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21-6039

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IN THE  
SUPREME COURT OF THE UNITED STATES

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STANLEY B. HILL,

Petitioner,

v.

STATE OF TENNESSEE,

Respondent.

---

ON PETITION FOR A WRIT OF CERTIORARI  
TO THE TENNESSEE SUPREME COURT

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PETITION FOR A WRIT OF CERTIORARI

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ORIGINAL

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## **PETITION FOR A WRIT OF CERTIORARI**

Petitioner, Stanley Hill, respectfully petitions the Court for a writ of certiorari in Stanley Blair Hill v. State of Tennessee, E2018-02080-SC-R11-PC (Tenn.June 9, 2021).

## **OPINIONS BELOW**

The opinion of the Tennessee Court of Criminal Appeals, E2018-02080-CCA-R3-PC (Tenn.Crim.App.2021) is unreported and is included in the Appendix. The opinion of the Tennessee Court of Criminal Appeals in Petitioner's direct state appeal is included in the Appendix.

## **STATEMENT OF JURISDICTION**

The Tennessee Supreme Court issued its opinion denying Petitioner's application for review by the Tennessee Supreme Court. This Court has jurisdiction pursuant to 28 U.S.C. § 1257(a).

## **PARTIES TO THE PROCEEDING**

The petitioner in this case is Stanley B. Hill. The respondent is the State of Tennessee.

## **THE PROBLEM**

In Tennessee, and other states, expert testimony is to be excluded if the testimony is based on mere possibility. See Ambrose v. Batsuk, 2008 WL 1901207 (Tenn.Crim.App.2007); Nixon v. Warden, 2011 WL 2418348 (N.J.2011). However, numerous courts allow “expert testimony” that is unreliable, conjecture and unhelpful to juries because, there is no guardrails as to what is science and what constitutes reliable science.

## **QUESTIONS PRESENTED**

1. Whether this Court, due to the dramatic increase in so-called sciences in recent years, should establish concrete guardrails for what qualifies as a reliable, peer-reviewed, forensic science.
2. Whether this Court, in an effort to reduce confusing and misleading scientific testimony by unqualified persons, should establish foundational elements that satisfy a minimal standard of reliability.

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

The testimony of so-called forensic experts is involved in innumerable cases across the country everyday. This fact draws upon various state rules of evidence and the federal rules of evidence. Specifically, Federal

Rules of Evidence 702, 703, 704, 705, 803, 402, and 403, and in the Petitioner's matter Tennessee Rules of Evidence 702, 703, 704, 705, 401, 402, and 403. Also, the impact of the standards of Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579, 113 S.Ct. 2786, 125 L.Ed.2d 469 (1993), and Kumho Tire Co. Ltd v. Carmichael, 526 U.S. 137, 119 S.Ct. 1167, 143 L.Ed.2d 238 (1999), remains unclear in the criminal realm. Tennessee, presumably like most states, recognizes that "Expert testimony and forensic science evidence, in particular, have become crucial to many criminal cases." Kendrick v. State, 454 S.W.3d 450 at 475 (Tenn.2015). However, Tennessee, and presumably most states, incorrectly allow junk science and junk science forensic testimony to be presented by the government as part of the standard operating procedure. As evidence that Tennessee state courts, and presumably other state courts, the Kendrick Court continued to say that "Many cases hinge on DNA evidence, blood toxicology reports, the identification of latent fingerprints, voice recognition, handwriting analysis, toolmark evidence, the analysis of bite marks, shoe prints and tire tracks, and other evidence that falls under the broad umbrella of 'forensic science.'" Id. As detailed herein, several of these so-called forensic sciences have been shown to be junk and have been discontinued from being used in federal courts. It is necessary for this

Court to set absolute prohibitions on the introduction of junk sciences because the introduction of these junk sciences run afoul of the provisions of federal and state rules of evidence by setting before a jury irrelevant and confusing information.

The problem of unrestrained junk science being offered by the government and allowed by courts in criminal matters is readily observed. Paul C. Giannelli stated "Despite the highly visible efforts to reform the rules governing experts in the civil arena, the 'junk science' debate has all but ignored criminal prosecutions." Giannelli, Paul C., "*Junk Science*": *The Criminal Cases*, 84 J.Crim.L.& Criminology 105 at 110 (Spring, 1993). Further, as recently as the year 2016, Johnathan J. Koehler and John B. Meixner, Jr. continue to notice the overwhelming problem of junk science being allowed to be presented in criminal matters without courts scrutinizing the so-called science or the so-called forensic expert offering testimony. Koehler and Meixner stated, "The idea that many forensic sciences lack a sufficient scientific foundation is not original with us...." Koehler, Jonathan J., and John B. Meixner, *An Empirical Research Agenda For The Forensic Sciences*, 106 J.Crim.L.& Criminology 1 at 5. (Winter, 2016).

## STATEMENT OF THE CASE

This matter "presents uncommon facts and unusual issues." State v. Hill, 2013 WL 4715115 at \*1 (Tenn.Crim.App.2013).

Petitioner's matter began on September 13, 2004, when the Blount County Grand Jury returned an indictment charging Petitioner with one count of First Degree Murder.

Petitioner's case proceeded to a jury trial on May 12, 2008 through May 16, 2008. Ultimately, the jury returned a verdict finding Petitioner guilty of First Degree Murder; and, Petitioner was sentenced to life with the possibility of parole.

During the trial, the State relied almost exclusively on the testimony of two people, namely: Dr. Darinka Mileusnic, medical examiner; and Danny Wilburn, sheriff's detective. Both of these persons offered testimony, as an expert, in areas in which they had no training nor knowledge.

Dr. Mileusnic testified that Petitioner had strangled the victim and then tried to stage a suicide. For reasons unknown, the trial court allowed Dr. Mileusnic to testify not only regarding the cause of death but also regarding the re-creation and reconstruction of the crime scene after viewing a videotape filmed by the police. Over Petitioner's objection due to surprise and failure of the State to provide specific information regarding

the proposed testimony of Dr. Mileusnic, the trial court allowed Dr. Mileusnic to stage a purported reenactment. Further, Petitioner argued in his objection that Dr. Mileusnic did not have training or expertise in recreating and reconstructing a crime scene; that she was acting and engaging in testimony beyond the scope of her expertise.

Mr. Wilburn testified as an apparent expert regarding bruising; the interpretation and explanation of bruises and bruising; strangulation markings; and crime scene reconstruction. Mr. Wilburn did not offer any explanation or details about how his methods and techniques complied with the scientific method; nor did Mr. Wilburn testify as to the reliability of the content of his testimony.

Petitioner filed a motion for new trial on June 3, 3008. The trial court denied Petitioner's motion for new trial on January 18, 2012. Petitioner filed a timely notice of appeal on February 1, 2012.

The Tennessee Court of Criminal Appeals affirmed the conviction on August 30, 3013.

Petitioner filed his original petition for post-conviction relief ("post-conviction petition") on August 20, 2014. Petitioner amended his post-conviction petition on January 9, 2015.

The trial court entered an agreed order on January 20, 2015, granting Petitioner permission to file a delayed appeal with the Tennessee Supreme Court. The trial court stayed the post-conviction proceedings.

Petitioner filed his delayed application for permission to appeal with the Tennessee Supreme Court on March 31, 2015. The application was denied.

The trial court held an evidentiary hearing on Petitioner's post-conviction petition on July 24, 2018. The trial court denied Petitioner's post-conviction petition on October 17, 2018.

Petitioner then timely filed his notice of appeal of the post-conviction denial on November 16, 2018. The Tennessee Court of Criminal Appeals affirmed the denial of Petitioner's post-conviction petition on February 22, 2021.

#### **REASONS THAT SUPPORT THIS COURT GRANTING THE WRIT**

If judges are like umpires, calling balls and strikes; then judges, just like umpires must exclude bats that are corked and penalize the players that use them. Judges must exclude junk sciences and chastise the participants that use the junk science; because, junk sciences violate the provisions of the rules of evidence by taking juries on journeys of

explanations to reach conclusions that are irrelevant and misleading. See Davis v. Straub, 445 F.3d 908 (6<sup>th</sup> Cir.2006) and West v. Kentucky Horse Racing Commission, 972 F.3d 881 (6<sup>th</sup> Cir.2020). In other words, the gatekeepers have abandoned their posts and are allowing misleading and unreliable information into court. Since at least 1994, the government has produced increasingly greater numbers of so-called experts in criminal cases even though the reliability, the accuracy, and the scientific methodology of these so-called experts raises more and more questions. See Proposals To Eliminate The Prejudicial Effect Of the Use Of The Word "Expert" Under The Federal Rules Evidence In Civil And Criminal Jury Trials Under The Federal Rules Evidence In Civil And Criminal Jury Trials, Federal Rules Decisions, (July, 1994).

#### **UNIFORM DEFINITIONS OF PERTINENT TERMS AND CONCEPTS**

1. Black's Law Dictionary (11<sup>th</sup> ed. 2019) defines the following terms:
  - a. Forensic – “Used in or suitable to courts of law or public debate <forensic psychiatry>. See FORENSIS. Rhetorical; argumentative <Tietjen's considerable forensic skills>. Exterior; foreign. Of, relating to, or involving the scientific methods used for investigating crimes.”

- b. Forensics – “The art of argumentative discourse or debate. The branch of law enforcement dealing with legal evidence relating to firearms and ballistics.”
  - c. Forensic science – A broad range of evidence-related disciplines, some laboratory-based (as with nuclear and mitochondrial-DNA analysis, toxicology, and drug analysis), others based on interpretation of observed patterns (as with fingerprints, writing samples, tool marks, bite marks, and specimens), and still others based on a combination of experiential and scientific analysis (as with explosive and fire-debris analysis, blood-spatter analysis).
  - d. Forensic evidence – “Evidence used in court; esp., evidence arrived at by scientific means (as with nuclear or mitochondrial DNA, toxicological and chemical analysis), by interpretation of patterns (as with fingerprints, handwriting, etc.), or by a combination of experiential and scientific analysis (as with explosive and fire-debris analysis, blood-spatter analysis).”
2. Encyclopedia Britannica describes the scientific method as a “process of observing, asking questions, and seeking answers through tests and experiments” which is “applied broadly in

science, across many different fields. Many empirical sciences, especially the social sciences, use mathematical tools borrowed from probability theory and statistics....” Britannica continues that “[t]he scientific method is critical to the development of scientific theories, which explain empirical (experiential) laws in a scientifically rational manner. In a typical application of the scientific method, a researcher develops a hypothesis, tests it through various means, and then modifies the hypothesis on the basis of the outcome of the tests and experiments. .... In this way, hypotheses serve as tools by which scientists gather data. From that data and the many different scientific investigations undertaken to explore hypotheses, scientists are able to develop broad general explanations, or scientific theories.” As described by the resource Science Buddies, the purpose of the scientific method is to “discover cause and effect relationships by asking questions, carefully gathering and examining the evidence, and seeing if all the available information can be combined in to a logical answer.” Science Buddies continues to explain that “The six steps of the scientific method include: 1) asking a question about something you observe, 2) doing background research to

learn what is already known about the topic, 3) constructing a hypothesis, 4) experimenting to test the hypothesis, 5) analyzing the data from the experiment and drawing conclusions, and 6) communicating the results to others."

### **GUIDING PRINCIPLES**

3. The applicable principle that applies to this case is stated by the Tennessee Court of Criminal Appeals in State v. Zimmerman, 823 S.W.2d 220 (Tenn.Crim.App.1991):

A reasonable probability of being found guilty of a lesser charge, or a shorter sentence satisfies the second prong of *Strickland* [the prejudice prong].

Zimmerman at 225.

4. Petitioner asserts that it is reasonable to conclude that he would have been acquitted or received a shorter sentence but for the junk science strangulation markings being presented to the jury.
5. Further, courts recognize that many, if not most, criminal cases arise where the only reasonable defense strategy requires explanation and education of the jury to scientific concepts by an expert. See Harrington v. Richter, 562 U.S. 86 at 106, 131 S.Ct. 770 at 788, 178 L.Ed.2d 624 at 643, (2011).

6. The scope and use of “forensic science”, “forensic evidence”, and the rise of “junk science” has overwhelmingly invaded the realm of and increased in use in criminal trials. See Kendrick v. State, 454 S.W.3d 450 (Tenn.2015); Lander, Eric S., *Fixing Rule 702: The PCAST Report And Steps To Ensure The Reliability Of Forensic Feature-Comparison Methods In The Criminal Courts*, 86 Fordham L.Rev. 1661 (March, 2018); White, Catherine E., “*I Did Not Hurt Him .... This Is A Nightmare*”: *The Introduction Of False, But Not Fabricated, Forensic Evidence In Police Interrogations*, 2015 Wis.L.Rev. 941 (2015); and Garrett, Brandon L. and M. Chris Fabricant, *The Myth Of The Reliability Test*, 86 Fordham L.Rev. 1559 (March, 2018). Unfortunately, the proliferation of the use of “junk science” in criminal cases, by the government in pursuit of a hollow conviction, and in fact in all cases, misleads juries and courts and results in verdicts that are the consequence of inflamed and incited emotions instead of verdicts founded on the grounds of science.
7. The Tennessee Court of Criminal Appeals in Ambrose v. Batsuk, 2008 WL 1901207 (Tenn.Crim.App.2007) stated, “It is proper to exclude expert testimony if it is based on mere possibility.” The

Ambrose Court continued, “The mere possibility of a causal relationship, without more, is insufficient to qualify as an admissible expert opinion.” In Petitioner’s matter, and presumably in many other cases, the so-called experts offered by the State should have been excluded because their testimony only confused the jury and did not offer more than a “mere possibility” of the actions to which they testified.

### **REAL-LIFE EXAMPLES OF JUNK SCIENCE IN ACTION**

8. Various types of so-called forensic evidence presented by the government in criminal prosecutions is the epitome of “the emperor has no clothes” in the vast majority of cases. See Schwinghammer, Katherine, *Fingerprint Identification: How “The Gold Standard Of Evidence” Could Be Worth Its Weight*, 32 Am.J.Crim.L.265 at 266 (Spring 2005).
9. Further, the axiom that “fingerprints never lie”, and other forms of forensic evidence, have also been debunked and discredited. See Lawson, Tamara F., “Can Fingerprints Lie? Re-Weighing Fingerprint Evidence In Criminal Jury Trials”, 31 Am.J.Crim.L. 1 at 2 (Fall 2003).
10. The McKie case – “A Matter Of Fingerprint Junk Science’

- a. Detective Shirley McKie was arrested and charged with murder based on upon her fingerprints being identified at a murder scene.
  - b. "If truth be told, 'everyone' believes that fingerprint evidence is reliable, even infallible evidence." Id. So thought Ms. McKie's father, a 30 year veteran in law enforcement. However, Mr. McKie now concedes that, in fact, fingerprints, fingerprint evidence, and fingerprint analysis is faulty and is unreliable.
  - c. It is routine to find a homicide detective's print at a murder crime scene; and, it was really not an issue of "mistakenly implicating" Detective Shirley McKie in a murder. "The problem was that Detective McKie had never been to the crime scene or inside the victim's house at all, and [Detective Shirley McKie] was adamant that it was not her thumbprint." Id. at 20.
11. The Mayfield case – "Four 'Fingerprint' Experts Promote Junk Science Of Fingerprint Analysis"
- a. The year is 2004 and the 9/11 attacks are still fresh in the minds and memories of all Americans. Any person that professes to be Muslim is automatically looked at with suspicion.

- b. Brandon Mayfield, a Muslim and interestingly enough an attorney, was held in custody “for two weeks as a material witness in a bombing that occurred in Madrid, Spain” in March 2004 based upon fingerprint analysis. The fact that Mayfield had no nexus to the events was irrelevant to the law enforcement authorities. Cole, Simon A, *“More Than Zero: Accounting For Error In Latent Fingerprint Identification,”* 95 J.Crim.L.&Criminology 985 at 985-986 (Spring 2005).
- c. Even more revealing and illuminating as to the unreliable nature of “forensic evidence” and “forensic testimony” by “an expert” was the testimony of “Kenneth Moses, a well-known independent fingerprint examiner widely considered a leader in the profession, [who] subsequently testified in a closed hearing that, although the comparison was ‘quite difficult,’ the Madrid print ‘is the left index finger of Mr. Mayfield.’” *Id.* In the Mayfield matter, not only did one “forensic expert” reach the blatantly erroneous conclusion, but four “forensic experts” reached the incorrect conclusion, namely Kenneth Moses as identified above; FBI Senior Fingerprint Examiner Terry Green; Supervisory Fingerprint Specialist Michael Wieners; and Unit

Chief, Latent Print Unit and fingerprint examiner John T. Massey, who was also “a retired FBI fingerprint examiner with over thirty years of experience” in apparently faulty analysis of fingerprints.

12. The Cowans case – “DNA Evidence Shows The Fallacy Of The Junk Science of Fingerprint Analysis”
  - a. Jeffrey Cowans was convicted of shooting and wounding a police officer solely based on fingerprint and eyewitness evidence. Volumes are filled by the inaccuracies and unreliability of eyewitnesses. See State v. Henderson, 27 A.3d 872 (N.J.2011); Roth, Jessica A., *Informant Witnesses And The Risk Of Wrongful Convictions*, 53 Am.Crim.L.Rev.737 (Summer, 2016); and Vallas, George, *A Survey Of Federal And State Standards For The Admission Of Expert Testimony On The Reliability Of Eyewitnesses*, 39 Am.J.Crim.L. 97 (Fall 2011). Mr. Cowans, who maintained his innocence, was finally released after serving six years when DNA testing conclusively proved that Mr. Cowans was not the perpetrator. After DNA evidence exonerated Mr. Cowans, the Boston Police

Department finally admitted "that the fingerprint evidence was erroneous." Id. at 987.

13. The Krone case – "DNA Evidence Shows that 'Forensic Odontology' Is Also Junk Science"

- a. Ray Krone was convicted of murder primarily based upon the testimony of Raymond Rawson, an alleged expert of odontology. Mr. Rawson testified that bite marks on the victim's body matched the bitemarks of Mr. Krone with "the highest order of confidence" and that "no other person [other than Mr. Krone could have] caused the bitemark injuries." Deitch, Adam, "*An Inconvenient Tooth: Forensic Odontology Is An Inadmissible Junk Science When It Is Used To 'Match' Teeth To Bitemarks In Skin*", 2009 Wis.L.Rev. 1205 at 1206 (2009).
- b. Mr. Krone spent three years in prison, on death row, based upon the completely faulty "forensic testimony" of an alleged expert in a junk science.

14. "Multiple states exclude polygraph evidence on the basis that it lacks scientific reliability." Deitch at 1233.
15. In other words, analyses, which the public accepts as infallible, are, in fact, completely junk. It is an offense to the field of science

to even refer to these analyses as "junk science" since there is no science involved.

16. How many other cases similar to these are out there is unknown because usually the defendants do not have the financial means to challenge the unreliable "junk science" methods and conclusions on which the government wholeheartedly relies.
17. In the instant matter, Petitioner finds himself the victim of even less reliable forensic testimony based upon an even more unreliable "junk science", namely strangulation mark identification. The star witness for the prosecution in Petitioner's matter testified about strangulation marks, a so-called forensic science which has no reliability and which therefore misleads juries.
18. Petitioner was not allowed to provide expert testimony or to utilize the provisions of Federal Rule of Evidence 803(13), by offering any "reliable authority" such as "treatises, periodicals, or pamphlets" to contradict the testimony of the so-called experts offered by the State.

**TRIAL COURTS ARE REQUIRED TO ENSURE THE RELIABILITY OF SCIENTIFIC TESTIMONY AND SCIENTIFIC EVIDENCE**

19. The United States Supreme Court directed all trial court judges to "ensure that any and all scientific testimony or evidence admitted is not only relevant, but reliable." Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579, 113 S.Ct. 2786 at 2794, 125 L.Ed.2d 469 (1993).
20. The narratives above highlight the completely absent characteristic of reliability and science in the methods employed by "forensic experts". Petitioner was prevented by the trial court from detailing to the jury exactly how unreliable these seemingly gold standard methods are. Petitioner was convicted primarily on the testimony of an expert in strangulation markings. This particular area of junk science is even less well known and presumably less reliable than the junk sciences of fingerprint analysis, bitemark analysis, and polygraph analysis. Petitioner argues that the trial court should have allowed Petitioner to present evidence on the completely unreliable nature of strangulation mark analysis.
21. As applicable more broadly, trial courts must be stopped from allowing testimony of junk sciences and guardrails must be put into place which protect the integrity of scientific analysis. At this point in history, with the proliferation of so-called forensic sciences, this

Court is in a position to establish well-defined standards as to what criteria construct valid and reliable forensic science. Guardrails are needed to keep forensic evidence that is presented before courts within the realm of peer-reviewed, valid science and outside of the world of fancy, so-called science.

22. A confounding issue that courts have failed to recognize or, worse, to willfully ignore or overlook, is that persons “who testify as experts for the prosecution are not truly scientists, but better fit the label of ‘technicians.’” Moenssens, Andre A., *“Novel Scientific Evidence In Criminal Cases: Some Words Of Caution”*, 84 J.Crim.L.&Criminology 1 at 5 (Spring, 1993). Accordingly, these “technicians” have no scientific training, much less advanced training, in which they could offer useful guidance to courts or juries. Stated otherwise, the proof that these “technicians” offer is utterly unreliable.

#### **THE REASONS THAT UNIFORM DEFINITIONS AND UNIFORM UNDERSTANDINGS ARE IMPORTANT**

23. The real-life cases described above highlight the fallacy of and false reliance on systems, techniques and methods that purport to be science but, rather, lack in any scientific or forensic rationale.

24. As these two examples underscore, reliance on these systems is misplaced; and, reliance on these systems by juries without at the very least a full disclosure and description of their vast shortcomings is a violation of a defendant's right to effective and sufficient cross-examination.
25. Jane Campbell Moriarty, quoting the President's Council of Advisors on Sci. & Tech., Exec. Office of the President, *Forensic Science in Criminal Courts: Ensuring Scientific Validity of Feature-Comparison Methods* 46 (2016), stated:

Without appropriate estimates of accuracy, an examiner's statement that two samples are similar -- or even indistinguishable -- is scientifically meaningless; it has no probative value, and considerable potential for prejudicial impact. Nothing -- not training, personal experience nor professional practices -- can substitute for adequate empirical demonstration of accuracy.

Moriarty, Jane Campbell, "*Deceptively Simple: Framing, Intuition, And Judicial Gatekeeping Of Forensic Feature-Comparison Methods Evidence*", 86 Fordham L.Rev.1687 at 1687 (March, 2018).

26. Ms. Moriarty continued:

Two national committees have written reports about the shortcomings of forensic science: The National Research Council for the National Academy of Sciences report in 2009 ("NRC report") and the President's Council of Advisors on Science and Technology report in 2016 ("PCAST report"). The

NRC report concluded that, other than DNA analysis, "no forensic method has been rigorously shown to have the capacity to consistently, and with a high degree of certainty, demonstrate a connection between evidence and a specific individual or source." The PCAST report was even more pointed in its critique, finding shortcomings in virtually all aspects of FCM evidence [feature-comparison methods of forensic science evidence], from foundation through application.

Moriarty at 1688-1689

**HOW THE PREJUDICE PRONG OF STRICKLAND  
IS INVOLVED IN PETITIONER'S MATTER  
AND HIGHLIGHTS THE PREJUDICE INHERENT IN OTHER MATTERS**

27. In Petitioner's case, and in countless other criminal matters, the jury verdict time and again hinges on the "forensic evidence" introduced and explained from the standpoint of the prosecution.
28. The testimony in this matter about the "forensic science" of "strangulation marks" could not be challenged by the Petitioner based upon the trial court's refusal to allow Petitioner to present evidence as to the complete unreliability of the strangulation mark testimony.
29. The prejudice prong in Petitioner's case is that the unscientific testimony offered by the prosecution was the main evidence that the jury relied on to convict Petitioner. Petitioner notes that the

overwhelming prejudice arises based upon the jury's reliance on anti-scientific testimony by person who is not a scientist and who has not had his work-product refined or criticized by the layers of scientific methodology. As noted by Moenssens, "Statistical estimates of the value of the expert's conclusions, if admitted in evidence, are usually terrific from the standpoint of the prosecutor, because estimates makes it appear that the odds are astronomical against the expert making a mistake and accusing the wrong person. ... Sometimes these experts, trained in one forensic discipline, have little or no knowledge of the study of probabilities, and never even had a college level course in statistics."

Moenssens at 18.

30. "Federal Rule of Evidence 702, which covers testimony by expert witnesses, allows a witness to testify 'in the form of an opinion or otherwise' if 'the testimony is based on sufficient facts or data' and 'is the product of reliable principles and methods' that have been reliably applied." Kafadar, Karen, "*The Critical Role of Statistics In Demonstrating The Reliability Of Expert Evidence*", 85 Fordham L.Rev. 1617 at 1617 (March 2018). Ms. Kafadar continued that, "From a scientist's perspective, demonstration requires some way

of quantitatively measuring a process. ... These probabilities, which provide measures of a procedure's performance in classifying evidence as being associated or not associated with a suspect ... can be estimated (with appropriately quantified uncertainties) via well-designed experiments. ... In real life, of course, we do not know the truth ...; all we have is the test result. For the test to be trustworthy, we want to have a high confidence that the conclusions from the forensic examination ... are correct."

Kafadar at 1621.

31. In this matter, as occurs in countless other matters across this county, courts, both state and federal, "have not fulfilled their role as gatekeepers to exclude or limit potentially unreliable feature-comparison methods of forensic science evidence...." Moriarty at 1687.
32. In this matter, the trial court's allowance of certain testimony regarding strangulation marks, allegedly made by Petitioner, is the epitome of unreliable forensic evidence. Even though the forensic evidence was completely unreliable, the strangulation testimony in Petitioner's matter was critically damning.

33. Petitioner sought to present a forensic expert to counter the testimony offered by the prosecution's expert witness. This fact was established during Petitioner's evidentiary hearing for his petition for post-conviction relief. Christopher Robinson, a crime scene reconstructionist, testified on Petitioner's behalf during the post-conviction hearing that Petitioner's trial counsel committed error by trial counsel's failure to retain the services of a crime scene reconstructionist and presenting the forensic testimony of a crime scene reconstructionist to contradict and to show the glaring flaws in the prosecution's evidence. Specifically, had Petitioner's trial counsel presented the testimony of a forensic expert to plainly highlight the inconsistencies and the invalidities of the prosecution's star witness. The significant impact of the prosecution's forensic witness and the severity of prejudice against the Petitioner is observed by the questions that the jurors had regarding a piece of rope allegedly used. Had Petitioner been able to present his own forensic expert to guide the jury through its questions, then Petitioner would not have been in a overwhelmingly prejudiced position; and, the likelihood that

Petitioner would have been found not guilty or received a significantly reduced sentence would have greatly increased.

34. Despite all of the questions of validity and reliability, Petitioner was not given the opportunity to challenge or bring to the jury's attention the highly flawed, and arguably completely defective, methods and techniques used by the prosecution's forensic expert. Petitioner's trial counsel even testified at the post-conviction hearing that a defense forensic expert testifying at the Petitioner's trial could have made a significant difference in the outcome of the Petitioner's trial. Petitioner argues that, at the least, had Petitioner presented a forensic expert to testify about the highly faulty and unreliable nature of the testimony given by an untrained prosecution witness then, Petitioner would have either been found not guilty or he would have received a significantly reduced sentence.
35. One interesting counterpart is that had Petitioner been allowed to present the testimony of a crime scene reconstructionist or some type of forensic expert, that testimony could have relied on and explained the scientific method to the court and, if necessary, to the jury. Petitioner's forensic expert would have testified that the

scientific method is the process and method that all true sciences are based upon. Petitioner's forensic expert could have walked the court through the overwhelming deficiencies in the prosecution's witness scientific foundations and would have likely convincingly shown that the prosecution's witness was not an expert and could not have offered any testimony that would have been relevant. Specifically, had Petitioner been allowed to present a forensic expert, the Petitioner would have been able to undermine, and show the hypocrisy and irrelevancy of the prosecution's other so-called expert detective Wilburn. Mr. Wilburn offered testimony, which was not vetted or scrutinized by the court, and which Petitioner was unable to challenge because Petitioner was not allowed to offer a forensic expert to point out the unproven, untested, and worthlessness of Wilburn's claims and methods used to produce Wilburn's testimony.

**THE ANSWER TO THE ESSENTIAL QUESTION, WHY SHOULD THIS COURT ACCEPT THIS CASE FOR REVIEW**

36. A countless number of defendants have been convicted or forced to enter a detrimental plea agreement without the benefit of any type of expert forensic defense. "Expert" witness testimony is a

virtual mainstay for the prosecution to present their case; yet, in practically all cases defendants are unable to provide a balanced and critical view of the prosecution's "expert" witness testimony because defendants lack the resources or courts do not allow the presentation of such a defense for dubious rationalizations.

37. As the actual scientific research has shown so-called "forensic sciences" have been determined to be no more than snake oil because the so-called "forensic sciences" in no way meet the demanding standards of the scientific method. A few of the examples highlighting the uselessness of these so-called forensic sciences are described above.
38. The prevalence of the government prosecutors presenting so-called "forensic science" evidence is practically ubiquitous. However, it is rare, if not absolute, that defendants are not given the opportunity to present contradictory proof or offer testimony to place in a clear light the deficiencies of the so-called "forensic science" presented by the government.
39. In Petitioner's case, the testimony of Dr. Mileusnic was "terrific" even though she had no training as a crime scene reconstructionist yet the court and the state allowed the jury to

infer that Dr. Mileusnic was a trained crime scene reconstructionist who was made it “appear that the odds [were] astronomical against the expert making a mistake....” Dr. Mileusnic’s testimony though not given through the lens of probabilities and statistics implied to the jury that Dr. Mileusnic was 100% correct in her testimony even though she had no training as a crime scene reconstructionist. This misleading testimony in Petitioner’s case, and presumably this type of similar testimony in other cases, prejudiced Petitioner.

## CONCLUSION

The challenges and deficiencies inherent in gate-keeping expert evidence in criminal trials has been discussed as recently as 2018 by U.S. District Court Judge Paul W. Grimm, District of Maryland, in his article *“Challenges Facing Judges Regarding Expert Evidence In Criminal Cases”* 86 Fordham 1601 (March, 2018). Petitioner refers to this article because if a federal judge sees and describes challenges in the use of and allowance of expert testimony in criminal cases as recently as 2018, then Petitioner argues that the same issues, and more, were involved in Petitioner’s case.

For the foregoing reasons, this Court should grant the petition for a writ of certiorari.

Respectfully submitted,

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STANLEY B. HILL  
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**CERTIFICATE OF SERVICE**

I hereby certify that a true and exact copy of the foregoing petition for writ of certiorari has been forwarded by first-class mail, postage prepaid, to Tennessee Attorney General, P.O. Box 20207, Nashville, TN 37202, on this the 6<sup>th</sup> day of September, 2021.

Stanley B. Hill  
STANLEY B. HILL

Respectfully submitted,

Stanley B. Hill  
STANLEY B. HILL

STATE OF TENNESSEE  
COUNTY OF MORGAN

On this the 30<sup>th</sup> day of September, 2021, before me personally appeared STANLEY B. HILL, known to me or who sufficiently proved his identity to me, and who being duly sworn, makes on oath that the statements contained herein are true and correct to the best of his knowledge, information and belief, and he executes same voluntarily for the purposes contained herein.

Sworn to and subscribed before me this 30<sup>th</sup> day of September, 2021

Mary Jo E. Labarge  
Notary Public

My Commission Expires: 08-24-2025.

