IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

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                              :
STATE OF MARYLAND   :
                              :
              v.   :   Criminal No. 136661
                              :
GREGORY TERRELL JONES,   :
                              :
         Defendant.   :
                              :
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HEARING

Rockville, Maryland   November 30, 2021

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                              Rockville, Maryland

                              November 30, 2021

          WHEREUPON, the proceedings in the above-entitled

matter commenced

          BEFORE: THE HONORABLE DAVID WARREN LEASE, JUDGE

          APPEARANCES:

          FOR THE STATE:

          MARYBETH AYRES, Esq.
          JAMES J. DIETRICH, Esq.
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          FOR THE DEFENDANT:

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1   P R O C E E D I N G S

2   THE CLERK: Calling Criminal 136661, State of

3   Maryland versus Gregory Terrell Jones.

4   MS. AYRES: Marybeth Ayres on behalf of the State.

5   MR. DIETRICH: James Dietrich on behalf of the State.

6   MS. RYAN: Molly Ryan on behalf of Mr. Jones.

7   MS. SANDLER: Samantha Sandler on behalf of

8   Mr. Jones, who's present now.

9   THE COURT: All right. Good afternoon, everyone.

10   Good afternoon, Mr. Jones. If you could just --

11   MR. JONES: Good afternoon.

12   THE COURT: -- state your name on the record for me,

13   please.

14   MR. JONES: Gregory Jones.

15   THE COURT: All right. You all can have a seat. So

16   I'm going to just remove this while I chat. This matter, I

17   know, was before the Court on October 12th, November 19th, and

18   November 23rd for the Court to consider defendant's motion to

19   exclude probabilistic genotype DNA evidence in this case. I

20   note that the State also moved in limine for the Court to admit

21   the testimony of Jennifer Bracamontes from Cybergenetics

22   Corporation to testify regarding the same evidence, and I note

23   that the parties have provided to the Court numerous legal

24   memorandum and information, exhibits to help the Court decide

25   this issue.

1   At the outset, I do want to just thank counsel on

2   both sides for what I consider to be some extremely

3   well-written, well-thought-out memorandum that were extremely

4   helpful to the Court in reviewing this issue. It's always a

5   pleasure to work with attorneys of such good quality, and I do

6   greatly appreciate all of your efforts in this matter.

7   Now, while the defendant has challenged the

8   probabilistic genotyping DNA generally, the primary focus of

9   the motion was that the probabilistic genotype software

10 utilized in this case, TrueAllele, was applied in such a

11 fashion as to render the results of that testing as unreliable.

12 Even assuming under Courts and Judicial Proceedings Article

13 10-915, assuming that that section would apply -- and the Court

14 does have some question as to whether TrueAllele would

15 constitute a DNA profile as defined under that statute -- but

16 case-specific challenges to the manner in which a particular

17 test was conducted or performed are generally allowed, even

18 under that statute, and that's basically what we have in this

19 matter.

20   So, in essence, what the defendant is seeking is to

21 really apply Part 3 regarding Maryland Rule of Evidence 7 -- or

22 5-702, whether a sufficient factual basis exists to support the

23 expert's testimony. As Rochkind v. Stevenson provided, that

24 this analysis basically has two prongs -- one, an adequate

25 supply of data to support the expert's opinion; and, two, the

1 use of reliable methodology to support the expert's opinion.

2 Stated another way, the expert must be able to articulate a

3 reliable methodology for how she reached her conclusions in the

4 case.

5   And I note that under Rochkind and -- whether we talk

6 about this as a Rochkind analysis or whether we talk about it

7 as a due process analysis, it basically is the same analysis.

8 It really just is sort of who's carrying the burden under those

9 particular analyses, but the -- a court generally has a

10 gatekeeping rule to ensure that only reliable expert testimony

11 goes to the jury, and under a due process analysis, it's

12 whether or not the evidence is of sufficient reliability to

13 render the defendant, really, a fair trial and that the

14 defendant is not to be tried based upon unreliable evidence.

15   Now, here Ms. Bracamontes is employed as a DNA

16 analyst at Cybergenetics and employed the TrueAllele software

17 in this case. She made a determination of a -- what is

18 referred to as a match statistic by TrueAllele folks, but it's

19 really a likelihood ratio. Those two terms are basically the

20 same thing. She used what she determined to be the, quote,

21 most concordant genotypes, and from that there were six subsets

22 of concordant runs of 12 or more genotypes.

23   Now, although the Montgomery County Crime Lab in this

24 case determined that there were at least six contributors to

25 the DNA sample, Ms. Bracamontes used runs assuming five and six

1 contributors. Additionally, while she ran conditioned runs

2 which assumed the presence of one or both of the victims in

3 this case, she determined not to use those runs. Based on

4 those -- based on the runs used by Ms. Bracamontes, she noted a

5 match statistic of 3.02, 2.53, and 2.46 for the three

6 five-contributor runs that were unconditioned and a 2.06, a

7 1.18, and a 1.07 for the six -- for the three-contributor --

8 for the six-contributor unconditioned runs. Based on this, she

9 chose a median value of 2.06, which related to a 1 in 114

10 probability in the case.

11   Now, the defendant has challenged both the adequacy

12 of the data used and whether Ms. Bracamontes used a reliable,

13 reliable methodology in reaching her opinion.

14   The Court also heard from Cybergenetics principal and

15 owner, Dr. Mark Perlin, who provided significant information to

16 the Court regarding the TrueAllele program and how the

17 TrueAllele program works.

18   Lastly, the Court notes that the sample in this case

19 involved what was undisputed to be a complex sample -- or was

20 considered to be a complex sample. Complexity is affected by

21 factors such as the number of contributors, the quantity of DNA

22 from each contributor, the mixture ratios, the sample

23 quality -- that being whether there has been any degradation of

24 the sample -- and the degree of allele sharing among the

25 contributors.

1   Here, basically, all of those sort of complicating

2   factors were present. The complexity -- number of contributors

3   in this case was at least five to six contributors. The

4   quantity of DNA from each contributor was found to be fairly

5   limited and small. They used measures that the Court had been

6   fairly unfamiliar with with respect to the metric system

7   numbers but noted that, really, we had a very, very small

8   quantity of DNA that was received in total and, certainly, then

9   broken up to the various contributors. The mixture ratios were

10 all -- there was a similar ratio mixture here and that there

11 was some degradation of the sample. There was a number

12 associated with that degradation, but it was really, in looking

13 back over my notes and over the -- there wasn't really a --

14 that that wasn't quantified very well as to what that actually

15 meant other than everyone seemed to agree that the sample had

16 been -- had a degree of degradation to it, and again, it was

17 very undisputed that there was significant allele sharing among

18 the various contributors to the DNA sample.

19   Additionally, the Court did review the 2021 sort of

20 report that has been issued by the National Institute of

21 Standards and Technology as well as the prior PCAST report from

22 2016. I note that the NIST report, that that is a government

23 agency; it's part of the United States Department of Commerce.

24 I will refer to the report at times during this opinion. I

25 note that one of the things that the report did note at the

1 outset, given the greater complexity of the sample, there is

2 greater uncertainty surrounding its interpretation.

3 Now, there are several discrete issues that I will

4 address in turn. First is the Cybergenetics use of the

5 five-contributor analysis. Now, in coming to her conclusion,

6 Ms. Bracamontes used runs which assumed five contributors.

7 Now, as I noted, the Montgomery County Crime Lab here, as well

8 as the defense experts, concluded that at least six

9 contributors were present in the sample. At one locus there

10 were 11 alleles present. This indicates the presence of at

11 least six contributors.

12 If there are six contributors at this locus in the

13 DNA sample, then there are six contributors throughout. The

14 fact that -- and, in fact, the probabilities, as put forth in

15 evidence in this case, suggest that there are more than six

16 contributors to the sample. However, there was an eleventh

17 allele, and there was some testimony that that eleventh allele

18 could constitute what's known as drop-in. That is an allele

19 that seems to just happen to, as they note, drop in; that it is

20 not related to any one of the contributors to the DNA sample.

21 However, there was no evidence provided as to how common or how

22 probable drop-in happens or occurs, and there was no opinion to

23 a reasonable degree of probability in this case that the

24 eleventh allele constituted drop-in. Rather, the evidence

25 presented in this court, as set forth by the Montgomery County

1 Crime Lab, suggested that the -- that there were six

2 contributors.

3 Consequently, the Court was at somewhat of a loss to

4 determine how a computer probability program can operate more

5 accurately if it's based upon flawed assumptions. To the

6 extent that TrueAllele contends that its program works better

7 if it -- if we assume an assumption which is not supported by

8 the evidence in this case, this Court will reject that

9 contention.

10 Consequently, the Court initially concluded that the

11 five-contributor runs lacked any reliable basis for inclusion

12 in the expert's opinion and, apply -- to apply Ms. Bracamontes'

13 analysis to the sixth-contributor unconditioned runs, we would

14 provide a match statistic, given her choice of a median, of

15 1.18, or just shy of 1 in 12 probability.

16 The next issue that the Court had to deal with was

17 the issue of concordant runs. Now, Ms. Bracamontes testified

18 in her declaration and in -- testified and, in her declaration,

19 stated that she used what's known as, quote, the most

20 concordant runs. Now, it is interesting that throughout her

21 declaration she meticulously documented the precise standards

22 of procedure, or SOPs, that she was applying and referring to.

23 Conspicuous by its absence was any SOP regarding the use of any

24 term noted as the most concordant runs.

25 Consequently, Ms. Bracamontes' analysis does not

1 appear to consistently apply Cybergenetics' SOPs. More

2 importantly, there is no objective measure to determine

3 concordance or to differentiate between concordant sets of

4 runs. This is a simply subjective call and is somewhat

5 problematic that a probabilistic DNA computer program does not

6 attempt to put in objective criteria to determine what

7 constitutes concordance, what constitutes a non-concordant run.

8   It is of -- this subjective call here which appears

9 to be somewhat arbitrarily applied in this case. I could not

10 determine why Ms. Bracamontes determined one or -- or the six

11 of those -- that six of those runs were, quote, more concordant

12 or why they would be more concordant than the other runs.

13 There didn't -- there was just really no ability for her to

14 articulate to the Court how it occurred other than through her

15 subjective call.

16   Of importance is that some of the concordant sets in

17 this case were exclusionary for Mr. Jones. Since the standards

18 of procedure do not provide for or quantify for the use of the

19 most concordant runs, the methodology used by Ms. Bracamontes

20 in this matter was called into question.

21   Next, the Court wanted to consider the conditioned

22 runs. Now, conditioning is a process by which a known

23 contributor is controlled for. Whether conditioning is used,

24 again, seems to be somewhat arbitrary in this case. Now,

25 Ms. Bracamontes stated in her declaration that conditioning can

1 sometimes decrease the match statistic. Here she provides that

2 sharing of genotypes between the two victims and Mr. Jones can

3 artificially reduce the match statistics. Now, this assumes

4 that the reduced match statistic would be incorrect. It also

5 assumes that Mr. Jones is the contributor.

6   But what drew the Court's attention and what was,

7 again, not adequately explained in any manner whatsoever -- I

8 understand that Ms. Bracamontes stated that she was not going

9 to use the conditioned runs, but then, in turn, used a

10 condition run to determine the match statistic for AO1 in a

11 six-contributor run. There was never a sufficient explanation

12 as to why the conditioning run was appropriate for the

13 determination of AO1 statistics but not for JG1, the statistic

14 related to Mr. Jones. This, again, raises strong concerns

15 regarding the reliability of the methodology employed in this

16 case, and it introduces arbitrariness into the analysis.

17   I noted that the case -- in the case packet provided

18 by Cybergenetics, it noted that there were good agreement

19 across 12-plus independent computer runs, better with

20 assumption and, again, no reason as to why the 12 runs were --

21 or some of the 12 runs were excluded.

22   The next factor that the Court considered was the low

23 match statistic in this case. Even assuming Ms. Bracamontes'

24 match statistic of 2.06, the Court notes that this is a fairly

25 low match statistic, or likelihood ratio, and significantly

1 lower than the KL values provided for in the results. Now, the

2 KL value is the expected log value when compared to the true --

3 compared with the true contributor in the analysis.

4   There is no standard of procedure by TrueAllele as to

5 what difference between the KL value and the actual value needs

6 to be in order there to be some concern about the results or

7 whether the results would be disregarded. In reviewing this

8 case, the Court noted that the KL value was at least off by two

9 bases points, or a factor of a hundred, a hundred times between

10 what the KL value expected was and what the log value was for

11 Mr. Jones in this matter. Again, providing a KL value without

12 providing any subsequent reason as to what the KL value means

13 or why there's such a difference between the KL value and the

14 actual value achieved again just leads to concern by the Court

15 as to the validity of the underlying statistics in this case.

16   The Court also noted and reviewed numerous cases

17 which have -- most of which have allowed TrueAllele or other

18 probabilistic genotype programs into evidence. However, when I

19 reviewed these cases, what I was struck by was the fact that

20 those cases all had such high probabilities that were extremely

21 higher than this case.

22   The Court notes in State v. Preston, which was

23 decided by the Ohio appellate court on July 1st of 2021 at 2021

24 WL 2765175, the statistic in that was 1 in 9.21 quintillion.

25   In United States v., I guess that's Gissantaner or

1 Gissantaner, at 990 F.3d 457, a Sixth Circuit case, the match

2 statistic in that case was 1 in 49 million, and that used, I

3 believe -- where they found that the match statistic -- the

4 value of the match statistic itself was very strong support for

5 the admissibility of the evidence in that case.

6   In Daniels v. State, 312 So. 2d 926, a Florida

7 appellate case from 2021, there were four items that were

8 tested. One item was 1 in 872 trillion. The other was 77

9 million, 1 in 194 quadrillion, and 1 in 789 billion.

10   In United States v. Washington, a District Court of

11 Nebraska case at 2020 WL 3265142, that was a STRmix case. They

12 had -- one item was found to be 1 in 2.9 octillion, had a --

13 another one had a low match statistic that was used, and that

14 was 1 in 11. There was a third item that was 1 in 90,000, and

15 a fourth that was 1 in 3.8 -- or 8.3 million. I note that the

16 one item with the low match was the seat of a bicycle. The

17 handlebars had the highest level, the helmet had a moderate

18 level, and then there was a bag that was found with a

19 significant level.

20   People v. H.K. at 130 N.Y.S.3d at 890, and that was a

21 Supreme Court of New York case, the match statistics there were

22 1 in 12.2 quadrillion and 4.81 quadrillion.

23   I note that in United States v. Lewis, 442 F. Supp.

24 3d 1122, District of -- a Minnesota case from 2020, the match

25 statistic was greater than 1 billion, and I can go on, but

1   those are the cases, certainly the most recent cases that have

2   dealt with probabilistic genotype -- all noting such

3   significantly higher levels than are presented here.

4   I also note that the Baltimore City Crime Lab, which

5   employs the TrueAllele software and whose job it is, obviously,

6   to analyze evidence and to provide such analysis for the

7   purposes of criminal prosecution, provides that the match

8   statistic in this case would have been considered inconclusive.

9   That's even the match statistic of using the five- and

10   six-contributor runs.

11   Now, I also note that there is a -- there's some

12   testimony that many of the crime labs that use TrueAllele do

13   set some minimum level of -- for there to be -- for

14   inconclusive match statistics, and while such procedures by the

15   various crime labs are not controlling on this Court, given the

16   variability of match statistics and Dr. Perlin's acknowledgment

17   that there is a plus or minus 1 basis regarding a match

18   statistic, that it is reasonable -- that that plus or minus 1

19   basically means that there's a tenfold variation between the

20   match statistics and what would be reality, and that's

21   primarily because there is no one match statistic that is

22   correct, and because of that it is a reasonable position, the

23   Court -- in the Court's mind, for crime labs to take such a

24   base for an inconclusive result; also note that here, if this,

25   if this crime had occurred in Baltimore City, then the evidence

1 regarding a match statistic would not -- would have been listed

2 as inconclusive in this matter.

3   I also note that the NIST report, which was

4 Defendant's Exhibit 5, notes that likelihood ratios are not

5 measurements in and of themselves, that there's no single

6 correct likelihood ratio. Different individuals and/or

7 probabilistic genotype software systems often assign different

8 lab -- or likelihood ratio values when presented with the same

9 evidence because the -- because they are based -- because they

10 base their judgment on different kinds -- or different kits,

11 protocols, models, assumptions, and conceptual algorithms.

12 Here, as explained above, this variation is present in

13 Ms. Bracamontes' own analysis, where she used her own and, at

14 times, varied from protocols from TrueAllele and based her

15 decision based upon subjective judgments which were divorced

16 from sound factual practice and even the SOPs of TrueAllele.

17   The next factor that the Court considered was the

18 high number of contributors. Here there are at least six

19 contributors to the DNA sample. Only TrueAllele purports to be

20 able to even analyze such a complex mixture. Again, reviewing

21 the number of cases that I did, I again found that there was a

22 lack of any number as high as six from the number of

23 contributors in any case that I was able to find.

24   Cybergenetics does cite to one study which it

25 conducted, and while that study was published, it is only one,

1 addressing a mixture of six or more contributors. I did note

2 that the PCAST report published by the President's Council of

3 Advisors on Science and Technology in 2016 provided at a

4 minimum that there should be at least two published studies

5 before a forensic scientific technique should be recognized.

6 Here, while there are numerous other studies regarding

7 TrueAllele and probabilistic genotype, very few of those

8 studies ultimately have been published, but the only -- but

9 this is the only one that addresses TrueAllele's claim that its

10 black box computer model can handle this number of

11 contributors.

12   Additionally, the study by TrueAllele did not deal

13 with samples with near the complexity of the DNA samples in

14 this case, which is what the NIST report recommends for there

15 to be a valid study. The studies also provided -- or the

16 study, the TrueAllele study also provided that at the lower

17 thresholds, there was some false-negative results. Now, I note

18 Dr. Perlin noted that these were not false-positive results,

19 which would be problematic in the case here; however, what the

20 Court noted is that the study had only known contributors and

21 therefore there could not have been a false-positive result in

22 the results generated by that study because of its limited

23 nature. Again, this supports the conclusion from the Baltimore

24 City Crime Lab, as well as others, that there should be some

25 threshold for reportable results.

1   The NIST report further provided some very stark

2   conclusions regarding probabilistic genotype software in

3   addition to what I've already discussed previously, which

4   really went to the as applied. Specifically, this report

5   concluded that publicly available information continues to lack

6   sufficient details needed to independently assess the

7   reliability of specific likelihood ratio values produced in

8   probabilistic geno software systems for complex DNA mixtures

9   interpretation. Now, that's what we have here, is a very

10 complex DNA mixture interpretation. I reviewed this report in

11 some detail. I found that the report to be very thoroughly in

12 its analysis and to be extremely well-documented.

13   Now, I note Dr. Perlin was extremely critical of this

14 report. Not only did he claim that it was incorrect and that

15 he disagreed with the factual conclusions in the report, but he

16 further claimed that the report, in essence, was corrupt. He

17 testified without objection that the NIST conclusions were

18 driven by a desire to receive additional grants or money from

19 the federal government. Now, mind you that there was

20 absolutely no evidence provided to support this bold

21 allegation.

22   The Court also noted, in reviewing the number of

23 cases that I did, I found that Dr. Perlin had previously

24 testified about the National Institute, not the report, but by

25 NIST generally, and certainly was not so negative about their

1 findings.

2   In State v. Simmer, S-I-M-M-E-R, 304 Neb 369 at 377,

3 a 2019 case, the Supreme Court in Nebraska, in ruling on

4 TrueAllele admissibility, noted that Dr. Perlin had testified

5 that TrueAllele had been used by the DNA group at the National

6 Institute of Standards and Technology, a part of the United

7 States Department of Commerce that creates resources for the

8 forensic community in the United States and the world that are

9 standards. He stated that the National Institute had used

10 TrueAllele to create standards for DNA mixtures against which

11 laboratories could check their equipment and their methods.

12 Thus the Court finds that Dr. Perlin touted NIST when it served

13 his purposes but makes bold allegations regarding corruption

14 when he doesn't like their conclusions.

15   Based upon the above reasons and analysis, I conclude

16 that Dr. Bracamontes' opinion lacked sufficient reliable data

17 to support her expert opinions in this case and that she did

18 not use a reliable methodology to support her opinion.

19 Therefore, finding that the methodologies were unreliable in

20 this case, I will grant the defendant's motion and exclude the

21 TrueAllele evidence from trial as unreliable as applied in this

22 case, and I do want to make it extremely clear that the Court

23 is not suggesting that the TrueAllele or any probabilistic

24 genotype system is unreliable and I -- the Court does believe

25 that under the correct circumstances, with appropriate

1 procedures being followed and that had produced a significant

2 result, such probabilistic genotype system evidence could be

3 admitted in the court. That simply was not the case in this

4 matter and under the particular circumstances presented here

5 today.

6   All right. So what I want to do is schedule a status

7 for Friday so that we can go over the voir dire in this case

8 and then any other potential preliminary matters before we

9 begin jury selection.

10   MS. SANDLER: Your Honor, I had brought over a copy

11 of voir dire that includes some questions that were not in my

12 original one, but the formatting, because it had to be changed

13 from a pdf to a Word document, did not come out great; so I

14 would like to just send it to you electronically later.

15   THE COURT: Okay. Well, the sooner, the better

16 because I need to get --

17   MS. SANDLER: I can give this to you now. It's just

18 not --

19   THE COURT: Well, that's fine. I just need to -- if

20 you can just get it to me, I think I -- we have the State's,

21 correct? Do we have -- do I have the State's --

22   MS. SANDLER: Yes, I believe you do.

23   THE COURT: -- voir dire?

24   MS. AYRES: I think so.

25   MR. DIETRICH: Yes, Your Honor.

1   THE COURT: I thought I did -- just a number of cases

2   that we have.

3   MS. SANDLER: I also think that I should state on the

4   record and -- that previously, based on your ruling two years

5   ago, the case was nol-prossed when the State said, based on the

6   firearms ruling, that they could not in good faith and

7   ethically go forward on this case, and I would ask that they

8   consider that, because basically the Court's ruling has been

9   the same now that your ruling today occurred.

10   They have firearm evidence that is not a match. It

11   is simply -- they're able to say there's marks that look

12   similar to other marks. So I would move for a motion to

13   dismiss the case --

14   THE COURT: Yes. I deny that.

15   MS. SANDLER: -- but I would also ask the State to

16   consider that.

17   THE COURT: They can proceed, and whether or not they

18   have new counsel on the case and -- or some new counsel on the

19   case and that the State is certainly able to weigh whether or

20   not they want to go forward with the case, but I believe that

21   if they -- they have that, is their sole discretionary call to

22   make, and I'm not going to interfere with that in any fashion

23   whatsoever.

24   MS. SANDLER: And, as I have always stated, we would

25   just state our motion to dismiss on speedy trial and due

1   process grounds and restate our motion on the irrelevance of

2   the casing from West Virginia that comes from my client's

3   aunt's house.

4   THE COURT: Well, I mean, like I said, I haven't

5   heard -- that's going to come up with respect to what evidence

6   connects the defendant to that house and the evidence at issue,

7   and so all those motions are denied.

8   MS. SANDLER: Did Your Honor want me to restate it as

9   a motion in limine, however, because -- I mean, I filed a

10 motion to --

11   THE COURT: Well, I'm not going to -- we're going to

12 try the case. I mean, I'm not going to have an in limine

13 motion now. The questions -- the evidence will come in or it

14 won't come in, depending on whether or not the State makes the

15 appropriate connection to connect up or at least that a

16 reasonable finder of fact could conclude that Mr. Jones had a

17 connection with the shell casing at issue in this matter.

18   MS. SANDLER: So are you saying, then, that the State

19 should not bring that up in opening, because it can't -- it's

20 not coming in until they can prove it's coming in?

21   THE COURT: Well, they can bring it up in opening if

22 they have a good-faith basis to believe that it'll be

23 admissible at trial, and that's what we're going to -- if they

24 don't produce it or if it doesn't come in, then that's fair

25 comment for Defense, but the State is entitled to, in opening

1 statement, make -- that's all it is. It's -- I tell the jury

2 it's not evidence and that they are not to consider it as

3 evidence, it's merely a road map as to what the State and/or

4 the Defense believes that they would be able to prove at trial.

5   MS. SANDLER: Right. So I guess one of the concerns

6 we have is that the State's firearm experts don't understand

7 your ruling fully and say something that they shouldn't say

8 that has been ruled that they cannot say.

9   THE COURT: Well, I'm not, I'm not going to engage in

10 speculation. I will assume that the State will properly

11 prepare their expert witnesses for trial. I mean, I'm not

12 going to -- I'm not going to babysit them. They're very good,

13 professional attorneys, and I anticipate that they will do what

14 the Court has ruled.

15   MS. SANDLER: Yes, Your Honor. So you wanted to

16 select a time on Friday?

17   THE COURT: Yes. Let's see if we can -- can you all

18 do 2:00 on Friday?

19   MS. SANDLER: Let me -- can I just check when -- I

20 have a motions hearing --

21   MS. AYRES: State can do that.

22   MS. SANDLER: -- that's either at 9:30 or 1:30. I

23 can check it right now.

24   THE COURT: Okay. All right. And I heard, the State

25 says they are available?

1   MS. AYRES: We are, Your Honor.

2   THE COURT: Okay. Great. And I think I mentioned to

3   you that we are likely going to be picking the jury over two

4   days.

5   MS. AYRES: We were actually going to ask for some

6   clarity on that, because we do have some family members of the

7   victim that are flying in from out of town --

8   THE COURT: Okay.

9   MS. AYRES: -- who wanted to watch openings, and so

10 whether we open on Tuesday or Wednesday will determine what

11 flight they pick.

12   THE COURT: Okay.

13   MS. AYRES: So are we -- is there a possibility we

14 would open Tuesday afternoon, or are we planning on opening on

15 Wednesday morning?

16   THE COURT: Well, I mean, I'd like to -- in the

17 perfect world, I'd love to open Tuesday afternoon because it

18 just means we are moving the case more quickly along, and if we

19 are lucky enough to be able to pick a jury by 2:30 on Tuesday,

20 you know, I'd be inclined not to lose a couple hours of

21 testimony.

22   We also have -- there's the -- when is the holiday

23 party here? I'm just going to -- I just wanted to let you know

24 that the court will be shut between 12:00 and 2:00 on one of

25 the days of our trial, and I just want to give you that

1 information so that if you have witnesses, that you can

2 certainly coordinate around that. So it's December 8th from

3 12:00 to 2:00. We'll take --

4   MS. AYRES: That's Wednesday.

5   THE COURT: -- it's basically an extra hour. It's

6 the courthouse holiday party, and so all staff are unavailable

7 during that time. So even if I wanted to try and continue on

8 the case, there'd be nobody here to do it. So unfortunately, I

9 am -- I have a lot of help in what I do here.

10   MS. AYRES: So we're shooting for opening Tuesday

11 afternoon, if we can?

12   THE COURT: If possible. I mean --

13   MS. AYRES: Okay.

14   THE COURT: -- I'd love to do it -- let me think, and

15 I'm just going to -- I'm trying to recollect. I did pick the

16 jury in the other murder case. Do you remember if we opened on

17 the afternoon of the second day or not?

18   THE CLERK: I don't believe we did.

19   THE COURT: I think we -- do you think we opened on

20 that Wednesday morning? And I'm anticipating picking three

21 alternates given the length of the trial. I'm just going to --

22 I'm just -- I'm trying to think if we did. I'm thinking that

23 we opened the next day.

24   THE CLERK: We did open Wednesday morning.

25   THE COURT: All right. I'll just give you this, is

1 that the one case that I did recently, where we picked -- it

2 was a large-strike first-degree murder case, and we picked the

3 jury, and at the end of -- I mean, we were close enough to the

4 end of the day on Tuesday that we kicked it to Wednesday

5 morning to begin opening.

6   So I think it's probably more realistic that we do it

7 Wednesday, but -- and given the fact that I think it's going to

8 be harder to pick this jury just because of the time issue as

9 -- that was a one-week, and we got it done in five days, and

10 this is going to be -- you know, it's set for 10, so we're

11 going to -- it's going to be harder to seat that jury. So I

12 wouldn't want to say that -- it's certainly much more likely

13 that we would open on Wednesday. So --

14   MS. AYRES: Okay.

15   MS. SANDLER: I am -- my motions are at 9:30, so 2

16 o'clock is fine.

17   THE COURT: All right. So Friday at 2:00 we'll go

18 over voir dire with the parties, and then we'll have that ready

19 so that -- my hope is that we can get started at 9 o'clock on

20 Monday. And so I'm going to say to you all -- and that's with

21 the first pool. And so we'll have a jury pool on Monday, and

22 what I generally would do is -- we ask the questions, we take

23 the responses from everybody, we'll be in 3E, and then we'll go

24 back into the anteroom there, which is at least pleasant so

25 that you all can sit and that you're not at the bench for eight

1 hours -- what I generally would do is try to then break that

2 group into two, because I'm not going to get to the second half

3 of that group before lunch. Instead of having a bunch of

4 people sitting in the courtroom when we're trying to keep

5 people safe and spread out is to excuse half of them, bring

6 them back at 1:30, go through the first half.

7   What I generally do then is, after we're completed

8 the first half, I'll excuse anybody that's been stricken for

9 cause, unless there's some, somebody has any type of concern

10 about anybody that we're excusing, and then let those folks go

11 for an extended lunch, which would generally bring them back

12 around 3:30 or so. Well, if I get to them and we excuse them,

13 I can actually let those folks go for the day, because we're

14 not going to get a -- unless we think there's a chance we can

15 get a qualified panel. I think we need 55 for three

16 alternates, so -- and I think we're going to get 86 that first

17 day, I think. I think that's the most that we can put in 3E.

18   So we'll put that in, and then we'll figure out where

19 we are at the end of the day to figure out how many jurors we

20 need for the, for the second day. I mean, if we're at 45 after

21 day one, great, and then we need -- we only need a smaller

22 pool, and then we may be able to get to that panel. It's just

23 not what I found previously.

24   MS. SANDLER: Your Honor, based on the fact that, as

25 you probably know, Mr. Jones did not have his trial this week,

1 which we were completely ready for, but it was a co-defendant

2 trial, I would just like him to hear that you have already --

3 you know that this is going forward, right? It is priority and

4 it is going to go?

5   THE COURT: Well, I think it was going to be priority

6 last time. I've spoken to Judge Bonifant about this trial,

7 especially when we had to -- we continued the last trial date,

8 that he was reluctant to do that --

9   MS. SANDLER: Okay.

10   THE COURT: -- given the length and age of this case,

11 but --

12   MS. SANDLER: Okay.

13   THE COURT: -- that's up to the administration,

14 ultimately, as to where we stand on priority.

15   I note from what I'm hearing is that folks are coming

16 from out of town. I'm going to make a note of that and send

17 that down to the administrative judge so that they're aware of

18 that. I believe we have potential out-of-state witnesses. I

19 understand some of them may be available by -- and whether

20 they're going to testify remotely or not I just don't know, so

21 we'll figure that out.

22   MS. SANDLER: Yes, Your Honor.

23   THE COURT: All right. All right. Is there anything

24 else I can help the parties with today?

25   MS. AYRES: I don't think so.

1   THE COURT: Okay.

2   MS. RYAN: No, Your Honor.

3   THE COURT: All right. Great. Thank you all very

4 much, and we'll see you on Friday.

5   THE CLERK: All rise.

6   THE CLERK: Court stands in recess.

7   (The proceedings were concluded.)

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√ Digitally signed by Wendy Campos

DIGITALLY SIGNED CERTIFICATE

     DEPOSITION SERVICES, INC. hereby certifies that the attached pages represent an accurate transcript of the electronic sound recording of the proceedings in the Circuit Court for Montgomery County in the matter of:

<div align="center">

Criminal No. 136661

STATE OF MARYLAND

v.

GREGORY TERRELL JONES

</div>

By:

_____
Wendy Campos
Transcriber