

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

UNITED STATES OF AMERICA,  
Plaintiff,

v.

File No. 15-20152

LEZLYE TAYLOR, LAWRENCE CHRISTOPHER  
DAVIS and CHRISTOPHER BLACKWELL,

Defendant.

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EXCERPT OF PROCEEDINGS  
COURT'S RULING ON EVIDENTIARY HEARING

BEFORE THE HONORABLE TERRENCE G. BERG

United States District Judge

United States Courthouse

600 Church Street

Flint, Michigan 48502

Thursday, March 24, 2016

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PAGE

COURT'S RULING ON EVIDENTARY HEARING:

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CERTIFICATE OF COURT REPORTER:

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EXHIBITS:

IDENTIFIED

RECEIVED

None marked.

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Flint, Michigan

Thursday, March 24, 2016

11:05 a.m.

(Court, counsel and defendants present)

(Excerpt begins with the Court's Ruling following the Evidentiary Hearing)

THE COURT: . . . Well, I want to thank the -- both sides here for the thorough presentation and the questioning that they've done today on this issue. I have read through all of the briefing on this matter and I've read through the relevant case law as well. And I've listened to the testimony of Lieutenant Crichton.

As I said before, the issue that's before the Court is not so much whether or not the methodology here that was used by Lieutenant Crichton is unacceptable as a scientific method to the point where under Rule 702 of the rules, Federal Rules of Evidence, that that methodology would be challengeable. No one is really making that argument here and under the *Daubert* and *Kumho Tire* cases, no one is suggesting that that methodology is incapable of meeting the relevance and reliability thresholds that must be shown to be admissible under Rule 702.

And so for clarity, I will indicate that the -- that I do find that the methodology that was used by Lieutenant Crichton here is acceptable under Rule 702, that he has laid a proper foundation to show that the methods that he used were reliable, and that they have been based on a theory that has been tested, that the theory has been

1 subject to peer review. That was part of his testimony.

2 That in particular, that with respect to the examination  
3 of consecutively-manufactured barrels and also  
4 consecutively-manufactured slides, that the methodology has been  
5 shown to have a low rate of error. And there has also been a  
6 considerable amount of testimony about general error rates by  
7 firearms tool examiners and that those error rates are also generally  
8 very low. And in addition, he did testify that his -- his  
9 methodology and the theory behind it is generally accepted in the  
10 field.

11 And so there really is no basis for excluding this and I do  
12 allow it to be admitted and I do allow him to testify.

13 Now, the other question that's been raised by the motion,  
14 more specific question is whether or not it would be appropriate for  
15 the Court to limit the testimony as was done by Judge Rakoff in the  
16 *United States v. Glynn* case, and that case is at 578 F. Supp. 2d 567.  
17 That's a Southern District of New York case from 2008, in which he  
18 did impose a requirement that the firearms forensic examiner present  
19 his conclusion by -- or I should say under the standard of whether or  
20 not the firearms matched more likely than not. And I have read  
21 through that opinion and I have also considered its reasoning.

22 I've also read through, of course, all the materials in this  
23 case and the government relies upon another case called *United States*  
24 *v. Otero*, which is another District Court opinion from Judge Chesler,  
25 and that case can be found at 849 F. Supp. 2d 425. That's a

1 District of New Jersey case from 2012. In that case, the Court  
2 considered the same question and concluded that it would not impose a  
3 limitation on the testimony.

4 I think it's been helpful in our hearing today to get a  
5 sense from the witness as to what the level of certainty is that he  
6 is testifying about. And I think it's an important distinction  
7 between, as has been called in -- Judge Rakoff called these bold,  
8 sweeping assertions of absolute certainty that concerned him in that  
9 case, that that is not what Lieutenant Crichton is suggesting the  
10 degree of certainty that he has here.

11 He describes it as a -- at the level of a practical  
12 certainty, which is quite high, is when I was questioning him just  
13 now, he indicated that he meant that it was very unlikely or  
14 extremely unlikely that the casing did not come from the questioned  
15 firearm. And so that is -- that is a high standard here.

16 But it's not so high that it's to the exclusion of every  
17 other firearm in the world and that -- that type of almost one  
18 hundred percent certainty was what concerned the judge in the *Glynn*  
19 case as well.

20 Because I believe that the testimony that Lieutenant  
21 Crichton has presented and all of the additional exhibits that were  
22 presented has provided a sufficient basis to rationally reach that  
23 level of certainty, that is to a practical certainty, I'm not going  
24 to impose any limitation on Lieutenant Crichton's testimony in this  
25 case.

1 I don't believe that it's required under the Federal Rules  
2 of Evidence to impose such a limitation. I'm concerned that it  
3 substitutes -- it would be effectively substituting the Court's  
4 opinion with respect to the degree of certainty that an independent  
5 proffered expert has concluded is appropriate based on that proffered  
6 expert's field. And I don't think that it's appropriate for the  
7 Court to substitute its judgment in the absence of some kind of  
8 proof or evidence that shows that that degree of certainty is  
9 unjustified.

10 Having said that, all of the evidence that was presented in  
11 this case is relevant to questioning the conclusions of the expert;  
12 that is to say, the evidence regarding some errors that have occurred  
13 in the past and the defense is certainly within its rights to raise  
14 issues regarding the conclusions of this expert just as they would be  
15 in every case to challenge whether or not that expert has reached a  
16 decision that is justified, reached an opinion that is justified to a  
17 certain degree of certainty.

18 And so the motion will be denied and that's the ruling of  
19 the Court regarding that motion.

20 (END OF EXCERPT)

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*CERTIFICATE OF COURT REPORTER*

I, PEG L. GOODRICH, Official Court Reporter  
in and for the United States District Court, Eastern  
District of Michigan, appointed pursuant to the  
provisions of Title 28, United States Code, Section  
753, do hereby certify that the foregoing Excerpt of  
Proceedings held before the HONORABLE TERRENCE G. BERG,  
District Court Judge, is a true and correct transcript of  
my stenotype notes in the matter of UNITED STATES OF AMERICA  
v. LEZLYE TAYLOR, LAWRENCE DAVIS and CHRISTOPHER BLACKWELL,  
File No. 15-20152, held on Thursday, March 24, 2016.

s/Peg L. Goodrich  
Peg L. Goodrich, CSR, RPR, RMR  
Federal Official Court Reporter  
United States District Court  
Eastern District of Michigan

Date: April 15, 2016  
Flint, Michigan