Gunshot Residue Tests

Paul C. Giannelli

*Case Western University School of Law, paul.giannelli@case.edu*

Follow this and additional works at: [https://scholarlycommons.law.case.edu/faculty_publications](https://scholarlycommons.law.case.edu/faculty_publications)

Part of the Evidence Commons

Repository Citation
[https://scholarlycommons.law.case.edu/faculty_publications/335](https://scholarlycommons.law.case.edu/faculty_publications/335)

This Article is brought to you for free and open access by Case Western Reserve University School of Law Scholarly Commons. It has been accepted for inclusion in Faculty Publications by an authorized administrator of Case Western Reserve University School of Law Scholarly Commons.
Determining whether a person has recently fired a weapon may be of critical importance in identifying an assailant, proving or rebutting a self-defense claim, or distinguishing a suicide from a homicide. Consequently, a number of techniques designed to detect gunshot residues (GSR) on the hands of a suspect or victim have been developed. These techniques range from the now-discredited paraffin test to the more modern techniques, which use instrumental analysis or scanning electron microscopy.

All GSR techniques have limitations. First, the residues can be removed by rubbing or washing the hands and, thus, usually must be collected soon after the firearm is fired. This also means that the absence of residues is not very probative. Second, even valid GSR tests are not conclusive:

The real value of the GSR test is that it can associate an individual with a firearm. It is important, however, to note that this does not identify that person as the shooter. GSR can settle on any hand placed near a weapon as it is fired. A person can pick up GSR simply by handling a dirty weapon or discharged ammunition components.

Whether Accused or Victim Handled or Fired Gun,” 1 A.L.R. 4th 1072 (1980).


See Kilty, “Activity After Shooting and Its Effect on the Retention of Primer Residue,” 20 J. Forensic Sci. 219, 230 (1975) (“[a]s the time after the shooting passes, the possibility decreases that significant amounts of [antimony] and [barium] will be detected”).
It is also possible, but very unlikely, that residue would be deposited on hands by other means.5

Paraffin Test

The paraffin or dermal nitrate test was introduced in this country in the early 1930s and adopted quickly by law-enforcement agencies.6 The test is designed to detect the presence of nitrate residues, which, due to the backblast of gases that escape during discharge, may be deposited on the hand of the person firing the weapon. These substances are residues from smokeless powder, the propellant used in modern cartridges. The term "paraffin test" derives from the paraffin cast technique, which is used to remove the residues from the hands. After removal, the cast is tested with a reagent, either diphenylamine or diphenylbenzidine. A color reaction—"dark blue spots"—indicates the presence of nitrate residues.

The principal problem with the paraffin test is its nonspecificity. A significant number of substances other than gunpowder residues contain nitrates and, therefore, also produce a positive reaction. One study concluded that a positive reaction is produced by tobacco or tobacco ash, fertilizer, pharmaceuticals, leguminous plants, and urine.7 A more comprehensive study found that "'rust,' colored fingernail polishes, residue from evaporated urine, soap and tap water"8 all produce a positive reaction. In other words, the test detects nitrate residues, but the source of these residues cannot be determined. Consequently, the probative value of a positive reaction is marginal at best, and, therefore, the paraffin test is rarely used today. If, however, a positive reaction is accompanied by microscopic identification of gunpowder particles, the nonspecificity problem may be overcome.9

The first reported case admitting testimony based on the paraffin test was decided in 1936.10 In 1959, the first case rejecting the test was reported.11 Although several courts followed suit and also rejected the paraffin test,12 evidence based on this test continued to be admitted in other courts.13 Indeed, in 1979, the Oklaho-

---


6 See "Diphenylamine Test for Gun Powder", 4 FBI Law Enforcement Bull. 5 (1935) ("current widespread use").


9 E.g., State v. Fields, 434 S.W.2d 507, 516 (Mo. 1968); Commonwealth v. Westwood, 324 Pa. 289, 300, 188 A. 304, 309 (1936).


ma Court of Criminal Appeals overruled an earlier decision and held evidence based on the test admissible, at least where the result of the test is negative.¹⁴

**Harrison-Gilroy Test**

In 1959, Harold Harrison and Robert Gilroy, of the University of Rhode Island, developed a new chemical method (color test) for GSR detection.¹⁵ Unlike the paraffin test, which detected propellant residues, this test is designed to detect primer residues—antimony, barium, and lead. Accordingly, the presence of nitrates is immaterial, and the nonspecificity of that substance, the principal problem with the paraffin test, is avoided. In addition, the simplicity of the Harrison-Gilroy test made it suitable for field use. Nevertheless, it is not widely used today due to its inadequate sensitivity and other drawbacks.¹⁶

Today, the test is important primarily because it focused attention on primer residues rather than powder residues. Few reported cases consider the admissibility of evidence based on the Harrison-Gilroy test. In one case, the court excluded evidence of the test because the analyst modified the test procedure.¹⁷ In another case, the evidence was admitted but the court apparently believed it was considering the paraffin test, which it had earlier approved.¹⁸

**Neutron Activation Analysis**

Neutron activation analysis (NAA) is a qualitative and quantitative method for determining the elemental composition of substances. It is extremely sensitive and accurate, capable of detecting elements in the microgram and nanogram range. In the detection of GSR, NAA is used to detect the presence and quantity of antimony and barium on the back of the shooting hand.¹⁹ These elements are the primer constituents of many cartridges, and their presence in elevated concentrations on the hands is indicative of a recent discharge of a firearm. Since barium and antimony may be present on the hands of persons who have not fired a firearm, NAA is based on the detection of significantly greater amounts of these elements than normally occur:

The presence of [antimony and barium] together and in amounts significantly higher than those normally found on the hands of the general population (hand blanks) is taken as indicative of the presence of GSR. Hand blank levels have been collected and reported by a number of laboratories. The

---


¹⁶ See Krishnan, note 2 supra, at 574 ("[t]his method did not gain wide acceptance in crime laboratories for field use because of a lack of specificity of the color reaction for the trace elements, inadequate sensitivity, interference of the color reactions among the three elements themselves, and the instability of the colors developed").


actual levels depend on the area of the hands sampled and to some extent on the sampling method used.20

Several methods, including swabbing and washing techniques, have been used to remove residues from the hands. The principal disadvantage of NAA is the required access to a research nuclear reactor.

A number of courts have admitted GSR testimony based on NAA.21 In one case, however, the court criticized the expert for overstating the conclusions that can be drawn from the test:

We are concerned . . . about the sweeping and unqualified manner in which [the expert’s] testimony was offered . . . An expert witness could be permitted to testify that in his opinion the chemicals present on defendant’s hand may have resulted from the firing of a gun. He should not have been permitted to state, as he did, that this defendant had definitely fired a gun.22

Atomic Absorption

Flameless atomic absorption spectroscopy (FAAS) is another instrumental technique used for elemental analysis. In the detection of GSR, FAAS is used to detect the elements antimony, barium, and lead. The greater availability of this technique and its capability of detecting lead, in comparison to neutron activation analysis, have made it an attractive method for analyzing GSR. 23 Several courts have admitted expert testimony, based on this technique, in GSR cases. 24

Anodic Stripping Voltammetry

Anodic stripping voltammetry (ASV) is a relatively new method


See also United States v. Barton, 731 F.2d 669, 671–672 (10th Cir. 1984) (unspecified "primer residue test" admitted).


for detecting GSR. It provides a simultaneous qualitative and quantitative method for detecting copper, lead, and antimony. Its principal advantage over other GSR techniques is that it uses inexpensive equipment. ASV is also quick, simple, and non-destructive. Whether ASV alone is sufficient for the detection of GSR is questionable. This technique does not detect barium, a primer residue, used in other instrumental GSR techniques. Proponents of this method rely primarily on the presence of antimony: "Antimony, . . . even in trace amounts, is indicative of probable contact with a handgun." Several Missouri cases have admitted evidence based on ASV, but defense experts apparently did not testify in these cases.

Scanning Electron Microscopy

The scanning electron microscope (SEM) uses a high-energy electron beam to produce magnification significantly greater than that which is possible with an optical microscope. This increased magnification, as well as greater depth of field, permits the identification of gunshot particles by their characteristic morphology. In addition, scanning with an electron beam causes the emission of X rays. Since each element produces characteristic X rays, an elemental analysis of the substances under examination is possible through the use of energy-dispersive X-ray analysis (EDXA). Barium, antimony, and lead are the elements that are indicative of a firearm discharge. In sum, SEM permits the identification of gunshot particles by their unique morphological characteristics and by elemental analysis.

The principal disadvantages of this technique are the cost of the instruments and the time-consuming nature of the analysis. Other reported problems concern the "variation between laboratories in determining the minimum number of particles analyzed to confirm gunshot residue" and the fact that cigarette lighter flint particles "mimic GSR in morphology."
Although the use of this technique for the detection of GSR is recognized in the literature, there are few reported cases. In People v. Palmer, expert testimony identifying gunshot particles based on SEM was upheld. According to the court, the technique has been generally accepted by the scientific community.

**Trace Metal Detection Technique**

The trace metal detection technique (TMDT) is designed to determine whether a person has recently handled a metallic object, including a firearm. In this respect, it differs from GSR tests that are designed to determine whether a person has recently fired a firearm.

In 1970, the Law Enforcement Assistance Administration (LEAA)-sponsored research first described TMDT. This research showed that metal objects leave traces (metallic ions) when they come in contact with skin and clothing surfaces. When sprayed with a reagent and exposed to ultraviolet light, the metal traces can be detected by their fluorescent colors. In addition, characteristic patterns, such as those left by the handling of a firearm, sometimes can be identified:

Examination by ultraviolet light of the metal trace patterns which appear as fluorescent colors on the hands or clothing of the suspect allows a police officer to determine whether a suspect has been in contact with certain metal objects, the type of metal or metals in the objects; and also to infer what type of weapon or metal object was probably involved.

In sum, the color of the pattern provides information about the identity of the metal, and the location, size, and shape of the pattern provides information about the type of object that the test surface came in contact with. The research indicates that metal traces may be detected up to thirty-six to forty-eight hours after contact with a firearm, even if normal routine washings have occurred.

Further research disclosed that TMDT is not as straightforward a procedure as the initial LEAA publication had suggested, that the amenability of subjects to the test varied, and that the test "involves highly subjective judgments." Thus, the successful use of the technique "hinges upon the acquisition of considerable personal experience, augmented by the accumulation of an extensive photographic file of patterns characteristic of as many different weapons and tools as possible."

Of the few courts that have considered the admissibility of TMDT evi-

---


32 Id. at 252–254, 145 Cal. Rptr. at 472–473.

dence, most have admitted the evidence.\textsuperscript{37} One court, however, has ruled TMDT evidence inadmissible for lack of general acceptance by the scientific community.\textsuperscript{38} In addition, the state’s failure to use TMDT, upon a defense request, has been held to violate due process.\textsuperscript{39}


\textsuperscript{38} People v. Lauro, 91 Misc. 2d 706, 712–713, 398 N.Y.S.2d 503, 507 (Sup. Ct. 1977). See also Esquivel v. State, 595 S.W.2d 516, 528–529 (Tex. Crim. App.) (second TMDT test not admitted because it was not conducted under similar conditions as first test), \textit{cert. denied}, 449 U.S. 986 (1980).

\textsuperscript{39} People ex rel. Gallagher v. District Court, 656 P.2d 1287, 1290–1292 (Colo. 1983).

\textsuperscript{40} Reid v. State, 267 Ind. 555, 559, 372 N.E.2d 1149, 1152 (1978).