

COMMONWEALTH OF THE BAHAMAS

CRI/VBI/24/12018

IN THE SUPREME COURT

Criminal Division

FRANKLYN EDGECOMBE aka "Chilly"

Applicant

AND

DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

BEFORE: The Honourable Mr. Justice Franklyn K M Williams KC

APPEARANCES: Ms. Marianne Cadet for Applicant

Mr. Timothy Bailey with him Ms. Tamika Roberts for the Respondent

DATE: 18 July 2023

Expert – Crime Scene Reconstruction – Firearms Instructor – Armorer – Whether "Firearms Expert" – Whether Crime Scene Reconstruction Expert – Expert disclaiming expertise - Expert – Crime Scene Reconstruction – Ballistics – Opinion – Whether independent – Whether unbiased – Failure to consider material fact detracting from concluded opinion

RULING

Williams J

1. The defense made application for two persons to be deemed experts. The first, that Mr. Frederick Delancy be deemed an expert in crime scene reconstruction and firearms; the second, that Dr. Richard Pumerantz be

deemed a crime scene reconstruction expert and firearm expert. The Court conducted a voire dire upon each application.

2. In the first, the proposed witness Delancy described himself :

“A. ...I served as a law enforcement officer, a police officer for 34 years in the capacity of a firearms instructor and armorer for the last 21 years.

Q. And you say you have how many years of firearm experience?

A. I have 21 years of firearm experience where I have been certified and accredited at a Smith and Wesson Academy out of Boston as a mater (sic) firearm instructor. I have a certification, a certificate from the Institution of Dr. Henry Lee who is the lead pathology on crime scene reconstruction.”

and:

“ THE WITNESS: I am not an expert in crime scene reconstruction. I have a certificate in crime scene reconstruction so I have a lot of experience, but I am a firearms expert and armorer.”

3. When asked about having given testimony:

“ THE WITNESS: As a matter of fact, your Worship, I was in the last matter which – that occurred on Fire Trail Road where we went to the locus on how to reconstruct the crime scene with the Major incident. ...I was there and I assisted in reconstructing that crime scene with a fellow comrade from out of the country, that was brought in by family members.”

and his experience in crime scene reconstruction:

“ Q. Mr. Delancy, could you go on and can you speak to your experience indicated earlier, your experience in crime scene reconstruction? You can speak to the course that you appeared before in reference to that so that the Court can have an understanding of your expertise in that.

A. Okay. Thank you.

I am more a firearms instructor and armorer than a crime scene technician. If I was to testify before this court in the capacity of crime scene technician I would have had to do quite a bit of footwork and produce reports and measurements that I have not prepared at this time to do. So I would say I have the knowledge, I did the course, I have a degree of foundational information but I cannot offer myself as an expert in the area of crime scene reconstruction.”

4. A firearms expert, otherwise known as a ballistics expert is a forensic specialist known professionally as a Firearm and Toolmark Examiner, who has the duty of collecting and analyzing evidence having to do with ballistics. These include:
 - Firearms
 - Live ammunition
 - Spent cartridges
 - Spent bullets or shell casings\
 - Bullet fragments
 - Shot shell wadding
 - Clothing
5. Firearms experts otherwise known as ballistic experts are required to have, minimally, a bachelor's degree in forensic science or related field. The expert must have a solid background of chemistry, physics and mathematics. These subjects are necessary because it is required that determinations of statistics, how objects move and how to identify chemical residues from firearms be made. This assumes the recovery and primary knowledge and analysis of a firearm and projectiles (live ammunition, spent bullets or shell casings, bullet fragments) none of which is or can be evidenced in this case, certainly not by Mr. Delancy (American Academy of Forensic Sciences; Forensic Science Education Programs and Accreditation Commission).
6. A firearms instructor teaches the responsible and safe use and handling of firearms, appropriate shooting techniques, maintains the police armory, and as armorer performs inspection, maintenance and repair of weapons and armory/range equipment (Royal Bahamas Police Force).
7. According to the Georgia Public Safety Training Center, crime scene technicians investigate crimes by analyzing details at the scene, collecting evidence, evaluating data and presenting their findings. The job requires meticulous attention to detail. Mr. Delancy says he is not a crime scene technician and did not visit the scene at first instance; it is purported that he visited the scene some four and one half years removed and was asked to look at photographs of shell casings.
8. A voire dire was held during which Dr. Pumerantz was examined as to his expertise:

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1 THE COURT: Okay, let's proceed.

2 EXAMINATION IN CHIEF BY MS. CADET:

3 Q. Mr. Pumerantz can you hear me?

4 A. Yes.

5 Q. Mr. Pumerantz, can you state your name and
6 occupation for the court?

7 A. Yes, my name is Dr. Richard Pumerantz, I am
8 the lead expert for Guns and Ammo Witness Consulting I
9 am also president of 10 X ammunition and president of
10 Polyfrang Ammunition.

11 Q. Okay. Can you speak to your experience,
12 please?

13 A. Yes, in addition to my educational background
14 having PHD, I have been in the firearms and ammunitions
15 since 2005 considered an expert. In addition I spent 18
16 years in county department. 16 of those years as a
17 certified firearms instructor and also since 2008 I've
18 been teaching the California Criminalistics constitute
19 here in California which is where all crime scene and
20 Ballistics Lab Techs go to school to become
21 professionals and I have been teaching them for years on
22 analysis of crime scene technical issues regarding
23 everything from the completion of evidence from the
24 identification of tool marks. I also have an associate
25 of tool marks, technical advisor for all law
26 enforcement.

27 Q. Have you testified in the court of The
28 Bahamas?

29 A. Yes, I testified in the Coroner's Court most
30 recently in the shooting of Azario Major.

31 Q. And can you state what evidence you were
32 allowed to give?

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1 A. Yes, I testified as to the crime scene
2 reconstruction itself, ballistic trajectory utilizing
3 ballistic trajectory broads(sic) into the vehicle from
4 the scene, I also was reviewing the pathology report
5 from coroner's office evaluating the wound, the wound
6 paths and the directions of the wounds as well as all
7 photographic evidence and video evidence to reconstruct
8 the crime scene and determine what had happened.

9 Q. Okay. Now in relation to firearms, when you
10 were called upon to examine in relation to firearms
11 expertise, what are you required to do?

12 A. Well, like I also did in Azario Major case my
13 extensive experience working with firearms manufacturers
14 as well as designing a firearms. My job is to look at
15 the firearms and to determine the make and model and
16 evaluate if there had been any modifications to the
17 weapon, in fact, I have a case I am working at right now
18 for the State of California where the Department of
19 Justice having me evaluate the functionality of a weapon
20 that was used in a murder.

21 Q. And have you reviewed crime scene photos
22 before?

23 A. Yes, for years, they are one of the most
24 valuable tools to help understand how to reconstruct the
25 scene itself.

26 MS. CADET: My Lord, I have no further
27 questions for this witness.

28 THE COURT: Yes, thank you.

29 Mr. Bailey.

30 CROSS-EXAMINATION BY MR. BAILEY:

31 Q. Good afternoon, Dr. Pumerantz?

32 A. Good afternoon.

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1 Q. Dr. Pumerantz, what's the extent of your
2 training in crime scene reconstruction?

3 A. My experience in training started back in I
4 would say it is been 18 years ago when I first became
5 involved in the Sheriff's department in Samber(sic)
6 County we have what are called trimester training
7 classes for continuing education, so every four months
8 we're required to go through training that included
9 everything from first aid to firearms training every
10 trimester and at least annually we would go through the
11 latest techniques for collection of evidence, witness
12 statements etc., that's been going and went on until I
13 retired in 2020.

14 Q. What about crime scene reconstruction?

15 A. Yes, crime scene reconstruction started around
16 2008 when I actually started to teach those courses in
17 these areas for California Criminalistics Institute.
18 So, most of the years, over the years, it's a lot of
19 years now I have thought a lot of students who are the
20 CSI's and crime lab technicians and even when I get
21 called in for jury duty I have to disclose the fact that
22 I probably taught whoever the lab tech is that's
23 testifying.

24 Q. And what degree of training that can tell us
25 that you have in this area?

26 A. My training in this area has been over 20
27 years of experience in the firearms industry of working
28 in this area for again in the industry as well as for
29 law enforcement for the sheriffs department.

30 Q. And what court can you say, which court if any
31 has deemed you an expert in the area of crime scene
32 reconstruction?

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1 A. California, Supreme Court, which is called
2 superior court here; the Oregon Supreme Court and most
3 recently the Bahamian Coroner's Court.

4 Q. Can you give us example one of the names of
5 cases when you were deemed expert when you gave evidence
6 as a crime scene reconstruction expert please?

7 A. I cannot and the reason is that most of the
8 cases that I work on backed all but the three of them
9 this one being included in those three were all settled
10 before they went to court, generally that's what happens
11 when I present a report, the facts of evidence
12 illuminated and the whichever side is utilized in that
13 report will settle the case.

14 Q. So you have never given evidence this those
15 cases you must submitted a report?

16 A. No, I gave evidence in the Bahamian court.

17 Q. That was in the Coroner's Court?

18 A. In the Coroner's Court.

19 Q. However given evidence in The Bahamas in a
20 Supreme Court?

21 A. No, sir.

22 Q. And have you ever been deemed an expert in the
23 Supreme Court in The Bahamas?

24 A. No, sir.

25 Q. Have you visited The Bahamas, sir?

26 A. Yes.

27 Q. Are you familiar with the area that you gave
28 this report on?

29 A. I've actually driven by that area Fincastle in
30 my two visits ago.

31 Q. What year was that, sir?

32 A. 2022.

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9. Halsbury's Laws of England provides some guidance on opinion and expert evidence. *Folkes v Chadd* (1782) 3 Doug KB 157; In *R v Turner* [1975] 1 QB 834, Lawton LJ restated the principle upon which expert evidence is founded:

"An expert's opinion is admissible to furnish the court with scientific information which is likely to be outside the experience and knowledge of a judge or jury. If on the proven facts a judge or jury can form their own conclusions without help then the opinion of an expert is unnecessary. In such a case if it is given dressed up in scientific jargon it may make judgement more difficult."

10. The fact that an expert witness has impressive scientific qualifications does not make his opinion any more helpful than that of the jurors themselves *Turner* (supra).

11. The case of *National Justice Compania Navierasa S.A. v Prudential Insurance Company (Ikarian Reefer)* (1993) 2 LLWR 68 provides some guidance on the duties and responsibilities of the expert:

- i. Expert evidence presented to the court should be, and should be seen to be, the independent product of the expert uninfluenced as to form or content by the exigencies of litigation;
- ii. An expert witness should provide independent assistance to the court by way of objective unbiased opinion in relation to matters within its expertises. An expert witness in the High Court should never assume the role of advocate
- iii. An expert witness should state the facts or assumptions upon which his opinion is based. He should not omit to consider material facts which could detract from his concluded opinion;
- iv. An expert witness should make it clear when a particular question or issue falls outside his expertise;
- v. If an expert's opinion is not properly researched because he considers that insufficient data is available, then this must be stated with an indication that the opinion is no more than a provisional one. In cases where an expert witness who has prepared a report could not assert that the report contains the truth, the whole truth and nothing but the truth without some qualification, that qualification should be stated in the report;
- vi. If after the exchange of reports, an expert witness changes his view on a material matter having read the other side's expert report or for any other reasons, such change of view should be communicated (through legal representatives) to the other side without delay and when appropriate to the court.

12. It is for the court to determine whether a witness is competent to give expert evidence *R v Silverlock* [1894] 2 QB 766. In that case, it was held that the test is whether the witness is sufficiently skilled to give expert evidence or has the necessary means of knowledge to make his opinion material. Counsel and or litigants instructing expert witnesses must be satisfied as to the witness expertise; they must engage an expert of suitable caliber *R v Pabon* [2018] EWCA Crim 420.

13. Expert witnesses must provide the court with the necessary scientific criteria and methodology for testing the accuracy of their conclusions so as to enable the judge or jury to form their own independent judgement by the application of those criteria or methodologies to the facts proved in evidence *R v Gilfoyle* [2000] EWCA Crim 81
14. The Court may in its discretion refuse to deem an expert where "the truth of the expert evidence" is in conflict with and outweighed by other material evidence Lord Parker CJ in *R v Byrne* [1960] 2 QB 396.
15. Mr. Delancy , by his answers, makes clear that issue he is asked to address is outside of his expertise.
16. In response to a question on the extent of his training in crime scene reconstruction, Dr. Pumerantz answered eighteen years, and references several types of training not including crime scene reconstruction. When the same question was asked again, he references a period of fifteen years, beginning in 2008. Further, he references teaching crime scene investigators and lab technicians not including crime scene reconstruction. When asked the same question a third time, he responds referencing his training of over twenty years of experience in the firearms industry as well employ in law enforcement. Again, no reference to crime scene reconstruction.
17. Dr. Pumerantz states that he has been deemed an expert in the Superior Courts of California and Oregon and most recently, the Coroners' Court of the Bahamas.
18. When asked to provide the name of one or more cases in which he was deemed a crime scene reconstruction expert, he did not. Further, his answer yielded the fact that in the named United States Superior Courts, he did not actually give testimony. When asked about the submission of reports in those instances claimed, he does not answer further. In the premises, I determined no clarity of experience or expertise in crime scene reconstruction.
19. On *voire dire*, Ms. Cadet submitted a report Dr. Pumerantz in support of defendant's application to have Dr. Pumerantz deemed an expert. In the introduction to that report, Dr. Pumerantz states:

"This analysis was authored by Richard K. Pumerantz, PhD at the request of the Office of the Public Defender, Nassau, The Bahamas. The scope of the work requested by Ms. Marianne Cadet was to evaluate the evidence available, including the crime scene Photos, the "Rand" Pathology Laboratory report, and the witness statement of Valentino Williams all supplied by the Office of the Public Defender. Further, the request was to determine if there were any inconsistencies between the witness statement and the other evidence provided.

According to the witness statement, this crime took place on Tuesday, 11 December 2018 sometime after 7:30 pm. The indicated location of the incident was in the area of North Street, Fort Fincastle.

This report concludes that to a reasonable degree of scientific probability the witness could not have seen all the events described in his statement, based on his self described specific location in the area."

and, *inter alia*, his findings:

"IV. Analysis of Pathology Report and Shell Casings

1. Based on the Pathology Report, the bullet path trajectories demonstrate that the shooter did not stand over the victim when the shots were taken. Any shots taken while the victim was on the ground would have been taken from a further distance.
2. Fired cartridge casings can be seen in several crime scene photographs and each one is designated by an orange cone. What is critical in this case is the lack of cartridge casings

next to or near the body. In crime scene photograph CS6 above you can see that there are no orange cones designating fired cartridge casings next to or near the body. Had the shooter been standing over the body, there would have been cartridge casings close to the body. This shows that the shooter was not standing over the body when the shots were taken.

3. This contradicts the Witness Statement where he stated that he “watched as [the shooter] stood over where I saw the person drop, and ...pointed the black handgun to the ground...”

Dr. Pumerantz concludes:

“ Based on the evidence provided to me, including the witness statement, the crime scene photographs, and the addition of the satellite maps of the area, this report concludes that to a reasonable degree of scientific probability that the statements of the witness are not supported by the evidence. The witness could not have seen the events that may have occurred in the alley due to the obstacles in his line of sight. Additionally, based on the pathology report and the fired cartridge casings, the shooter could not have stood over where the person dropped and fired shots into the victim. These inconsistencies in the Witness Statement compared to the physical evidence at the crime scene and the pathology report call into question the veracity of the entire witness statement dated 15 December 2018.”

20. Ms. Cadet, in support of her application to have Dr. Pumerantz deemed an expert in crime scene reconstruction, commended to the Court the article “ How Satellite Imagery is Used in Criminal Investigations and Law Enforcement” . I note the following paragraph from that article:

“However, there are some challenges associated with using satellite imagery in criminal investigations. ...the resolution of satellite imagery can be limited, which can make it difficult to identify small details at the crime scene. Finally, satellite imagery can be difficult to interpret, which can lead to inaccurate interpretations of the data.”

21. In this regard, the requirements of the Evidence Act are *apropos*:

“67. (1) In any criminal proceedings, a statement contained in a document produced by a computer shall not be admissible as evidence of any fact stated therein unless it is shown –

- (a) That there are no reasonable grounds for believing that the statement is inaccurate because of improper use of the computer;
- (b) that at all material times the computer was operating properly, or if not, that any respect in which it was not operating properly or was out of operation was not such as to affect the production of the document or the accuracy of its contents; and
- (c) ...

(3) In any criminal proceedings where it is desired to give a statement in evidence in accordance with this section, a certificate –

- (a) Identifying the document containing the statement and describing the manner in which it was produced;
- (b) giving such particulars of any device involved in the production of that document as may be appropriate for

- the purpose of showing that the document was produced by a computer;
- (c) dealing with any of the matters mentioned in subsection (1); and
 - (d) purporting to be signed by a person occupying a responsible position in relation to the operation of the computer,

be shall be evidence of anything stated in it; and for the purposes of this subsection it shall be sufficient for a matter to be stated to the best of the knowledge and belief of it.

- 22. This provision (above) and the requirements thereunder have not been complied with; the accuracy of what is purported to be satellite imagery of the locus has not, and cannot, in the premises, be attested to.
- 23. Dr. Pumerantz in the conclusion to his report states, *inter alia*, "My conclusions rely upon scientific methodologies that are generally accepted within law enforcement and the firearms and ammunition community." He does not lay the scientific foundation to his conclusion by stating these methodologies.
- 24. On this question of the conclusions of Dr. Pumerantz and hence his expertise, perusal of the evidence of Dr. Caryn Sands is useful.
- 25. In summary, Dr. Sands determined that the entrance of gunshots B through H were all to the rear or back of each part of the body of the deceased so effected. When coupled with the scattered littering of casings, this is consistent with the depiction of the events told by Valentino Williams, i.e. that the deceased was being chased, his back to the shooter with shots being fired during that chase.
- 26. Dr. Sands found:

"A. ...

The first gunshot wound was to the head, it was the left side of the top of the head, it was the entrance; one eighth of an inch to the left of the midline of the parietal scalp. So, it was the top of head, parietal scalp, left of the midline –middle of the head, left. So the entrance was at the top of the head. Just to be clear, gunshot wounds have an entrance and an exit , or an entrance and a bullet recovered, usually. ...

The path that the bullet takes is the path that it went through in the head; so left side of the parietal scalp, left side of the head; left side of the parietal bone, the bone in the skull; left parietal lobe of the brain, and occipital lobe of the brain; and the cerebellum. The cerebellum is part of the brain at the back. A copper jacketed bullet was recovered in the brain and the cerebellum; this ended in a bullet being recovered.

The direction was front to back and downward. The direction means that the entrance was closer to the front of the body than where the bullet was recovered, so travelling front to back. And downward means that it was – the bullet was recovered lower than where it entered. It entered the top of the head, and the bullet was recovered at the back of the head, in the brain, so its going downward."

- 27. I have highlighted in bold, the forensic terms and findings of Dr. Sands which not only contradict, but are, in my view an absolute refutation of the reported conclusions of Dr. Pumerantz. The findings (above) Dr. Sands are consistent with, and point, inexorably to the truthfulness of the witness Valentino Williams when he states he "...watched as 'Chilly' stood over where I saw the person drop, and I watched as he pointed the black handgun to the ground and fired the gun...". The crime scene photos depict the

body of the deceased face up upon being found; this is consistent with the findings of Dr. Sands (highlighted above), which themselves are consistent with statement of Valentino Williams *R v Byrne* (supra)

28. It is clear that, contrary to what is asserted in his report, that Dr. Pumerantz did not “evaluate” or “review” the pathologist report, or if he did, he omitted to “consider material facts which could detract from his concluded opinion” *National Justice Compania Navlerasa S.A. v Prudential Insurance Company* (supra). Nowhere in his report is reference made to the particular findings of Dr. Sands which I have highlighted. On the contrary, so it appears to me that the report and its conclusion(s) are not the “independent product of the expert uninfluenced as to form or content by the exigencies of litigation.” *National Justice Compania Navieras S.A.* (supra).
29. In the premises, and for the purposes of the trial of this matter, I decline to deem Dr. Pumerantz an expert.

Dated the 16th day of August, 2023


FRANKLYN K M WILLIAMS KC

JUSTICE