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Motion in Limine to Exclude Plaintiff's Proposed Exhibits (#47, 48, 52, 97)

William D. Mason
Cuyahoga County Prosecutor

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FILED IN THE COURT OF COMMON PLEAS

CUYAHOGA COUNTY, OHIO

1999 DEC 27 P 3:55
ALAN J. DAVIS, Special Administrator
Of the Estate of
SAMUEL H. SHEPPARD

W. F. FURST
CLERK OF COURTS
CUYAHOGA COUNTY

Judge Ronald Suster

Case No. 312322

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

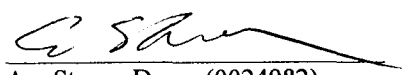
v.

THE STATE OF OHIO

Defendant

Defendant, State of Ohio, by and through counsel, William D. Mason, Prosecuting Attorney for Cuyahoga County, Assistant Prosecutor A. Steven Dever, and Assistant Prosecutor Dean Boland moves this Honorable Court to exclude Plaintiff's proposed Exhibits numbered: 47, 48, 52, and 97 for the reasons set forth fully in the following brief.

Respectfully submitted,
William D. Mason
Prosecuting Attorney
Cuyahoga County


A. Steven Dever (0024982)
Dean Boland (0065693)
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1200 Ontario St.
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(216) 443-5870
Attorneys for Defendant

BRIEF

Facts and Introduction

The current Plaintiff's Exhibit List contains three letters as proposed exhibits. Those exhibits are numbered on the current Plaintiff's Exhibit List as follows: 47, 48, 52, and 97.

Law and Argument

Evid. R. 901(A) states "[t]he requirement of authenticity or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what it purports to be." As of today's date, these letters have not been properly authenticated pursuant to the rule. While Plaintiff's attorneys may be able to properly authenticate these letters pursuant to Evid. R. 901(A) at trial, the admissibility of the letters as evidence would be improper and must be excluded pursuant to Evid. R. 802 as being hearsay evidence.

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 except as otherwise provided by the Constitution of the United States, by the Constitution of Ohio, any statute enacted by the General Assembly. . . by these rules, or by other rules proscribed by the Supreme Court of Ohio." Letters are not admissible to prove the truth of the matter asserted. See, e.g., Mason v. Murphy, (12 Dist. 1997), 123 Ohio App.3d 592 (Letter from forensic chemist at crime laboratory, which contained results of tests performed on blood sample taken from motorist, was hearsay and thus was inadmissible in prosecution for driving under the influence); Miles v. General Tire & Rubber Co., (10 Dist. 1983), 10 Ohio App.3d 186 (Tire manufacturer's recall letter, was inadmissible hearsay evidence against commercial lessor of the motor home, inasmuch as it was offered to prove truth of matter stated therein, namely, that defective tires were used on the motor home).

There are approximately twenty-three exceptions to Evid. R. 802, and none of these exceptions apply to the use of the letters at issue. See Evid. R. 803; Evid. R. 804. In particular, Evid. R. 804(B)(3) does not render this hearsay evidence admissible as a declaration against interest. The Ohio Supreme Court has held that "[t]o qualify as a statement against interest, it must be shown that the statement 'tended to subject' the declarant to criminal liability so that a reasonable person in the declarant's position would not


have made the statement unless the declarant believed it to be true.” State v. Gilliam, (1994), 70 Ohio St. 3d 17, 20.

The letters contain no statements which amount to a declaration against interest. None of the statements by Richard Eberling subject him to criminal liability. Richard Eberling was simply attempting to interject himself into the spotlight and curry favor with Cynthia Cooper. Furthermore, “corroborating circumstances must clearly indicate the trustworthiness of the statement.” Evid. R. 804(B)(3). A statement from a convicted murderer presently incarcerated or any other individual who is attempting to curry favor with prosecutors in order to protect their penal interest is unlikely to be trustworthy. See, e.g., State v. Williams, (4 Dist. April 14, 1992), Hocking County App. No. 90 CA 15 at 5, unreported (trial court erred in admitting hearsay testimony of police officer about a statement made to him by an individual to whom the defendant made a statement of guilt). Therefore, the letters, Plaintiff’s proposed exhibits 47, 48, 52, and 97, are not admissible under Evid. R. 802, or any of the exceptions outlined in Evid. R. 803 or Evid. R. 804.

Conclusion

For the reasons above, the State of Ohio respectfully requests the court to exclude Plaintiff’s exhibits 47, 48, 52, and 97 from this trial.

Respectfully submitted,
William D. Mason
Prosecuting Attorney
Cuyahoga County



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CERTIFICATE OF SERVICE

The foregoing Motion to Exclude Plaintiff’s Exhibits was served upon plaintiff’s counsel Terry Gilbert at 1370 Ontario St, 17th Floor, Cleveland, Ohio 44113 this 27 day of December, 1999 by Regular U.S. Mail.