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CR13-0667367-T CR13-0667365-T	:	SUPERIOR COURT
STATE OF CONNECTICUT	:	JUDICIAL DISTRICT OF HARTFORD
V.	:	AT HARTFORD
DONALD RAYNOR, JR.	:	MARCH 9, 2015

STATE'S OBJECTION TO DEFENDANT'S MOTION FOR PORTER HEARING AND MOTION IN LIMINE

The State objects to Defendant's motion filed March 5, 2015 seeking a *Porter* hearing as to the admissibility of the expected testimony of the State's ballistics and firearms expert James Stephenson and, in the alternative, seeking a limitation on the scope of Mr. Stephenson's testimony. The Defendant's motion has no basis in Connecticut law and should be denied. Indeed, it acknowledges that the Connecticut Supreme Court has not adopted the standard that the Defendant asks this Court to apply to expert testimony such as that of Mr. Stephenson -- that is, the federal standard set out in *Kumho Tire Co. v. Carmichael*, 526 U.S. 137 (1999). Defendant's claim that "the time has come" to apply that standard is not convincing.

I. BACKGROUND

Trial in this case is to begin on this date, March 9, 2015. Defendant's motion anticipates the State's proffer of testimony by Mr. Stephenson, who has testified in numerous cases based upon his experience as a ballistics and firearms expert. Defendant's motion is aimed at excluding or limiting Mr. Stevenson's testimony as to the

identity of the gun that fired the shell casings recovered at the scene of the shooting of Delano Grey, of whose murder the Defendant stands accused in this case. Mr. Stephenson is also expected to testify that the same gun fired the shells recovered at the site of the attempted murder of Deborah Parker, based on his forensic tool mark analysis of the shell casings.

II. ARGUMENT

A. APPLICABLE LAW

In *State v. Porter*, 241 Conn. 57 (1997), *cert. denied*, 523 U.S. 1058 (1998), the Supreme Court adopted the standard articulated in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), setting out the standard for threshold admissibility of scientific evidence in this state. The Court adopted the nonexclusive list of factors that judges should consider in deciding, as gatekeeper, whether a proffered expert's testimony was sufficiently reliable to be presented to the jury – whether the theory or technique had been tested, whether it had been subject to peer review, standards controlling the technique's application, and whether the technique was generally accepted. *Id.* at 65. The trial court is only to deem scientific evidence inadmissible when the "methodology underlying such evidence is sufficiently invalid to render the evidence incapable of helping the fact finder determine a fact in dispute." *Id.* at 89.

This is the law in Connecticut with respect to scientific evidence. The courts have expressly declined to adopt *Kumho Tire*.

B. DEFENDANT'S MOTION HAS NO BASIS IN APPLICABLE LAW.

Connecticut appellate authority could not be clearer: the *Kumho Tire* standard of the federal courts is not the law in Connecticut with respect to evidence that does not fall squarely under the rule regarding scientific evidence articulated in *State v. Porter*, 241 Conn. at 57. *See Banco Popular North America v. du'Glace, LLC*, 146 Conn. App. 651, 658 (2013) ("[a]lthough federal courts have applied the *Daubert* gatekeeping function as to the admission of all expert testimony, not just testimony based on science; *see Kumho Tire Co., Ltd. v. Carmichael,* 526 U.S. 137 (1999); Connecticut has never adopted that expansion of the *Daubert* holding") (citing *Message Center Management, Inc. v. Shell Oil Products, Co.,* 85 Conn.App. 401, 422 n.12 (2004)).

The rules of evidence that apply to Mr. Stephenson's testimony are clear: All relevant evidence is admissible except as provided by the federal or state constitutions or Connecticut statute. Conn. Code Evid. § 4–2. Relevant evidence is evidence that has a logical tendency to aid the trier in the determination of an issue, "and the fact that evidence may be subject to several interpretations does not affect its admissibility as long as it can be construed as relevant." (Citation omitted; internal quotation marks omitted.) *Jenkins v. Kos*, 78 Conn. App. 840, 843-44 (2003). The testimony by Stephenson is relevant, as it has a logical tendency to aid the jury in reaching its determination regarding the facts of this case.

The Appellate Court reached this conclusion in a case involving the same ballistics and firearms expert, James Stephenson, ruling that the trial court properly held that a *Porter* hearing was unnecessary given the well established principles in ballistics analysis. *State v. Legnani*, 109 Conn. App. 399, 417-18 (2008). In *Legnani*, the court

held that "[b]ecause identifying the magazine markings is a subset of the well established and admissible science and practice of firearm and tool mark identification, the court did not have to subject evidence related thereto to a *Porter* hearing" and the trial court did not abuse its discretion in refusing to hold a *Porter* hearing.

The Appellate Court also noted that "the science of firearm and tool mark identification, which has been well established and admissible evidence under prior case law. See *State v. Miles,* supra, 97 Conn.App. at 239, 903 A.2d 675 (firearm and tool mark examiner testified that bullet recovered from victim had been fired from gun recovered near scene of shooting); *State v. Miller,* 95 Conn.App. 362, 367, 896 A.2d 844 (Stephenson testified as the state's firearm and tool mark examiner that two bullets recovered were fired from same firearm, that bullet fragments recovered were consistent with being fired from same type of firearm as those two bullets and that four, nine millimeter cartridges were fired from same firearm), cert. denied, 279 Conn. 907, 901 A.2d 1228 (2006)."

See also State v. Brewer, 2005 WL 1023238 (March 9, 2005) (O'Keefe, J.), rejecting a defense motion seeking to preclude testimony by the state's firearms and ballistics expert, on the basis of *State v. Porter*. The court held that a *Porter* hearing was unnecessary since "the scientific principles of ballistics and firearm analysis are so well established that they can be admitted on a mere showing of relevance." *Id.* at *1. *See also State v. Reid*, 254 Conn. 540, 546 (2000) (ruling that microscopic hair analysis was not the type of evidence contemplated in *Porter* to be subject to a *Daubert* hearing).

Finally, in *Maher v. Quest Diagnostics, Inc.*, 269 Conn. 154, 172 (2004), while holding that cancer doubling time evidence "was not so well accepted within the

scientific community that reliability may be presumed," the Supreme Court observed that scientific evidence is excluded from the ambit of *Porter* when such evidence, and its underlying methodology, is "well established" and the scientific principles upon which it is based are considered so reliable "that there is little or no real debate as to their validity." That very conclusion is called for here. Mr. Stephenson's testimony is based on well-established methods, and there can be little debate as to the validity of those methods. While the jury is certainly free to decide for itself as to the conclusions Mr. Stephenson has reached, his methods themselves are reliable, and he should be allowed to testify.

III. CONCLUSION

For the reasons set forth above, the State asks this Court to deny Defendant's motion.

THE STATE OF CONNECTICUT

By: _____

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CERTIFICATION

This is to certify that a copy of the foregoing State's Objection to Defendant's Motion For Porter Hearing And Motion In Limine was hand delivered to counsel of record for the defendant on this 9th day of March, 2015.

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Patrick J. Griffin
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