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Informants Expert Witness Testimony Allowed

By Steven Cohen

Plaintiff sued defendant for negligence in the death of her son who was acting as an informant. The defendant hired an informant's expert witness to provide testimony. The plaintiff filed a motion to exclude this testimony, which the court denied.

Facts: This case ([Przybysz v. City of Toledo – United States District Court – Northern District of Ohio – October 17th, 2017](#)) involves the death of a man (Thomas Przybysz) who was acting as an informant for the Toledo Police Department and Sgt. Williams. The plaintiff (Thomas' mother) sued the police department, arguing that they caused Thomas' death by not protecting him. The defendant hired Michael Levine (informant's expert witness) to provide testimony on their behalf. The plaintiff filed a motion to exclude the expert testimony of Levine.

Discussion: Levine's expert opinion stated that the way Sgt Williams handled the investigation and the threats against Thomas was reasonable.

First, the plaintiff alleges that Levine does not have the necessary law enforcement experience to testify as an expert witness in this case because he retired in 1990. The court opined that this is not a reason to exclude Levine's testimony as they need to look at his resume as a whole. After retiring in 1990, Levine became a trial consultant, testifying in numerous cases involving undercover and informant handling practices. In addition, he also has contracts with state and federal agencies to train their officers on undercover and informant handling practices. Thus, the court opined, Levine is qualified to offer an opinion in this particular case and any arguments or complaints dealing with his experience go to the weight of the testimony, not its admissibility.

The plaintiff also argues that Levine's testimony is not reliable because the data and facts that he relies on are not accurate. The court ruled that these supposed "inaccuracies" are supported in the record. For example, Levine stated that Thomas was eager to become an informant and that he was an experienced street dealer. The plaintiff alleged that this information was inaccurate. However, the record does show that Thomas was actually eager to become an informant and that he actually was an experienced street dealer. Even though there are some errors in Levine's testimony, the court ruled that they are inconsequential to his broader conclusions and that any arguments again go to the weight of the testimony and not its admissibility.

Last, the Plaintiff argues that Levine does not provide any methodology to draw his conclusions and only relies on his experience in law enforcement to draw his conclusions. The court ruled that this is acceptable as long as he adequately connects his experience to his conclusions. In this case, the court opined, Levine does in fact connect the two and any further arguments go to the weight of the testimony and not its admissibility.

Conclusion: The motion to exclude the expert witness testimony of Michael Levine is denied.

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