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3RD DISTRICT COURT SALT LAKE COUNTY, STATE OF UTAH	
STATE OF UTAH, Plaintiff, v. JASON CHRISTOPHER HALL, Defendant.	MOTION IN LIMINE TO EXCLUDE EXPERT TESTIMONY Case No. 221906445 Judge: PAUL B. PARKER

STATE OF UTAH, through Steven A. Wuthrich and Heather Waite Grover, Assistant Attorneys General, moves to exclude the expert testimony of Gerald M LaPorte. The expert's purported testimony relies on uncorroborated hearsay of the defendant rather than on sufficient facts and data; the testimony impermissibly comments on the defendant's character for honesty; and, absent the uncorroborated hearsay, the content of the expert's testimony is irrelevant, confusing, misleading to the jury, and a waste of time.

FACTS

1. Defendant is charged with stalking and threatening an elected official. The basis for these charges is a series of emails, letters, and packages sent to a city councilman. While the emails are full of criticisms, the most blatant threats of violence are contained in the letters that were sent either in envelopes or as part of a package. The letters do not contain handwriting. Rather, they are typed messages printed on white, standard-sized paper (8.5"x11").

2. The letters were sent to the city councilman on four occasions: (1) Letter #1, postmarked March 8, 2021, (2) Letter #2, postmarked November 20, 2021, (3) Letter #3, postmarked March 11, 2021, and (4) Letter #4, postmarked November 2, 2021. Letter #1 consisted of two sheets of paper; a different message was written on each sheet of paper. The expert designated Letter #1 and its envelope as Q1. *See* Exhibit A, Expert Report, at 5. To distinguish between the two pages in Letter #1, the expert referred to the page with the longer message as Q1B and the page with the shorter message as Q1C. *See id.* The expert designated Letter #2 and its envelope and label as Q2; Letter #3 as Q3; and Letter #4 as Q4. *See* Exhibit A, Expert Report, at 5. *See id.*

3. Sometime in 2023, Defendant retained an expert, Gerald M. LaPorte, to examine samples from these four threat letters. In January 2024, the expert came to the Utah Attorney General's Office to take samples from the original letters. From the samples, the expert intended to discern the type of ink with which the letters were printed. The expert made this determination by performing a chemical analysis on the ink. *See id.* at 5-8. Once the ink type was discerned, the expert compared the ink in the threat letters with the ink in sample documents printed from office machines in Defendant's workplace and home. *See id.* at 6-8.

4. On January 19, 2024, Defense counsel's investigator gave the expert sample printouts from four sources: three office machines at Defendant's workplace and one office machine at Defendant's home. *See id.* at 6, ¶ 19. The sample page from the office machine at Defendant's

home is described this way: “This page was printed on 1-19-2024 on HP LaserJet P1102w printer located at Hall’s house. This is the only operative printer, and has been for several years.” *See id.* Attachment 11.

5. In April 2024, Defendant provided the State with a report prepared by the expert. The expert’s report contains a description of the testing methods, conclusions about the ink type of the threat letters and the sample pages, and opinions about whether the ink in the threat letters match the ink in the sample pages from Defendant’s office machines. Defendant intends to call the expert to testify at trial and to offer his report as evidence.

6. According to the report, the expert determined that the page from Letter #1 with the longer message (Q1B), Letter #2 (Q2B), and the label from Letter #2 (Q2A) were printed with ink from an ink-jet printer. *See id.* p. 7. In fact, he concluded that it is “probable” that the two letters and label were printed on the exact same inkjet printer. *See id.* at 7, ¶ 21(ii). That conclusion was based on the following: (1) both letters and the label had the same microscopic pattern of ink splatters around certain letters and (2) both letters and the label had the same microscopic streaks of stray ink on similar places on the paper. *See id.* at 16-21. Additionally, the ink in these letters and the label have the same chemical formulation. *See id.* at 21, ¶ 42.

7. However, the expert determined that the page with the shorter message in Letter #1 (Q1C) was not printed on an ink jet printer. Instead, he concluded that the ink used for this page was black toner from a laser printer. *See id.* at 21, ¶ 43-45. Letter #4 was also printed with black toner from a laser printer. *See id.* In fact, the chemical formula in this black toner from Letter #1 (Q1C) and Letter #4 (Q4) were the same. *See id.* Additionally, the chemical formula in Letter #1 (Q1C) and Letter #4 (Q4) matched the chemical formula in the ink from one of Defendant’s work printers, the Sharp brand printer. *See id.* at 7-8.

8. The expert determined that Letter #3 (Q3) was also printed with black toner from a laser printer. *See id.* at 21-22. However, the chemical formula of the black toner from Letter #3 differed from the chemical formula of the black toner in Letter #1 (Q1C) and Letter #4 (Q4). *See id.* Nonetheless, this second toner's chemical formula matched the chemical formula of another printer in Defendant's work, the Xerox brand printer. *See id.* p. 7-8.

9. The expert's report also explained that "[t]here are numerous office machines from the same manufacturer that will use the same or similar toner formulation." *Id.* at 8, fn. 2. Because many different office machines use toner with the exact same chemical formula, "[i]t cannot be concluded definitely that the document was printed from the known or suspect office machine." *Id.* Thus, the similarity of the chemical formula "should not be construed to imply that [any specific printer of that model or from that manufacturer] printed the questioned letter." *Id.*

10. From this comparison, the expert opined, "none of the five (5) office machines that [the defendant] had access to could have been used to print the [threat letter materials printed with an inkjet printer]." *See id.* p. 7.

11. The expert report does not identify the source of information about the office machines to which the defendant had access, nor does it clarify if there were any inoperable printers at Defendant's home.

ARGUMENT

The expert's purported testimony from his report has three problems that justify exclusion. First, the expert's testimony is based on inadmissible hearsay rather than on sufficient facts or data. Second, the expert's testimony impermissibly comments on Defendant's character for honesty, attempting to bolster Defendant's credibility. Finally, if the portion of the report

containing the hearsay and impermissible bolstering is removed, what remains is irrelevant or a confusing waste of time.

I. THE EXPERT’S TESTIMONY SHOULD BE EXCLUDED BECAUSE IT IS BASED ON HEARSAY RATHER THAN SUFFICIENT FACTS OR DATA.

The expert’s testimony should be excluded because it is based on inadmissible hearsay, rather than sufficient facts and data. Under Utah Rule of Evidence 702(b), scientific or specialized knowledge “may serve as the basis for expert testimony,” but there must be a “threshold showing that the [expert’s] principles or methods that are underlying in the testimony (1) are reliable, (2) are based upon sufficient facts or data, and (3) have been reliably applied to the facts.” Even if the expert’s method is reliable, “the method— [including the basic method of] logical deduction—[must] based on sufficient facts or data.” *Taylor v. Univ. of Utah*, 2020 UT 21, ¶ 20, 466 P.3d 124. If the “analytical gap between the evidence presented and the inferences to be drawn...is too wide,” logical deduction is not appropriate. *Id.* at ¶ 21 (citing *Turpin v. Merrell Dow Pharms., Inc.*, 959 F.2d 1349, 1360–61 (6th Cir. 1992)).

While the State does not dispute that the expert uses reliable scientific methods, his testimony and ultimate opinion is based on insufficient facts or data. The expert has not identified the source for his testimony about the printers to which the defendant had access. The report only discloses that the defense counsel’s investigator went to Defendant’s home and workplace and printed a couple sheets of paper from four different machines.

Ultimately, Defendant is the only source for information about the printing machines to which he had access. The investigator can identify the machines in Defendant’s workplace and home two to three years *after* the original threat letters. Family, friends, and coworkers can confirm the existence of printers at Defendant’s home and work. But only the defendant could confirm or deny using any of the multiple publicly available computers, such as those at a public

library, FedEx office, the UPS store, etc., not to mention printers at other people's homes or workplaces.

The defendant's expert cannot offer statements of the defendant if the defendant does not testify. The defendant's statements, when offered by the defendant, are hearsay and are not admissible by any exception. *See* Utah R. Evid. 702. Most critically, absent the hearsay statements, there is too wide of an analytical gap for the expert to testify or opine about defendant's connection (or lack thereof) to the threat letters.

II. THE EXPERT'S TESTIMONY SHOULD BE EXCLUDED BECAUSE IT SERVES AS IMPERMISSIBLE COMMENTARY REGARDING THE DEFENDANT'S CREDIBILITY.

The expert's testimony and opinions rely on the idea that Defendant honestly disclosed the printers available to him in 2021, and in this way, the expert's testimony impermissibly comments on Defendant's credibility. Utah Rule of Evidence 608 states that "evidence of [a witness's] truthful character is admissible only *after* the witness's character for truthfulness has been attacked." Utah courts have consistently held that this rule "does not allow a witness to bolster the testimony of another witness based on specific incidents or to offer general opinions about credibility when the other witness's reputation for truthfulness has been attacked." *State v. Doutre*, 2014 UT App 192, ¶ 22, 335 P.3d 366. Additionally, "not even properly qualified experts are permitted to offer . . . evidence, anecdotal or otherwise, that informs the jury, even indirectly, that a witness is more or less likely to be telling the truth." *State v. Burnett*, 2018 UT App 80, ¶ 43, 427 P.3d 288.

The defendant's expert's testimony would impermissibly invite the jury to draw inferences about Defendant's credibility. By commenting on the printers Defendant had access to and opining about whether the threat letters could have come from those printers, the expert

invites the jury to infer that Defendant truthfully identified the printers to which he had access in 2021. The expert has not cited any other source for that information. The expert has not indicated whether he took any steps to verify the truth of that information before concluding that the defendant could not have printed two of the threat letters. Rather, the expert report presents uncritical acceptance of information about Defendant's access to printers, inferring that the expert believed the defendant is telling the truth. This inference is precisely what Utah case law precludes: commenting on defendant's believability.

III. THE EXPERT'S TESTIMONY SHOULD BE EXCLUDED BECAUSE, EVEN ABSENT THE IMPERMISSIBLE HEARSAY, IT IS IRRELEVANT, OR IF MINIMALLY RELEVANT, THE RELEVANCE IS OUTWEIGHED BY THE LIKELIHOOD OF CONFUSING THE ISSUES, MISLEADING THE JURY, AND WASTING TIME.

Excluding all of the expert's testimony is appropriate because his testimony will not help the trier of fact to understand or determine an issue of fact, and it is confusing, likely to mislead the jury, and a waste of time. The test for relevance is whether evidence "has any tendency to make a fact more or less probable than it would be without the evidence and[,] . . . the fact is of consequence in determining the action." Utah R. Evid. 401. "[A] witness who is qualified as an expert...will help the trier of fact to understand the evidence or to determine a fact in issue." Utah R. Evid. 702(a). The *Daubert* court clarified the "helpfulness" requirement of Rule 702 to be primarily one of relevance and require "a valid scientific connection to the pertinent injury as a precondition to admissibility." *Daubert v. Merrell Down Pharmaceuticals Inc.*, 509 U.S. 579, 591–92 (1993). The *Kumho* case clarified that this standard applies to all expert testimony. *Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 147 (1999). Lay witness testimony that only shows what "may" have occurred, is "wholly speculative," and "irrelevant." *State v. Vigil*, 922 P.2d 15, 27 (Utah Ct. App. 1996). Thus, expert testimony should be excluded where it "has no bearing on

the factual predicate for [the criminal charges] . . . [and would] not have aided the jury in determining the questions before it.” *State v. Holm*, 2006 UT 31, ¶ 7, 137 P.3d 726, 731.

Defendant’s expert testimony, with or without the impermissible hearsay, will not help the jury understand or determine an issue of fact that is of consequence in this case. The ultimate issue in determining Defendant’s guilt or innocence is not whether a specific printer was used. Rather, guilt or innocence will hinge on whether the evidence shows that Defendant sent the letters. If there is no way to determine what printers were in Defendant’s home and workplace in 2021 and no way to rule out the use of printers outside of Defendant’s home and workplace, information about the inks and types of printers simply has no bearing on any factual predicate of stalking through sending letters or threats to a public official through such letters. The expert’s testimony would be mere speculation.

Even if the testimony rises above speculation, it should be excluded because its probative value is outweighed by the likelihood of confusing the issues and wasting time. The Utah Rules of Evidence permit a court to “exclude relevant evidence if its probative value is substantially outweighed by a danger of... confusing the issues, misleading the jury, or wasting time.” Utah R. Evid. 403. “If the evidence has an unusually strong propensity to...mislead a jury, [Utah courts] require a showing of unusual probative value before it is admissible under rule 403.” *State v. Troyer*, 910 P.2d 1182, 1191 (Utah 1995).

The expert’s testimony, even if minimally relevant, does not have unusual probative value that would outweigh its propensity to mislead a jury and confuse the issues. Ink and printer identification of exemplars printed in 2024, while possibly interesting, will confuse the jury and mislead them from the real issue: whether defendant send the threat letters in 2021. Additionally,

testimony that compares apples to oranges, 2024 exemplar letters to 2021 threat letters, simply wastes the jury's time.

CONCLUSION

For the foregoing reasons, this court should exclude the expert's testimony.

DATED: May 24, 2024

SEAN D. REYES
UTAH ATTORNEY GENERAL

/s/ Heather Waite Grover
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CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing to be served on the following via the court's e-filing system.

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