

**THE STATE OF NEW HAMPSHIRE
SUPERIOR COURT**

MERRIMACK, SS.

JULY TERM, 2025

STATE OF NEW HAMPSHIRE

v.

ERIC SWEENEY

Docket No.: 217-2023-CR-00721

**STATE'S OBJECTION TO DEFENDANT'S MOTION IN LIMINE TO EXCLUDE
GUNSHOT RESIDUE EVIDENCE**

NOW COMES the State of New Hampshire, by and through its attorneys, the Office of the Attorney General (“the State”), and submits this objection to the defendant’s motion seeking to exclude from his trial evidence pertaining to gunshot residue [hereinafter “GSR”] collected from him. Despite the defendant’s attempt to portray GSR as a novel technique of questionable reliability, the evidence is well-recognized and routinely admitted—including through the defendant’s retained expert on the matter—and is otherwise relevant and admissible. Such evidence is plainly relevant and admissible. In support of this motion, the State submits the following.

1. The defendant is charged with, *inter alia*, three counts of first-degree murder. Trial on the matter is scheduled to begin with jury selection on September 8, 2025.
2. For purposes of this objection, the State accepts as true information set forth in the Defendant’s Motion, at paragraphs 7-22. He State adds the following information.
3. Defense retained gunshot residue expert witness Jack Hietpas was deposed. In that deposition, Dr. Hietpas noted that he has testified as an expert on GSR. The following

exchange regarding the specific testing at issue here also occurred during Dr. Hietpas's deposition questioning:

Q. Are you familiar with RJ LEE?

A. I am. I have heard of them and reviewed cases from them several times over the years, yes.

Q. Okay. And what is your understanding with respect to RJ Lee?

A. I, their mission has evolved, I believe, over the years, but currently my understanding is that they traditionally do gunshot residue analyses tests as a private laboratory that can get contracted from various state, local, federal laboratories. They specialize in gunshot residue analysis.

Q. Do you dispute or disagree with the testing or methodology employed by RJ Lee as detailed in its report[]?

A. I do not.

Q. As part of your work do you conduct similar types of testing?

A. When I was, before I—so I'm currently working at John Jay College of Criminal Justice. Prior to that I was working at a private company in Illinois called Microtrace, and that was a private trace evidence laboratory, and in that role one of my duties was, yes, to do gunshot residue analysis. So I would do very similar testing like RJ lee has performed.

Q. Do you dispute or disagree with any findings detailed in the RJ Lee report?

A. I do not.

4. In the Defendant's Motion, he first contends that gunshot residue testimony "fails under Daubert." Defendant's Motion, at ¶¶ 24-37. Specifically, the defendant contends that the methodology employed by RJ Lee is unreliable. Defendant's Motion, at ¶ 27. That assertion is at direct odds with the testimony of the defendant's own expert, who neither disputed nor disagreed with that methodology. See supra, ¶ 3.

5. More particularly, the defendant takes issue with gunshot residue generally, and RJ Lee's internal review process. Defendant's Motion, at ¶ 33. As to the former, a cursory

review of jurisprudence from both federal and state courts establishes that GSR evidence is widely accepted and generally admissible at trial. See, e.g., United States v. Stafford, 721 F.3d 380, 393-96 (6th Cir. 2013); State v. Williams, 324 A.3d 760, 774-79 (Conn. 2024); Commonwealth v. Johnson, 972 N.E. 2d 460, 469-71 (Mass. 2012); People v. Serrano, 631 N.Y.S.2d 340, 341 (N.Y. App. Div. 1st Dept. 1995). The defendant does not cite to any authorities or other information that the GSR analysis is unreliable, non-scientific, or that it does not have broad acceptance in the forensic community. And, as noted, his own retained expert does not challenge the methodology employed. As to the defendant's latter challenge—to RJ Lee's internal review process—that he may take issue with the efficacy of procedures employed neither undermines the reliability of the underlying methodology nor makes the science at issue unreliable.

6. The defendant also raises challenges to the methods employed by law enforcement in collecting samples for review by RJ Lee. Defendant's Motion, at ¶¶ 34-36. They are challenges that miss the mark with respect to the Daubert claim that he raises. Whether and to what extent law enforcement processed evidence in accordance with recommended or even required guidelines does not affect the methodology or underlying science for the testing subsequently conducted. The defendant's argument otherwise is akin to challenging the methodology and science of DNA analysis because investigators may not have followed certain protocol in collecting specimens for such analysis. Such attacks simply do not constitute valid grounds for objection under Daubert.

7. Equally unpersuasive is the defendant's attack on the challenged evidence's admissibility under New Hampshire Rule of Evidence 403. Defendant's Motion, at ¶¶ 38-42.

8. As a starting point here, the evidence plainly is relevant. Evidence is relevant when it has “any tendency to make a fact [of consequence in determining the action] more or less probable than it would be without the evidence.” N.H. R. Evid. 401; State v. Watkins, 148 N.H. 760, 767 (2002) (“Relevant evidence need only have a tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.”). And here, evidence that a particle characteristic of gunshot residue was found on the defendant’s hand makes it “more probable” than it would be without the evidence, see N.H. R. Evid. 402, that the defendant held a firearm that discharged and deposited that particle on him. That other inferences may be drawn from that same evidence—such as the defendant being proximity to someone else firing, or the particle being deposited on him through transfer, see Defendant’s Motion, at ¶ 39—does not vitiate that relevancy

9. Nor is the evidence’s relevance substantially outweighed by the danger of “unfair prejudice and misleading the jury.” Id. at ¶40. That the State’s expert “was clear in his report and in his deposition that he is unable to opine where the particles he identified originated,” Id. at ¶41, will make the likelihood of juror confusion on this matter remote at best. And as to prejudice, the limitations and qualifications of the evidence will all be laid plain for the jurors. In the end, the challenges mounted by the defendant—both to reliability of the underlying science and methodology employed, and as to the relevance of the results of the analysis undertaken, go to the weight of the evidence at issue, not its admissibility.

10. Many of the arguments advanced by the defendant were raised in United States v. Stafford, supra, and rejected by the Sixth Circuit Court of Appeals. That decision provides useful guidance here. In Stafford, the appellant raised challenges under Rules of Evidence 702

and 403 similar to those raised by the defendant. First addressing the Rule 702 claim, the Sixth Circuit stated:

[The defendant] argues that the district court abused its discretion in admitting the gunshot-residue evidence and the related expert testimony because they both fail to meet the standards of Daubert and Federal Rule of Evidence 702. [The defendant] made similar arguments before trial as to the admissibility of the gunshot-residue evidence and the experts' testimony, but the district court concluded that both were admissible because the defendant's "arguments [went] to the weight, not the admissibility," of the evidence and testimony.

. . . [The defendant] states that "[gunshot-residue] testing will not determine whether an individual fired a gun, was present when a gun was fired by someone else, or was merely in an environment in which [gunshot residue] existed." The defendant claims that because these three possible outcomes summarize the testimony of the Government's expert—and because [the expert] could not testify whether [the defendant] actually fired the weapon—[the expert] "could not reasonably make any conclusions as to the actual source of the six [gunshot-residue] particles found," and therefore [the expert's] testimony did not meet the standards of Daubert or Rule 702.

Under Rule 702, an expert may offer scientific or technical testimony if the court finds the witness is qualified by "knowledge, skill, experience, training, or education"; that the testimony is relevant; and that the testimony is reliable. [The defendant], in claiming that the expert's conclusion is inadmissible, is challenging the expert's reliability, not his qualifications or the testimony's relevance.

To determine the testimony's reliability, the court does not determine whether [the opinion] is correct, but rather [determines] whether it rests upon a reliable foundation. As gatekeeper, the trial court only determines the admissibility of expert evidence; the jury determines its weight. The court's focus is solely on principles and methodology, not on the conclusions that they generate.

Stafford, 721 F.3d 393-94 (internal citations and quotation marks omitted), Turning to the claims based on Rule 403, the appellate court reasoned:

[the defendant] claims that the possibility of inadvertent transfer of gunshot-residue particles to a suspect's hands creates prejudice that outweighs the test's probative value. [That] argument goes to the admissibility of circumstantial evidence, not the admissibility of scientifically reliable evidence. The district court found, correctly, the gunshot-residue evidence to be sufficiently reliable and allowed its admission. The admission of such circumstantial evidence need not remove every hypothesis but guilt.

As to its probative value . . . the evidence allowed the jury to infer that [the defendant] was in possession of the firearm and to decide how much weight to give that conclusion. The trial record also indicates that the defense cross-examined the Government's expert extensively on this very point—that there can be inadvertent transfer of gunshot residue resulting in "contamination."

Finally, [the defendant] argues that the gunshot residue is inadmissible because it is undisputed that the [police] fail[ed] to use proper evidence gathering techniques in testing for [gunshot residue]. The trial record indicates that the officers, in conducting [the defendant's] arrest: did not bag his hands; could have transferred gunshot residue to [the defendant's] hands from handling their own weapons, from the backseat of the police car, or from the booking area of the [police station]; and did not swab [the defendant's] hands until after he had been booked. These arguments, while potentially valid as to the accuracy of the test and the conclusions to be drawn from it, do not relate to the test's reliability or the reliability of the expert testimony. Furthermore, [the defendant's] arguments go to the weight of the gunshot-residue evidence, not its admissibility, which was properly considered by the jury. Again, the cross-examination of the expert at trial allowed the jury to consider the weight of the gunshot-residue evidence and any shortcomings in evidence collection by the [police]. . . .

[The defendant] also argues that the gunshot-residue evidence was improperly admitted under Federal Rule of Evidence 403, as its probative value was substantially outweighed by a danger of unfair prejudice. . . . [The defendant] contends that because a positive finding of gunshot residue on a defendant could only reveal (1) that the individual discharged a firearm, (2) that the individual was in close proximity to a firearm when it was discharged, or (3) that the individual came into contact or handled something that had gunshot residue on it, its probative value was questionable because it offered two non-incriminating possibilities and one incriminating possibility. [The defendant] did not attempt to impeach the conclusion that gunshot residue was found on his hands, and defense counsel thoroughly explored the weaknesses in the gunshot-residue testing on cross-examination.

Id. at 394-95 (internal citations and quotation marks omitted). The Sixth Circuit concluded that the trial court did not abuse its discretion in admitting the challenged GSR evidence, despite the challenges raised under Rules 403 and 702. Similarly here, the defendant's complaints are best left for vigorous cross-examination and argument at trial, and do not form valid grounds for exclusion of the relevant and reliable GSR evidence at issue.

WHEREFORE, the State of New Hampshire respectfully requests that this Honorable Court:

- A. Deny the defendant's motion in limine to exclude gunshot residue evidence; and
- B. Grant such further relief as may be just and proper.

Respectfully submitted,

THE STATE OF NEW HAMPSHIRE

By its attorneys,

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July 23, 2025

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CERTIFICATION

I certify that a copy of this notice has been sent to counsel for the defendant, via the electronic case filing system.

July 23, 2025

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