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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF KITSAP

STATE OF WASHINGTON,  
  
Plaintiff,  
  
vs.  
  
GERALDO DeJESUS,  
  
Defendant.

Case No: 15-1-00972-7  
  
MEMORANDUM OF LAW  
RE: NSM-008

A. Statement of Facts

On March 30, 2015, detectives from the Kitsap County Sheriff's office executed a search warrant of 1330 Sidney Avenue, #101 in Port Orchard. This apartment was rented by Ivy DeJesus, the ex-wife of Geraldo DeJesus. Mr. DeJesus had been staying at this address frequently and, according to his statements to law enforcement, spent the night there on March 28, 2015.

Inside of a closet, Detective Keeler located a gun case, designated TJK-011. Inside the gun case were 15 rounds of ammunition and an empty magazine. There was also foam padding. Noticeably absent from the gun case was a firearm.



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1 On March 31, 2015, Detective Menge inspected the gun case more  
2 carefully. A sticker on the case said the associated firearm was a Smith and  
3 Wesson .9mm, Model #SW9VE. Detective Menge pulled back the foam padding  
4 and she discovered an envelope with a spent .9mm shell casing and a sticker  
5 labeled "Tom B. 03/05/2009." The shell casing was assigned KCSO number  
6 NSM-008.

7 According to Chris Corino, regional sales manager for Smith and Wesson,  
8 Smith and Wesson makes 2000 per day. There are many people who test fire the  
9 firearms and, apparently, it is common to include the test fire shell casing with the  
10 firearm itself when it is sold. The employees experience a high turnover and it is  
11 impossible to determine who "Tom B." is. Apparently, the person performing a  
12 test fire will go to a firing range, shoot a "few shots," put a casing in the gun case,  
13 and "move onto the next one."  
14

15 Mr. DeJesus objects to the admission of NSM-008.

16 B. Argument

17 In order to be admissible, a piece of evidence must be relevant.  
18 Evidence is relevant if it has a "tendency to make the existence of any fact that is  
19 of consequence to the determination of the action more probable or less  
20 probable." The existence of NSM-008 is only relevant if analyzed alongside the  
21 envelope label.  
22

23 But the label is hearsay. It is a "written assertion" offered to prove the  
24 matter asserted: presumably, that Tom B performed a test fire of the firearm on  
25 March 5, 2009 and placed the shell casing from the test fire in the proper gun

1 and (9). Although it is not required that the person generating the document  
2 personally testify, the State must still call a witness who can testify as to “when,  
3 where, and under what circumstances the [document] was made.” *Saldivar v.*  
4 *Momah*, 145 Wn.App. 365, 400, 186 P.3d 1117 (2008).

5  
6 Even when the State relies on a process or system, a witness is still  
7 necessary. In *Seattle v. Peterson*, 39 Wn.App. 524, 693 P.2d 757 (1985) the  
8 District Court took judicial notice of the process by which radar guns are  
9 certified. The Court of Appeals reversed, holding that the prosecutor was  
10 required to present “proof that the device in question is so designed and  
11 constructed that, when properly operated, the results or readings are accurate.”  
12 *Peterson* at 526, In *Burmeister v. State Farm*, 92 Wn.App. 359, 966 P.2d 921  
13 (1998) the Court held that a police report was not properly authenticated, even  
14 though it was produced in the normal course of business and was signed under  
15 penalty of perjury.

16 In this case, “Tom B” is the only person with personal knowledge of how  
17 the shell casing was generated and his (or her) identity is unknown and,  
18 apparently, unknowable. Because the person with personal knowledge is not  
19 known, the State must rely on the “process or system” of Smith and Wesson.  
20 But the State cannot provide any evidence of the “process or system” used by  
21 Tom B. Tom B did not leave any reports and nothing is known about him (or  
22 her). The little we do know about the protocol from Smith and Wesson leaves  
23 one wondering about the internal controls. The shell casing is not generated  
24 for the purposes of litigation, so there is no reason to accurately document  
25 exactly what occurred. The description given by Mr. Corino leaves an image

1 of piles of shell casings on the ground as 2000 firearms are test fired each day  
2 with Tom B moving from one firing range aisle to the next like a speed dater  
3 looking for his match. This is not a system or process designed to ensure  
4 accuracy and reliability.

5  
6 C. Conclusion

7 This Court should suppress evidence of NSM-008.

8  
9 Dated this 28<sup>th</sup> day of March, 2016.



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15 Attorney for Defendant  
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