

IN THE CIRCUIT COURT OF THE  
SECOND JUDICIAL CIRCUIT IN AND  
FOR LEON COUNTY, FLORIDA

STATE OF FLORIDA,

CASE NO.: 2008 CF 697

vs.

SPN.: 197149

GARY MICHAEL HILTON,

Defendant.

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11 JAN 12 PM 3:19

FILED

ORDER DENYING DEFENDANT'S MOTION IN LIMINE  
NUMBER THIRTEEN TO EXCLUDE EVIDENCE REGARDING  
TOOLMARK IDENTIFICATION OF AN US M7 BAYONET, IMPERIAL  
BRAND ON THE TIRE

THIS MATTER coming on to for evidentiary hearing on January 7, 2011, as to Defendant's Motion In Limine Number Thirteen To Exclude Evidence Regarding Toolmark Identification Of An US M7 Bayonet Imperial Brand On The Tire filed on December 2, 2010, and the Court having considered the testimony presented, reviewed all materials submitted by both parties and being otherwise advised in the premises, it is hereby

ORDERED and ADJUDGED that the motion be denied. The Court finds as follows:

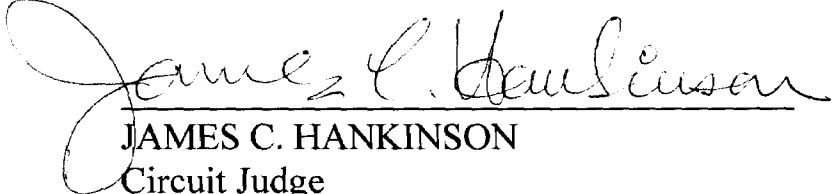
1. The defense in this motion contends that the toolmark identification testimony to be presented by Jeff Foggy, Florida Department Of Law Enforcement (FDLE), crime laboratory analyst, must be excluded because the methodology utilized does not satisfy the test for admissibility established by Frye v. United States, 293 F.1013 (D.C. Circuit 1923). The defense contends that the methodology used is not generally accepted in the relevant scientific field and that Foggy does not have sufficient training, experience, and expertise to qualify him to offer this opinion.

2. The Court finds that Foggy has sufficient training experience and expertise to qualify as an expert in tool mark identification.
3. Under Ramirez v. State, 810 So. 2d, 836 (Fla. 2002), the first determination this Court must make is whether toolmark identification as presented in this case is a “new or untried scientific theory” or whether it is a “generally accepted scientific theory ...” Ramirez at 843. Based upon a review of the literature, case law and testimony presented to the Court, the Court finds the underlying scientific principle and the testing procedures used in this case are generally accepted in the scientific community. As directed by the Court in Ramirez, the Court has considered the dictates of section 90.403, Florida Statutes, and on balance finds that the testimony should be admitted.
4. The Court will comment briefly on the testimony of Dr. Adina Schwartz, Ph.D., the defense witness. Dr. Schwartz is certainly knowledgeable of the literature in the field. However, the Court finds that she is a biased witness attempting to advocate a cause rather than an objective witness. In her article,<sup>1</sup> presented to the Court by the defense, she says, “... firearms and toolmark identifications should be inadmissible across-the-board.” At the same time, she acknowledges that “... firearm and toolmark identification testimony has largely been admitted as a matter of course.” She goes on in this article to chastise the Florida Supreme Court for finding that “toolmark evidence, ... , is generally accepted in the scientific community and has long been upheld by courts.” Rameriz at 846. She goes on to say that the Court in Ramirez made a “spurious distinction” between the specific facts of this case and the general acceptance of toolmark evidence. Schwartz at pages 39-40. While that may be her opinion, it is not the opinion generally accepted in the scientific community.

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<sup>1</sup> Adina Schwartz, Systemic Challenge to the Reliability and Admissibility of Firearms and Toolmark Identification, 6 Columbia Science and Technology Law Review 1 (March 28, 2005), page 1.

DONE and ORDERED this 12<sup>th</sup> day of January, 2011, in Tallahassee, Leon County, Florida.

  
JAMES C. HANKINSON  
Circuit Judge

cc:

William Meggs, State Attorney  
Georgia Cappleman, Assistant State Attorney  
Nancy A. Daniels, Public Defender  
Maria Ines Suber, Assistant Public Defender  
Robert Friedman, Assistant Public Defender