

SEP 09 2015

YELLOWSTONE COUNTY CLERK

**MONTANA THIRTEENTH JUDICIAL DISTRICT COURT, YELLOWSTONE COUNTY**

STATE OF MONTANA,

Plaintiff,

vs.

PATRICK O. NEISS,

Defendant.

Case No.: DC 14-0627

Judge Gregory R. Todd

**ORDER GRANTING IN PART AND DENYING IN PART DEFENDANT'S MOTIONS *IN LIMINE***

This matter comes before the Court on three separate Motions *in Limine* filed by Defendant for the exclusion of evidence under Mont. R. Evid. 402, 403, and 404(b), 801, and 702 on August 24, 2015. Plaintiff responded on September 4, 2015. Hearing was held on September 8, 2015. Having read the motions and supporting briefs and after oral argument, this Court deems the matter submitted.

**BACKGROUND**

Frank Greene and Patrick Neiss were neighbors who each occupied significant parcels of land located West of Billings, Montana in Yellowstone County. Greene lived at 800 Homewood Park Drive and Neiss lived at 7200 Central Avenue. Both properties consisted of several acres of undeveloped range land connected by a small dirt foot

1 path. In August of 2007 Neiss stored a vehicle motor on his property at 7200 Central  
2 Ave. while he was away in Federal Prison. On October 29, 2007 Darlene Durand,  
3 Neiss' mother, reported the motor stolen. Subsequent investigation by law  
4 enforcement did not identify a culprit or locate the motor. On April 29, 2008 Neiss was  
5 released from prison. Sometime after April of 2008 Neiss returned to 7200 Central  
6 Ave. Neiss believed that Greene was responsible for the theft and the two engaged in  
7 a series of confrontations culminating in several recorded instances in 2012.

8 On June 21, 2012 Greene called 911 to report that Neiss had assaulted him by  
9 swinging a baseball bat at him at a local Exxon station. No charges were filed and  
10 Greene obtained a temporary restraining order against Neiss that was ultimately  
11 dismissed.

12 On September 1, 2012 Yellowstone County Sherriff's Deputies responded to a  
13 disturbance at Greene's home where Greene reported that he had been in a minor  
14 vehicle collision with Neiss and Neiss had verbally threatened him.

15 On September 27, 2012 Deputies again responded to Greene's home when  
16 Greene reported that Neiss had followed him into his driveway, shouted obscenities at  
17 him, and fired several gunshots into the air. Deputies did not recover any shell casings  
18 from the incident, but were able to interview several of Greene's friends and neighbors  
19 who reported that they were aware of the ongoing dispute and at least one neighbor  
20 reported hearing the gunshots.  
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22 In November of 2012 Greene obtained a second temporary restraining order  
23 against Neiss. This order was also, ultimately dismissed. Neiss attempted to obtain a  
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1 temporary restraining order against Greene in November 2012, but his request was  
2 denied by the Yellowstone County Justice Court.

3 On March 8, 2013 Greene and his girlfriend, Manda Schaible, were at Greene's  
4 home when Greene went outside to work on his truck at approximately 7:30 p.m. At  
5 10:44 p.m. Schaible went outside to give Greene his telephone when she discovered  
6 his body. While on the phone with 911, Schaible observed Neiss' vehicle drive by  
7 slowly. Greene was pronounced dead at the scene with three gunshot wounds.  
8 Detectives located five .40 caliber shell casings and were able to recover a spent bullet  
9 from a nearby air conditioning unit.

10 At approximately 11:04 p.m. Billings police located Neiss in the area of Grand  
11 Avenue and Shiloh Road. Police officers detained Neiss and noticed that he was  
12 wearing athletic shoes. Officers also obtained a gunshot residue sample. Subsequent  
13 investigation revealed distinctive athletic shoe prints along the dirt foot path that  
14 connected 800 Homewood Drive and 7200 Central, along with 13 .40 caliber shell  
15 casings collected from Neiss' home at 7200 Central Ave. No .40 caliber weapon was  
16 found at the scene or at the Neiss residence. On August 11, 2014 Neiss was charged  
17 with Deliberate Homicide and Tampering with or Fabricating Physical Evidence.  
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## 19 20 **STANDARD OF REVIEW**

21 A district court has broad discretion to determine the relevance and admissibility  
22 of evidence. *Simmons Oil Corp. v. Wells Fargo Bank, N.A.*, 1998 MT 129, ¶ 19, 289  
23 Mont. 119, 125 (1998) (internal citations omitted).  
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3 **DISCUSSION**

4 Under Mont. R. Evid. 402 all relevant evidence is admissible, except as  
5 otherwise provided by constitution, statute, these rules, or other rules applicable in the  
6 courts of this state... *Id.* Here, Defendant moves *in limine* to exclude evidence  
7 concerning:

8 1. Testimony or evidence of Temporary Restraining Orders ("TROs") or any of  
9 the allegations contained therein;

10 2. Testimony or evidence of any other allegations against Defendant not  
11 specifically related to TROs but that includes uncharged conduct concerning:

12 a. a shooting heard by neighbors and reported by Decedent to law  
13 enforcement;

14 b. testimony related to the back windshield of Decedent's vehicle being  
15 broken.

16 3. Defendant's prior criminal history and related incarceration at a Federal  
17 Bureau of Prisons Facility;

18 4. Testimony regarding Defendant's possession of firearms or related products,  
19 including allegations of his possession of a silencer or a suppressor;

20 5. Miscellaneous articles, including Billings Gazette, Billings Gazette blogs and  
21 Klaxon publishing articles;

22 6. Statements made to third parties by the decedent prior to his death; and,

23 7. Expert testimony regarding toolmark or ballistic comparisons and shoe print  
24 comparisons.

25 Defendant asserts that testimony regarding TROs, or allegations contained  
therein as well as testimony concerning his previous incarceration would be more  
prejudicial that probative under the Montana Rules of Evidence. Defendant, therefore,  
asks the Court to exclude the evidence under Mont. R. Evid. 403 and 404(b).

1 Defendant's argument, however convincing, under the Montana Rules of  
2 Evidence is immaterial because other foundational law applies, and it is to this law the  
3 Court now turns.

#### 4 5 **I. Temporary Orders of Protection**

6 Under Mont. Code Ann. § 40–15–201 “A petitioner may seek a temporary order  
7 of protection ... The petitioner shall file a sworn petition that states that the petitioner is  
8 in reasonable apprehension of bodily injury ... and is in danger of harm if the court  
9 does not issue a temporary order of protection immediately.” It is clear from the  
10 statutory language that the filing of a sworn petition is essential to obtaining a  
11 temporary order of protection (hereinafter “TRO”). The sworn petition must necessarily  
12 include a statement explaining to the issuing court, the circumstances that created a  
13 reasonable apprehension or imminent harm if the court does not act. That statement,  
14 in Montana, takes the form of a notarized, sworn affidavit.  
15

16 The Sixth Amendment to the United States Constitution guarantees, “[i]n all  
17 criminal prosecutions, the accused shall enjoy the right ... to be confronted with the  
18 witnesses against him.” U.S. Const. art. VI.

19 In *Crawford v. Washington*, 541 U.S. 36 (2004), the U.S. Supreme Court  
20 analyzed the Sixth Amendment's Confrontation Clause. Noting, textually, the first step  
21 in determining who or what the Confrontation Clause applies to is to determine what is  
22 a “witness” under the meaning of the Sixth Amendment. The Court determined that  
23 witnesses are those who “bear testimony.” 2N. Webster, *An American Dictionary of*  
24 *the English Language* (1828) (cited in *Crawford*, at 51–52). And that, “[t]estimony, in  
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1 turn, is typically [a] solemn declaration or affirmation made for the purpose of  
2 establishing or proving some fact." *Id.* (internal quotations omitted). The Court did not  
3 provide an exhaustive list of what would qualify as "testimonial," but stated that the  
4 "core class" of testimonial statements included "material such as affidavits, custodial  
5 examinations, [and] prior testimony that the defendant was unable to cross-examine..."  
6 *Id.*

7         The prior opportunity to cross-examine witnesses was not merely a sufficient  
8 condition, but rather, the crucible of adversarial examination was a necessary and  
9 dispositive condition throughout the historical record examined by the U.S. Supreme  
10 Court. *Id.* at 55. A similar analysis of the phrasing of Montana's Constitution yields the  
11 same result despite the fact that Montana's Constitution, art. II § 24, exhibits an even  
12 stronger protection by requiring the confrontation be "face to face." In both cases,  
13 *Crawford's* holding is persuasive; "Where testimonial statements are at issue, the only  
14 indicium of reliability sufficient to satisfy constitutional demands is the one the  
15 Constitution actually prescribes: confrontation." *Crawford* at 69.

17         The parties urge this Court to analyze and apply the Montana Rules of Evidence  
18 to the questioned testimony. An analysis and comparison of the Montana Rules with  
19 their Federal counterparts yields the same result. Affidavits are voluntary declarations  
20 of facts written down and sworn to by a declarant before an officer authorized to  
21 administer oaths. *Blacks Law Dictionary*, 50 (Bryan A. Garner ed., 9th ed., West  
22 2009).

1 "Hearsay is a statement, other than one made by the declarant while testifying  
2 at the trial or hearing, offered in evidence to prove the truth of the matter asserted."

3 Mont. R. Evid. 801(c). Affidavits without live testimony at trial are therefore hearsay.

4 Hearsay is governed by Mont. R. Evid. 802 which provides, "[h]earsay is not  
5 admissible except as otherwise provided by statute, these rules, or other rules  
6 applicable in the courts of this state." *Id.* Fed. R. Evid. 802 provides, "[h]earsay is not  
7 admissible unless any of the following provides otherwise: a federal statute, these  
8 rules, or other rules prescribed by the Supreme Court." *Id.* Mont. R. Evid. and Fed. R.  
9 Evid. 804 govern exceptions to the hearsay rule when the declarant is unavailable.

10 Mont. R. Evid. 804(a) states "[a] declarant is not unavailable as a witness if  
11 exemption, refusal, claim of lack of memory, inability, or absence is due to the  
12 procurement or wrongdoing of the proponent of a statement for the purpose of  
13 preventing the witness from attending or testifying." *Id.* Fed. R. Evid. 804(b)(6)  
14 provides, "[a] statement offered against a party that wrongfully caused — or  
15 acquiesced in wrongfully causing — the decarant's unavailability as a witness, and did  
16 so intending that result.

17  
18 Both rules exclude hearsay, and both rules allow an exception to the hearsay  
19 rule for testimony by declarants who were unavailable for trial due to the wrongful acts  
20 of the opposing party. The exceptions to the rules of evidence appear to allow the  
21 admission of affidavits, such as the TROs at issue here, if the opposing party  
22 wrongfully caused the decarant's unavailability. However, both rules qualify  
23 unavailability by imposing a specific intent to prevent the witness from testifying. The  
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1 specific intent to prevent a witness from testifying at trial is otherwise known as the  
2 forfeiture by wrongdoing doctrine.

3 Two separate questions arise when examining the rules, the first is temporal:  
4 when does a court determine that the defendant did wrong to establish forfeiture of the  
5 protection of the Confrontation Clause? And second, must the defendant's wrongdoing  
6 be specifically directed at keeping the witness from testifying? The first question leads  
7 to the conclusion that the U.S. Supreme Court reached in *Crawford*, "[d]ispensing with  
8 confrontation because testimony is obviously reliable is akin to dispensing with a jury  
9 trial because a defendant is obviously guilty." *Id.* at 62. The second question leads to  
10 a form of circular reasoning that if a defendant is charged with a homicide the victim  
11 necessarily cannot testify at trial, therefore, defendants charged with homicide cannot  
12 keep a victim's hearsay evidence out at trial. So, the act of being charged with  
13 homicide is itself an exception to the hearsay rule. Both lines of reasoning raise the  
14 specter of ancient inquisitorial practices the U.S. Supreme Court so clearly denounced  
15 in *Crawford* and its progeny.  
16

17 In *Giles v. California*, the U.S. Supreme Court considered "whether a defendant  
18 forfeits his Sixth Amendment right to confront a witness against him when a judge  
19 determines that a wrongful act by the defendant made the witness unavailable to testify  
20 at trial." *Id.* 554 U.S. 353, 356 (2008). The facts of the *Giles* case are similar to those  
21 presented here. In 2002 Giles shot and killed his ex-girlfriend outside the garage of his  
22 grandmother's house. There were no witnesses, and a third party heard gunshots. At  
23 trial, the prosecution introduced statements made to a police officer by the ex-girlfriend  
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1 regarding a domestic abuse report taken three weeks earlier. The court allowed the  
2 statements.

3 A California rule of evidence permitted admission of out of court statements  
4 describing threats of physical injury when the declarant is unavailable to testify and  
5 those statements were deemed trustworthy. Giles was convicted of first-degree  
6 murder. The U.S. Supreme Court determined that “[t]he terms used to define the  
7 scope of the forfeiture rule suggest that the exception applied only when the defendant  
8 engaged in conduct *designed* to prevent the witness from testifying.” *Giles* at 359.  
9 (emphasis in original).

10 The Montana Supreme Court had opportunity to comment on *Giles* in *Sanchez*  
11 *v. State*, 2012 MT 191, 366 Mont. 132. While the Montana Supreme Court did not  
12 directly address the petitioner’s Confrontation Clause challenge, the Court did  
13 recognize “that the forfeiture by wrongdoing exception to a defendant’s Sixth  
14 Amendment confrontation right applies only when the defendant engaged in conduct  
15 *designed* to prevent the witness from testifying.” *Sanchez*, at ¶ 9, 135. (internal  
16 quotations omitted, emphasis in original).  
17

18 Article II § 24 of the Montana Constitution guarantees, “[T]he accused shall have  
19 the right ... to meet the witnesses against him face to face ...” Montana’s  
20 Constitutional demand is even more stringent than that of its federal counterpart. The  
21 Montana Constitution demands not only confrontation, but face to face confrontation.  
22 Therefore, if the Federal Constitution is the floor and the Montana Constitution is the  
23 ceiling of a defendant’s right to confrontation, the walls prohibiting the State’s  
24 introduction of information pertaining to the temporary restraining orders are high  
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1 indeed, if not altogether insurmountable in this case. Therefore, Defendant's motion to  
2 exclude evidence of the TROs is **GRANTED**.

### 3 **II. Uncharged Conduct**

4 As a general rule, character evidence is not admissible to prove conduct in  
5 conformity therewith. Mont. R. Evid. 404; *State v. Dist. Ct. of the Eighteenth Judicial*  
6 *Dist.*, 2010 MT 263, ¶ 47, 358 Mont. 325 (2010). However, it is also the case that  
7 uncharged conduct can supply the motive, intent, plan, opportunity, or lack of mistake  
8 for the charged conduct. In essence, the uncharged conduct can be the cause and the  
9 charged conduct, its effect. *Id.* at ¶ 59. Defendant asserts that admission of testimony  
10 regarding his uncharged conduct would be more prejudicial than probative. However  
11 in this situation, where there is a longstanding dispute involving several confrontations  
12 over the years, the conduct and relationship of the parties in the dispute can be  
13 uniquely probative. Absent their conflict it is unclear that the parties even knew each  
14 other, therefore the conflict that includes several calls to law enforcement, is probative  
15 and will help the jury understand their contentious relationship.  
16

17 However, because the probative value of testimony regarding uncharged  
18 conduct extends to the nature of the parties' relationship, the scope of testimony must  
19 reflect the relationship. Because testimony regarding TROs, and a previous No  
20 Stalking Order are barred by the confrontation clause and rules of evidence, similar  
21 hearsay testimony elicited through law enforcement must also be narrowly  
22 circumscribed. Therefore, testimony that serves only to provide a mouthpiece for  
23 otherwise excluded hearsay will not be allowed and any testimony regarding previous  
24 uncharged conduct must be narrowly tailored to aid the jury in understanding the  
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1 parties' relationship. Further objections to testimony will be ruled on in the context  
2 presented at trial. Accordingly, Defendant's Motion to Exclude evidence of Uncharged  
3 Conduct is **DENIED IN PART AND GRANTED IN PART.**

### 4 **III. Defendant's prior criminal history**

5 Different from the analysis above is the fact that defendant was charged,  
6 convicted, and sentenced to Federal prison for an offense. Here, the Rule 403  
7 balancing test weighs more heavily in Defendant's favor of exclusion because the  
8 Montana Supreme Court has said "the general rule barring proof of other crimes should  
9 be strictly enforced in all cases where applicable ... and should not be departed from  
10 except under conditions which clearly justify such a departure. The exceptions should  
11 be carefully limited, and their number and scope not increased." *State v. Derbyshire*,  
12 2009 MT 27, ¶ 22 (citing *State v. Tiedmann*, 139 Mont. 237 at 242-243 (1961)).

13 Additionally, the relevance of such information is questionable due to its lack of  
14 a connection to the current situation. Because the general rule bars proof of other  
15 crimes and evidence of the Defendant's prior Federal incarceration is of questionable  
16 relevancy, its probative value is outweighed by its potential for prejudice and will be  
17 excluded. At oral argument on September 8, 2015 Plaintiff agreed with the potential for  
18 prejudice. Therefore, Defendant's Motion to Exclude evidence of his prior Federal  
19 Incarceration is **GRANTED.**

### 20 **IV. Testimony regarding Defendant's possession of firearms or related** 21 **products, including allegations of his possession of a silencer.**

22 Under Mont. R. Evid. 402, "All relevant evidence is generally admissible  
23 ... Evidence which is not relevant is not admissible." *Id.* Defendant asserts that  
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1 testimony regarding allegations that he manufactured silencers and possessed firearm  
2 related materials in his home is either immaterial because the alleged murder weapon  
3 was not found, or more prejudicial than probative because other firearms, and related  
4 products are not connected to the crime charged. Additionally, Defendant argues that  
5 the introduction of such evidence is misleading because evidence of a suppressor is  
6 based on investigator's questioning of Defendant's eight-year old son who related that  
7 he had seen silver tubes attached to Defendant's .22 caliber pistol.

8 All evidence offered against an accused in a criminal trial is prejudicial. The  
9 question is whether the proffered evidence is *unduly* prejudicial. Here, detectives  
10 obtained gunshot residue samples from the Defendant within a few hours after the  
11 alleged incident on March 8, 2013, and executed search warrants on Defendant's  
12 property in March 2013 and in August of 2014. Gunshot residue samples from two  
13 suppressors tested positive and, pursuant to the search warrants, detectives collected  
14 a number of .40 caliber shell casings, ammunition, and a suppressor as well as  
15 Defendant's computer. An FBI analysis of Defendant's computer revealed internet  
16 searches between January and February of 2013 regarding silencers, and  
17 suppressors. Investigators also discovered internet searches regarding the definition  
18 of murder, trials, and downloaded videos of people being shot.

19  
20 Defendant argues that the evidence collected by detectives associated with the  
21 search warrants cannot be connected to the charged crime and is thus irrelevant. To  
22 support his position, Defendant cites to a Florida District Court's opinion in *Tolbert v.*  
23 *State*, 154 So. 3d 1141, 1142 (2014). The Florida court found that the defendant's jury  
24 trial was tainted by evidence that a gun was found with drugs because the state  
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1 presented no evidence linking the handgun to the drug trafficking charge. Notably, in  
2 *Tolbert*, the defendant was convicted of trafficking in cocaine by possession. The  
3 Florida court abused its discretion by allowing evidence that a gun was found in a trash  
4 bag that also contained cocaine.

5 Here, Defendant is charged with Deliberate Homicide with a weapons  
6 enhancement, and as outlined above, ample evidence supports a connection between  
7 the charged offense and the firearms related items seized from Defendant's person  
8 and his property. Moreover, a home-made silencer was found at the Defendant's  
9 property and investigation revealed that some local residents did not hear gunshots at  
10 the time of the alleged incident. The presence of a silencer, as well as tools and  
11 instructions about how to make a silencer, are pieces of evidence that can serve to  
12 explain issues highly relevant to the night of the incident. Therefore, Defendant's  
13 Motion to Exclude testimony regarding his possession of firearms or related products,  
14 including allegations of his possession of a silencer is **DENIED**.

#### 15 **V. Miscellaneous articles**

16 Defendant notes that included in the discovery given to him, there are numerous  
17 newspaper articles pertaining to the investigation. Defendant also notes that the  
18 articles were included in discovery due to an abundance of caution on the part of the  
19 Prosecution, and will not be introduced at trial. The specific contents and allegations  
20 contained in newspaper articles are classic hearsay and will be excluded as such.

21 However, the State argues that the newspaper articles in question relate to  
22 Defendant's plan or motive, because detectives located articles about the ongoing  
23 investigation that were seized during the search of Defendant's property. The State  
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1 intends to question the detectives who found the articles about the subject of the  
2 articles, where and how they were found. The State may thereby avoid conflict with  
3 the Hearsay rule. Testimony regarding where and how the articles were found on  
4 Defendant's property, and the general subject of the articles will be admitted.

5 Testimony that serves only to recite the contents of a newspaper article, however, will  
6 not be admitted and should not be offered for that purpose. Therefore, Defendant's  
7 Motion to Exclude evidence from newspaper articles is **GRANTED IN PART AND**  
8 **DENIED IN PART.**

9 **VI. Statements made to third parties by the decedent prior to his death**

10 As noted above, and in the Court's hearsay analysis; testimonial, out of court  
11 statements by witnesses who are unavailable for cross examination violates the  
12 Confrontation Clause. Likewise, absent an exception to the hearsay rule, out of court  
13 statements made by persons other than the declarant, offered to prove the truth of the  
14 matter asserted are not admissible if no exception applies. Specifically, testimony by  
15 Mark Mauritzon, James Alquist, Wes Hinkle, and Eric Van Winkle relating what the  
16 decedent told them is hearsay. Therefore, hearsay evidence presented at trial will be  
17 ruled on at trial and Defendant's Motion to Exclude Hearsay Testimony is **GRANTED.**

18 **VII. Expert testimony regarding toolmark or ballistic comparisons and**  
19 **shoe print comparisons.**

20 Expert witnesses must have specialized knowledge that would distinguish them  
21 from a lay person. Here, Defendant requests the Court exclude anticipated testimony  
22 regarding firearms or tool mark comparisons and shoe print comparisons. The  
23 admission of scientific evidence is governed by Mont. R. Evid. 702. If the field of  
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1 expertise is reliable and the expert is qualified, the trial court should allow the expert to  
2 testify as to the application of the science, leaving the testing of the reliability of the  
3 application of the science to vigorous cross-examination, presentation of contrary  
4 evidence, and careful instruction on the burden of proof. *State v. Clifford*, 2005 MT 219  
5 ¶ 29, 328 Mont. 300, 307 (2005). “If a reliable field helps the trier of fact, and the court  
6 deems the witness qualified as an expert, then he may testify.” *Id.* at ¶ 33.

7 Defendant attacks the validity of the science behind firearms or tool mark  
8 comparison and shoe print comparison. “The subjective nature of a toolmark or firearm  
9 examiners opinion renders it suspect. So too, does the fact that to a large degree,  
10 there is no empirical testing of the fundamental basis behind the testimony, which is  
11 then passed off as “science.” *Def.’s Br. 7* (Aug. 24, 2015). Like the defendant in  
12 *Clifford*, Defendant here, misapprehends the force behind Rule 702, as stated above,  
13 “if a reliable field helps the trier of fact, and the court deems the witness qualified as an  
14 expert, then he may testify.” *Clifford* at ¶ 33 (emphasis in original). Determining that a  
15 particular scientific field is reliable and that a person is an expert in that field are  
16 separate considerations from determining what an expert may actually testify to.

17  
18 Testimony concerning a definitive match between shell casings and shoe prints  
19 to the exclusion of all others in the world stretches the bounds of expert testimony,  
20 even if uncontroverted and submitted by the most qualified expert. However, vigorous  
21 cross-examination, presentation of contrary evidence, and careful instruction remain  
22 the traditional and appropriate means of attacking “shaky but admissible” evidence.

23  
24 At oral argument held on September 8, 2015 the State presented its expert  
25 Travis Spinder, a 13 year veteran firearms and toolmark examiner. Spinder was

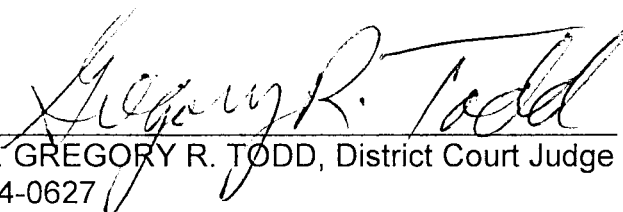
1 questioned about his training, experience, and his field of expertise in general. He also  
2 spoke about the specifics of firearm and ammunition comparisons as well as error  
3 rates and National studies. Spinder related that in his field experts are unable to  
4 render opinions of ultimate certainty, rather, experts render opinions to a practical  
5 certainty. As such, Spinder will be allowed to testify. Furthermore, any testimony  
6 regarding shoe print comparison or analysis must have sufficient foundation and will be  
7 ruled on at trial. Therefore, Defendant's Motion to Exclude expert testimony is  
8 **DENIED.**

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12 **ORDER**

13 For the reasons stated above,

14 **IT IS HEREBY ORDERED** that Defendant's motions *in limine* are **GRANTED IN**  
15 **PART** and **DENIED IN PART.**

16  
17 DATED AND ORDERED this 9<sup>th</sup> day of September, 2015.

18  
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20   
21 HON. GREGORY R. TODD, District Court Judge  
DC 14-0627


22 cc: Lance G. Lundvall, Attorney for Defendant  
23 Lisa J. Bazant, Attorney for Defendant  
24 Paul Chaon, Attorney for Plaintiff  
25 Juli Pierce, Attorney for Plaintiff



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**CERTIFICATE OF SERVICE**

This is to certify that the foregoing was caused to be served upon the parties or their attorneys of record at their last-known address this 7<sup>th</sup> day of September, 2015.

By   
Erik P. Rathie  
Law Clerk to HON. GREGORY R. TODD