

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX                      Part 33

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THE PEOPLE OF THE STATE OF NEW YORK

Against

DECISION  
*Frye* Motion  
IND. NO. 267/2018

AMINA MANSELL & MICHAEL ROSS,

Defendants.

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April A. Newbauer, J.

Defendants Amina Mansell and Michael Ross are charged with criminal possession of a weapon in the second degree and related charges stemming from a report of shots fired in the vicinity of 1480 Washington Avenue, Bronx County. Defendant Mansell filed a motion pursuant to *Frye v. United States*, 293 F 1013 (DCC 1923), and its progeny to preclude NYPD ballistics expert testimony that shell casings found at the scene matched a firearm recovered from the defendants. Similarly, defendant Ross filed a motion seeking preclusion of any expert testimony comparing spent bullets from the firearm to shell casings on the grounds that it now falls outside the spectrum of general acceptance in the relevant scientific communities. The People opposed both motions. The court ordered a *Frye* hearing to test the reliability of any expert opinion based on toolmarks. The hearing commenced on December 20, 2019 and concluded on January 22, 2020.<sup>1</sup>

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<sup>1</sup> The hearing proceeded on the following dates: December 20, 2019, January 13, 2020, January 14, 2020, January 15, 2020, January 21, 2020 and January 22, 2020.

## Conclusions

The defendants' motions to preclude testimony by a firearms examiner are denied. The People may proffer Detective Jaikissoon as an expert in firearm and toolmark examination as described below, subject to an applied challenge.

After considering the voluminous record, including the testimony of expert witnesses and the exhibits<sup>1</sup>, the relevant scientific community is deemed to be the forensic science coupled with scientific methodology in studies and statistics, and to the extent that human perception and judgment continue to be involved in toolmark examination, the field of psychology as well. Each of these overlapping communities plays an important part in determining what is accepted science in the firearm and toolmark identification arena.

No expert dispelled the notion that firearms can leave marks on bullets or shell casings. These markings fall into three or four categories depending on the expert who describes them. There is agreement that "class characteristics" are intentional marks some manufacturers use to brand their products. These marks can be known to forensic examiners in the field through field training. Other types of marks that may appear on shell casings may be left through unintended features of manufacturing ("subclass characteristics"). These marks may appear on a batch or batches of firearms of unknown quantity. "Individual characteristics" are marks left on bullets or shell casings because of a variety of reasons, including repeated use of a gun, the conditions under which it has been fired, the environment affecting the casing after it is expelled, etc.

The evidence at the hearing shows that the forensic science community is united in its

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<sup>1</sup> Some exhibits were admitted for limited purposes.

view that through the practice of examining these marks under a microscope, a trained practitioner can decide whether there is “sufficient” agreement to reliably identify a particular firearm as the source of the toolmarks. Based on the evidence at the hearing, the non-forensic sectors of the relevant scientific community are just as unified in their view that toolmark identification is a practice in search of a science and is not reliable. The proliferation of studies since the practice underwent more rigorous scientific scrutiny underscores this fact. The experts in scientific design and statistics agreed that the current studies, most of which were promulgated through the toolmark industry, fail to assure a reliable error rate for examiners trying to “identify” a particular firearm.

Reconciling the various viewpoints does not prove simple. Indeed, courts around the country--albeit primarily applying a *Daubert* standard—have come to different conclusions about toolmark testimony in the past fifteen years. For this reason, a lengthier written opinion which lays out the expert testimony, its consequences and the basis for the conclusions reached will follow.

### ***In limine*** ruling

There is an applied challenge pending, but assuming the People’s proffered expert was properly trained and is proficient, the People may call him to testify as to whether he found any class characteristics that would include or exclude the firearm at issue. The ballistics examiner may explain the reasons for any opinion that class characteristics are present or not present to the jury. The examiner may explain what is done with instruments, e.g. a microscope, describe verbally and/or show the jurors photos of the relevant evidence, including shell casings and test fires. The examiner may not, however, offer qualitative opinions on matters not adequately supported by the relevant scientific community. Specifically, the examiner may not opine on the


significance of "marks" seen other than class characteristics, as the reliability of that subjective practice in the relevant scientific community as a whole has not been established.

A comprehensive written decision to follow this short order.

This constitutes the decision and order of the court.

ENTER,

Dated: January 23, 2020  
Bronx, New York



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HON. APRIL A. NEWBAUER  
Acting Supreme Court Justice