

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT KANSAS CITY

FILED
DIVISION 10
31-Mar-2017 14:16
CIRCUIT COURT OF JACKSON COUNTY, MO
BY Emily Kissea

STATE OF MISSOURI)
Plaintiff,)
)
v.)
CEANTONYO DEQWON KENNEDY)
Defendant.)

Case No. 1516-CR00258-01
Division 10

ORDER DENYING MOTION TO EXCLUDE FIREARMS IDENTIFICATION TESTIMONY

On this 29th day of March, 2017, the Court considers Defendant Ce-Antonyo Kennedy's motion to exclude any expert testimony that shell casings found at the crime scene match a gun possessed by defendant which was recovered the day following the murder of Alexis Kane. The Court held a hearing on March 27, 2017 and heard evidence on the issue. Because such testimony is admissible under well-established Missouri law and is admissible under the *Frye* standard, the *Daubert* standard, and Missouri's civil standard, the Court will DENY Defendant's motion.

Being advised in the premises, the Court finds and orders as follows:

1. In his motion, Defendant asks this Court to exclude testimony about the results of the ballistics testing. Alternatively, Defendant wants this Court to preclude any lab technician from testifying that there was a match between the crime scene evidence and the stolen Springfield handgun. Defendant contends the *Frye* standard should not—or does not—apply and ballistic testing is not admissible under *Frye*.

2. The Court finds Missouri still follows the *Frye* test for determining whether expert testimony is admissible. Missouri courts have recently reaffirmed that *Frye* still applies in Missouri for criminal cases. *See e.g., State v. Patton*, 419 S.W.3d 125, 129 (Mo. App. E.D.

2013); *State v. Johnson*, 402 S.W.3d 182, 185 (Mo. App. E.D. 2013); *State v. Daniels*, 179 S.W.3d 273, 28-81 (Mo. App. W.D. 2005). *Daubert* governs the admissibility of expert testimony in federal court and does not supplant the *Frye* standard. *Daubert* interprets the Federal Rules of Evidence and consequently binds federal courts. Defendant suggests this Court consider recently passed legislation that amends § 490.065. This law does not have an emergency clause and will take effect on August 28, 2017. The Court will not apply the law because it is not in effect yet and will not have legal significance in this case.

3. *Frye* requires that a particular science or procedure be “sufficiently established to have gained general acceptance in the field to which it belongs.” *Dorsey v. State*, 488 S.W.3d 276, 297 (Mo. 2014). Missouri courts have allowed expert testimony regarding casing identifications since the 1930s and have permitted experts to conclude that a particular weapon was the source of a spent projectile or casing. *State v. Couch*, 111 S.W.2d 147, 149 (Mo. 1937); *State v. Markel*, 77 S.W.2d 112, 114 (Mo. 1934). During the March 27 hearing, the State presented substantial evidence regarding the history and admissibility of this type of evidence. After hearing the evidence and considering the prior case law, the Court finds casing identification and toolmark analysis is generally accepted in the scientific community and the standards specifically used in this case have general acceptance within the field of toolmark analysis. Casing identification evidence will be admissible at trial.

Because such testimony is admissible under well-established Missouri law and is admissible under the *Frye* standard, the Court DENIES Defendant’s motion.

IT IS SO ORDERED.

3-31-2017
Date


HON. PATRICK W. CAMPBELL

CERTIFICATE OF SERVICE

I hereby certify that copies of the above and foregoing were mailed/mailed/faxed on this 29th day of March, 2017 to:

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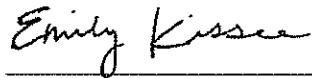
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