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Motion in Limine to Exclude Plaintiff's Proposed Exhibits (#5, 7, 100)

William D. Mason
Cuyahoga County Prosecutor

Marilyn B. Cassidy
Cuyahoga County Assistant Prosecutor

A. Steven Dever
Cuyahoga County Assistant Prosecutor

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FILED

IN THE COURT OF COMMON PLEAS

2000 JAN -4 P 1:19

CUYAHOGA COUNTY, OHIO

ALAN J. DAVIS, Special Administrator
of the Estate of
SAMUEL H. SHEPPARD
CUYAHOGA COUNTY

Plaintiff

vs.

THE STATE OF OHIO

Defendant

Judge Ronald Suster

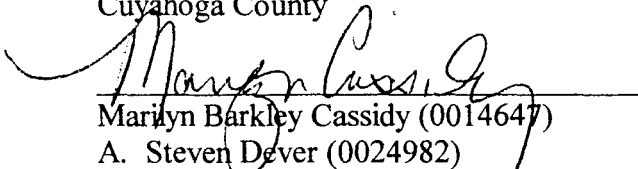
Case No. 312322

MOTION IN LIMINE TO
EXCLUDE PLAINTIFF'S
PROPOSED EXHIBITS
(EVID. R. 401, 402, 802)

Defendant, State of Ohio, by and through counsel, William D. Mason,
Prosecuting Attorney for Cuyahoga County, Assistant Prosecutor Marilyn Barkley
Cassidy, and Assistant Prosecutor A. Steven Dever, moves this Honorable Court to
exclude Plaintiff's proposed Exhibits numbered: 5, 7, and 100 for the reasons set forth
fully in the following brief.

Respectfully Submitted,

WILLIAM D. MASON
Prosecuting Attorney
Cuyahoga County


Marilyn Barkley Cassidy (0014647)
A. Steven Dever (0024982)
Cuyahoga County Prosecutor's Office
1200 Ontario St.
Cleveland, Ohio 44113
(216) 443-5870
Attorneys for Defendant

BRIEF

Facts and Introduction

The current Plaintiff's Exhibit List contains numerous items as proposed exhibits. Those exhibits are numbered on the current Plaintiff's Exhibit List as follows: 5, 7, and 100. These exhibits include documents relating to Richard Eberling and a police report concerning the discovery of a flashlight. Under Evid. R. 402 and 802, these exhibits are not admissible for the following reasons.

Law and Argument

Evid. R. 401 defines "relevant evidence" as being any "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." See also Brown v. City of Cleveland, (1981), 66 Ohio St.2d 93. The Plaintiff's proposed exhibits listed above do not meet this definition.

The proposed exhibits are being offered to impeach Richard Eberling and implicate him in the death of Marilyn Sheppard. These exhibits must be excluded because they do not make the existence of any fact of consequence more or less probable.

The fact that Richard Eberling legally changed his name upon adoption has absolutely no relevance to this case. Therefore, Exhibit 5 must be excluded.

Exhibit 7 must also be excluded. Regardless of the content of these Selective Service documents, they are not relevant to this case. The Selective Service's thoughts, observations, and actions regarding Richard Eberling are not relevant to whether Sam Sheppard is innocent of murdering his wife. Therefore, the Exhibit 7 must be excluded from this trial.

Furthermore, the Selective Service documents are inadmissible hearsay. Hearsay is defined as a “statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.” Evid. R. 801(C). Evid. R. 802 states that “[h]earsay is not admissible. . . “ There are approximately twenty-three exceptions to the Evid. R. 802, and none of these exceptions apply to the use of these documents as evidence. See Evid. R. 803; Evid. R. 804. These documents are being offered to impeach Richard Eberling through the truth of the matter asserted in those documents. Therefore, Evid. R. 802 also requires the exclusion of Exhibit 7.

Exhibit 100 must also be excluded from this trial. This police report is not relevant to this case. The flashlight was found on the beach one year after the murder of Marilyn Sheppard. There is no indication that this flashlight was in any way involved in the murder. It is nothing more than speculation to imply that this flashlight was the murder weapon. Mere speculation does not make the existence of a fact of consequence to this trial more or less probable. Therefore, the report must be excluded from this trial under Evid. R. 402.

Furthermore, the jury is facing substantial amounts of legal, factual, and scientific information, and the introduction of this evidence would only hinder the jury in its role. The presentation of this evidence would also lengthen what is anticipated to be a protracted trial. Judicial resources will be strained enough in light of the complexity of the issues and the notoriety of this case and requires that this evidence be excluded.

These items have no relevance to the determination of whether Samuel H. Sheppard is innocent of his wife’s murder on July 4, 1954. Therefore, the proposed

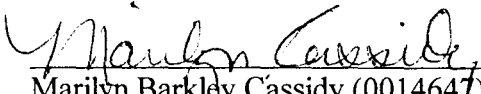
exhibits should not be admitted since they are not relevant and must be excluded under Evid. R. 402.

Conclusion

For the reasons above, the State of Ohio respectfully requests the court exclude Plaintiff's proposed exhibits 5, 7, and 100 from this trial.

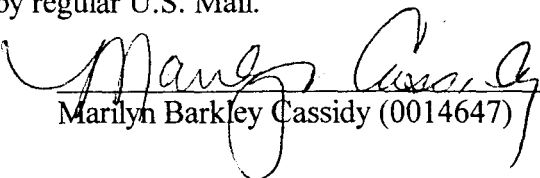
Respectfully Submitted,

WILLIAM D. MASON
Prosecuting Attorney
Cuyahoga County


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Attorneys for Defendant

CERTIFICATE OF SERVICE

The foregoing Motion to Exclude Plaintiff's Exhibits was served upon plaintiff's counsel Terry Gilbert at 1370 Ontario Street, 17th Floor, Cleveland, Ohio 44113 this 3 day of January, 2000, by regular U.S. Mail.


Marilyn Barkley Cassidy (0014647)