



1-3-2000

Motion in Limine to Exclude Plaintiff's Proposed Exhibits (#28, 29, 30...)

William D. Mason
Cuyahoga County Prosecutor

Marilyn B. Cassidy
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A. Steven Dever
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IN THE COURT OF COMMON PLEAS

CUYAHOGA COUNTY, OHIO

1000 JAN -3 1:27

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

Plaintiff

vs.

THE STATE OF OHIO

Defendant

Judge Ronald Suster

Case No. 312322

CLERK OF COURTS
CUYAHOGA COUNTY

MOTION IN LIMINE TO
EXCLUDE PLAINTIFF'S
PROPOSED EXHIBITS
(EVID. R. 401& 402)

Defendant, State of Ohio, by and through counsel, William D. Mason,
Prosecuting Attorney for Cuyahoga County, Assistant Prosecutor Marilyn Barkley
Cassidy, and Assistant Prosecutor A. Steven Dever, moves this Honorable Court to
exclude Plaintiff's proposed Exhibits numbered: 28, 29, 30, 33, 34, 35, 36, 37, and 39
for the reasons set forth fully in the following brief.

Respectfully Submitted,

WILLIAM D. MASON
Prosecuting Attorney
Cuyahoga County

Marilyn Barkley Cassidy

Marilyn Barkley Cassidy (0014647)
A. Steven Dever (0024982)
Cuyahoga County Prosecutor's Office
1200 Ontario St.
Cleveland, Ohio 44113
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Attorneys for Defendant

BRIEF

Facts and Introduction

The current Plaintiff's Exhibit List contains numerous items as proposed exhibits. Those exhibits are numbered on the current Plaintiff's Exhibit List as follows: 28, 29, 30, 33, 34, 35, 36, 37, and 39. These exhibits include several items relating Vern Lund. Under Evid. R. 401 and 402, these exhibits are not admissible for the following reasons.

Law and Argument

Evid. R. 401 & Evid. R. 402

Evid. R. 401 defines "relevant evidence" as being any "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." See also Brown v. City of Cleveland, (1981), 66 Ohio St.2d 93. The Plaintiff's proposed exhibits listed above do not meet this definition.

The proposed exhibits are being offered to impeach Richard Eberling and implicate him in the death of Marilyn Sheppard. These exhibits must be excluded because they do not make the existence of any fact of consequence more or less probable. Vern Lund's death certificate, passport, and military photographs simply do not make it more or less probable that Sam Sheppard murdered his wife, or that anyone else did for that matter.

The jury is facing substantial amounts of legal, factual, and scientific information, and the introduction of this evidence would only hinder the jury in its role. The presentation of this evidence would also lengthen what is anticipated to be a protracted trial. Judicial

resources will be strained enough in light of the complexity of the issues and the notoriety of this case and requires that this evidence be excluded.

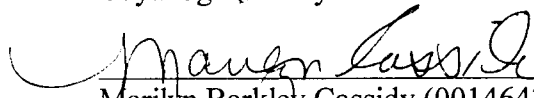
These items pertaining to Vern Lund have absolutely no relevance to the determination of whether Samuel H. Sheppard is innocent of his wife's murder on July 4, 1954. Therefore, the proposed exhibits should not be admitted since they are not relevant under Evid. R. 402.

Conclusion

For the reasons above, the State of Ohio respectfully requests the court exclude Plaintiff's proposed exhibits 28, 29, 30, 33, 34, 35, 36, 37, and 39 from this trial.

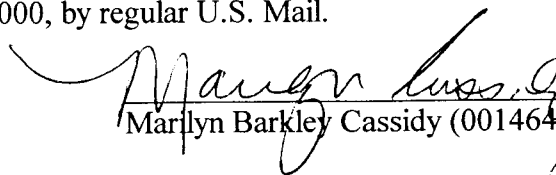
Respectfully Submitted,

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 Street, 17th Floor, Cleveland, Ohio 44113 this 3 day of January, 2000, by regular U.S. Mail.


Marilyn Barkley Cassidy (0014647)