

2016 JAN -5 A 10: 35

STATE OF MARYLAND

v.

CAESAR GOODSON

* * * * *

CRIMINAL DIVISION

IN THE
CIRCUIT COURT FOR
BALTIMORE CITY
CASE No. 115141032

STATE'S MOTION IN LIMINE TO PROHIBIT THE TESTIMONY OF CHARLES G. RUSSELL, OR IN THE ALTERNATIVE, LIMIT HIS TESTIMONY TO ACCIDENT RECONSTRUCTION

Now comes the State of Maryland, by and through Marilyn J. Mosby, the State's Attorney for Baltimore City; Michael Schatzow, Chief Deputy State's Attorney for Baltimore City; Janice L. Bledsoe, Deputy State's Attorney for Baltimore City; and John Butler, Assistant State's Attorney for Baltimore City; and pursuant to Rule 4-252(d) respectfully moves this Court *in limine* to issue a pretrial order to prohibit the testimony of Charles G. Russell or, in the alternative, to limit his testimony to the field of accident reconstruction, his area of presumed expertise. In support of this Motion, the State submits the following:

1. The Defendant has informed the State that he proposes to call Charles G. Russell as an expert in the area of Accident Reconstruction.
2. Maryland Rule 5-702 governs the admissibility of expert testimony and provides:

Expert testimony may be admitted, in the form of an opinion or otherwise, if the court determines that the testimony will assist the trier of fact to understand the evidence or to determine a fact at issue. In making that determination, the court shall determine (1) whether the witness is qualified as an expert by knowledge, skill, experience, training, or education, (2) the appropriateness of the expert testimony on a particular subject, and (3) whether a sufficient factual basis exists to support the expert testimony.

Additionally, as the Court of Special Appeals has explained,

If a proffered expert opinion, properly challenged, fails the Rule 5-702 test in any respect, it does not come into evidence at all. It does not come halfway in, with less than full efficacy. Under Rule 5-702, the evidence is either in or out.

Terumo Med. Corp. v. Greenway, 171 Md. App. 617, 624 (2006). Further, “if an expert's opinion testimony is based upon a premise which is shown to be unsound or faulty, the judge should strike the testimony.” *Franch v. Ankney*, 341 Md. 350, 361 (1996).

3. To date, the Defendant has provided the State with the opinions, credentials, and curriculum vitae of Charles G. Russell, including his employment history and prior court appearances in which he was designated as an expert in the field of accident reconstruction. However, the solitary reference within these materials to the field of biomechanics is a class attended by Mr. Russell entitled “Occupant Kinematics & Biomechanics.” Stated another way, according to his own credentials Mr. Russell has a limited educational background in the field of biomechanics, no previous work experience in the field of biomechanics, nor has he ever previously been qualified as an expert in the field of biomechanics.

4. While Maryland’s appellate courts have yet to differentiate the fields of biomechanics and accident reconstruction, the Sixth Circuit, in *Smelser v. Norfolk S. Ry.*, 105 F.3d 299, 305 (1997), explains that biomechanics “apply the principles in mechanics to the facts of a specific accident and provide information about the forces generated in that accident, explain how the body moves in response to those forces, and thus determine what types of injuries would result from the forces generated.” The Twelfth Circuit, in a similar fashion, defines accident reconstruction as “[a] mathematical recreation of a wreck [which] uses the speeds and weights of the vehicles and factors in the coefficient of friction of the relevant surfaces and vehicles to create a model that integrates the physical evidence into a mathematical equation that explains the wreck.” *Brown v. State*, 303 S.W.3d 310, 320 (2009). In *Withrow v. Spears*, 967 F. Supp. 2d 982, 992 (D. Del.

2013), the United States District Court excluded testimony by a “licensed professional engineer, accredited in four states . . . [who] served as an expert witness in civil and criminal courts . . . [with] over 40 years of experience . . . in accident reconstruction,” because said testimony involved hand placement and body movements, an area outside the scope of accident reconstruction. In explaining the difference between the two fields, the Court explained that biomechanical testimony involves, “apply[ing] the principles in mechanics to the facts of a specific accident . . . and the forces generated in that accident” and explaining “how the body moves in response to those forces [to] determine what types of injuries would result from the forces generated.” *Id.* Furthermore, “accident reconstruction testimony [entails] facts involved in the sequence of events immediately preceding an accident, such as those relating to vehicle mass; direction of skid marks; dimensions of vehicles involved; dents, breaks and paint transfers of vehicles; road surface textures; and physics principles of mechanics such as inertia, velocity, coefficients of friction, and operating characteristics of vehicles.” *Id.* (internal quotation marks omitted).

5. On December 7, 2015, the Defendant disclosed Dr. Michael Woodhouse as an expert in the field of biomechanical engineering. Along with a two-paragraph opinion and curriculum vitae, the Defendant disclosed multiple graphs displaying “Police Van Accident plots” and eight (8) videos, each depicting a different angle of a singular event in which a handcuffed, leg-shackled, figure falls backwards while striking the rear wall of what appears to be a replication of the interior of a Baltimore City police van. The State received no detailed report.

