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State's Memorandum in Support of Limiting Testimony of Dr. Michael Sobel

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IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

CHARLES MURRAY, ADMINISTRATOR,	:	CASE NO. 312322
Plaintiff	:	
V	:	JUDGE: SUSTER
	:	
STATE OF OHIO	:	<u>STATE'S MEMORANDUM</u>
	:	<u>IN SUPPORT OF</u>
Defendant	:	<u>LIMITING TESTIMONY</u>
	:	<u>OF DR. MICHAEL SOBEL</u>

Defendant anticipates that Dr. Michael N. Sobel will attempt to testify as an expert with regard to the cause of a scar depicted on the wrist of Richard Eberling. Defendant submits that such testimony is impermissible under Ohio Evid. R. 702. Dr. Sobel's area of expertise is forensic odontology. He is not qualified as an expert to reach weapon/wound conclusions once he has excluded the existence of a bite mark.

Evid R. 702 provides, in pertinent part:

A witness may testify as an expert if all of the following apply:

- A. The witness' testimony either relates to matters beyond the knowledge or experience possessed by lay persons or dispels a misconception common among lay persons;

B. The witness is qualified as an expert by specialized knowledge, skill, experience, training, or education regarding the subject matter of the testimony . . .

A threshold determination must first be made under Evid. R. 104 (A) concerning the qualifications of the witness to testify. The expert must demonstrate some knowledge on the particular subject superior to that possessed by an ordinary juror. *Scott v. Yates* (1994), 71 Ohio St.3d 219, citing, *State Auto Mut. Ins. Co. v. Chrysler Corp.* (1973), 36 Ohio St.2d 151, 160. The test for determining the competency of an expert witness was set forth in *State Auto Mut. Ins. Co v. Chrysler Corp, supra, :*

“His qualification [as an expert witness] depends upon his possession of special knowledge which he can impart to the jury, and which will assist them in regard to a pertinent matter, which he must have acquired either by study of recognized authorities on the subject or by practical experience, and it must appear he has an opinion of his own, or is able to form one, upon the matter in question.”

Permitting a witness to testify beyond his scope of expertise constitutes reversible error. The Ohio Supreme Court held that a police officer who was qualified to conduct accident investigation [collect data and record information] was not qualified to testify about accident reconstruction . *Scott v. Yates, supra* at 220. Similarly, in *State v. Williams*, (Ohio App.9 Dist . 1994), 80 Ohio App.3d 648, a chemist was permitted to testify as an expert concerning the reliability of urine testing, but the court found that his credentials were insufficient to qualify his testimony with regard to weapon/wound analysis and such testimony was properly excluded.

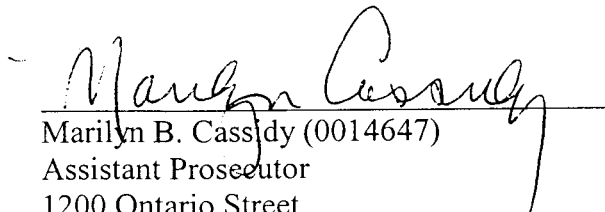
Dr. Sobel testified in his deposition that, in his opinion, a mark on the forearm of Richard Eberling was caused by a fingernail of Mrs. Sheppard. Dr. Michael Sobel is qualified as an odontologist. He attended dental school and has a specialty in orthodontics and forensic odontology. His credentials do not extend to analysis of skin marks, and

wounds, and speculation as to how a wound to the skin has taken place. Such testimony is beyond the scope of Dr. Sobel's expertise and must be excluded. At the very most, Dr. Sobel may be qualified to identify bite marks. Accordingly, he could state that the wound is or is not a bite mark. Any further testimony would be improper.

In light of the foregoing, Defendant respectfully requests that Dr. Michael Sobel's testimony be limited his area of qualified expertise. Further, Defendant respectfully requests that the court exclude testimony by Dr. Sobel concerning a connection between the avulsed fingernail of Mrs. Sheppard and a scar on the wrist of Richard Eberling.

Respectfully submitted,

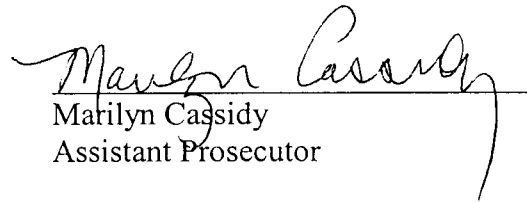
WILLIAM D. MASON, PROSECUTING
ATTORNEY, CUYAHOGA COUNTY


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CERTIFICATE OF SERVICE

A copy of the foregoing Memorandum in Support of Limiting Testimony of Dr. Michael Sobel was hand delivered to Mr Terry Gilbert on February 29, 2000 in Court Room 20 B. A facimile copy was sent to Mr Gilbert on February 28, 2000.

Respectfully,


Marilyn Cassidy
Assistant Prosecutor

*** TRANSMISSION REPORT ***

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