

IN THE CIRCUIT COURT FOR THE EIGHTEENTH JUDICIAL CIRCUIT
IN AND FOR SEMINOLE COUNTY, FLORIDA

STATE OF FLORIDA,
Plaintiff,

CASE NO. 11-1858CFA

vs.

SHAWN EMMANUEL RICHARDSON,
Defendant.

**ORDER LIMITING THE STATE'S EXPERT TESTIMONY RELATING TO THE
COMPARISON OF SPENT CARTRIDGE CASINGS AND DENYING THE STATE'S
MOTION TO EXCLUDE EXPERT TESTIMONY OF WILLIAM TOBIN**

THIS CAUSE comes before the Court on the Defendant's "Motion in Limine to Exclude or Limit State's Proposed Expert Testimony Relating to the Comparison of Spent Cartridge Casings," filed on May 14, 2013, and the State's "Motion to Exclude Expert Testimony of William Tobin," filed on July 9, 2013. Having conducted a hearing and having reviewed the Defendant's memorandum, and the documents attached to the State's Notice of Filing, the Court finds as follows:

The record reflects that the Defendant was charged with second degree felony murder while discharging firearm, attempted robbery with a weapon, shooting into a building, and possessing a firearm by a convicted felon. In his motion, the Defendant is seeking to exclude or limit the testimony of the State's firearm and toolmark examiner. Analyst Lynn Skoglund, with FDLE, testified she "matched" the three spent .40 caliber cartridge casings recovered at the scene (EB-2) with the .40 caliber Browning semiautomatic pistol recovered from a vehicle in which the Defendant was a passenger (RRF-14). In its motion, the State is seeking to exclude the testimony of the Defendant's expert, William Tobin, a metallurgical consultant, who testified during the hearing regarding the limitations of firearms identification analysis.

The Florida Legislature recently amended Fla. Stat. § 90.702. As a result, as of July 1, 2013, Florida has changed from the Frye standard on admissibility of expert testimony to the Daubert standard. See Frye v. U.S., 293 F. 1013 (D.C. Cir. 1923); Daubert v. Merrell Dow Pharmaceuticals, 509 U.S. 579 (1993). The Daubert standard is the one utilized in Federal court. Therefore, application of the Daubert standard to firearm identification evidence in Florida is a new issue; however, it has been extensively addressed in federal courts. This is especially true given that firearm identification evidence has been the subject of more frequent challenges in federal courts over the last ten years. As a result, several district courts have provided extensive discussions of the theory and practice of firearm analysis and identification as well as the criticisms of those practices and have engaged in thorough evaluations of the Daubert standard as applied to firearm identification, in particular the type of spent cartridge casing identification conducted in this case. See United States v. Otero, 849 F. Supp. 2d 425, 431–35 (D.N.J. 2012); United States v. Taylor, 663 F. Supp. 2d 1170, 1175–1178 (D.N.M.2009); United States v. Diaz, No. CR 05–00167 WHA, 2007 WL 485967, at *4–* 11 (N.D.Cal. Feb.12, 2007); United States v. Montiero, 407 F. Supp. 2d 351, 365–72 (D.Mass.2006). This Court has not found a single federal case that has completely excluded expert testimony on firearm identification. However, several have limited the degree of confidence the expert could express regarding his or her opinion. See, United States v. Glynn, 578 F. Supp. 2d 567 (S.D.N.Y. 2008); Taylor, 663 F. Supp. 2d 1170; Diaz, No. CR 05–00167 WHA, 2007 WL 485967; Montiero, 407 F. Supp. 2d 351.

The factual findings of above referenced cases are consistent with the evidence presented in this case and this Court is persuaded by the well-reasoned conclusion of the court in Montiero. After applying all of the factors set forth in Daubert to firearms identification, that court

concluded that “the methodology of firearms identification is sufficiently reliable” to be admissible. Montiero, 407 F. Supp. 2d at 372. However, “[b]ecause an examiner’s bottom line opinion as to an identification is largely a subjective one, there is no reliable statistical or scientific methodology which will currently permit the expert to testify that it is a ‘match’ to an absolute certainty.” Id. Therefore, Analyst Skolgund may testify “that the cartridge cases were fired from a particular firearm to a reasonable degree of ballistic certainty,” but cannot testify “that there is a match to an exact statistical certainty.” Id. at 375.

Regarding the State’s motion to exclude the testimony of William Tobin, the Court finds that Mr. Tobin is an expert in metallurgy and qualified to testify regarding the limitations of firearm identification analysis, and that such testimony is relevant and would assist the jury in weighing the credibility of Analyst Skolgund’s testimony.

Accordingly, it is

ORDERED AND ADJUDGED that Analyst Skolgund is precluded from testifying that there is a match to an exact statistical certainty as outlined above.

It is further **ORDERED AND ADJUDGED** the State’s motion to exclude the testimony of William Tobin is **DENIED**.

DONE AND ORDERED in chambers at Sanford, Seminole County, Florida, this 10th day of September, 2013.



JOHN D. GALLUZZO, Circuit Judge

Copies furnished this 10 day of September, 2013 to:

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