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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
AIKEN DIVISION

UNITED STATES OF AMERICA,) Cr. No. 1:04-045
)
)
VERSUS) Columbia, SC
) November 10, 2005
ERNEST WRENN,) & November 14, 2005
)
Defendant.)
)
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EXCERPTS OF JURY TRIAL
DISCUSSIONS RE TEST FIRING

BEFORE THE HONORABLE MARGARET B. SEYMOUR
UNITED STATES DISTRICT JUDGE, and a jury.

Appearances:

For the Government: JONATHAN GASSER, ESQ.
U.S. Attorney for South Carolina
TARA MCGREGOR, ESQ.
Assistant U.S. Attorney
1441 Main Street, Suite 500
Columbia, SC 29201

For the Defendant: DOUGLAS N. TRUSLOW, ESQ.
914 Richland Street, Suite B-102
Columbia, SC 29201

Court Reporter: Gary N. Smith, CM
901 Richland Street
Columbia, SC 29201
(803) 256-7743

Stenotype/Computer-Aided Transcription

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2 (Excerpt of proceedings on November 10, 2005)

3 (Jury not present)

4 MR. TRUSLOW: Your Honor, they have talked about
5 testing this item, you have heard what the witnesses have had
6 to say about their testing that they are proposing. I don't
7 know whether they are going to --

8 THE COURT: I'm not sure I'm following you, the
9 witnesses have said what about the testing?

10 MR. TRUSLOW: They said if you try to take one of
11 these uppers and shoot it, it would come up being incredibly
12 dangerous.

13 THE COURT: Did they say that's what they are going
14 to do?

15 MR. TRUSLOW: The government indicated at the
16 beginning of the case that they may or may not ask the court
17 to take these things out for a live fire demonstration. And
18 we deferred a decision on that, and I think they deferred as
19 to what they were going to do.

20 But you indicated, as I recall, if they were going
21 to do it they needed to give us two days' notice, and then we
22 would decide what we were going to do and where we were going
23 to go. So --

24 MR. GASSER: I guess that leads us to one other
25 thing, I'm not sure whether Mr. Truslow is challenging or

1 not. Because if he's not challenging it, then we don't have
2 to do the live fire.

3 THE COURT: Challenging what?

4 MR. GASSER: Whether or not the Maxim -- whether or
5 not the RPDs, the Daewoo, and the SAWS in question can be made
6 to fire in full automatic mode.

7 THE COURT: When you say, "Can be made to fire in
8 fully automatic mode," you mean attached to something else or
9 by themselves?

10 MR. GASSER: Under the law, the question is whether
11 or not they are readily restorable and whether or not they are
12 machine gun parts or whether or not they are machine gun
13 receivers. Obviously they have to make attachments to them,
14 because under the law it says -- when it talks about "designed
15 to shoot automatically or can be readily restored to shoot
16 automatically," that is an "or."

17 So, if it's designed to shoot automatically -- it
18 doesn't say anything about -- if you need to add pieces to it,
19 you need to add pieces to it -- "can be readily restored to
20 shoot automatically." "Or readily restored" obviously means
21 you have got to do something to it, either add something to it
22 or subtracting something from it.

23 The definition of a machine gun also includes the
24 frame or receiver of a machine gun. So, if that's the
25 definition of a machine gun, in and of itself, we all know the

1 frame and receiver of a machine gun can't fire by itself
2 without adding certain things to it.

3 But that's still part of the definition,
4 independently by itself, "The frame or receiver, any parts or
5 combination of parts designed and intended for use in
6 converting a weapon into a machine gun, or any combination of
7 the parts from which a machine gun can be assembled, if such
8 parts are in possession of a person."

9 THE COURT: If that's in effect what you are saying
10 the law is or what the definition of a machine gun is, I would
11 assume that would be part of your requested charge to the jury
12 as to what a definition of a machine gun is?

13 MR. GASSER: Yes, ma'am.

14 THE COURT: What would be the necessity of testing
15 it then?

16 MR. GASSER: To show that they fired in full
17 automatic mode, that they are -- that the jury can find any
18 one of these. They can find it was readily restorable -- I
19 guess the first thing is, is Mr. Truslow challenging whether
20 or not these -- the items in question in this case, the SAW
21 upper, the RPD upper, and the Daewoo upper can be made --
22 not -- I know he might be challenging how they can be made,
23 but just can they be made in a laboratory setting, in a safe
24 setting, can they be made to fire in full automatic mode?

25 THE COURT: Let me just ask you this, is it your

1 intent to have a testing of these items? And if so, we need
2 two days' notice so that we can make arrangements.

3 MR. GASSER: I guess it would have to be in reply to
4 defense expert witnesses. If Mr. Truslow -- and I know the
5 court can't make him -- but if Mr. Truslow is not willing to
6 concede that those items can fire in full automatic mode, I
7 would also note that he had -- they had all the opportunity to
8 test these, just like they did with the Maxims, if they so
9 choose. Because obviously they got a court order to get a
10 videotape.

11 So, in reply, if their experts are not willing to
12 concede that they can be made to fire in full automatic mode,
13 however ridiculous as their expert or Mr. Truslow thinks it
14 is, the government would like to, because we think that is an
15 issue the jury would want to know, and we have to test fire
16 the weapons.

17 THE COURT: That being the case, if the government's
18 case is going to take another two days, which would be Monday
19 and Tuesday, I don't know how many witnesses Mr. Truslow is
20 going to call, that may take us into a third week if we are
21 going to have to test these. So, you will have to let us know
22 as soon as possible.

23 MR. GASSER: Well, I think I am letting the court
24 know, that is what our request would be --

25 MR. TRUSLOW: Your Honor, the reason that we, to

1 respond, the reason we haven't tested the RPD quote-unquote
2 upper is because it is our opinion that, A, it would be
3 incredibly foolish and dangerous to try to do it.

4 Number two, it cannot do it -- when you take the --
5 when you take the item that was manufactured and -- unless you
6 add another conversion device to it, something different that
7 was not designed or intended, it can't be done. I --

8 THE COURT: Let me just -- I don't know why it
9 wasn't tested or whether -- I'm not getting into your trial
10 strategy or anything like that. I mean everybody -- you are
11 doing what you think you need to do to prove your case, or
12 to -- for the government to prove -- to meet their burden of
13 proof.

14 And the testimony so far has been that the witnesses
15 who have taken the stand have felt that it would not be
16 feasible to try to shoot it by itself, or to devise some kind
17 of make-shift mechanism to -- or device to shoot it. That
18 being said, the government's position is that there are other
19 things that you can do to it to make it shoot, is what I'm
20 understanding from you, Mr. Gasser.

21 MR. GASSER: We test fired these.

22 THE COURT: But you haven't test fired it by itself,
23 you test fired it by making it a part of something else. Is
24 that correct?

25 MR. GASSER: Beg the court's indulgence. Hold on a

1 second, beg the court's indulgence.

2 Your Honor, I want the court to be aware that the
3 test firing of these firearms, is they use the same protocol
4 that they do whenever they test fire firearms.

5 I mean, it's not like this case is unique. They
6 indicate they have been doing this for years, the exact same
7 type protocol they have been using. And what they do is, they
8 remove the M-11 receiver, the M-11 lower and then they install
9 a shoulder stock, a guide rod, and spring onto the SAW-type
10 machine gun receiver with plastic cable.

11 And then they use -- either magazine or belt feed --
12 and they load the ammunition. And then they let go of the
13 slide -- they let go of the charging handle, they hit the
14 charging handle, the charging handle goes forward and the gun
15 fires in full automatic mode.

16 And that's the same way they have been testing at
17 the FTB, it's the same standard they have been using.

18 THE COURT: Well, let me just say, it appears
19 there's an issue as to whether or not, or there's a question
20 as to whether or not you are going to want to test these, so I
21 think in an abundance of caution you should probably make the
22 appropriate arrangements to at least put the parties on notice
23 that would have to be put on notice that there may be a
24 request to test these, and I would think that would have to be
25 on Thursday or Friday of next week, in case the -- there's a

1 need to have it done or there's a decision this is to be done.

2 But I don't want to delay the trial because we have
3 to make arrangements, so I would like to have all of that set
4 in place for Thursday or Friday of next week in the event that
5 it's deemed appropriate.

6 MR. GASSER: And we have not made our final decision
7 as to whether or not we are going to -- we will do that, Your
8 Honor, and then we will discuss over the weekend strategy-wise
9 based on what's transpired today, what we think is going to
10 happen, whether we actually make that final request. I want
11 the court to understand we may withdraw that request as well,
12 but I understand we need to be ready to do so.

13 MR. TRUSLOW: I was just trying to be prepared, Your
14 Honor, because we are going to have a very strenuous objection
15 to them being able to test it. They say they tested it but
16 they didn't videotape it.

17 The second thing was, and this is why I'm going --
18 been going back to the shoestring matter with the letter that
19 they wrote, for example, to Mr. Blakely where, quoting their
20 language, a machine gun is something that's designed to
21 shoot -- I'm quoting -- "or can be readily restored to shoot
22 automatically more than one shot without manual reloading by a
23 single function of the trigger. This term shall also include
24 the frame or receiver of any such weapon," and then it appears
25 to be in bold, "Any part designed and intended solely and

1 exclusively, or in combination of parts designated and
2 intended for use in converting a weapon into a machine gun."

3 So, what Mr. Gasser has indicated that they would do
4 to make it fire is they would take it, they would alter it
5 from its condition in which my client manufactured it as --
6 for its intended purpose, they would take off parts, they
7 would add parts, they would remove parts, they would add on
8 some springs, I think he talked about getting some ties
9 similar to shoestrings, and make it do -- shoot.

10 So, it just becomes -- it's ridiculous. Anything --
11 I can remember when my children were small they might say
12 something like, "You never told me I couldn't put beans in my
13 ears."

14 I mean, the thought would have never occurred to a
15 manufacturer to do what ATF has apparently done. Nobody in
16 their right mind would ever consider, from the testimony you
17 heard on the witness stand, nobody in their right mind would
18 imagine doing it.

19 Experienced shooters who shot hundreds of thousands
20 and one of them I think said a million shots, and they've
21 worked on these guns, they can do whatever they have done --
22 it never would have crossed their mind to do the thing that
23 ATF -- the creative thing that ATF says they have done to
24 alter it and make it fire.

25 And when they -- at the point in time when we got

1 the November 14th -- and they said that on the RPD that they
2 made it fire as a machine gun and they classified it as that.
3 Then it's over, no matter -- at that point in time they have
4 then classified it.

5 Until they classify it and until they do something
6 like that, nobody would ever have imagined -- and this isn't
7 policy, this is just basic United States versus Staples
8 policy -- that nobody, no manufacturer in their right mind,
9 nobody in the industry would ever imagine that ATF would do
10 something as wild and beyond anybody's imagination as to try
11 to create something to make this thing fire, especially with
12 adding new parts that my client never imagined, could never
13 have guessed that they would use.

14 And that's my point and that's why I think this
15 attempt to test is not very wise.

16 THE COURT: All right. You can let me know on
17 Monday.

18 MS. MCGREGOR: Thank you, Your Honor.

19 THE COURT: 9:30.

20 (Thereupon, the proceedings were recessed.)

21 * * * * *

22 (Excerpt of proceedings on November 14, 2005)

23 (Jury not present)

24 MR. GASSER: Good morning.

25 THE COURT: Good morning.

1 MR. GASSER: Your Honor on one -- when we ended the
2 evening last evening, the testimony on Thursday, I believe the
3 last -- one of the last subjects that was discussed with the
4 court was the issue of the government potentially requesting
5 live fires of certain firearms relevant to this particular
6 case.

7 Ms. McGregor and I had the weekend to go back and sit
8 down and discuss our options with our agents and our technical
9 people and review again the definition of machine guns and then
10 what our burden is with regard to five of the counts in the
11 indictment, and it's based on having that opportunity the
12 government would not request any type of live fire exercise. And
13 I just wanted to put the court on notice that we will not be
14 requesting that activity.

15 THE COURT: All right. Thank you. Anything from you,
16 Mr. Truslow?

17 MR. TRUSLOW: No, Your Honor, we are ready to --
18 ready to go.

19 THE COURT: All right.

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1 CERTIFICATE OF REPORTER

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I certify that the foregoing is a correct transcript
from my stenographic notes in the above-entitled matter.

s/ Gary N. Smith

November 9, 2006

Gary N. Smith, CM
Official Court Reporter
United States District Court
District of South Carolina