



12-13-1999

## Motion in Limine to Exclude Expert Testimony Pertaining to the Value of DNA Evidence

William D. Mason  
*Cuyahoga County Prosecutor*

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IN THE COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO

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

Plaintiff

vs.

THE STATE OF OHIO

Defendant

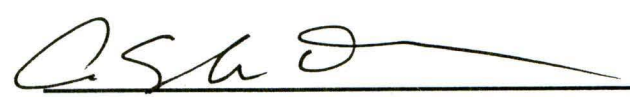
Judge Ronald Suster P 2:17

Case No. 312322 E. FURST  
CLERK OF COURTS  
CUYAHOGA COUNTY

MOTION IN LIMINE TO  
EXCLUDE EXPERT TESTIMONY  
PERTAINING TO THE VALUE OF  
DNA EVIDENCE

Defendant moves this court to exclude the testimony and expert report of Neil  
Miller for the reasons outlined in the attached brief.

Respectfully Submitted,  
William D. Mason  
Prosecuting Attorney  
Cuyahoga County



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*Moot  
off witness  
list*

## Brief

### Introduction

Plaintiff's proposed expert witness Neil Miller is the compiler of a report entitled Convicted By Juries, Exonerated By Science. The report is a compilation of cases in which DNA testing established the identity of a suspect that was different from the person who had previously been convicted of that crime. It is important to note that the report is composed almost entirely of rape cases. There are no homicide cases detailed. The report catalogs the number of persons who were released from prison when a court determined that, by DNA evidence alone, they could not have been the perpetrator of the rape for which they were convicted.

This expert's report and testimony are not relevant to this case and should be excluded.

### Law

The controlling United States Supreme Court cases on the admissibility of expert testimony are Daubert v. Merrell Dow Pharmaceuticals (1993), 113 S. Ct. 2786, 509 U.S. 579 and Kumho Tire Company v. Carmichael (1999), 119 S. Ct. 1167. Daubert established the primacy of the Rules of Evidence over the previous reliance on the well-known "general acceptance" standard of Frye v. United States, 54 App.D.C. 46, 293 F. 1013 when considering the admissibility of scientific expert testimony. The Kumho case expanded the use of Evidence Rule 702 to the testimony of non-scientific, technical experts.

The Daubert two-step analysis requires that an "expert's testimony both [rest] on a reliable foundation and [be] relevant to the task at hand." Daubert at 2790. An expert's

testimony while interesting, or even compelling is not admissible unless it satisfies both of these steps.

Mr. Miller's report, and by extension his proposed testimony, offers no scientific conclusion as to the value of the DNA evidence in this case or any other. He is only able to conclude from the cases he has recorded that a certain number of people have been wrongly convicted of rape and subsequently freed based upon DNA evidence. He cannot conclude that DNA is exculpatory in every case in which it is employed. He cannot conclude that DNA is even useful to either side in every criminal case in which it is available. He is not qualified to testify as to the value of the DNA evidence in this case. He can only conclude that in the cases outlined in his report DNA was critical to identify the suspect and thereby identify someone wrongly accused. His report is a compilation of what other experts, attorneys and judges have determined in cases that have no connection to this one.

Another important point to make is that this report cannot in any way be considered scientific or technical. Mr. Miller's report and testimony are most similar to a newspaper article compiling statistics for an interesting Sunday morning Metro section piece. He can conclude nothing from his report that can be considered scientific or technical. It's reportage. Interesting to some, but a time-wasting distraction for the jury in this case.

Aside from the non-scientific, non-technical nature of his testimony, it is wholly irrelevant to the sole issue of this case---Is Dr. Sam Sheppard innocent of the murder of his wife? "If scientific, technical or other specialized knowledge will assist the trier of fact to understand the evidence or to determine *a fact in issue*, a witness qualifies as an

expert.” Evid. R. 702. (Emphasis added). There is no fact at issue in this case for which Mr. Miller’s testimony will provide insight to the jury. His testimony will be used only to impermissibly bolster the testimony of their DNA expert, Dr. Mohammad Tahir. It is for Dr. Tahir to comment or not on the value of the DNA evidence in this case. Mr. Miller has no skill, education or experience (and plaintiff’s haven’t offered him as a DNA expert) to entitle him to comment on the DNA evidence in this case. Allowing him to comment on the value of DNA evidence as used in other cases opens the floodgates to companion witnesses to each expert offered by either party. Using plaintiff’s logic, the State of Ohio would be entitled to offer an additional expert to each of our current experts to comment on how valuable that expert’s testimony will be. The scenario is a waste of time.

Finally, relying on his report, Mr. Miller has made no analysis of any of the evidence in this case, including the DNA evidence of which plaintiff’s want him to speak. He is not an expert in any area that pertains to the factual disputes in this case. He has not conducted any analysis of the evidence in this case. It is a much closer connection to the case to allow a reporter from the time of either of the two trials to offer a report that compiles the color, style and size of the suits the parties wore to trial each day. Testimony as to how many wrongly accused persons were later released from prison based upon DNA tests does not inform this jury one way or the other as to whether Dr. Sam Sheppard murdered his wife on July 4, 1954.

For the reasons listed above, defendant requests the court exclude the report and testimony of plaintiff’s proposed expert Neil Miller.

Respectfully Submitted,  
William D. Mason  
Prosecuting Attorney  
Cuyahoga County



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#### CERTIFICATE OF SERVICE

This Motion to Exclude the Testimony of Plaintiff's Expert Neil Miller was served upon plaintiffs at 1370 Ontario, The Standard Building, 17<sup>th</sup> Floor, Cleveland, Ohio 44113, this 13 day of December, 1999 by regular U.S. Mail.



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Steven Dever (000000000)  
Cuyahoga County Prosecutor's Office