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Motion in Limine to Exclude Expert Testimony of Elizabeth Balraj & Balraj Analysis re: Marilyn Sheppard Homicide

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IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

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2000 JAN 28 P 1:47
CUYAHOGA COUNTY
PROSECUTING ATTORNEY

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

Plaintiff

vs.

STATE OF OHIO

Defendant

Judge Ronald Suster

Case No. 312322

MOTION IN LIMINE
TO EXCLUDE EXPERT
TESTIMONY OF
ELIZABETH BALRAJ

Plaintiff hereby moves this Court for an Order preventing the State from offering any opinion testimony from Dr. Elizabeth Balraj. The reasons for granting this motion are as follows.

For some time, the State has listed Dr. Balraj as an expert witness on its lists. Pursuant to this Court's recent grant of an extension of time, all reports from Coroner's employees were due to be exchanged on January 14, 2000. On that date, Plaintiff received a statement from Dr. Balraj indicating the work that has been performed by her office (attached as Exhibit A). As this document states no opinions or conclusions, it cannot satisfy the requirement of a written document that "adequately sets forth the expert's opinion," Local Rule 21.1, Part I(B).

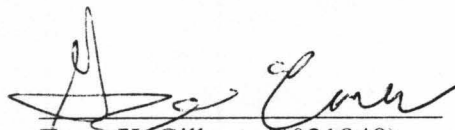
On January 27, 2000, past the deadline set by this Court, counsel for Plaintiff received an "addendum" to Dr. Balraj's statement (attached as Exhibit B), in which she indicated that "[w]ithin a reasonable medical and scientific certainty, I concur with all of the results and conclusions detailed

in the reports that have already been submitted." *See* Exhibit B, at 1. Again, this document does not satisfy the requirement that "each report adequately sets forth the expert's opinion," Local Rule 21.1, Part I(B). Although it uses the common catchphrase, "reasonable degree of [insert field here] certainty," it does not **adequately** set forth Dr. Balraj's opinions.

Under Local Rule 21.1, Part I(B), "[a] party may not call an expert witness to testify unless a written report has been procured from the witness and provided to opposing counsel. * * * An expert will not be permitted to testify or provide opinions on issues not raised in his report." As the State has not provided a satisfactory written report from Dr. Balraj within the time required by this Court, under the mandatory language of this rule, she may not be permitted to give expert opinion testimony.

Therefore, Plaintiff asks this Court to enter an order *in limine* preventing Dr. Balraj from testifying as an expert.

Respectfully submitted,



Terry H. Gilbert (0021948)

George H. Carr (0069372)

1700 Standard Building

1370 Ontario Street


Cleveland, OH 44113

(216) 241-1430

Attorneys for Plaintiff

Certificate of Service

The undersigned certifies that the foregoing Motion *in limine* to Exclude Expert Testimony of Elizabeth Balraj has been served on William Mason, Prosecuting Attorney, Justice Center, 9th Floor, 1200 Ontario Street, Cleveland, Ohio 44113 on this 28th day of January, 2000.



George H. Carr (0069372)
Attorney for Plaintiff



CORONER
Elizabeth K. Balraj, M.D.

January 14, 2000

Marilyn Reese Sheppard
Coroner's Case #76620
Autopsy #M-7280

Additional Work Performed During the Years 1997 to 2000 on the Investigation of the Death of Marilyn Reese Sheppard by the Cuyahoga County Coroner's Office.

I, Elizabeth K. Balraj, M.D., Cuyahoga County Coroner and Forensic Pathologist, performed and/or directed and supervised the performance, monitored the progress and reviewed the findings and documentation of the following additional work performed by the Cuyahoga County Coroner's Office.

1. Disinterment of the body of Dr. Samuel Holmes Sheppard on the 17th of September 1997 from Forest Lawn Memorial Gardens Cemetery, 5600 East Broad Street, Columbus, Ohio 43213. Upon disinterment, samples were collected by Elizabeth K. Balraj, M.D., for DNA analysis by Dr. Mohammad Tahir, Ph.D., Plaintiff's Attorney's DNA Consultant.
2. Disinterment of the body of Marilyn Reese Sheppard (Case #76629, Autopsy #M-7280), and fetus (Case #76629F) from Knollwood Cemetery, 1678 SOM Center Road, Mayfield Heights, Ohio 44124, on the 5th of October 1999. Upon disinterment, examinations were conducted by anthropologists and odontologists respectively. Samples were obtained for DNA analysis by Elizabeth K. Balraj, M.D.
3. DNA Testing: Male Fetus and Marilyn Reese Sheppard.
 - Under direction of Ms. Linda Luke, Supervisor, Trace Evidence and DNA Department, Cuyahoga County Coroner's Office.
4. Head injury reconstruction:
 - a. Study effects and resultant injuries on a skull (visually and radiologically) produced by various



CORONER
Elizabeth K. Balraj, M.D.

weapons, namely: 1950's vintage flashlight, channel lock pliers, fireplace poker and an adjustable crescent wrench. X-rays of the head (17) were taken after use of each weapon.

- Tests performed by Dr. Owen Lovejoy, Ph.D., Consulting anthropologist for the Cuyahoga County Coroner's Office in the presence of Elizabeth K. Balraj, M.D., Linda Luke, and James T. Wentzel, Forensic Photographer, Cuyahoga County Coroner's Office.
- Photographic documentation by Mr. James T. Wentzel.

b. Review of Cuyahoga County Coroner's Office files for other cases of injuries by blunt objects (weapons) to study wound patterns, by Elizabeth K. Balraj, M.D.

5. "Weapon" imprint analysis on pillowcase: to determine the nature of the blood imprint observed on the pillowcase by James T. Wentzel and Trace Evidence Department Scientists, Cuyahoga County Coroner's Office.
6. Source of blood "trail" in the Sheppard home: compare the number and size of bloodstains deposited on a stairwell using bloodied channel lock pliers, a bloodied pipe and a pipette containing blood, by James T. Wentzel and members of the Trace Evidence and DNA Department of the Cuyahoga County Coroner's Office.
7. Photographic analysis of the scar on the wrist of Richard Eberling, by James T. Wentzel.

Independently reviewed two photographs of Richard Eberling's left wrist (taken at the time of his autopsy) in order to compare Marilyn Reese Sheppard's avulsed fingernail with the scar in the photographs.

8. Digitize the film negatives relevant to this case, Mr. James T. Wentzel.
9. Digital image analysis of the wrist watch. Accurately measure the blood stains found on the wrist watch. A composite image was assembled using photographs taken in 1966 of the links of the wrist watch belonging to Samuel Holmes Sheppard, by James T. Wentzel.



CORONER
Elizabeth K. Balraj, M.D.

10. Digital image analysis of Marilyn Reese Sheppard crime scene photographs: determine using modern imaging technology, the size, shape and location of individual blood stains found in crime scene photographs of the bedroom, by James T. Wentzel.

The reports of these tests and procedures are included.

Elizabeth K. Balraj MD

Elizabeth K. Balraj, M.D.
Cuyahoga County Coroner
and Forensic Pathologist



CORONER
Elizabeth K. Balraj, M.D.

January 27, 2000

Marilyn Reese Sheppard
Coroner's Case #76620
Autopsy #M-7280

Addendum to the report dated the 14th of January 2000, titled Additional Work Performed During the Years 1997 to 2000 on the Investigation of the Death of Marilyn Reese Sheppard by the Cuyahoga County Coroner's Office.

All of the tests mentioned in that report (Items 1 through 10) were done under my direction and supervision. I performed and/or directed and supervised the performance, monitored the progress, and reviewed the findings and documentation of these tests. I witnessed the performance and/or interpretation of these tests. Furthermore, I played a major role in designing these tests. I initiated and ordered the performance of test numbers 4 through 10.

Within a reasonable medical and scientific certainty, I concur with all of the results and conclusions detailed in the reports that have already been submitted.

Test #4. Head injury reconstruction.
To provide relevant information about the type of weapon that might have been used to inflict the injuries. I concur with Dr. Lovejoy's opinion as detailed in his report. It is my opinion that these are blows caused by blunt trauma. A flashlight did not produce those injuries. The weapon was greater in mass than a flashlight.

Test #5. I concur with the results and conclusion detailed in the report.

Test #6. I concur with the results and conclusion as detailed in the report.

page #1

PLAINTIFF'S
EXHIBIT

B



CORONER
Elizabeth K. Balraj, M.D.

- Test #7. I concur with the results and conclusion.
- Test #8. I concur with the results.
- Test #9. I concur with the results and conclusion of Mr. James T. Wentzel.
- Test #10. I concur with the test results.

Elizabeth K. Balraj, M.D.
Elizabeth K. Balraj, M.D.
Cuyahoga County Coroner
and Forensic Pathologist