

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT IN AND
FOR ORANGE COUNTY, FLORIDA

CASE NUMBER 2008-CF-15606

STATE OF FLORIDA,
Plaintiff,

v.

CASEY MARIE ANTHONY,
Defendant.

ORDER GRANTING MOTION TO STRIKE DEFENDANT'S MOTION
TO EXCLUDE UNRELIABLE EVIDENCE (PLANT OR ROOT GROWTH)

This matter came before the Court for consideration of the state's Motion, filed February 15, 2011 and the defense's Memorandum in Opposition, filed March 7, 2011.

The state alleges the defense Motion to Exclude Unreliable Evidence (plant or root growth) is insufficient and argues that David W. Hall, Ph.D, will present opinion testimony based on his personal experience rather than a methodology or scientific principle or test that is generally accepted in the scientific community. The state asks the Court to strike the portion of the Motion to Exclude Unreliable Evidence that would compel the state to establish the general acceptance of the testimony.

Dr. Hall was retained as a botanist to look at plant material at the crime scene, i.e., the scene where Caylee Marie Anthony's body was found. He visited the scene to view the vegetation, and subsequently reviewed photographs. It is clear from reading Dr. Hall's deposition that his opinions are based on his personal experience. For example, he candidly admitted that he was not aware of any publication that supported the use of root diameter to establish the growth rate of unidentified plants, nor was he aware of his peers

engaging in that methodology. Furthermore, he indicated his opinion was based on 60 years of studying plants and root systems he had no empirical data. *See* deposition transcript, pages 48 and 59.

In Florida, the admissibility of testimony and other evidence based on novel scientific evidence is governed by *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923).

In general terms, the gate of admissibility is not opened unless the proponent of new scientific evidence can demonstrate by the greater weight of the evidence that the scientific principle upon which the evidence is based, and the testing procedures used to apply the principle to the facts of the case, have gained general acceptance for reliability among impartial and disinterested experts within the particular scientific community to which the principle belongs. *See Sybers v. State*, 841 So. 2d 532, 542 (Fla. 1st DCA), *review dismissed*, 847 So. 2d 979 (Fla. 2003).

State v. Demeniuk, 888 So. 2d 655, 658 (Fla. 5th DCA 2004).

More specifically, *Frye* requires the trial judge, as gatekeeper, to draw three conclusions before allowing an expert to testify on the applicability of a new scientific principle. The judge must:

1. Determine whether the proposed expert will assist the jury in understanding the evidence or in determining a fact in issue;
2. Decide whether the expert's testimony is based on a scientific principle or discovery that has gained general acceptance in the particular field in which it belongs; and
3. Determine whether a particular witness is qualified as an expert to present opinion testimony on the subject in issue.

Id., citing *Ramirez v. State*, 651 So. 2d 1164, 1166 (Fla. 1995). Thus, the *Frye* test applies when an expert witness reaches a conclusion by deduction, applying a scientific principle, formula, or procedure developed by others.

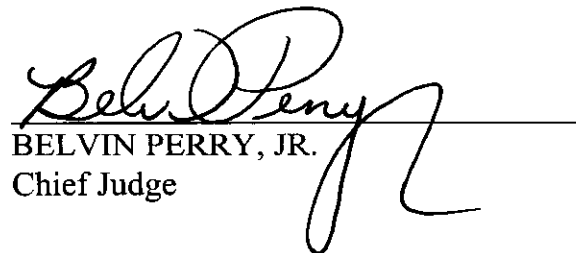
By contrast, “pure opinion” testimony is based solely on the expert’s training and experience, personally developed through clinical experience, observation, or research.

Id. at 659, citing *Hadden v. State*, 690 So. 2d 573, 579-580 (Fla. 1997), and *Rickgauer v. Sarkar*, 804 So. 2d 502, 504 (Fla. 5th DCA 2001). It is well-established that *Frye* is not applicable to pure opinion testimony, which is analyzed by the jury as it analyzes any other personal opinion or factual testimony given by a witness. *Marsh v. Valyou*, 977 So. 2d 543, 548 (Fla. 2007); *Flanagan v. State*, 625 So. 2d 827 (Fla. 1993).

In arriving at his conclusions, Dr. Hall did not use any scientific tests, principles, procedures, or methodology. He did not read any scientific journals or conduct any experiments. Instead, he relied upon his own analysis of photographs of the plant material at the crime scene. This Court concludes that Dr. Hall will give pure opinion testimony, which is not subject to a *Frye* challenge, so that the state does not have to establish the general acceptance of the opinions to which he will testify. Defense counsel will be able to cross-examine him at trial, and the jury will be entitled to evaluate the weight and credibility to be given to his opinions.

It is hereby ORDERED AND ADJUDGED that the state's Motion to Strike Defendant's Motion to Exclude Unreliable Evidence (Plant or Root Growth) is GRANTED.

DONE AND ORDERED in chambers at Orlando, Orange County, Florida this 18th day of March 2011.

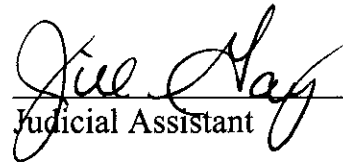

BELVIN PERRY, JR.
Chief Judge

Certificate of Service

I certify that a copy of the foregoing Order Granting Motion to Strike Defendant's Motion to Exclude Unreliable Evidence (Plant or Root Growth) has been provided this

18th day of March 2011 to the following:

- Linda Drane Burdick, Jeffrey L. Ashton, and Frank George, Assistant State Attorneys, 415 North Orange Avenue, Orlando, Florida 32801
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