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APPEARANCES:

FOR THE STATE:

Mr. Kevin Gray, ADA
Mr. John David Luten,
First Assistant D.A.
500 South Denver
Tulsa, OK 74103

FOR THE DEFENDANT:

Mr. Clark Brewster
Attorney at Law
2617 E. 21st Street
Tulsa, OK 74114

1 (The following transcript is an
2 excerpt, containing only a portion of the
3 proceedings:)

4 MR. GRAY: I think we can turn to page
5 five.

6 THE COURT: I'm there.

7 MR. GRAY: Judge, on Defendant's
8 Exhibits, Mr. Brewster, in his letter from April
9 1st, outlined their proposed exhibits, and I just
10 wanted to go through them.

11 Number one, photographs of Mr. Bates and his
12 family, I have no idea how that has any relevance
13 to the trial, and I object to them being
14 introduced in any way.

15 THE COURT: How are photographs of Mr.
16 Bates and his family relevant, Counsel?

17 MR. BREWSTER: Just gives them an
18 understanding of who he is, might save some
19 questions, but I'll defer to Your Honor. We,
20 typically, would like the jury to know who our
21 client is, so we do ask that the picture be used.

22 THE COURT: I'll sustain the State's
23 objection.

24 MR. GRAY: The manufacturer's
25 literature and articles regarding the Taser that

1 Mr. Bates carried, again, I understand that the
2 issue here is the Taser. I don't understand the
3 relevance of manufacturer's literature, nor a
4 sponsor for it.

5 THE COURT: The way I'm hearing this is
6 there might be testimony about this information,
7 but you would object then to the introduction of
8 the actual literature?

9 MR. GRAY: Yes.

10 THE COURT: Are you planning on trying
11 to introduce the literature itself?

12 MR. BREWSTER: I think so. It's a
13 learned treatise, in essence, and it really
14 becomes important -- it has become important in
15 other weapons confusion cases that I read, and
16 read the transcripts from. It shows the weight,
17 although we did weigh it. It shows, you know,
18 how it's to be deployed, how the laser is
19 deployed in a proper way, how to use it. I think
20 it's, in essence, a learned treatise from the
21 standpoint at least it's information that can be
22 relied upon by experts.

23 THE COURT: Certainly, and I agree.
24 I'm asking about the actual article. Are you
25 telling me that you want to just give them this

1 treatise to take back with them?

2 MR. BREWSTER: Not necessarily a
3 treatise, but the manual, instructions, and the
4 weight, and how it's deployed would be contained
5 therein.

6 What we would normally do, Judge, and I would
7 do it in this case, is examine our expert about
8 it. He'll know it off the top of his head, but
9 to the extent he needs to refresh memory. We'll
10 mark it if we offer it as an exhibit. You can
11 make your ruling then, but we won't introduce it
12 or preadmit it based upon their objection.

13 MR. GRAY: I guess, Judge, I don't have
14 any objection to him asking him about it, because
15 obviously if that's part of their defense, they
16 need to talk about how much it weighs, that's
17 fine. I just don't think there's any reason to
18 send sales literature on a Taser back with the
19 jury.

20 THE COURT: So far I agree with you. I
21 guess Mr. Brewster could change my mind during
22 the examination, but short of that, I would agree
23 with you and sustain that objection.

24 Your next one?

25 MR. GRAY: Judge, the exemplar of the

1 Taser in terms of introducing --

2 THE COURT: You said you had no
3 objection to that one.

4 MR. GRAY: Yes, exactly.

5 On manufacture's literature on the handgun,
6 Judge, again, same objection as with the Taser.

7 THE COURT: Same ruling.

8 MR. GRAY: The exemplar of the handgun
9 itself, we'll have the handgun in evidence. I
10 don't understand the need to have an exemplar.
11 The State also has a concern about that
12 particular exemplar. We had an opportunity to
13 talk with a person named Michael Hardison, who
14 filled out an affidavit for us that was at least
15 concerning to us.

16 THE COURT: When you say exemplar of a
17 handgun, you mean an identical handgun?

18 MR. GRAY: I think they're proposing to
19 introduce or show to the jury an identical
20 handgun to the Smith & Wesson. My concern is it
21 won't be an identical handgun.

22 THE COURT: This 24 paragraph affidavit
23 you gave me.

24 MR. GRAY: Judge, the summary basically
25 is, the 2A Shooting Center that Mr. Brewster

1 co-owns, along side a couple other folks, the
2 employee, Michael Hardison there, was approached
3 by one of the folks that works there and asked to
4 change out the springs on a brand new Smith &
5 Wesson that was to be used in the Bates trial as
6 an exemplar, and was asked to change out the
7 springs to reduce the trigger-pull weight to a
8 lesser weight.

9 I have no idea what the trigger-pull weight
10 is on Mr. Bates gun as it currently exists, but
11 the concern I have is that if someone is being
12 asked to change the trigger pull on a new
13 firearm, and then that firearm is proposed as an
14 exemplar for the jury to have or use or pull the
15 trigger or any -- even used as a demonstrative or
16 asked to send it back with the jury for the jury
17 to use, that concerns me. They will have the
18 original gun, and I don't see any reason to send
19 any gun back with the jury that's not Mr. Bates
20 gun.

21 MR. BREWSTER: I don't disagree, but I
22 do -- I don't disagree that the exemplar gun
23 shouldn't be used by the jury.

24 But I do want to explain, just so that Mr.
25 Gray -- and I don't think he's accusing me of

1 anything improper, but when we went over to look
2 at the evidence with Mr. Hasten [sic], Officer
3 Hasten [sic] and Mr. Gray --

4 MR. GRAY: Heisten. Heisten.

5 MR. BREWSTER: -- was very
6 accommodating. When we looked at the actual gun
7 -- and I think we commented -- I know Heisten and
8 I did, the trigger pull is just -- I've never had
9 a revolver with a trigger pull so light, just
10 absolutely unbelievably light.

11 So what we did, knowing that we could not
12 have the actual gun for our experts and for our
13 own office demonstrative, we went and bought that
14 exact gun, and then that exact gun had a real
15 tough trigger pull, so I sent it over to 2A
16 Shooting Center and asked if they could make it a
17 lighter trigger pull so we have the same kind of
18 feel, and we asked them to do that, and they did.

19 But it's been used as an exemplar for us and
20 our experts, and since we didn't have direct
21 access to go to the Faulkner Building every time,
22 so we don't intend to use that as an exhibit.
23 Unless the State wanted to use it instead of
24 getting the other one out of a bag or something.
25 They're identical.

1 So with respect, the motion, I don't think
2 it's necessary.

3 THE COURT: Yes, sir. Thank you. I'll
4 sustain without objection number five.

5 State, your next one?

6 MR. GRAY: Thank you, Judge.
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C E R T I F I C A T E

STATE OF OKLAHOMA)
)
COUNTY OF TULSA)

I, Dana L. Rush, a Certified Shorthand Reporter in and for the State of Oklahoma, do hereby certify that the foregoing transcript of Excerpt heard on April 12, 2016, in the City of Tulsa, Tulsa County, Oklahoma, in the matter of State vs. Robert C. Bates, Case No. CF-2015-1817, transcribed from my machine shorthand notes, is true and correct to the best of my ability.

I am not an attorney for or a relative of either party.

IN WITNESS WHEREOF, I have hereunto set my hand and stamp this 13th day of April, 2016.

Dana L. Rush, C.S.R.

My Commission expires:
December 31, 2016



Dana L. Rush
State of Oklahoma
Certified Shorthand Reporter
No. 1785

My Certificate Expires 12-31-16