

NOT FOR PUBLICATION

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX**

People of the Virgin Islands,

Plaintiff,

v.

SX-14-CR-136

Eugene Roberts,

136/14

SX-14-CR-137

Derick Liburd,

137/14

SX-14-CR-144

Larry Williams,

144/14

Defendants.

MEMORANDUM OPINION

THIS MATTER is before the Court on Defendant Larry Williams's Motion for a Daubert Hearing and Production of Evidence Related to Reynold DeSouza's Expert Opinion and Testimony, filed on April 22, 2016 (hereinafter "Motion").

FACTUAL AND PROCEDURAL HISTORY

Defendant Larry Williams (hereinafter "Williams") was arrested on April 19, 2014. He was advised of his rights on April 22, 2014 and arraigned on May 21, 2014. The Government alleges that Williams and his co-defendants committed a series of violations, including murder, attempted murder, and firearm offenses. On April 22, 2016, Williams submitted this instant Motion requesting a Daubert hearing challenging the reliability and basis of Firearm and Toolmark Examiner Reynold DeSouza's (hereinafter "DeSouza") report and also requesting the production of evidence related to DeSouza's expert opinion and testimony.

STANDARD OF REVIEW

The trial judge acts as a 'gatekeeper' to ensure that 'any and all expert testimony or evidence is not only relevant, but also reliable.' *Pineda v. Ford Motor Co.*, 520 F.3d 237, 243

(3d Cir. 2008) (quoting *Kannankeril v. Terminix Int'l, Inc.*, 128 F.3d 802, 806 (3d Cir. 1997) (citing *Daubert*, 509 U.S. at 589).

Federal Rule of Evidence 702 governs the admission of scientific and expert evidence. This rule states that:

[a] witness who is qualified as an expert by knowledge, skill, experience, training or education may testify in the form of an opinion or otherwise if:

- (a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;
- (b) the testimony is based on sufficient facts or data;
- (c) the testimony is the product of reliable principles and methods; and
- (d) the expert has reliably applied the principles and methods to the facts of the case.

"The Daubert standard represents the soundest rule for the Virgin Islands." *Antilles School, Inc. v. Lembach*, 2016 V.I. Supreme LEXIS 7, *1 (2016). In *Daubert*, the United States Supreme Court set a two prong test for determining the validity and admissibility of scientific evidence: 1) relevance; and 2) reliability. Relevance goes to the helpfulness standard set forth in Rule 702, as determined by the trial court. The reliability prong requires inquiry into the methodology used as a basis for the expert's conclusions, to ensure that it is grounded in good sense and based on more than mere "subjective belief or unsupported speculation." *Bolofsky v. General Elec. Co.*, 980 F.Supp. 818, 821 (D.V.I. 1997).

In *Schneider ex rel. Estate of Schneider v. Fried*, the Third Circuit provided what is referred to as a shorthand for the three-part test that must be satisfied in order for an expert to testify. This requires the Court to look at the qualification, reliability, and fitness of the expert. 320 F.3d 396, 404 (3d Cir. 2003). "The party offering the expert must prove each of these requirements by a preponderance of the evidence." *Mahmood v. Narciso*, 549 F. App'x 99, 102 (3d Cir. 2013) (citing *In re TMI Litig.*, 193 F.3d 613, 663 (3d Cir. 1999)).

"If a court finds that an expert has employed a methodology only slightly different from a methodology that the court thinks is clearly reliable, the court should be more likely to accept the

altered methodology than if it was evaluating that methodology as an original matter.” *In re Paoli*, 35 F.3d at 745 n.14. A judge should only exclude evidence if the flaw is large enough that the expert lacks “good grounds for his or her conclusions.” *Id.* at 746. The Third Circuit goes further to explain that the proponent of the evidence does not *have* to demonstrate that the assessments of the expert are correct. The requirement is that they demonstrate by a preponderance of the evidence that their opinions are reliable. *Id.* at 744.[emphasis added], “The analysis of the conclusions themselves is for the trier of fact when the expert is subjected to cross-examination.” *Oddi v. Ford Motor Co.*, 234 F.3d 136, 146 (3d Cir. 2000) (quoting *Kannankeril*, 128 F.3d at 806).¹

DISCUSSION

In his Motion, Williams argues that the People provides only a conclusory summary of DeSouza’s opinion which has no basis and reasons for his opinion. Williams further argues that DeSouza does not provide any information regarding the rifling or class, subclass, and individual characteristics of the various casings and bullet fragments, which would cause him to identify or eliminate a casing or bullet as having been fired from a particular firearm. It is Williams’ contention that the People failed to provide the basis for DeSouza’s opinions in order for Williams’ to determine whether those opinions were “grounded on good sense and based on more than mere subjective belief or unsupported speculation.”

I. Daubert Hearing

The Court granted Williams’ Motion as to his request for a Daubert hearing and a Daubert hearing was held on August 30, 2016. At the Daubert hearing, DeSouza testified that he has been

¹ “Any weaknesses or inadequacies [plaintiff] believes exist with the fact and assumptions of [defendant’s expert’s] conclusions can be highlighted through effective cross-examination.” *Keller v. Feasterville Family Health Care Ctr.*, 557 F. Supp. 2d 671, 679 (E.D. Pa. 2008)

working in the field of firearms and toolmark identification since 2009. He trained, from 2009 to 2011, at the VIPD with Maurice Cooper, a firearms examiner with approximately thirty years of experience in the field. He was then selected to attend the National Firearms Examiner Academy in Maryland. There, he received specialized training in firearms and toolmark examination until his graduation in September 2011. Since then, DeSouza has continued to work under Maurice Cooper's supervision, and has performed examinations in approximately 75 firearm and toolmark cases per year. DeSouza further testified that he performed approximated 168 cases last year. DeSouza stated that he has been qualified to testify as an expert in the Superior Court 25 times. He also stated that he is a provisional member of the American Federation of Firearm and Toolmark Examiners (hereinafter "AFTE"), has attended five AFTE training conferences and receives quarterly publications per year. The Court found DeSouza to be qualified to testify as an expert for the purposes of the Daubert hearing.

DeSouza then testified to the procedure that he routinely follows in order to examine firearm and toolmarkings. DeSouza explained that upon receipt of the evidence from the VIPD Property department, he would begin his examinations of the evidence and document those findings on the VIPD Worksheets. DeSouza testified that in order to conduct an examination, he would test fire the recovered firearm and compare the test fired bullets to the recovered evidence under a microscope. While looking through the microscope, he looks for sufficient agreements and patterns of individual marks and firing pin impressions.² Once similar agreements and firing

² Toolmark identification is based on the theory that tools used in the manufacture of a firearm leave distinct marks on various firearm components, such as the barrel, breech face or firing pin. The theory further posits that the marks are individualized to a particular firearm through changes the tool undergoes each time it cuts and scrapes metal to create an item in the production of the weapon. Toolmark identification thus rests on the premise that any two manufactured products, even those produced consecutively off the same production line, will bear microscopically different marks. With regard to firearms, these toolmarks are transferred to the surface of a bullet or shell casing in the process of firearm discharge. Depending on the tool and the type of impact it makes on the bullet or casing, these

impressions are found, DeSouza testified that he can conclude that the bullets were shot from the same firearm. DeSouza would then mark the worksheets of his findings and also take photographs of the findings. The toolmark identification based theory rests on the premise that any two manufactured products, will bear microscopically different marks which will make the weapons identifiable.³ DeSouza completed 20 worksheets and three reports detailing his findings (People's Exhibits 5-7). DeSouza also produced photographs of the bullets and markings and pointed to the specific areas where there were matching striations. Based on DeSouza's testimony, the Court did not find that there is a flaw that is significant enough to conclude that DeSouza lacked "good grounds for his or her conclusions."⁴

II. Production of Evidence Related to DeSouza's Expert Opinion and Testimony

The Court finds that William's Motion was mainly based on his belief that Defendants had not been provided the worksheets and reports completed by DeSouza. As noted above, per Williams' request, the People produced these worksheets and reports.⁵ In DeSouza's worksheets, the information provided details such as the case finish, primer finish, case marks, firing shape pin, and bullet design.⁶ In DeSouza's bullet worksheets, information regarding the caliber, rifling

surface marks consist of either contour scratch lines, known as striations (or striae), or impressions.

United States v. Wrensford, 2014 U.S. Dist. LEXIS 102446, *6-7, 2014 WL 3715036 (D.V.I. July 28, 2014)

³*Theory of Identification as it Relates to Toolmarks*, AFTE Journal, Vol. 30, No. 1, Winter 1998, at 87.

⁴*In re Paoli*, 35 F.3d at 746.

⁵ Counsels for the Defendants raised the argument that they were "ambushed", thus unprepared to challenge the worksheets provided by Plaintiffs because they were never provided to Defendants prior to the Daubert hearing. Upon the Court's review of the correspondence via email between the parties, the Court found that Defendants were in fact provided the worksheets and reports on April 25, 2016 at 2:56 p.m. by former Assistant Attorney General Kippy Roberson.

The Court noted that Attorney Yohanna Manning was not representing Defendant Lester Roberts at the time of the communication, but documentation showed that the information was sent to prior counsel Attorney Micheal Joseph. The Court provided the information to Attorney Manning upon his request and provided the parties until Friday, September 09, 2016 to supplement their briefs regarding the findings of DeSouza. The People were given until Tuesday, September 13, 2016 to submit any responses. No documents were filed with the Court.

⁶ Plaintiff's Exhibit 5, p. 1-11

type, lands and grooves, core material and bullet design are provided. Each worksheet also has a remarks section in which DeSouza made notations regarding certain findings he made while testing.

CONCLUSION

In summary, the Court granted Williams' Motion as to the Daubert hearing and a Daubert hearing was held. At the Daubert hearing, the People produced the evidence related to DeSouza's expert opinion and testimony. Thus, as to Williams' Motion for the production of evidence, the Court will deny as moot.

DONE and so **ORDERED** this 25th day of October, 2016.

ATTEST:

Estrella George
Acting Clerk of the Court



~~Darryl Dean Donohue~~
Senior Sitting Judge of the Superior Court

By: 

Deputy Clerk ~~#~~

Dated: 10/25/16