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Motion to Exclude Testimony of Phyllis Moretti

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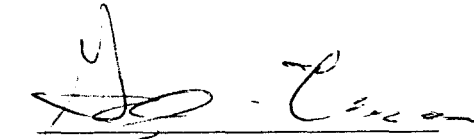
3-7-00

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

CHARLES MURRAY, Administrator)	Judge Ronald Suster
of the Estate of)	
SAMUEL H. SHEPPARD)	Case No. 312322
)	
Plaintiff)	
)	<u>MOTION TO EXCLUDE</u>
vs.)	<u>TESTIMONY OF</u>
)	<u>PHYLLIS MORETTI</u>
STATE OF OHIO)	
)	<u>Rule 104(A) Hearing Requested</u>
Defendant)	
)	

Plaintiff hereby moves this Court for an Order striking Phyllis Moretti as a witness and to preclude the Defendant, State of Ohio, from offering any testimony from her. The reasons and authorities for granting this motion are set forth fully in the attached brief in support, which is hereby incorporated by reference.

Respectfully submitted,


Terry H. Gilbert (0021948)
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1370 Ontario Street
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Attorneys for Plaintiff

Brief In Support

I. Background

Plaintiff expects the State to offer the testimony of Phyllis Moretti during its case in chief. Ms. Moretti purports to have obtained a confession to the murder of Marilyn Sheppard from Dr. Sam Sheppard in 1966.

II. Law and Argument

Pursuant to R.Evid. 804(B)(3), a statement "tending to inculcate the declarant to criminal liability . . . is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement." Here, the alleged confession obtained by Ms. Moretti lacks sufficient corroborating circumstances, and should be excluded in the absence of a proffer of additional corroboration by the State.

III. Conclusion

Ms. Moretti should not be permitted to testify that Dr. Samuel Sheppard confessed the murder of Marilyn Sheppard to her, or to authenticate any purported written confession by him, until evidence of sufficient corroborating circumstances is proffered by the State.

Respectfully submitted,



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Attorneys for Plaintiff

Certificate of Service

The undersigned certifies that the foregoing Motion to Exclude Testimony of Phyllis Moretti has been served on William Mason, Prosecuting Attorney, Justice Center, 9th Floor, 1200 Ontario Street, Cleveland, Ohio 44113 on this 7th day of March, 2000.


George H. Carr (0069372)
Attorney for Plaintiff