

Hair Evidence

n “This court has been unsuccessful in its attempts to locate *any* indication that expert hair comparison testimony meets any of the requirements of *Daubert*.”

n Williamson v. Reynolds, 904 F. Supp. 1529, 1558 (E.D. Okl. 1995) *rev'd on this issue*, Williamson v. Ward, 110 F.3d 1508, 1522-23 (10th Cir. 1997) (due process, not *Daubert*, standard applies in habeas proceedings)

Williamson (cont.)

- n Expert: “microscopically consistent”
- n “[T]here ... could be another individual somewhere in the world that would have the same characteristics.”
- n Prosecutor: “[T]here’s a match.”

Williamson (cont.)

- n State appellate court: The “hair evidence placed [petitioner] at the decedent’s apartment.”
- n “Expert did not explain which of the ‘approximately’ 25 characteristics were consistent, any standards for determining whether the samples were consistent, how many persons could be expected to share this same combination of characteristics, or how he arrived at his conclusions.”

Edward Honaker

- n Expert: Crime scene hair sample “was unlikely to match anyone” other than the defendant.
- n Another expert would later conclude: the “hairs were not comparable.”
- n Exonerated by DNA.

Central Park Jogger

- n Prosecutor “pointed out, hairs from the jogger were found on two of the suspects. How could that have happened if they were not involved?”
 - n N.Y. Times, Dec. 1, 2002, at 50.
- n Later DNA analysis: not jogger’s hair

Montana: Arnold Melnikoff

n Erroneous hair evidence in the trial of Jimmy Ray Bromgard, who spent 15 years in prison before being exonerated by DNA.

n Liptak, *2 States to Review Lab Work of Expert Who Erred on ID*, N.Y. Times, Dec. 19, 2002, at A24

Montana (cont'd)

- n Melnikoff: “[T]he odds were **one in one hundred** that two people would have head hair *or* pubic hair so similar that they could not be distinguished by microscopic comparison and the odds of *both* head and pubic hair from two people being indistinguishable would be about **one in ten thousand.**”
- n State v. Bromgard, 862 P.2d 1140, 1141 (Mont. 1993)

Montana (cont'd)

“The witness’s use of probabilities is contrary to the fact that there is not – and never was – a well established probability theory for hair comparison... . If this witness has evaluated hair in over 700 cases as he claims in his testimony, then it is reasonable to assume that he had made many other misattributions.”

⁂ Innocence Project, *Peer Review Report*

Nelson v. Zant

- n State's expert testified that the hair not only could have come from the defendant but that it could only have come from about 120 people in the entire Savannah area.
- n However, FBI concluded that it was not suitable for comparison purposes.
 - n 405 S.E.2d 250 (Ga. 1991).

Oklahoma City: Joyce Gilchrist

- n “[T]he forensic report was at best incomplete, and at worst inaccurate and misleading.”
- n “We find it inconceivable why Ms. Gilchrist would give such an improper opinion, which she admitted she was not qualified to give.”

n McCarty v. State, 765 P.2d 1215, 1218 (Okla. Crim. App. 1988)

FBI Review

- n 8 cases: misidentified hairs in 6 & fibers in 1
- n “The review of the laboratory notes revealed that they were often incomplete or inadequate to support the conclusions reached by the examiner. No documentation existed that would allow the examiner to identify textile fibers associated in one of the cases.”
 - n Special Agent Deedrick, *Summary of Case Reviews of Forensic Chemist, Joyce Gilchrist* (April 4, 2001) at 1

Guy Paul Morin

- ✎ Moran was erroneously convicted based, in part, on hair evidence.
- ✎ Recommendation 2: “Trial judges should undertake a more critical analysis of the admissibility of hair comparison evidence as circumstantial evidence of guilt.”
 - ✎ Hon. Fred Kaufman, *The Commission on Proceedings Involving Guy Paul Morin* (Ontario Ministry of the Attorney General 1998).