *supra* note 12, at 1208-23 (detailing questions vital to the application of the general acceptance standard which *Frye* leaves unanswered, such as: What must be accepted? What constitutes acceptance? When is acceptance sufficiently general? When is evidence scientific?).

30. *Downing*, 753 F.2d at 1237.

31. *Id.* at 1236-37. The court found that this feature of *Frye* "unnecessarily impeded the truth-seeking function of litigation." *Id.* at 1236.

32. *Id.* at 1229-30, 1237.

33. *Id.* at 1237.

34. *Id.* at 1237-44. Federal Rule 702 covers expert testimony. "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." FED. R. EVID. 702.

Federal Rule 403 explains when relevant evidence may be excluded. "Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." FED. R. EVID. 403.

35. *Downing*, 753 F.2d at 1237. In addition to general scientific acceptance, the court suggested several factors that affect the reliability of the proffered evidence. *Id.* at 1238-39. Among these factors are the relation between the disputed technique and more established scientific procedures; the existence of a specialized literature dealing with the technique; the professional stature of expert witnesses; the nonjudicial uses to which the technique is put; and the frequency and type of error produced by the technique. *Id.*; see also Giannelli, *supra* note 12, at 1235 (to be relevant, evidence must be reliable).

the jury's resolution of factual disputes.³⁶ Evidence meeting these criteria is admissible unless its probative value is substantially outweighed by its potential to overwhelm, confuse, or mislead the jury.³⁷ Under this approach, lack of general acceptance does not cause inadmissibility *per se*, but weighs in the determination of whether the evidence is sufficiently reliable to assist the fact finder.³⁸ Having articulated the Federal Rules-based test for scientific evidence, the *Downing* court remanded the case to the trial court for an evidentiary hearing consistent with the court's opinion.³⁹

In the instant case, the Fifth District Court of Appeal chose not to apply *Frye*,⁴⁰ and instead endorsed a relevancy test for determining the admissibility of scientific evidence.⁴¹ In his appeal, defendant had challenged the admissibility of the results of the specific DNA test administered to him, rather than the admissibility of DNA-print evidence in general.⁴² Nevertheless, the court found that the novelty of DNA-print evidence called for re-examination of both the specific administration of the test and the general theory supporting it.⁴³

To determine the general admissibility of DNA-print evidence, the instant court first studied the Florida standard for admissibility of scientific evidence⁴⁴ and confessed its uncertainty as to *Frye*'s status in Florida.⁴⁵ The Florida Supreme Court had neither accepted nor

36. See *Downing*, 753 F.2d at 1242. The court requires an on-the-record, detailed proffer explaining the precise relevance of the proposed testimony to disputed facts of the case. *Id.*; see also MCCORMICK ON EVIDENCE § 185, at 541-42 (E. Cleary 3d ed. 1984) (for material evidence to be relevant, it must not only relate to a disputed factual issue, but have probative value in the resolution of that issue).

37. See *Downing*, 753 F.2d at 1237. The court initially spoke in terms of the tendency of the evidence to overwhelm, confuse, or mislead the jury rather than the prejudicial effect of the evidence. *Id.* at 1237, 1239. However, part V of the opinion demonstrates that the balancing test to which the court refers is the one described by Federal Rule 403. *Id.* at 1242-43.

38. *Id.* at 1238.

39. *Id.* at 1244.

40. *Andrews*, 533 So. 2d at 846-47.

41. *Id.* The court proposed that the relevancy approach be followed in Florida courts generally. *Id.* at 847.

42. *Id.* at 843. Defendant's test was administered by Lifecodes Corporation, which specializes in DNA identity testing. *Id.* Lifecodes is licensed as a clinical laboratory by the State of New York. *Id.* at 848. The company performs DNA identity tests for forensic and paternity purposes, as well as for the diagnosis of genetically-related diseases. *Id.* at 849.

43. *Id.* at 843.

44. *Id.* at 843-47.

45. *Id.* at 843. Due to the substantial similarity of Florida's Evidence Code to the Federal Rules of Evidence and other state codes based thereon, the court reviewed both federal and state cases. *Id.* at 846-47.

rejected *Frye*,⁴⁶ while at least two district courts of appeal had explicitly or implicitly adopted a relevancy test.⁴⁷ The instant court then recommended that Florida follow the relevancy approach outlined in *Downing*.⁴⁸ The court reasoned that an approach based on the Federal Rules would, like *Frye*, prevent the admission into evidence of unreliable testimony, but would be less likely than *Frye* to exclude reliable testimony.⁴⁹

Having endorsed the relevancy test, the instant court then applied the test to determine the admissibility of DNA-print evidence.⁵⁰ The court first examined the qualifications of the expert witnesses, all of whom testified for the state.⁵¹ The court next considered the indicia of reliability of DNA-print testing.⁵² Testimony at trial revealed that DNA-print testing had been in existence for ten years, its results were routinely used in other disciplines, and the procedure was generally accepted in the scientific community.⁵³ Finally, the court analyzed the procedures in the DNA test administered to appellant, and found each of appellant's allegations of methodological flaws to be without merit.⁵⁴ The court observed that if the DNA test is improperly administered, it ordinarily yields no result rather than an incorrect one.⁵⁵ Appellant's inability to produce experts to testify against the DNA test administered to him further weakened his case.⁵⁶

46. *See id.* at 844-45.

47. *Id.* at 844-46. Those courts were the First District Court of Appeal in *Brown v. State*, 426 So. 2d 76 (Fla. 1st D.C.A. 1983) and the Fourth District Court of Appeal in *Kruse v. State*, 483 So. 2d 1383 (Fla. 4th D.C.A. 1986). *Id.*

48. *Andrews*, 533 So. 2d at 847.

49. *Id.* at 846-47. Other authorities doubt that the relevancy test will effectively screen out unreliable evidence, because shortcomings in the adversary process may impair full exploration of the technique's unreliability, and juries are not qualified to evaluate scientific reliability. *See Giannelli, supra* note 12, at 1239-45.

50. *See Andrews*, 533 So. 2d at 849-50.

51. *Id.* at 847. The examination showed each expert to be experienced and well-trained. *See id.*

52. *Id.* at 847-48.

53. *Id.* Other indicia of reliability were that a number of laboratories around the world perform DNA-print tests, and that the discoverer of a reagent involved in the procedure had won a Nobel Prize for that discovery. *Id.*

54. *Id.* at 848-49. Specifically, appellant contended that the gel used in the process was measured against a relative rather than absolute quality standard. *Id.* at 849. Appellant further challenged the statistical accuracy of the calculation that one person in 840 million would have a DNA structure matching the sample taken from the swab. *Id.*

55. *Andrews*, 533 So. 2d at 849. Testimony also revealed that Lifecodes used control samples to further safeguard against error. *Id.*

56. *Id.* at 851. Although an inability to demonstrate disagreement among experts about the reliability of the procedure would seem dispositive under *Frye*, courts applying the relevancy

Returning to the question of the admissibility of DNA-print evidence in general, the instant court found that such evidence met the standards for admissibility imposed by Florida's version of Federal Rule 702.⁵⁷ First, the witnesses were qualified as experts.⁵⁸ Second, the DNA-print test results were helpful to the jury.⁵⁹ The only remaining part of the admissibility inquiry was determining whether the probative value of the testimony was substantially outweighed by its potential prejudicial effect.⁶⁰ The court noted that DNA-print testing, unlike fingerprint or bite-mark analysis, does not permit the fact finder to examine physical evidence and independently evaluate the expert's conclusions.⁶¹ While this feature warranted special caution, the court found that this alone did not make the evidence so unreliable as to justify its exclusion.⁶²

The general acceptance standard articulated in *Frye* rests on the tacit assumption that only the scientific community may properly evaluate the reliability of scientific evidence.⁶³ As a result, *Frye's*

test may exclude evidence which all informed experts consider reliable if such evidence is highly prejudicial. See *Downing*, 753 F.2d at 1242-43 (explaining that the balancing test in Rule 403 is especially important when eyewitness testimony accompanies fingerprints or other such physical evidence).

57. *Andrews*, 533 So. 2d at 849-51. FLA. STAT. § 90.702 differs from Federal Rule 702, *supra* note 34, principally in its final clause:

If scientific, technical, or other specialized knowledge will assist the trier of fact in understanding the evidence or in determining a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify about it in the form of an opinion; however, the opinion is admissible only if it can be applied to evidence at trial.

FLA. STAT. § 90.702 (1987) (emphasis added).

58. *Cf. supra* note 34 (quoting Federal Rule 702).

59. *Andrews*, 533 So. 2d at 850. It is questionable whether appellant could have been convicted without the DNA-print evidence. Although appellant matched the general physical description of the assailant, the victim could not positively identify appellant. *Id.* at 842. An analysis of the semen sample taken from the victim revealed only that appellant's blood type matched that of the assailant. *Id.* at 842-43. However, like 65 percent of the male population, appellant had type "O" blood. *Id.* at 843. The most damaging circumstantial evidence against appellant was that his fingerprints were found on a screen that was removed from the victim's window on the day of the assault. *Id.*

60. *Id.* at 849.

61. *Id.* at 850. The DNA-print test would only allow the jury to observe X-ray photographs of markings purported to be bands of DNA. *Id.* at 849.

62. *Id.* at 850.

63. See *supra* note 27; see also *Downing*, 753 F.2d at 1237-38 (asserting that under *Frye*, those most knowledgeable about scientific matters decide on the reliability of scientific procedures); *United States v. Addison*, 498 F.2d 741, 743-44 (D.C. Cir. 1974) ("The requirement of general acceptance in the scientific community assures that those most qualified to assess the general validity of a scientific method will have the determinative voice.").

general acceptance standard requires courts to delegate their authority to evaluate the reliability of proffered evidence when that evidence is scientific. However, as *Downing* noted, *Frye* provided no guidelines for identifying either general acceptance or the relevant scientific field.⁶⁴

This definitional vagueness permits a court to retain significant control in determining the reliability of scientific evidence. By broadening or narrowing its criteria for general acceptance and the relevant scientific field, a court applying the *Frye* standard effectively can determine the outcome of the reliability inquiry despite the delegation of authority *Frye* tacitly demands.⁶⁵ Under *Frye*, the court may tailor the notions of general acceptance and relevant scientific field so that scientific opinion will support the court's own preliminary determinations of the reliability of scientific evidence.

As *Coppolino* demonstrates, however, the court's ability to control the outcome of the reliability determination under *Frye* is limited. In *Coppolino*, two factors operated against the admissibility of the toxicological test results under *Frye*. First, the newness of the test rendered widespread acceptance of its reliability impossible.⁶⁶ Second, by narrowing the relevant scientific field to only those scientists familiar with the test,⁶⁷ questions from the state's scientific witnesses⁶⁸ about the reliability of the toxicological test prevented a finding of general acceptance. Under *Frye*, a court unable to find general acceptance may not admit the scientific evidence. By ruling that the trial court

64. *Downing*, 753 F.2d at 1236; see also *supra* note 29 and accompanying text.

65. *Downing*, 753 F.2d at 1236. The *Downing* court noted:

[T]he vague terms included in the standard have allowed courts to manipulate the parameters of the relevant "scientific community" and the level of agreement needed for "general acceptance." Thus, some courts, when they wish to admit evidence, are able to limit the impact of *Frye* by narrowing the relevant scientific community to those experts who customarily employ the technique at issue.

Id.; see also Giannelli, *supra* note 12, at 1208-11, 1215-16 (discussing the difficulties of applying *Frye* when: a scientific technique falls within the domain of more than one discipline; the court must consult a subspecialty within a scientific field; agreement among scientists is substantial but not nearly unanimous; and experts' careers are tied to evidence on which they testify).

66. *Coppolino*, 223 So. 2d at 69. Although some portions of the toxicological test were standard, the overall procedure was new when considered in *Coppolino*. *Id.*

67. See *supra* note 65.

68. 223 So. 2d at 70; see also *supra* text accompanying note 19.

69. See *Brown v. State*, 426 So. 2d 76, 87 (Fla. 1st D.C.A. 1983) (noting that if *Frye* had been employed in *Coppolino*, the test results would have been inadmissible and adding, "[A] strict adherence to *Frye* would severely curtail trial court discretion.").

was within its discretion in admitting the toxicological test results, the *Coppolino* court refused to endorse *Frye's* tacit delegation of judicial authority to determine the reliability of scientific evidence. *Coppolino* thus effectively asserts that the ultimate determination of reliability rests with the court rather than the scientific community.⁷⁰

The instant court's adoption of the relevancy test accomplishes directly what *Coppolino* accomplished indirectly: giving the court ultimate authority to determine the reliability of scientific evidence. Like *Coppolino*, the instant decision does not reject *Frye* outright. The relevancy test incorporates *Frye's* underlying premise that a showing of reliability is a proper foundation for the admissibility of scientific evidence.⁷¹ Under the relevancy test, a judicial finding that a scientific procedure has gained general acceptance in the scientific community may still be the key factor in the determination of admissibility.⁷² However, the relevancy test requires that the court consider general acceptance with other factors that indicate helpfulness to a jury and prejudice to the opposing party.⁷³ By so requiring, the relevancy test openly weighs factors of reliability which courts applying *Frye* may consider *sub silentio*, perhaps pursuant to a determination of whether general acceptance exists in the relevant scientific field.⁷⁴ Such openness promotes the uniform and orderly decisionmaking that the *Downing* court found to be impeded by *Frye's* definitional vagueness.⁷⁵

Although the instant decision promotes admissibility of scientific evidence in general, and DNA-print evidence in particular,⁷⁶ it is not

70. Cf. *United States v. Williams*, 583 F.2d 1194, 1198 (2d Cir. 1978) ("In testing for admissibility of a particular type of scientific evidence, whatever the scientific 'voting' pattern may be, the court cannot in any event surrender to scientists the responsibility for determining the reliability of that evidence.").

71. See Giannelli, *supra* note 12, at 1235 ("The probative value of scientific evidence . . . is connected inextricably to its reliability; if the technique is not reliable, evidence derived from the technique is not relevant.").

72. See *Downing*, 753 F.2d at 1238 ("In many cases . . . the acceptance factor may well be decisive, or nearly so.").

73. See MCCORMICK, *supra* note 6, § 203, at 609 ("In . . . treating the yeas and nays of the members of a scientific discipline as but one indication of the validity, accuracy, and reliability of the technique, the traditional balancing method focuses the court's attention where it belongs — on the actual usefulness of the evidence in light of the full record developed on the power of the scientific test.").

74. See *supra* note 65 and accompanying text.

75. See *supra* text accompanying note 30.

76. The court's finding that DNA-print evidence is generally reliable may serve as a basis for judicial notice of the reliability of such evidence in future cases. See C. WRIGHT & K. GRAHAM, *FEDERAL PRACTICE AND PROCEDURE* § 5168, at 88-89 (1978) (describing the process by which expert testimony in individual cases becomes a basis for judicial notice in future cases).

a completely satisfactory vehicle for the court's endorsement of the relevancy test. Because the court found DNA-print tests generally accepted in the scientific community,⁷⁷ the court could have reached the same holding under *Frye* that it reached by applying the relevancy test.⁷⁸ The court's argument in favor of the relevancy test would have been more compelling if the relevancy test had been necessary to avoid a different, less just ruling under *Frye*. Nevertheless, because the instant court allied itself with courts supporting the relevancy test, the importance of the test for Florida is augmented. Hopefully, the state legislature or court of last resort will follow the lead of *Andrews* with a more authoritative determination on the admissibility of scientific evidence in Florida.

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77. See *supra* note 53 and accompanying text.

78. *Andrews*, 533 So. 2d at 877 n.6 (corroborating state's assertion that evidence in the instant case would meet *Frye* standard as well as relevancy test).