

1
2 SUPERIOR COURT OF THE STATE OF CALIFORNIA

3 IN AND FOR THE COUNTY OF PLACER

4 Department Three

5 Judge Mark S. Curry, Presiding

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF PLACER

MAY 07 2012

WAKE CHATTERS
EXECUTIVE OFFICER & CLERK
By R. Harmon, Deputy

9 PEOPLE IN AND OF THE STATE OF
10 CALIFORNIA,

11 Plaintiff,

12 vs.

13 BRAD ROBERT MILLER.
14 Defendant.

Case No.: 62-98243

COURT RULING AND ORDER
EXCLUDING THE TESTIMONY OF
ALICIA CARRIQUIRY.

15 Background

16
17 The People intend to call a firearms expert that will purportedly testify
18 that test-fire bullets from a firearm found in the victim's home match bullets
19 taken from the victim during an autopsy, thereby establishing the weapon as
20 the murder weapon. In a prior ruling, this Court held that the People's
21 firearm expert could opine that the match is a "practical certainty" as long as
22 the expert did not testify that it was a certainty to the exclusion of all other
23 firearms.

24
25 In response, the defendant has announced his intention to call
26 Professor Alicia Carriquiry to testify as an expert witness. The People object
27 to the proposed testimony. In making this ruling, the Court has considered
28 the proffered testimony of Professor Carriquiry, as set forth in her five-page
"Affidavit" attached to the defendant's brief, other background information

1 provided by the defendant, a transcript of Professor Carriquiry's testimony at
2 a 402 hearing in Los Angeles Superior Court¹, and the 16 page declaration
3 of the People's proposed firearm expert, Robert Wilson. In addition, the
4 Court reviewed various studies and reports the parties attached to their
5 motions.

6
7 Discussion

8 The defendant proposes to call Professor Carriquiry as an expert
9 witness to convey to the jury "the skepticism within the scientific community
10 regarding the reliability of the (firearm) evidence" and to illustrate "the lack
11 of methodology, testing, and research in the discipline." In her affidavit,
12 Professor Carriquiry sets forth her opinions about the identification methods
13 used in this case and also firearm identification generally. She writes, for
14 example, that Mr. Wilson's identification to a 'practical certainty', "ventures
15 into the realm of speculation"...and is not supported by science. The
16 Professor's chief complaint is that the basic assumption relied upon by
17 firearm examiners that tool marks on firearms are unique, is not supported
18 by sufficient scientific data or testing, and therefore, opinions of "practical
19 certainty" are not supported by good scientific methodology. Her opinions
20 are based upon her participation on a committee tasked to determine the
21 feasibility of a national firearm data base and her review of *some* research
22 literature from the field of forensic firearm identification. However, she has
23 not reviewed many other research papers on firearm identification because
24 they are "unavailable" and she does not consider papers published in the
25 AFTE journal as reliable. [People v. Knight rt: 49] She does base her
26 opinions, in part, upon a paper written by Federal Judge Harry Edwards.
27

28

¹ People v. Roger Knight No. LA067366.

1 Professor Carriquiry voices her criticism stating, "The spotty, small scope
2 studies have been carried out in a disjointed manner by various firearms
3 examiners in no way can be considered to provided information that would
4 be need to properly quantify the probative value of firearm markings."
5 (Paragraph #10) She adds that, "The fundamental assumptions of
6 'uniqueness' and 'reproducibility' of tool marks on ballistic evidence are not
7 generally accepted in the relevant scientific community." And, she opines,
8 the subjective methodology for identifying so-called 'individual'
9 characteristics is "not generally accepted." (Paragraph #4) During her
10 testimony in People v. Knight, she referred to the identification methods
11 made by firearm examiners as "absurd." [rt 19: 1-8] and that she is "...more
12 qualified than firearm examiners themselves in interpreting the results using
13 probabilities and statistics. [rt 12:19-28]

14
15 After review of Professor Carriquiry's background and experience, the
16 Court finds that Professor Carriquiry is not qualified to render the opinions
17 proffered. She is a statistician. She has a PhD in Statistics/Animal
18 Breeding and Genetics. She has no prior training or experience in the field of
19 firearms examination, has conducted no tests or analysis' of the bullets or
20 firearm involved in this particular case, and she is not a member of the
21 forensic scientific community. She appears to have reviewed only *some* of
22 the relevant forensic firearm identification studies. Her main relevant
23 connection to the field of firearm examination is that she was a member of a
24 committee that considered the feasibility of a national firearms data base,
25 however, the report itself cautioned, " the study is neither a verdict on the
26 uniqueness of firearms-related tool marks generally nor an assessment of
27 the validity of firearms identification as a discipline and did not address the
28 admissibility of forensic firearms evidence in court." This Court notes that

1 the professor's rather strongly worded opinions appear to contravene these
2 admonishments.

3
4 Secondly, the Court finds that Professor Carriquiry's opinions are
5 mostly conclusory, overly broad and unsupported, and thus, have low
6 probative value. For instance, she opines, "The fundamental assumptions of
7 'uniqueness' and 'reproducibility' of tool marks on ballistic evidence are not
8 generally accepted in the relevant scientific community"... and the
9 subjective methodology for identifying so-called 'individual' characteristics is
10 "not generally accepted." (Paragraph #4) Her conclusions that the methods
11 are not "generally accepted", however, are not only inconsistent with
12 numerous court findings of general acceptance (see for example, *People v.*
13 *Cowan* (2010) 50 Cal. 4th 401, 468; *U.S. v. Taylor* 2009 663 F. Supp. 2d.
14 1170 [using pattern matching is generally accepted]), but also contrary to
15 this Court's finding that the methods used by the People's examiner in this
16 case are generally accepted in the forensic firearm scientific community. It
17 appears that Professor Carriquiry is applying her own standard of what she
18 feels is "generally accepted" and what is not. Her testimony at the 402
19 hearing in Los Angeles Superior court reflects a lack of knowledge of
20 relevant research in the field of firearm identification. Her broadly worded
21 statements that some studies "call into question the reliability of the method
22 employed by firearm examiners", i.e. the Miller study, appear unsupported.

23
24 As the defendant stated in his motion, he seeks to call the expert to
25 testify about "the skepticism within the scientific community regarding the
26 reliability of the (firearm) evidence" and to illustrate "the lack of
27 methodology, testing, and research in the discipline. Given the lack of
28 involvement in the field and her background, the Court finds that such
opinions are of marginal relevance and also create a substantial risk of

1 confusion of the issues and also the likelihood of an undue consumption of
2 time on a collateral issue.

3
4 Clearly, Professor Carriquiry *is* an expert in statistics, and if this case
5 involved the use of complicated mathematical formulas or statistics, such as
6 DNA evidence where complicated mathematical and statistical data are
7 introduced, than the witness would be properly qualified to give an opinion
8 concerning statistical calculations. In this case, however, the People's
9 expert will not be giving a numerical or statistical probability and will
10 concede that a large part of his opinion is subjective. The subjectivity of an
11 identification is the crux of the concerns raised by the Academy of Science
12 report and may be a valid concern. However, as a statistician, the professor's
13 personal opinion that this method of identification is not good science is not
14 relevant. The defendant is free, of course, to thoroughly cross-examine the
15 People's expert on every aspect of how he arrived at his conclusion and the
16 subjective nature of it, and to call his own firearm expert to contradict or
17 cast doubt upon the People's expert. Thus, the Court will exercise its
18 discretion pursuant to Evidence Code section 352 and exclude the testimony
19 of Professor Carriquiry.

20 However, to ensure that the jury accords the proper weight to the
21 People's expert opinion of a match to "practical certainty", the Court would
22 entertain from the defendant a proposed cautionary jury admonishment
23 concerning how to consider this form of testimony.

24
25 It is so ordered.

26
27  Judge Mark S. Curry

28 Judge of the Superior Court

Date 5/7/2012