

1 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
2 IN AND FOR THE COUNTY OF CONTRA COSTA  
3 BEFORE THE HONORABLE THOMAS M. MADDOCK, JUDGE  
4 DEPARTMENT 16

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7 PEOPLE OF THE STATE OF )  
CALIFORNIA, )  
8 )  
Plaintiff, )  
9 )  
vs. ) No. 5-110816-6  
10 )  
JOSEPH BLACKNELL, ) Proceedings  
11 )  
Defendant. ) Court Ruling  
12 -----)

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14  
15 REPORTER'S PARTIAL TRANSCRIPT OF PROCEEDINGS

16 **JANUARY 13, 2012**

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18 A P P E A R A N C E S

19 FOR PLAINTIFF:

20 MARK A. PETERSON,  
DISTRICT ATTORNEY  
21 CONTRA COSTA COUNTY  
BY: DEREK BUTTS,  
22 Deputy District Attorney

23 FOR DEFENDANT:

24 ROBIN LIPETSKY,  
PUBLIC DEFENDER  
25 CONTRA COSTA COUNTY  
By: DIANA GARRIDO,  
26 Deputy Public Defender

27  
28 Reported by: Laura Espinosa, CSR No. 11400

1 JANUARY 13, 2012

MORNING SESSION

2 P R O C E E D I N G S

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4 (The following contains a partial  
5 transcript of the proceedings held)

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7  
8 THE COURT: The issue on the shell  
9 casings.

10 I have reviewed my notes and reviewed a  
11 couple more of the declarations.

12 A couple of things:

13 One, the use of comparison evidence on  
14 shell casings -- and in this case, it's just shell  
15 casings, not the bullets themselves -- has been used  
16 in the courts of California for many, many years.

17 I just reviewed during the lunch hour at  
18 least ten California Supreme Court cases in the last  
19 six months that cite to evidence of comparisons for  
20 shell casings without a single question being  
21 raised.

22 I'm satisfied that it has been used for a  
23 considerable period of time and has been essentially  
24 utilized without question.

25 The evidence that's been brought before me  
26 in terms of the *Kelly-Frye*, to use the old phrase,  
27 the *Kelly* hearing, is not sufficient to convince me  
28 that the evidence is not valid scientific evidence.

1 In fact, I am convinced by a preponderance of the  
2 evidence it is valid. ]

3 The testimony of the experts provided by  
4 the defense, I carefully evaluated the credibility  
5 in both their manner of speaking and the evidence  
6 they presented, and I'm not satisfied -- I am  
7 satisfied not a single one of them pointed to any  
8 errors in the procedure.

9 Their basis was primarily statistical  
10 analysis and demanding that a similar type analysis  
11 be done for toolmark type evidence as is done for ]  
12 DNA without any basis from experience in doing that  
13 type of analysis that it was not scientifically ]  
14 valid at this time.

15 I also found quite credible the People's  
16 witnesses, Mr. Murdock in particular, as to the  
17 manner in which these analyses are done.

18 I also in reading the study that came out,  
19 *The Path Forward* -- I abbreviated its title -- I was  
20 impressed that that analysis started off saying, We  
21 make no attempt to discredit the type of analysis ←  
22 done in shell casing comparisons, and it was not the  
23 intent of the article.

24 But what really impressed me negatively  
25 from the defense was the entire study seemed to be  
26 directed toward creating a federal bureaucracy. All  
27 types of forensic evidence was criticized for not  
28 having a central organization that would direct the

Stat and

1 states on how they should conduct their evidentiary  
2 analysis in forensics.

3 It spoke volumes of classic Washingtonian  
4 bureaucracy development. It devoted most of their  
5 time to fighting the budget issue -- well, much of  
6 their time -- recognizing that budget issues were  
7 going to be difficult in starting this agency, but  
8 that it was so important that the federal government  
9 take control over forensic science and forensic  
10 evidence throughout the rest of this land.

11 I don't think that was in any way  
12 supportive of the analysis of whether shell casing  
13 comparison is good science or bad science. It just  
14 was indicating there needs to be a more centralized  
15 control over the evidence.

16 So for that and a number of other reasons,  
17 including the credibility assessment, I find that  
18 shell casing comparison is acceptable to be  
19 presented to the court for a jury's finding of fact  
20 to see whether or not it is evidence supportive of a  
21 verdict for the People or not supportive of a  
22 verdict for the People.

23 So that's my ruling on shell casings.

24 MS. GARRIDO: Your Honor, if I may  
25 inquire?

26 THE COURT: Yes.

27 MS. GARRIDO: Is the Court then declining  
28 as well to limit the scope of the opinion that the

1 expert offers with regard to how absolute the  
2 identification is?

3 THE COURT: That's correct. I'm not going  
4 to limit his expert opinion as to how accurate or  
5 absolute the shell casing comparison is. However,  
6 he will be subject, I'm sure, to careful  
7 cross-examination, and the jury will have an  
8 opportunity to hear what the basis is for his  
9 opinion and whether or not they consider it in any  
10 way will be up to them.

11 (Requested portion of transcript concluded.)

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1 STATE OF CALIFORNIA )  
2 CONTRA COSTA COUNTY ) ss.

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I, Laura Espinosa, Official Court Reporter of the Superior Court of the State of California, County of Contra Costa, do hereby certify that the foregoing pages above my printed name contain a full, to the best of my ability, a full, true and correct transcription of my stenotype notes of the proceedings had within the proceedings of said Court of the cause in the files of the action of said court; and that said transcript includes all rulings, acts or statements of the Court, also all motions, objections or exceptions of counsel that the reporter could audibly discern, and all matters to which the same relate.

IN WITNESS WHEREOF, I have hereunto set my hand this 4th day of April, 2012.

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Laura K. Espinosa,  
C.S.R. No. 11400