

**IN THE DISTRICT COURT OF COUNTY
STATE OF OKLAHOMA**

THE STATE OF OKLAHOMA,)	
Plaintiff,)	
)	
vs.)	Case No. CF-
)	
Defendant.)	

**MOTION FOR *DAUBERT/KUMHO* HEARING ON ADMISSIBILITY
OF CONCLUSIONS OF**

COMES NOW the Defendant through undersigned counsel and respectfully moves this Court to grant a hearing on the reliability and admissibility of the conclusion of the witness [redacted] that the death of [redacted] was deemed a homiced. This hearing is requested pursuant to *Taylor v. State*, 1995 OK CR 10, 889 P.2d 319, which is the Oklahoma adoption of *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 113 S.Ct. 2786, 125 L.Ed.2d 469 (1993), and pursuant to *Harris v. State*, 2004 OK CR 1, 84 P.3d 731,745, which adopted the holding of *Kumho Tire Company, LTD v. Carmichael*, 526 U.S. 137, 119 S.Ct. 1167, 143 L.Ed. 238 (1999).

In all cases, a court must exercise its gatekeeping obligation so that the expert, whether relying on "professional studies or personal experience," will, when testifying, employ "the same level of intellectual rigor" that the expert would use outside the courtroom when working in the relevant discipline. . . . A court must . . . make a determination of the appropriate factors of reliability for the particular controversy before it based upon the nature of that controversy.

Christian v. Gray, 2003 OK 10, 65 P.3d 591. A *Daubert* hearing is the usual tool for a Court to perform this gatekeeping task¹.

STATEMENT OF PERTINENT FACTS

The body of [redacted] was examined by a Pathologist employed by the Office of the Chief Medical Examiner [redacted], who concluded that a Homicide

¹“The Tenth Circuit federal court has stated that federal courts may decide whether a *Daubert* challenge is decided upon special briefing or some other procedure, and has further explained that a common method is a *Daubert* hearing, although such a hearing is not specifically mandated.” *Christian v. Gray, supra*, 2003 OK 10, 65 P.3d at 610.

had occurred although no medical or scientific evidence has been provided to confirm such a conclusion.

- The conclusion of [REDACTED] does not meet scientific or specialized knowledge standards of admissibility as required by *Taylor and Harris, supra*. [REDACTED] reported that [REDACTED] had no fatal injuries, and that nonetheless based on her examination she ruled manner of death to be homicide, despite the absence of signs of struggle, or defensive injuries, and including a toxicology report that indicates potentially harmful levels of ETOH and Methamphetamine. Her reasoning was not apparent and was counter-intuitive. [REDACTED] states in her report the findings of the investigator of the ME's office. This creates strong doubt whether her conclusions were based on scientific analysis, or on a strong predisposition to arrive at a particular inculpatory conclusion at the expense of accepted scientific principles of analysis.

- Without physical scientific evidence, conclusions that the "manner of death" was Homicide due to traumatic asphyxia would be false and insupportable. Further, [REDACTED] report is contradictory based on the accepted scientific definition of traumatic asphyxiation.² Coupled with the loss of accreditation of the Office in which [REDACTED] performs her duties and based upon the OK statute of all laboratories being accredited, [REDACTED] testimony cannot be trusted to provide any value whatever in proving the State's case. These deficiencies warrant inquiry into whether her testimony can satisfy *Taylor/Daubert* standards.

The standards of admissibility under *Daubert* and *Kumho* clearly are not met by [REDACTED] strained, procrustean conclusions. The question then arises whether her testimony can meet *Kumho* standards of specialized knowledge in this case.

In this hearing Defendant proposes to examine by cross-examination of [REDACTED] the validity of her conclusion as to the **MANNER** of death, asserting that such a connective

rationale would involve a novel theory of inductive reasoning of highly questionable reliability, since it is not based on logical deductions from her examination.

Respectfully submitted,



CERTIFICATE OF SERVICE