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BEFORE THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,	.	
	.	Case Number 19-cr-358
Plaintiff,	.	
	.	
vs.	.	
	.	
DEMONTRA HARRIS,	.	October 15, 2020
	.	10:01 a.m.
Defendant.	.	

TRANSCRIPT OF EVIDENTIARY HEARING
BEFORE THE HONORABLE RUDOLPH CONTRERAS
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Government:	MICHAEL AMBROSINO, AUSA LAURA CRANE, AUSA CHRISTOPHER BERRIDGE, AUSA United States Attorney's Office 555 Fourth Street Northwest Washington, D.C. 20530
For the Defendant:	MANUEL RETURETA, ESQ. Retureta & Wasseem 300 New Jersey Avenue Northwest Suite 900 Washington, D.C. 20001
Official Court Reporter:	SARA A. WICK, RPR, CRR 333 Constitution Avenue Northwest U.S. Courthouse, Room 4704-B Washington, D.C. 20001 202-354-3284

Proceedings recorded by stenotype shorthand.
Transcript produced by computer-aided transcription.

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P R O C E E D I N G S

(All participants present via video conference.)

THE COURTROOM DEPUTY: This is Criminal Action 19-358,
United States versus Demontra Harris.

For the United States, I have Ms. Laura Crane, Christopher
Berridge, and Michael Ambrosino. For defendant, I have
Mr. Manuel Retureta. Our court reporter today is Ms. Sara Wick.

All parties are present.

THE COURT: Good morning, everyone. Are we ready to
proceed?

MR. RETURETA: Yes, Your Honor.

MR. AMBROSINO: We are, Your Honor.

THE COURT: Ms. Crane, are you going to be doing the
speaking or Mr. Ambrosino?

MS. CRANE: Your Honor, Mr. Ambrosino.

THE COURT: Mr. Ambrosino, just for our scheduling
purposes, how long do you expect your direct to go?

MR. AMBROSINO: Three hours, Your Honor.

THE COURT: And Mr. Retureta, how long do you expect
your cross to be approximately?

MR. RETURETA: Much, much shorter than that. I don't
expect more than about a half an hour, Your Honor, truly. I
think the issues here are pretty defined. It's just a matter of
how the Court wants to -- or how far the Court wants to let the
witness testify. So I don't expect a long cross-examination at

1 all.

2 THE COURT: Okay. I assume by that calculation both
3 parties expect that we will only need one day for the hearing;
4 is that correct?

5 MR. RETURETA: Correct, Your Honor.

6 THE COURT: Okay. That's helpful.

7 MR. AMBROSINO: That seems reasonable, Your Honor.

8 THE COURT: All right. Go ahead, Mr. Ambrosino.

9 MR. AMBROSINO: Thank you, Your Honor.

10 DIRECT EXAMINATION

11 BY MR. AMBROSINO:

12 Q. Mr. Weller, can you, please, introduce yourself to the
13 Court and also spell your name.

14 A. My name is Todd Weller, T-o-d-d W-e-l-l-e-r.

15 Q. And let's begin with your educational background.

16 A. Okay. I have a bachelor's degree in biochemistry and
17 molecular biology from Dartmouth College, and I have a master's
18 in science and forensic science from the University of
19 California Davis.

20 COURT REPORTER: Excuse me, Your Honor. The witness
21 hasn't been placed under oath.

22 TODD WELLER, WITNESS FOR THE GOVERNMENT, SWORN

23 DIRECT EXAMINATION (Continued)

24 BY MR. AMBROSINO:

25 Q. And Mr. Weller, how are you currently employed?

1 A. I currently am the president of my own forensic science
2 company called Weller Forensics.

3 Q. And what do you do?

4 A. Several functions. I provide forensic science consulting,
5 working with attorneys and other members of the judicial system
6 providing information and consulting services regarding forensic
7 science issues. I also provide training for attorneys and law
8 enforcement and other forensic scientists. I also perform some
9 case work analysis as well in my private company. And sorry,
10 the last thing is --

11 Q. Before --

12 A. Excuse me. The last thing is I also perform research in
13 forensic science.

14 Q. All right. Now, before starting your own company, how were
15 you employed?

16 A. Prior to my own company, I worked at the Oakland Police
17 Department Criminalistics Laboratory in California, and I worked
18 there for 16 and a half years.

19 Q. And were you trained in more than one forensic discipline?

20 A. Yes.

21 Q. What forensic disciplines are you trained in and practice
22 in?

23 A. I started my career in drug chemistry, so identifying -- or
24 testing substances for controlled substances. I also performed
25 crime scene work throughout my career at the Oakland Police

1 Department. I performed DNA analysis for four years, and then
2 for the remaining eight years while at the Oakland Laboratory, I
3 was assigned to the firearms and toolmarks unit.

4 Q. All right. Let's focus in on that. With respect to
5 firearms and toolmarks examination, what was your training?

6 A. The training took a total of approximately two and a half
7 years. A year of that was spent at what's called the National
8 Firearms Examiner Academy, or NFEA. It's, like I said before, a
9 year-long training program that is hosted by the ATF, and it is
10 designed to give new examiners foundational knowledge in the
11 discipline of firearm and toolmark examination. So I completed
12 that starting in 2008, and I finished in 2009.

13 And then my training continued on back at the Oakland
14 Police Department with other trained criminalists, the
15 supervisor of the section, with more hands-on, case work-like
16 experience.

17 Q. And once you were fully trained, how many years did you
18 spend conducting firearms and toolmark examinations?

19 A. So my assignment with the unit starting in 2008, with that
20 assignment I began some initial case work examinations, firearms
21 testing. So my case work really began in my career early on.
22 As far as performing comparison-type case work, that started in
23 2011, and that continued on until I left, which is close to the
24 end of 2016.

25 Q. And do you continue to do that through present day in your

1 consulting business?

2 A. I occasionally do still perform comparison case work, yes.
3 It's not very often, but I still do.

4 Q. And we are going to be discussing a number of research
5 studies today throughout the hearing. Have you taken part in
6 firearms and toolmark validation studies?

7 A. Yes.

8 Q. And how many approximately?

9 A. So I have published a total of four papers, and three of
10 those involve direct empirical research, and then I have a fifth
11 one that was just accepted for publication the beginning of this
12 month.

13 Q. And have you also actually participated as a firearms
14 examiner in validation studies?

15 A. Yes.

16 Q. And many studies have you actually participated in as an
17 examiner?

18 A. I think the count is four.

19 Q. And to your knowledge, in making -- in identifying
20 cartridge casings to one another, to a particular firearm, to
21 your knowledge have you ever made an error --

22 A. No, I have not.

23 Q. -- in those studies?

24 A. No, I have not made an error to the best of my knowledge.

25 Q. Turning back to the research that you've conducted, you

1 indicated that you've conducted research in the area of firearms
2 and toolmarks identification?

3 A. Correct.

4 Q. And in doing so, did you do so alone or in conjunction with
5 other scientists?

6 A. All of those papers involve co-authors, other scientists.

7 Q. And what type of scientists have you collaborated with in
8 conducting firearms and toolmarks research?

9 A. They involve Dr. Lillian, who has a medical degree and also
10 a Ph.D. in computer science. Another paper involved co-authors
11 from NIST, the National Institute of Standards and Technology.
12 I worked with their metrology department, their engineers at
13 NIST. Those are some examples of other co-author scientists.

14 Q. And did you actually participate in designing these
15 studies?

16 A. Yes, I did.

17 Q. Now, did these studies undergo scientific peer review in
18 journals?

19 A. Yes.

20 Q. And in what journals have your studies been published?

21 A. I've studied -- I'm sorry. I've published (distorted
22 audio).

23 COURT REPORTER: Could the witness repeat his answer.

24 BY MR. AMBROSINO:

25 Q. I think you came in and out there. Could you repeat that?

1 I think you broke up a little bit in the middle of your answer.

2 A. Sure. So I published in both the AFTE Journal -- AFTE is
3 spelled A-F-T-E -- and the second journal I published in is in
4 the Journal of Forensic Sciences.

5 Q. And do each of those journals have different types of peer
6 review?

7 A. At the time, yes.

8 Q. In terms of blind or double blind. And what were the types
9 of peer review in place at the time your journal articles were
10 published?

11 A. So the first time I published in the Journal of Forensic
12 Sciences, they used a single-blind method. A later publication
13 involved a double-blind method. So they changed their form of
14 peer review between my publications. The AFTE Journal at the
15 time I published was an open peer review.

16 Q. And you indicated that you have acted as a researcher.
17 Have you also acted as a peer reviewer for these various
18 scientific journals that you just mentioned, both AFTE and the
19 Journal of Forensic Sciences?

20 A. Correct, I have served as a peer reviewer for both of those
21 journals.

22 Q. And what is the OSAC?

23 A. OSAC stands for the Organization of Scientific Area
24 Committees.

25 Q. And is there a subcommittee for firearms and toolmark

1 examination?

2 A. Yes, there is.

3 Q. And do you currently hold a position on that subcommittee?

4 A. Yes. I am currently the vice chair of that subcommittee.

5 Q. And were you previously the chair of that committee?

6 A. I was. The transition happened on October 1st of this
7 year, so just a couple weeks ago. And prior to that, I was
8 chair for three years.

9 Q. How long were you -- okay.

10 And prior to being chair for three years, did you hold a
11 position on the subcommittee?

12 A. I did. I was vice chair before that again for three more
13 years. So I am starting my seventh year on the committee.

14 Q. Mr. Weller, throughout your career, have you testified
15 generally in the area of forensics?

16 A. I have.

17 Q. How many times -- in the area of forensics generally, how
18 many times have you been qualified as an expert?

19 A. So covering those areas which I talked about, whether it's
20 crime scene, DNA, drug identification, or firearms and
21 toolmarks, approximately around 100 times I've testified across
22 that category -- categories of testimony.

23 Q. And focusing in on firearms and toolmarks examination, how
24 many times have you been qualified as an expert witness
25 previously?

1 A. 39 times.

2 Q. And are you consulted by the defense routinely?

3 A. Yes.

4 Q. And have you actually testified for the defense previously?

5 A. I have.

6 Q. All right. And I would like to draw your attention -- if
7 you could bring up Government's Exhibit Number 1.

8 Mr. Weller, is this your resume?

9 THE WITNESS: Your Honor, can you see that okay before
10 I --

11 THE COURT: I can, and I have paper copies with me as
12 well.

13 THE WITNESS: Okay. Thank you. Sorry.

14 BY MR. AMBROSINO:

15 Q. And Mr. Weller, is this your resume?

16 A. Yes, it is.

17 Q. And is it current?

18 A. It is except for two things that will need to be updated
19 very shortly, one of those being the additional publication
20 which was just accepted. I'm waiting to do that until the --
21 the publication is available online so that I can add that to
22 the resume, and the second thing is to update my resume under
23 OSAC denoting that I am the vice chair. Currently, the resume
24 says that I am the chair.

25 MR. AMBROSINO: All right. And Your Honor, I would

1 ask that this be made a hearing exhibit.

2 THE COURT: Any objection?

3 MR. RETURETA: No objection, Your Honor.

4 THE COURT: All right. It's admitted.

5 (Government Exhibit 1 received into evidence.)

6 BY MR. AMBROSINO:

7 Q. Directing your attention to Government's Exhibit 2 -- can
8 you bring that up on the screen please, Mr. Weller.

9 And is this a statement you swore out back on September 19,
10 2019?

11 A. Yes.

12 Q. And would you like to adopt this statement as a part of
13 your testimony here today for purposes of efficiency?

14 A. Yes.

15 MR. AMBROSINO: Your Honor, I would ask that this also
16 be made a part of the hearing record. This has been included in
17 the government's pleadings.

18 THE COURT: Any objection?

19 MR. RETURETA: No objection, Your Honor.

20 THE COURT: It's admitted.

21 (Government Exhibit 2 received into evidence.)

22 MR. AMBROSINO: Your Honor, at this time the
23 government asks that Mr. Weller be qualified as an expert in
24 firearms and toolmark identification and in the design of
25 firearms and toolmark validation studies.

1 MR. RETURETA: No objection, Your Honor.

2 THE COURT: I will qualify him as such.

3 BY MR. AMBROSINO:

4 Q. Mr. Weller, how would you define firearms and toolmark
5 examination?

6 A. Firearm and toolmark examination is the discipline of
7 examining -- it is primarily focused on examining fired
8 ammunition components. What I mean by that is fired bullets and
9 fired cartridge cases, comparing those and looking at the
10 microscopic marks left behind on those components and using
11 those microscopic marks in an attempt to make source attribution
12 conclusions, whether it be that these items are from the same
13 source or different source.

14 Q. Now, because we're dealing in this case with fired shell
15 casings, I'm going to ask you to give a very short tutorial on
16 the types of markings that are impressed on fired shell casings
17 used Government's Exhibits A, B, C, and D. Could you please
18 bring those up onto the screen.

19 Directing your attention to Government's Exhibit A, can you
20 please describe to the Court what we are looking at here.

21 A. Sure. So this is an example of -- part of the methodology
22 of firearm and toolmark examination is to characterize the types
23 of marks left behind on fired ammunition, and one of those
24 characterizations are what we call class characteristics. The
25 class characteristics are marks left behind that are