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DC

NO. CR13-0667367-T	:	SUPERIOR COURT
STATE OF CONNECTICUT	:	JUDICIAL DISTRICT OF HARTFORD
V.	:	AT HARTFORD
DONALD RAYNOR JR.	:	MARCH 9, 2015

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

The State of Connecticut hereby opposes the defendant's motion for a hearing pursuant to State v. Porter, 241 Conn. 57, 698 A.2d 739 (1997), regarding the anticipated testimony of expert forensic firearms and tool examiner James Stephenson. Despite the defendant's contentions, Connecticut state law firmly holds that the science of firearm and tool mark identification has been so well established that a trial court does not have to conduct a Porter hearing prior to admitting such evidence. See State v. Legnani, 109 Conn. App. 399, 415-21, cert. denied 289 Conn. 940 (2008), and cases cited therein indicating that such evidence has routinely been held admissible without such a hearing.

I. FACTUAL SUMMARY

The pending charge arises out of the June 18, 2007 killing of Delano Gray in the area of 97 Enfield Street, Hartford. The defendant has been charged with murder based principally on information provided by his co-defendant Jose Rivera. Rivera is expected to testify that he was the driver when the defendant shot Gray with a .223 caliber rifle from the backseat of a car, in a classic "drive-by" shooting.

At trial, the State intends to offer uncharged misconduct evidence relating to a February 16, 2008 shooting incident in the area of 119 Baltimore Street, Hartford wherein

Debra Parker and her husband Darryl Spence were shot at by two individuals, one firing a rifle and another a handgun. Parker has identified the defendant as the person who shot at her using a rifle. The Connecticut Forensic Science Laboratory Firearms Section confirms that spent shell casings recovered from both of the above-referenced crime scenes indicate that the same weapon was used in the commission of each crime, thus leading to the anticipated trial testimony of the State's expert, James Stephenson.

On July 16, 2008 the Hartford police discovered an illegal cache of firearms in the woods behind a garage in the backyard of a home on Eastford Street in Hartford's North End. Among the firearms, police located a .223 caliber Kel-Tec rifle in a duffel bag. As noted, a critical witness in this case is the defendant's associate, Jose Rivera. In addition to identifying the defendant as the shooter of Delano Gray, Rivera has identified the subject rifle as the one used by the defendant to kill Gray. Rivera also acknowledges that he and the defendant both knew in July of 2008 that the .223 rifle used to kill Gray was discovered and seized by Hartford police near Eastford Street. The state's expert, James Stephenson, is expected to testify that forensic examination of the seized rifle determined that spent cartridge casings found at the scenes of both the Gray killing on June 18, 2007 and the Parker and Spence shootings on February 16, 2008 had been fired from this rifle.

II. ARGUMENT

The defendant has requested a hearing pursuant to State v. Porter, supra, regarding the admissibility of the anticipated testimony of expert forensic firearms and tool examiner James Stephenson. In Milton v. Robinson, 131 Conn. App. 760 (2011), the Connecticut

Appellate Court had occasion to explain the following with respect to the requirements for conducting a hearing on the admissibility of scientific evidence:

> "In State v. Porter, [241 Conn. 57, 698 A.2d 739 (1997) (en banc), cert. denied, 523 U.S. 1058, 118 S.Ct. 1384, 140 L.Ed.2d 645 (1998)], our Supreme Court adopted the test for determining the admissibility of scientific evidence set forth in Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579, 113 S.Ct. 2786, 125 L.Ed.2d 469 (1993). In so doing, the court noted two threshold requirements to the admissibility of scientific evidence. First, that the subject of the testimony must be scientifically valid, meaning that it is scientific knowledge rooted in the methods and procedures of science ... and is more than subjective belief or unsupported speculation.... This requirement establishes a standard of evidentiary reliability ... as, [i]n a case involving scientific evidence, evidentiary reliability will be based upon scientific validity.... Second, the scientific evidence must fit the case in which it is presented.... In other words, proposed scientific testimony must be demonstrably relevant to the facts of the particular case in which it is offered, and not simply be valid in the abstract." (Citation omitted; internal quotation marks omitted.) State v. Haughey, 124 Conn. App. 58, 71, 3 A.3d 980, cert. denied, 299 Conn. 912, 10 A.3d 529 (2010).
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> Although the Supreme Court in Porter established the requirements for the admissibility of scientific evidence, it "did not define what constituted 'scientific evidence,' thereby allowing the courts to maintain some flexibility in applying the test. As a result, a court's initial inquiry should be whether the [evidence] at issue ... is the type of evidence contemplated by Porter .... In Porter, our Supreme Court noted that 'some scientific principles have become so well established that an explicit ... analysis [under Daubert v. Merrell Dow Pharmaceuticals, Inc., supra, 509 U.S. at 579, 113 S.Ct. at 2789] is not necessary for admission of evidence thereunder.... Evidence derived from such principles would clearly withstand a Daubert analysis, and thus may be admitted simply on a showing of relevance.' " (Citations omitted; internal quotation marks omitted.) State v. Legnani, 109 Conn. App. 399, 419, 951 A.2d 674, cert. denied, 289 Conn. 940, 959 A.2d 1007 (2008).

Milton v. Robinson, supra, 131 Conn. App. at 770-71.

It is clear from the above that the law in Connecticut is such that a hearing on the admissibility of scientific evidence is not required if the science and practice involved has been well established and admissible under prior case law. In the 2008 case cited by the Milton Court, State v. Legnani, the Connecticut Appellate Court specifically held that the science and practice of firearm and tool mark identification is one such area that is so well established that a Porter hearing is not required. State v. Legnani, supra,109 Conn. App. at 419-21. Therefore, such testimonial and demonstrative evidence may be admitted simply on a showing of relevance. Id.

As recently as 2013, when addressing the issue of whether testimony regarding narcotics field test results could be admitted without a Porter hearing, the Connecticut Appellate Court effectively reiterated its position on firearm and tool mark identification when it cited to its earlier decision in Legnani favorably, including it among a string cite of cases highlighting a line of cases in which "[the Appellate Court has] concluded that certain forms of scientific evidence have become so well established that a formal Porter inquiry is rendered unnecessary...." See State v. Martinez, 143 Conn. App. 541 (2013).

III. CONCLUSION

In sum, while the defendant has located a federal judge in the Southern District of New York who might agree with his contention, the Appellate Courts of the State of Connecticut do not. Further, the law of the case doctrine does not support the defendant's call for a Porter hearing or motion in limine to preclude Mr. Stephenson from testifying as

an expert in firearm and tool mark identification – he has previously testified as such in the defendant's first trial.

STATE OF CONNECTICUT

By _____
Patrick J. Griffin
Supervisory Assistant State's Attorney

CERTIFICATION

This is to certify that a copy of the foregoing was hand delivered on this 9th day of March, 2015 to counsel of record:

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Patrick J. Griffin
Commissioner of Superior Court