

IN THE COURT OF COMMON PLEAS OF DELAWARE COUNTY, OHIO

THE STATE OF OHIO, :

Plaintiff, :

vs. : Case No. 16 CR I 07 0349

WESLEY P. HADSELL, :

Defendant. :

MOTION FOR HEARING PURSUANT TO EVID. R. 702
EVIDENTIARY HEARING REQUESTED

Now comes the State of Ohio, by and through Assistant Delaware County Prosecutor Douglas Dumolt, respectfully moving this Court to conduct an evidentiary hearing pursuant to 702 to determine whether the proposed opinions and testimony of George Shaw, MD PHD, satisfy the requirements of Evid. R. 702. Specifically, that State requests a hearing to determine whether the witness qualifies as an expert pursuant to Evid. R. 702(B) and whether the proposed opinions and testimony of this witness are scientifically reliable pursuant to Evid. R. 702 (C) and Daubert v. Merrell Dow Pharmaceuticals, 609 U.S. 589 (1993).

Defense counsel has previously been granted a hearing with respect to the State's expert. To the extent the concerns raised by the defendant have any validity, they are equally applicable to his own proposed expert. The State respectfully requests the hearing on the defense expert be set at the same time. Alternatively, the State would request the current hearing be vacated and both witnesses be briefly questioned outside the presence of the jury before they testify at trial.

Common Pleas Court
Delaware County, Ohio
FILED
JAN 03 2018
2018 JAN 13 PM 3:41
CLERK OF COURTS
DELAWARE COUNTY, OHIO
COMMON PLEAS COURT

Memorandum in Support

Determining whether a witness may provide expert testimony "entails a preliminary assessment of whether the reasoning or methodology underlying the testimony is scientifically valid and of whether that reasoning or methodology properly can be applied to the facts in issue." Daubert v. Merrell Dow Pharmaceuticals, Inc. (1993), 509 U.S. 579, 113 S.Ct. 2786, 2796, 125 L.Ed.2d 469. However, the United States Supreme Court recognized in Kumho Tire Co., Ltd. v. Carmichael (1999), 526 U.S. 137, 119 S.Ct. 1167, 143 L.Ed.2d 238, that "[t]he trial court must have the same kind of latitude in deciding how to test an expert's reliability, and to decide whether or when special briefing or other proceedings are needed to investigate reliability, as it enjoys when it decides whether or not that expert's relevant testimony is reliable." Kumho Tire at 152

On January 2, 2018 the State received an expert report from the defendant in this case outlining certain opinions he intends to offer at trial. Unlike the lengthy report prepared by Ruth Downing, Dr. Shaw's report is rather brief and relies in part upon erroneous information that will not be admitted at trial. One example of this is that "injuries may be more apparent a few days after the strangulation event, and this is not the case here." He reaches this conclusion based upon a mistaken belief that some of the photographs he reviewed were taken several days after the strangulation event. They were not.

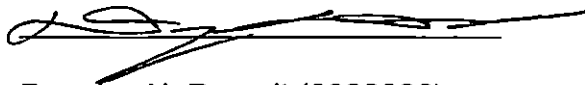
In reviewing Dr. Shaw's CV, he appears to have neither taught nor received any type of specialized training with respect to strangulation. None of the lectures, presentations, or publications he has listed on his CV appear more than tangentially related to the testimony he would be offering in this case. Moreover, the report is silent as to whether or not Dr. Shaw employed "scientifically valid reasoning, theories, principals, or methodologies" in forming his opinion. Ironically, these are the same alleged deficiency the defendant complains of with respect to in the expert report provided by the State. If the defendant is permitted to conduct a pretrial examination of the State's expert, the same opportunity must be afforded to the State.

While Dr. Shaw is undoubtedly qualified to offer testimony about many topics relating to the field of medicine, his CV does not reflect any specialized training or knowledge that would allow him to form the opinions he offered in this case. This stands in stark contrast to the State's expert witness who has both taught and attended dozens of trainings pertaining to strangulation and has previously been recognized as "an expert in the effects and identification of strangulation. See e.g. *State v. Plott*, 2017-Ohio-38, ¶¶114-117 (finding no error in qualifying Ruth Downing as an expert in this field).

In this case, both sides have prepared expert reports offering alternative theories of causation of the injuries sustained by the victim in this case. The State's expert believes the injuries to be the result of manual strangulation. The defense expert believes the injuries are also/more consistent with the defendant merely striking the victim.

After a preliminary examination both experts, the State anticipates both experts being permitted to testify and the jury being permitted to give the appropriate weight to each expert.¹ The State would prefer that both experts simply be questioned outside the presence of the jury immediately before they testify. This would eliminate the burden on the witnesses of appearing for separate hearings so close to trial. The State anticipates Dr. Shaw's schedule is likely as busy as Nurse Downing's. However, if the Court is to have a pretrial hearing on the qualifications and opinions of the State's expert, the same procedure should be employed for the defendant's purposed expert.

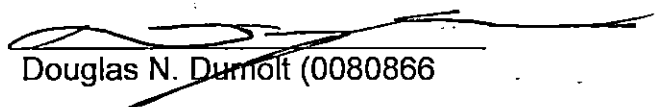
RESPECTFULLY SUBMITTED,
CAROL HAMILTON O'BRIEN,
PROSECUTING ATTORNEY



Douglas N. Dumolt (0080866)
Assistant Prosecuting Attorney
140 North Sandusky St.
Delaware, OH 43015
(740) 833-2690
(740) 833-2689 FAX
COUNSEL FOR PLAINTIFF

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing memorandum delivered to Brian Jones, attorney for the defendant, on this, the 3rd day of January, 2018 via courthouse mail.



Douglas N. Dumolt (0080866)

¹ The State anticipates the defense expert modifying the portions of his opinion that rely upon a mistaken understanding of the record prior to trial.