

“THE IMPORTANCE OF FORENSIC  
EVIDENCE IN PROSECUTIONS IN  
COURTS IN NIGERIA ”

**BY**

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**ABSTRACT** : The paradigm shift in investigation and prosecution of offences in Nigeria must be rooted in intelligence and scientific based approach. The days of sole reliance on suspect's confessional statement as the sole evidence in prosecutor's arsenal are over. Globally, crime has become more complex and complicated that mere combing of crime scenes and interrogations of suspects are insufficient if diligent prosecution is to be achieved. This paper examines vital roles forensic evidence plays in crimes prosecution in Nigeria .It examines judicial approach and evaluates the challenge inhibiting effective application of forensic evidence by courts in crime prosecution and advances proactive measures for effective judicial application of forensic evidence.

**1.0 INTRODUCTION** : Shoddy and lack lustre investigation by Law Enforcement agents had impeded effective prosecution of criminal cases in Nigeria. This is so because reliance is often placed on extra judicial statements made during interrogation of suspects, the admissibility of which is often suffocated by hurdles of trial within trial and incessant redeployment of Investigating police officers.

The above legal hurdles is, however avoided where Prosecution has other evidence to rely on especially in form of forensic evidence.

**2.0 WHAT IS FORENSIC EVIDENCE?** As a general rule, opinion evidence is inadmissible; a witness may only speak of facts which he personally perceived, not of inferences drawn from those facts. However, forensic evidence forms an exception as an expert opinion

- **William Blackstone** defines forensic evidence as “Evidence used in court, especially evidence arrived at by scientific or technical means”.
- Where there are no eye witnesses to a crime or where the accounts of eye witnesses are conflicting in nature and the suspect is unwilling to admit guilt by confession, the best and cut dry evidence is forensic account of the crime commission.

Forensic evidence is most handy in prosecution of violent and property/money laundering cases as webs of criminal artistries are carefully tracked and analysed by forensic science.

**3.0 COMPONENTS OF FORENSIC EVIDENCE :** Forensic evidence investigation include Fingerprinting, Computer forensics, DNA, polygraphing, odontology, forensic pathology, toxicology, ballistics

**(A) Fingerprinting:** Fingerprint evidence rests on three basic principles:

- (a) That a person's ridge pattern or fingerprints do not change throughout his lifetime .
- (b) That the ridge patterns differ from individual to individual and from digit to digit even in identical twins, such differential notations are prominent.
- (c) That though all patterns are individualistic and distinct in their ridge characteristic, they vary within limits thereby allowing for systemic classification.

## **Judicial attitude to Finger prints evidence :**

- When court has to form an opinion on a point relating to finger prints or finger impressions, reliance is placed on opinion of expert . See **Sections 68 and 101 of the Evidence Act 2011.**
- **The person called as expert must first give factual basis of his qualification, training and experience in the field of study before his evidence can be received.**
- No hard and fast rule can be laid down as to when a person is qualified as an expert in finger prints .It is up to the discretion of the presiding Judge or Magistrate to satisfy itself.

However, to qualify as an expert on fingerprints, the witness must show that he has formal training in the subject and practical experience on reading and comparing of fingerprints as well as photography .

This is so because at trial, he may be required to produce photographic enlargements of the developed latent fingerprints and photographic enlargements of the comparison inked prints of the defendant.

As to the exact number of identical characteristic comparison that must be tendered in evidence for absolute identification such depends on rarity of the type and presence of certain features or signs. However, the acceptable practice is that once there are sat least 12 evidence points comparisons, such become admissible provided the impression is clear. Nevertheless, evidence of partial fingerprints showing less than 12 characteristics comparisons may still be admissible.

**Limitations:** Some factors inhibit use of finger prints and these are :

- It may not survive due to environmental wear and tear on the object.
- Where the surface had been damaged, mutilated or crime scene not well preserved but exposed to many intruders, finger prints become unreliable .A good example is when over 150 finger impressions were found at the scene when Funsho Williams was killed.
- It is exclusionary in form especially older people with worn out finger prints or those who have lost their hands or feet are automatically excluded .
- Epileptic power supply or outages may truncate the its functionality especially where there are no spontaneous alternative power supply.

**Importance:** Notwithstanding the limitations, the importance of finger prints in criminal prosecution can not be ignored as such plays following roles:

- A suspect must have touched many objects in the course of commission of offence, such objects are most likely to have finger prints of the suspects thereby assisting crime investigation.
- It is fast in nature.
- Its accuracy most certain and secure form of information gathering as no two individuals have same impressions or patterns.
- It is non invasive in form.
- It is simple to use.
- It is non transferable thereby ruling out sharing of passwords.
- From technology management perspective, finger prints is cost effective as small hand held scanners are now readily available and easy to set up.
- Normally, the individual that issued the laboratory report would serve as the expert at court but failure to call him does not stop the tendering of such report through another expert.

**(B) Admissibility of Computer Forensics:** Today, people are more dependent on computer usage and other digital devices including android phones in which one can communicate through social media, e-mails and various e-transactions as well as online education. The constant usage of these devices has its positive and negative effects as more crimes are initiated or committed through computers and other internet devices.

Investigators are not only interested in the content of emails, documents and other files, but also in the meta data associated with those files. Records of a user's actions may be stored in log files and other applications on a computer and phones such as internet browsers.

Computer forensic evidence are therefore used, prominently in Intellectual property theft, internet fraud often enabled by phone emails, forgeries mails, money laundering through numerous dummy accounts, drug trafficking etc.

As for other types of evidence, admissibility of computer generated evidence follows certain conditions **viz:**

**(i) It must be relevant to the fact in issue**

**(ii) It must be pleaded ( in criminal trial, it means such document must have been frontloaded as part of Proofs of evidence).** Document not listed in the proofs can be included by filing Notice of additional list of evidence.

**(iii) It must be admissible in law: This requires compliance with conditions under Section 84(2) of the Evidence Act 2011.** In **KUBOR & ANOR VS DICKSON (2016) LPELR 41357 (SC)** .1 The appellant without calling witness to lay proper foundations tendered in evidence print out of online Punch Newspapers and election result from INEC website, the Supreme Court in dismissing the appeal stated :

“A party that seeks to tender in evidence computer generated document needs to do more than just tendering same from the bar. Evidence in relation to the use of the computer must be called to establish the conditions set out under Section 84 (2) of the Evidence Act 2011”.

- Where the maker of the computer generated evidence is called as witness or oral evidence of a person familiar with the operation of the computer can be given of its reliability and functionality; and that such a person need not be a computer expert, then there is no need of electronic identification.

However, where the witness who is called is not the maker of the computer generated evidence then letter of identification in line with Section 84 (2) of the Evidence Act becomes imperative. This position had been judicially approved in **BRILA ENERGY LTD VS FRN (2018) LPELR-43926 (CA) 1 at 20-29, paragraphs A-B; JUBRIL VS FRN (2018) LPELR-43993 (CA) 1 at 42-43, paragraphs F-C and ROWAYE Vs FRN & ORS (2018) LPELR-45650 (CA) 1 at 72-79, paragraphs D-B.**

**(C) POLYGRAPHING:** This is the use of polygraph machine for detecting not lies but deception. It is a device used to test or question individuals for the purpose of detecting deception or verifying the truth of statements.

- It records visually, permanently, and simultaneously a person's cardiovascular pattern, respiratory or breathing pattern, electro dermal or galvanic skin response pattern as a minimum.
- It is a simple, accurate scientific procedure designed to measure the body's response to stimuli.
- It works on the principle of the body's response to hormones secreted at the fear of being discovered during deception as every human responds to the stimulus of fear.

**Grounds against admissibility of Polygraph results:** Some of the objections to admissibility of polygraph results are:

- That objective standardized review is not possible.
- That nature of examination is subjective formulation.
- That Polygraph operator already has prejudice and bias as to guilt of suspect.
- Another area of question with relation to the Polygraph technique is the qualifications of the Polygraph examiners. Despite many crusades within and without the Polygraph industry to have states establish licensing and character requirements, there is on limited legislation in this area even in the United States .

The earliest case denying admissibility to Polygraph evidence is **FRYE V. UNITED STATES**, 293 F.103 (1923) where the United States Court of Appeal declared inadmissible a systolic blood pressure deception test put forward by appellant in a murder trial.

Post Frye's decisions rigidly applied the non admissibility rule of polygraph as if such were a matter of binding precedent until the enactment of Federal Rules of Evidence 1975 which provides for conditions of admissibility of opinion of expert witness qualified by knowledge, skill, experience or training generally been held inadmissible among those jurisdictions considering the matter.

But in 1993, Frye case was dealt a devastating blow by United States Supreme Court in the case of **DAUBERT VS MERRELL DOW PHARMACEUTICALS INC.** 509 US 579 where certain standards were laid down for admissibility of scientific knowledge. The court was to determine whether bendeclin used in treatment of nausea and vomiting during pregnancy was responsible in birth limb defects in children. The plaintiffs had relied on expert opinion that did not reflect consensus of scientific community and same was rejected .But on further appeal to Supreme Court ,however having laid down certain tests concluded that appellants were unable to prove causation.

In recent times in United States, there are divergent views with some States prohibiting admissibility of polygraph report like New York, Texas, Pennsylvania, Illinois and Washington DC . These States reject polygraphs on grounds that such are not scientifically reliable .

In contrast, States like California, Alabama, Georgia, Indiana, North Dakota, Ohio, New Jersey, Arizona, Nevada, Florida, Arkansas, Wyoming, Idaho, Iowa, Kansas, Utah, New Mexico, Delaware polygraph report is admissible both parties consent to it and there is no objection to its admissibility from the opponent .

In United Kingdom, results from polygraph are inadmissible in evidence in court and same position holds in Canada.

In India , by virtue of Article 21 (3) of Indian Constitution 2022 , a person can not be a witness against himself. Consequently, polygraph results are inadmissible.

**The position in Nigeria as to whether polygraph result is admissible is in state of fluidity with no clear position.** In **THE STATE OF LAGOS VS . ADEGBOYEGA ADENEKAN**, Adebayo Falola, a polygraph expert and security consultant with the Halogen Security Company Ltd. told an Ikeja Domestic Violence and Special Offences Court that Adegboyega Adenekan, the Chrisland School Supervisor, who allegedly raped a two-year and 11-month pupil failed a polygraph test. The expert stated further that defendant said he needed to exonerate himself and said he would take the polygraph test and “ we all agreed that he should take the test”. Only the examiner and the examinee were in the polygraph laboratory and consent form was signed by Adenekan and he was not threatened nor maltreated into taking the test. But when the Prosecuting Counsel sought to tender the result in evidence, the defence objected to its admissibility on ground that there is nothing in Sections 58 to 76 of the Evidence Act that admit an opinion as to whether a person is lying and that the oral evidence and what the document seek to project are expressly excluded by Section 67 of the Evidence Act. The Court in its ruling rejected the result as inadmissible in Nigeria.

However, in **ROSULU IDOWU RONKE VS FRN (2017) LPELR-43584 (CA) 1 at Hon. Justice Lawal Akapo** of the High Court of Lagos State was convicted for the offences of Conspiracy and Obtaining Money by false pretence . The appellant appealed on grounds inter alia that evidence of PW5 and PW6 relating to polygraph results should be expunged.

But **Tijani Abubakar ,J.C.A** in dismissing the appeal stated :

“ With respect to the polygraph report tendered as evidence by PW5 and PW6, the Appellant's contention is that the polygraph reports have no evidential value and that whether or not the Appellant was telling the truth is not what a mechanical device would show, but a proper investigation. The Respondent on the other hand argued that their testimony can only be rebutted by the testimony of another expert. I am inclined to agree with the Respondent's counsel to the extent that the polygraph allegedly being challenged by the Appellant was tendered by PW5 and PW6, both of whom identified themselves as experts. It follows therefore that their evidence can only be rebutted by the testimony of another expert and not by the ipse dixit of counsel or submissions contained in the brief of argument. By the provisions of Section 68 (1) of the Evidence Act 2011, when the Court has to form an opinion upon a point of foreign law, Customary Law, or Custom or Science or Art or as to identity of handwriting or finger impressions, the opinion upon that point of persons especially skilled in such foreign law, customary law, customs, science or art, or questions as to the identity of handwriting or finger impressions are admissible, See: BILLE Vs. STATE (2015) 15 NWLR (Pt. 1536) 363 at 359. It is trite that evidence not challenged or contradicted is deemed admitted and same requires no further proof. ”

It is noted that with advancement in technology, a time would come for Nigeria court to consider and admit polygraph results as relevant tool in crime detection.

**(D) Forensic evidence by way of Ballistic report:** This is an expert analysis on the use of fire arm .

- A fire arm itself is a projectile device having its force being supplied by creation and expansion of gases through burning of power exchange.
- A fire arm has three (3) main parts: The barrel ( which provides space for the expansion of gases; The Action(consists of mechanisms for loading, firing, extraction and ejection of bullets or cartridges) ;and The stock(which is the part that holds the firearm for firing purposes).

## **When is ballistic report necessary?**

- It is necessary where the type of firearm used in commission of an offence is in doubt.
- It is necessary where the defence alleged, the firearms accidentally fires.
- It is necessary where in a homicide charge, more than one individual fires shots at the scene of the crime.
- It is necessary where the range of the firing is questioned .

## **Critical areas of consideration in ballistic report would address :**

- Is the firearm in working condition as at the time it was allegedly fired?
- Is the fire arm liable to fire accidentally by itself?
- Was the particular fire arm recovered? Was it recovered from the scene of crime? If so, what position was it?
- Are there any other materials on the firearm?

Firearm if fired may carry finger prints of the user, fibres, flesh, hair or other extraneous material which are important materials for forensic examination.

- The spent bullets or cartridges/ammunition are also of great forensic importance.

The injuries, victims and firearms are critical areas for information gathering in forensic investigation.

**The Injuries :** The injuries found on the victim are useful tools of investigation and aspects of inquiries should involve:

- The injuries inflicted on the victim are such gun shot injuries? if so? What type of firearm or ammunition had been used?
- Are the injuries intentionally inflicted , accidental or suicidal?

**The victim:** Inquiries should include-

- What part of the body was shot and in what propensity?
- A gun shot at the back of deceased definitely rules out defence of self defence .
- The doctor who carried out post mortem must ask the question as to whether the injury inflicted is external or exit wound? And what was the range of fire that caused the injuries?

**The firearms:** This is rarely recovered at the scene of crime as suspects must have destroyed, damaged or hid same elsewhere to hide critical evidence . When eventually recovered, such most often contain forensic items like blood stains, finger prints etc which are also critical to ascertain the identity of the perpetrator.

In Nigeria, ballistic report is admissible as expert evidence by virtues of Sections 68 and 101 of the Evidence Act 2011 provided the such is relevant and the expert witness has laid proper foundation of his qualification, training and practical experience.

**Judicial attitude:** The attitude of courts had been that where there are credible evidence to prove the fact that fire arm was used , its make and functionality, then ballistic report is unnecessary. In **CHIEF AMAREMOR VS THE STATE (2014) LPELR-22591 (SC) 1** .The appellant who was convicted for shooting one Chief Obiri appealed against his conviction on ground that ballistic expert was not called to give evidence of the pistol used. Dismissing the appeal, **PETER –ODILI JSC** relying on earlier Supreme Court decision in **IDEN VS THE STATE (1994) 8NWLR (PT.365) 719**, explains:

“The evidence of a ballistic expert may in some situations be desirable or necessary, certainly not in this instance where the weapon used in the offence is not in any doubt and the expert's evidence not produced is not prejudicial. ”

**(F) Forensic evidence in form of Toxicology:** This takes the form of forensic examination of food ,drinks , meat plants or fruits etc taken by victim to ascertain if poison, what type of poison and in what degree was such administered ?

- The mode by which the poison was administered is important factor as poison directly injected into blood stream has immediate effect unlike those administered through food or inhaled
- The age, health and individual's allergy materially affect the action of poisons in the victim.
- The prime consideration is to establish the corpus delictus -The victim either dead or alive is most important source of evidence especially his garment or left overs.

**(G) Expert opinion is oil exploration/seismic operations** : Oil pollution /seismic operation are technical areas that require scientific identification of causation, nature and probable damage.

In establishing criminal culpability, Prosecution must show three basic ingredients viz:

- That a duty of care is imposed on Multi national oil exploration companies to exercise diligence and comply with best standard in exploration activities.
- That there is a breach of that duty of care as a result of reckless, careless or gross negligence of the Multi national oil companies.
- That a damage arises from the breach of duty of care.
- It is imperative that Prosecution link the damage suffered to either seismic or oil exploration activities and this can only be achieved through expert opinion.
- Where Prosecution fails in proving causation between the activities of the defendant /company and the damage, the defendant/company has no case to answer.

- **The applicable standard in criminal negligence is slight higher than regular standard of care in civil negligence.** In **COMPAGNE GENERALE DE GEOPHYSIQUE (NIG) LTD v. ANOZIE** (2018) LPELR-46185 (CA) 1. The Plaintiffs action was founded on private nuisance and he alleged that the Appellants men used dynamites, explosives, or other earth-moving devices during their seismic works/activities near his residential premises in Imo State and consequently, set up heavy vibration which caused damage to his building leading to its being pull down. Plaintiff sued for N10 million damages but was awardee N5 million , upon which defendant appealed. The plaintiff claims were set aside on appeal due to absence if convincing expert opinion as ORJI-ABADUA JCA pointed out-

“The lone issue distilled for determination herein is "whether the Respondent proved his case to entitle him to judgment. And as the Appellant expounded, the salient points are "whether the 40 meters range asserted by the Respondent was correct; whether the shot actually caused the damage and whether the damage could still have been caused even at 180 meters....the Respondent, said that he was only a few meters away from where they shot it, and when rigorously pressed on how many meters it were, he said, 40 meters. He did not know the quantity of dynamites that could affect his house. ...P.W.2 who prepared the Valuation Reports admitted he is not a Ballistic and Explosive Expert, he did not witness the damage to the property. He is neither a Structural nor a Civil Engineer. When queried whether he can determine if a particular explosive caused a damage without a test, he answered that his job stops at valuation of property, inspection, and looking at the components of the property and what happened to them, not checking if cannons were shot or any explosive used.....

.....It was his client who told him that C.C.G., exploded dynamite in 1998 and showed him the point.....Before an award is made, there must be proof that a damage was occasioned by the acts of the defendant. Therefore, any failure to recover compensation payable to victims of seismic operations, to my mind, is invariably attributable to errors on the part of the Legal Practitioners for the Plaintiffs who probably fail to comply with the requirements of the law in terms of provision of cogent and credible evidence to establish that the damage was indeed caused by the seismic operations of the defendant.....There is no doubt that the Respondent, in the instant appeal, sustained some damages to his building as a result of heavy vibration apparently caused by extensive use of either dynamites, explosives or other earth-moving devices, but for him to succeed in establishing his claim, the Evidence Act mandatorily requires evidence of an expert. The opinion of a person specially skilled in seismographic operations is relevant in establishing liability. “

**4.0 Challenges** - The various constraints to effective use of forensic evidence in criminal prosecution in Nigeria are:

- i. Absence of robust comprehensive legal frameworks to recognize and articulate various aspects of forensic science.
- ii. Conservative judicial approach to inroads by forensic evidence constitute another obstacle. Some judges disallow expert while in court from tendering report as his oral testimony suffices. But some judges still insist on that the expert tenders the report . There is no unison of approach in this aspect and such creates uncertainty and fluidity of judicial decisions.
- iii. Lack of trained experts in forensic science coupled with poor work environment and remuneration inhibits accessibility to forensic tools I criminal investigation in Nigeria.