

No. 1-12-1062

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of Cook County.
Plaintiff-Appellee,	)	
	)	
v.	)	No. 04-CR-21589
	)	
WILLIAM H. SMITH,	)	Honorable
	)	Luciano Panici,
Defendant-Appellant.	)	Judge, Presiding.

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JUSTICE HOFFMAN delivered the judgment of the court.  
Presiding Justice Connors and Justice Delort concurred in the judgment.

**ORDER**

¶ 1           *Held:* The judgment of the circuit court was affirmed where the court did not err  
in admitting toolmark and firearm evidence without a *Frye* hearing.

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After a jury trial, the defendant was convicted of three counts of first-degree murder (720 ILCS 5/9-1(a)(2) (West 2004)) for the shooting deaths of Carmelita Taylor, Cameron Young and Ryan Jernigan and one count of attempted first-degree murder (720 ILCS 5/9-1(a)(1),

5/8-4(a) (West 2004)) for the shooting of Terrence Martin.<sup>1</sup> He was subsequently sentenced to concurrent life sentences for the murder convictions and another consecutive life sentence for the attempted murder conviction. On appeal, the defendant contends that the trial court erred in admitting firearm and toolmark identification evidence without conducting a hearing pursuant to *Frye v. United States*, 293 F. 1013, 1014 (D.C.Cir. 1923). For the reasons that follow, we affirm.

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On August 25 and 26, 2004, the defendant was indicted for first-degree murder and attempted first-degree murder. The indictment alleged that, on July 6 and 7, 2004, the defendant, along with co-defendants D'Andre Greer, James Massey and Samuel Dupree, participated in the murder of Carmelita Taylor, the kidnapping and murders of both Ryan Jernigan and Cameron Young, and the attempted murder of Terrance Martin. Prior to trial, the defendant moved *in limine* to exclude firearm and toolmark identification evidence under *Frye*. The trial court denied the motion, finding that a *Frye* hearing was not required as the methodology for toolmark and firearm identification was generally accepted in the scientific community and admissible in court.

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At trial, the State summarized the complex facts of the case as follows. Taylor, Martin, and Jernigan shared an apartment at 13719 South Homan in Robbins. Jernigan and Martin worked together at Jernigan's auto repair business; Jernigan and co-defendant Greer operated a drug business together. In July 2004, Greer contacted his cousin, co-defendant Samuel

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<sup>1</sup> Co-defendants D'Andre Greer, James Massey and Samuel Dupree are not part of this appeal; Dupree, Greer and the defendant were tried at the same time but before separate juries; Massey negotiated a guilty plea deal in exchange for his cooperation with the State, including his agreement to testify against the defendant.

Dupree, and his friend, the defendant, and directed them to go to Jernigan's apartment and steal his drugs and money.

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On July 6, 2004, the defendant and Dupree went to Jernigan's residence with guns, but he was not home. Taylor answered the door, and they broke into the house. For the next several hours, Dupree and the defendant tied up, tortured, sexually assaulted, and threatened Taylor and Martin because they could not produce drugs or money. Meanwhile, co-defendant James Massey was asked by DuPree to come to the apartment and help them; Massey agreed and went to the Robbins apartment where he saw Martin and Taylor tied up. Jernigan, having been lured back to the apartment by the victims under force, arrived with Young. They were met by the defendant and Dupree, who had their guns drawn. The defendant and Dupree forced Jernigan into the trunk of Massey's Buick and forced Young into the vehicle. Massey and the defendant waited in the car while Dupree went upstairs to the apartment and shot Taylor four times in the head while she was tied up on her bed. Dupree then turned to Martin and shot him in the head twice, leaving him for dead. However, Martin survived.

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The defendant, Massey, and Dupree left Robbins in Massey's car with Jernigan in the trunk and Young in the backseat, and they drove to a remote location at 125th and Doty in Chicago. They released Young, but Dupree shot him in the head as he exited the vehicle. With Jernigan still in the trunk, they drove to Dupree's home in Dolton, parked in the garage,

next to Dupree's cousin's Jaguar. Realizing he left his car (a cream-colored Aurora) near the Robbins crime scene, Dupree and Massey drove in the Jaguar back to Robbins, leaving the defendant to guard Jernigan in the trunk of the Buick. Upon returning to Dolton, the offenders moved Jernigan to the trunk of Dupree's Aurora; the defendant and Dupree drove off in the Aurora and Massey followed in his Buick. They, along with Greer at another location, began calling Jernigan's friends and family members attempting to extort money from them in exchange for Jernigan's life, but they were unsuccessful.

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At one point, they pulled over near 77th and Eggleston Street, and the defendant exited the Dupree's Aurora and entered his hatchback. The three cars followed each other in circles for approximately two hours. Eventually, after all attempts to get money from Jernigan's friends failed, Dupree, Massey, and the defendant stopped their cars around 56th Street and Perry. Jernigan was released from the trunk of Dupree's car, but he was shot by Dupree as he started to walk away. All three men fled in their vehicles.

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The evidence adduced at trial supported the State's summary of the case. Terrance Martin, the surviving victim, testified that, on the day of the crime, he and Taylor were in the apartment, but Jernigan was not home when the offenders broke in. Martin identified both Dupree and the defendant as the offenders and identified their clothing (khaki pants and a uniform shirt with a nut-and-bolt emblem). He testified that the defendant used extension cords to tie him up and both men repeatedly asked him and Taylor where Jernigan kept his

money and drugs. Over the course of several hours, the defendant and Dupree tortured, sexually assaulted Taylor, forced Martin and Taylor to have sex, and attempted to set Martin on fire by pouring flammable materials, including paint, on him and lighting matches.

¶ 1 0  
Martin testified that, at one point, Jernigan's mother, Sheryl Parks, arrived at the apartment. He expected Parks because he was supposed to fix her car for her that day. He told Parks to leave, which she did, angrily stating that she would find Jernigan to fix her car. This detail was corroborated by Parks' testimony.

¶ 1 1  
Martin also described a series of phone calls that took place over the course of the crime, including several calls that Dupree received on his cell phone and an incoming call from Jernigan to the apartment phone. When Jernigan called, he and Taylor were forced to entice him to return home. Martin also described overhearing one of Dupree's phone calls in which he was able to identify Greer's voice as the caller. He heard Greer tell Dupree to kill Martin if he did not produce money or drugs. Martin testified that he recognized Greer's voice because he used to live with him. On one call, Dupree had Taylor provide directions to the apartment to a man, later identified as co-defendant James Massey, who eventually arrived at the apartment. Sometime after Massey arrived, Martin heard the men stating that Jernigan had arrived. Martin next remembered waking up disoriented, crawling to the downstairs neighbor to get help, and later awaking at the hospital.

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Martin further testified that, on August 20, 2004, he identified the defendant as one of the offenders in a photo lineup, and four days later, he identified him in an in-person lineup at the police station. Martin also identified a gun which looked like Dupree's gun and the clothing worn by Dupree and the defendant, including uniform work shirts with a nut-and-bolt emblem.

¶ 1 3

Martin's version of events was corroborated by Massey. Massey admitted that, on December 11, 2008, he entered into a plea agreement with the State. As part of that agreement, the State dropped the murder charges against Massey and agreed that he would receive a 15-year sentence for pleading guilty to one count of aggravated kidnapping in exchange for his testimony against the defendant, Dupree, and Greer. Massey admitted that, had he not entered into this agreement, he faced life imprisonment for the murders of Taylor, Young, and Jernigan and the attempted murder of Martin.

¶ 1 4

Massey testified that, on July 6, 2004, he agreed to pick up Dupree at an apartment in Robbins. Dupree gave Massey directions to the apartment over the phone, and Massey drove his Buick to the location. At the apartment, he saw Martin tied up on the floor and Taylor sitting on the couch and the defendant and Dupree, who were armed with pistols and wore gloves, khaki pants, and uniform shirts with nut-and-bolt emblems. Massey recognized the shirts from a company where he and Dupree once worked. Dupree and the defendant repeatedly asked Martin where he kept the drugs and money, and they ransacked the home.

Massey asked Dupree what was going on after Dupree had received a couple of phone calls. Dupree told him that Greer had "set up a lick," which meant an armed robbery. At one point, Martin got on the house phone and spoke to Jernigan, luring him to return to the apartment.

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Massey testified consistently with Martin regarding the several hours of torture, including the attempted paint-and-fire attack, and the sexual assaults that the defendant and Dupree inflicted upon Martin and Taylor. He stated that, eventually, the defendant went downstairs to meet Jernigan while Dupree was on his cell phone. Shortly thereafter, Massey testified that Dupree ordered him to back his car into the driveway and open his trunk, which he did. Dupree forced Jernigan in the trunk and forced Young to lay on the armrest between the front seats of the vehicle. Dupree then went upstairs to the apartment, and Massey heard gunshots.

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According to Massey, they left the scene in his Buick, got on the expressway for a short time, exiting and parking near 115th Street and Doty. Dupree told Young that he was releasing him, but as Young exited the car, Dupree turned toward the backseat, grabbed the defendant's gun, and shot Young several times. Massey heard a couple of shots, panicked and drove off; Dupree told him to drive to Dolton, where Dupree resided. In Dolton, Massey and Dupree took a gray Jaguar to Robbins in order to retrieve Dupree's Aurora, leaving the defendant to guard Jernigan, who was still in the trunk of Massey's Buick. After returning to Dolton, Dupree forced Jernigan into the trunk of his Aurora and told Massey to follow him and the

defendant. Massey followed Dupree and the defendant to 77th and Eggleston, where the defendant exited the Aurora and entered a small hatchback vehicle. The three vehicles then drove around for about two hours.

¶ 1 7  
Massey testified that he saw Dupree talking on his phone several times during the car ride, but he did not know to whom he was speaking. Eventually, the three vehicles stopped at 57th Street and Perry, where Dupree and the defendant exited their vehicles. The defendant walked toward Dupree's car, opened the trunk, and released Jernigan. As Massey began driving away, he saw Dupree draw his gun and heard several shots fired. Massey identified People's Ex. No. 70 as a gun that resembled the gun that Dupree used the night of the crime although he could not be certain that it was the exact gun.

¶ 1 8  
Cook County Assistant State's Attorney John Somerville testified that, on August 24, 2004, he agreed to provide a videotaped confession; the videotape was played for the jury and admitted into evidence. In the videotaped statement, the defendant admitted to his participation in the crimes and his version of events was consistent with the details provided at trial by Massey and Martin.

¶ 1 9  
Witness accounts regarding various phone calls corroborated the events described by the defendant, Massey and Martin. Parks testified that, after she left the Robbins apartment, Jernigan's downstairs neighbor called her and told her people had been shot. Parks returned



to the scene, relieved to find out that Jernigan was not there. Shortly thereafter, she received a phone call from Greer, who asked for \$10,000 in exchange for Jernigan's life. The next day, Parks received another call from Greer, who told her that Jernigan was dead.

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Raymond "Quick" Lee testified that he received a call from Jernigan's phone and the caller demanded \$20,000 or two kilos of cocaine for Jernigan's life. Lee received a second call from Jernigan's phone; the caller again demanded money or drugs. Then, Jernigan got on the phone and told Lee that the men were serious and had already shot Young in front of him. Lee was with Steve Watson during this time, and Watson took the phone. Lee ran down the street and then returned to Watson, who had the phone on speaker. Watson told the caller that they had come up with \$10,000 and about \$2,800 of cocaine. The caller stated that was not enough money. Watson's testimony was consistent with that of Lee.

¶ 2 1

Glenda Young, a friend of Greer, testified that she was with him on July 6, when Greer received a cell phone call. She heard Greer tell the caller to "kill that bitch and that nigger." Greer put the phone to Young's ear, and she heard Taylor screaming and begging for her life. Young and Greer returned to his home and went to his basement, where Greer received more cell phone calls. She heard Greer ask for Jernigan on one of the calls. Young testified that she saw the name "Jack" appear on Greer's incoming caller identification and that Dupree's nickname was "Jack."

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The various phone calls described by the witnesses were corroborated by the phone records. The parties stipulated to all relevant telephone phone records, and the State called F.B.I. Special Agent Niki Skovran and Chicago's High Intensity Drug Trafficking Area cell phone analyst Megan Misura to testify that they analyzed the historical phone data and records and concluded that the data corroborated the testimony of the State's witnesses regarding the timing of the calls and the alleged locations of the offenders, victims, and witnesses.

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Other evidence submitted at trial included: the electrical cords, blood evidence; paint from Taylor's body; spent shell casings, projectiles, fired bullets, bullet fragments, copper-jacketed bullets and other ballistic evidence collected from the scenes and during the victims' autopsies; a 9 millimeter pistol; and a newspaper covering the crime retrieved from the defendant's home. Karen Morrisette, an investigator for the Cook County State's Attorney Office, testified that a search of the defendant's home led to the recovery of a month-old Chicago Tribune newspaper containing a large article about the crime. Because it was the only newspaper in the house, the State argued it represented the defendant's "trophy" of the crime. Chicago Police Detective Brian Quinn testified that he recovered a 9 millimeter semi-automatic luger pistol after a passenger of a car which he was pursuing discarded it near 4111 West End Street. Firearms testing later connected the weapon with this crime.

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Brian Mayland, an Illinois State Police Forensic Scientist and expert in firearms identification, explained the scientific methods, procedures, and equipment used in his field.

In comparing and analyzing the firearm evidence in this case, Mayland determined that the bullets and fragments recovered that were suitable for comparison came from a 9 millimeter .38 caliber semi-automatic weapon. Mayland testified that, in his opinion, the thirteen bullets, bullet fragments, and projectiles recovered in this case were all fired from the same firearm, with the exception of one bullet recovered from the ground near Young's body on Doty.

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On cross-examination, Mayland admitted the conclusions he makes, based on comparing the individual and class characteristics of the firearm evidence, are his subjective opinions. He testified that he cannot attach any type of probability to the certainty of his identifications, such as 100% or 50%, because finding a "match" is a matter of his opinion. Mayland testified that standard protocol required his reports to be verified by a second examiner, and protocol was followed in this case.

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Aimee Stevens, an Illinois State Police Forensic Scientist, testified that she tested the 9 millimeter semi-automatic luger pistol recovered by Detective Quinn and determined, by comparing test-fired bullets with crime scene evidence recovered in this case and stored in the Integrated Ballistics Identification System, that the weapon was used in this crime. On cross-examination, she admitted that her conclusion was her subjective opinion based on her review of the individual and class characteristics of the ballistic evidence. Stevens' report was also verified by a second examiner.

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After the jury convicted the defendant, he was sentenced to life imprisonment. The defendant's posttrial motions were all denied, and this appeal followed. The defendant argues that the trial court erred when it admitted the toolmark and firearm identification evidence without conducting a *Frye* hearing. He contends that, based on this evidentiary error, he is entitled to a new trial. We disagree.

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The admission of scientific testimony in Illinois is governed by the "general acceptance" test set forth in *Frye*, which provides that such evidence is admissible only if the methodology or scientific principle upon which the opinion is based is sufficiently established to have gained general acceptance in its particular field. *People v. Robinson*, 2013 IL App (1st) 102476, ¶ 61 (*appeal denied*, No. 117135 (Mar. 26, 2014)); *Frye*, 293 F. at 1014. The *Frye* standard is limited to scientific methodology that is considered new or novel. *Robinson*, 2013 IL App (1st) 102476, ¶ 61; *People v. McKown*, 226 Ill. 2d 245, 257 (2007). General acceptance of a methodology need not require that it be unanimously accepted or even accepted by a consensus or majority of experts. *Id.* Further, under *Frye*, a court inquires into the general acceptance of the methodology, not the particular conclusion reached or the methodology used by the specific expert in a particular case. *Id.*

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Like the defendant in this case, the defendant in *Robinson* argued that the trial court should have excluded the toolmark and firearms identification evidence under *Frye* because it

lacked a scientific basis. The court disagreed, finding that, while "federal and state courts have had occasion to revisit the admission of expert testimony based on toolmark and firearms identification methodology," the courts have "uniformly" concluded that toolmark and firearms identification methodology is generally accepted and admissible at trial. *Robinson*, 2013 IL App (1st) 102476, ¶ 91 (after thorough examination of state and federal cases in ¶¶ 81-90). The court further concluded that the trial court did not err in admitting the evidence without a *Frye* hearing, "particularly where the trial judge barred the witnesses from testifying their opinions were 'within a reasonable degree of scientific certainty.'" *Id.*

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In this case, the defendant does not cite to any authority which was not already addressed in *Robinson*. See *Robinson*, 2013 IL App (1st) 102476, ¶¶81-90 (discussing cases cited by the defendant here, including: *United States v. Glynn*, 578 F.Supp. 2d 567 (S.D.N.Y. 2008); *United States v. Monteiro*, 407 F.Supp. 2d 351 (D.Mass. 2006); *United States v. Green*, 405 F.Supp. 2d 104 (D. Mass. 2005)). As *Robinson* pointed out, no judicial decision, including the ones cited by the defendant in this case, has held that "traditional microscopic firearms comparison testimony [is] generally inadmissible." *Id.*, ¶ 85. Additionally, like the experts in *Robinson*, Mayland and Stevens testified that their conclusions were their subjective opinions based on their comparisons of the characteristics of the bullets and fragments. Neither testified that their opinions were scientifically certain, and Mayland specifically testified that he could not attach any type of probability to his identifications.

¶ 3 1

Moreover, even if a *Frye* hearing was required, the court's admission of the toolmark and firearm evidence in this case would have been harmless error given the overwhelming evidence of the defendant's guilt. "When a defendant challenges the admission of evidence, we may hold the admission to be harmless '[w]hen the competent evidence in the record establishes the defendant's guilt beyond a reasonable doubt and it can be concluded that retrial without the erroneous admission of the challenged evidence would produce no different result.' " *McKown*, 226 Ill. 2d at 275 (quoting *People v. Arman*, 131 Ill. 2d 115, 124 (1989)). Here, even excluding the firearms expert testimony, the evidence in the record included the identification of the defendant by a surviving victim (Martin) and co-defendant (Massey), the defendant's videotaped confession, and the cell phone records corroborating the testimony of the State's witnesses. On its own, the overwhelming remaining evidence established the defendant's guilt beyond a reasonable doubt and a retrial would not produce a different a result. Thus, any error in failing to conduct a *Frye* hearing amounted to harmless error under the facts of this case.

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Based on the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

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Affirmed.