

STATE OF MISSOURI)
)
CITY OF ST. LOUIS) SS

IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS
STATE OF MISSOURI

STATE OF MISSOURI,)
)
Plaintiff,)

vs.) Case No.: 2322-CR00297-01

DANIEL RILEY,)
)
Defendant.) Division No.: 22

MOTION TO PRECLUDE TESTIMONY AND TO STRIKE A WITNESS
AND REQUEST FOR SANCTIONS

COMES NOW Defendant Daniel Riley, by and through counsel The Diemer Law Firm, P.C. and for its Motion to Preclude the Testimony and Strike the Expert Witness stating:

1. Defendant has previously sent a Request for Discovery.
2. More specifically, Defendant requested all expert reports and data.
3. Defendant is in possession of Det. Morris’s “Accident Reconstruction Report.”
4. More recently, Defendant has requested access to the actual physical evidence of the actual crash data recorders for the vehicles listed in the “Accident Reconstruction Report” authored by Det. Morris.
5. The State of Missouri, by the Office of the Circuit Attorney, has not responded to the Request to examine the actual data recorders.
6. The Police Reports provided, do not list the automobile data records as being seized as and for evidence.

7. Furthermore, the “Accident Reconstruction Report” details that the data retrieval cord connected to the automobile data recorder from Defendant’s vehicle was not proper based upon the available information to Det. Morris.

8. Det. Morris also states in his “Accident Reconstruction Report” that upon obtaining the proper data retrieval cord, he would re-examine the automobile data recorder of Defendant’s vehicle to verify the accuracy of his previously obtained results.

9. A complete review of the “Accident Reconstruction Report” in this matter does not reveal that Det. Morris performed any such test.

10. The expert witness endorsed by the Defense cannot verify the results of Det. Morris because there is no automobile data recorder to examine.

11. While the expert witness endorsed by the Defense is in possession of data retrieved by Det. Morris, admittedly this is the data derived from the incorrect data retrieval cord connected to the automobile which the Defendant was alleged to have operated at a speed above the limit for the City of St. Louis.

12. No corroborating scientific evidence has been provided to authenticate the data retrieved by the use of an improper connection.

13. The State has not preserved evidence for the Defense expert to even test the results of the use of the improper data retrieval cord.

14. By the State’s inability to verify the information because of the use of an improper connection, the State now intends to introduce technical evidence by an expert witness without proper scientific proof, or even verification by their own expert.

Discussion

Frye Standard

The Federal Court of Appeals for the District of Columbia held in *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923) that for new or novel scientific evidence to be admissible, it must “have gained general acceptance in the particular field in which it belongs.” This standard came to be known as the *Frye* standard. There are two prongs to the *Frye* standard:

1. identifying the “particular field” or relevant scientific community; and
2. demonstrating that novel scientific evidence (such as accident reconstruction by use of crash data recording) is generally accepted in that community.

Combined, both prongs provided a measure of the reliability of the scientific evidence. The *Daubert* case (*Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 584-587.) went a bit further in identifying the factors to be considered. The court defined “scientific methodology” as the process of formulating hypotheses and then conducting experiments to prove or falsify the hypothesis, and provided a set of illustrative factors (i.e., not a “test”) in determining whether these criteria are met:

1. Whether the theory or technique employed by the expert is generally accepted in the scientific community;
2. Whether it has been subjected to peer review and publication;
3. Whether it can be and has been tested;
4. Whether it has a known error rate; and
5. Whether the research was conducted independent of the particular litigation or dependent on an intention to provide the proposed testimony.

Here, while there is a acceptance to a degree of reconstruction based upon proper retrieval of information, there is no information provided by the State that the information retrieved in this case is accurate. In fact, the State's own expert, writes in his report that he would re-test the data with the use of a proper connection. In other words, Det. Morris (the State's Expert) is aware of a potential issue, and he cannot recreate the results using the proper equipment. And, if you apply the underlying principle of *Frye* or *Daubert*, the reliability of the evidence is dependent upon the ability to recreate test result.

In this case, the Defense cannot recreate, nor verify the data and information and results for the lack of the actual data recorder for the expert to test.

The State, by their expert, did not employ a cord generally accepted to retrieve data, and admitted it was incorrect. The State has not provided peer review on the technique employed by Det. Morris and Morris himself admits he should use the correct connection and had hoped to do so but did not. Moreover, the State **cannot and did not** recreate, **nor** verify the data and information and results using the proper equipment. Det. Morris' technique has not been tested for accuracy, and there is no known error rate.

It seems, therefore, that the State is seeking to introduce results and opinions that have not be verified and are not generally accepted because of the method, manner, and admitted use of an improper connection to the data recording device employed in the Defendant's vehicle.

WHEREFORE, based on the foregoing, Defendant prays this Court issue an Order Precluding the Opinions and Evidence regarding the data allegedly retrieved from the Defendant's vehicle; of Striking Det. Morris as an expert witness; and as a Sanction for failing to preserve evidence; that the Defense be allowed to submit instructions to the Jury that an adverse

inference should be drawn for the State failing to preserve evidence, and such other and further relief as the Court deem just and proper.

Respectfully submitted,

The Diemer Law Firm, P.C.

/s/ Daniel E. Diemer

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CERTIFICATE OF SERVICE

The undersigned certifies that a true copy of the foregoing instrument was served upon the following parties via e-filing on this 31st day of January, 2024, to: Circuit Attorney's Office, St. Louis City.

/s/ Daniel E. Diemer