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Defendant's Motion to Exclude Supplemental Reports of Epstein and Laber

Marilyn B. Cassidy
Cuyahoga County Assistant Prosecutor

William D. Mason
Cuyahoga County Prosecutor

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FILED

2000 FEB 23 A 10:35

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

CLERK OF COURTS
CUYAHOGA COUNTY

ALAN DAVIS, EXECUTOR,
Plaintiff

V

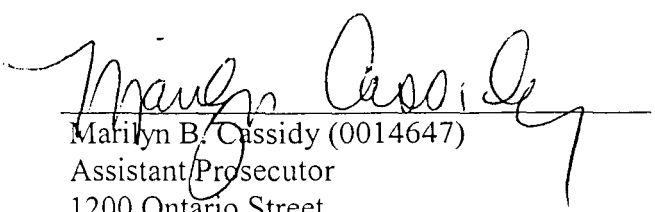
STATE OF OHIO,
Defendant

: CASE NO. 312322
:
: JUDGE SUSTER
:
: DEFENDANT'S MOTION TO
: EXCLUDE SUPPLEMENTAL
: REPORTS OF EPSTEIN AND
: LABER

State of Ohio, by and through counsel William D. Mason, Prosecuting Attorney, County Prosecutor, and Marilyn Cassidy, Assistant Prosecutor, move the court to exclude the supplemental report of Drs. Epstein and Laber. The grounds for this motion are that one expert from whom defendant has not received any initial report signed the report. In addition, the report is dated February 14, 2000 but served upon Defendant February 17, 2000, well after the deadline for supplemental reports set by the court, all as is set forth in the memorandum attached hereto and incorporated herein by reference.

Respectfully submitted,

WILLIAM D. MASON, PROSECUTING
ATTORNEY, CUYAHOGA COUNTY


Marilyn B. Cassidy (0014647)
Assistant Prosecutor
1200 Ontario Street
Cleveland, Ohio 44113
(216) 443-7785

MEMORANDUM IN SUPPORT

On February 17, 2000, Plaintiff served defendant with a supplemental expert report dated February 14, 2000. Bart Epstein and Terry Laber signed the report. The state has previously objected to Laber as an expert in that no report was received from him within the time frame prescribed by the court. In addition, the report is not timely submitted.

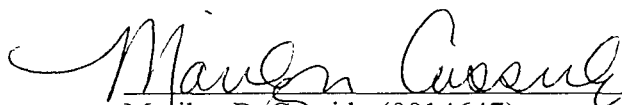
The state objects to any supplemental report from Bart Epstein for the reason that supplemental reports were due on December 31, 1999 pursuant to the case management order. Defendants made written objection to plaintiff's use of Dr. Laber as an expert witness prior to the beginning of trial. Local rule 21.1 provides that no expert may testify unless he has submitted an expert report. To date Dr. Laber has submitted no report, other than this supplemental report at issue. Accordingly, the court should not permit his testimony.

Secondly, the court permitted supplemental reports in order to allow plaintiff to respond to new information provided by defense experts evaluating information from the exhumation of the remains of Mrs. Marilyn Sheppard. That series of reports did not include blood spatter. Moreover, supplemental reports were due by December 31, 1999 pursuant to the court's order.

In sum, one expert who has submitted no prior report signed the supplemental report. Supplemental reports were to have been submitted by December 31, 1999. Finally, the purpose of plaintiff's supplemental reports was to respond to defense reports relative to the exhumation, not blood spatter. In light of the foregoing, the supplemental report of Epstein and Laber should be excluded.

Respectfully submitted,

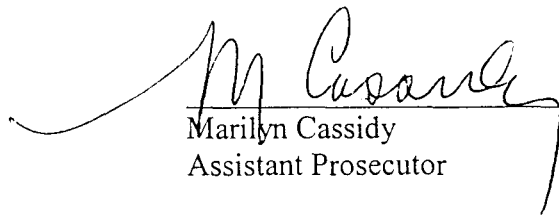
WILLIAM D. MASON, PROSECUTING
ATTORNEY, CUYAHOGA COUNTY


Marilyn B. Cassidy (0014647)
Assistant Prosecutor
1200 Ontario Street
Cleveland, Ohio 44113
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CERTIFICATE OF SERVICE

A copy of the foregoing Motion to Exclude Supplemental Report of Epstein and Laber was served upon Terry Gilbert and George Carr, this 23 day of February, 2000, at 1370 Ontario Street, Suite 1700, Cleveland, Ohio 44113, by ordinary U.S. mail, postage paid.

Respectfully submitted,


Marilyn Cassidy
Assistant Prosecutor