

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF KENTUCKY  
AT PADUCAH  
CIVIL ACTION NO. 5:09-CV-00032-TBR

MICHAEL ADAM CARNEAL

PETITIONER

V.

COOKIE CREWS, WARDEN

RESPONDENT

**MOTION *IN LIMINE*  
TO EXCLUDE TESTIMONY OF A SCIENTIFIC, TECHNICAL, OR MEDICAL  
NATURE FROM DR. E. KELLY FIRESHEETS**

Comes now the Respondent, Cookie Crews, Warden, by and through counsel, and respectfully submits as follows for her motion *in limine* to exclude certain testimony:

1) In an order entered September 10, 2010, the parties to this action were placed under an obligation to disclose all expert witnesses, opinions, and reports pursuant to Fed. R. Civ. P. 26(a)(2). (DN 60). That rule requires the disclosure of the identity of any experts, as well as written reports and the materials relied on by the experts. The time to make such disclosures shall be governed by court order. As part of the September 10, 2010, order of this Court, the Petitioner was required to file his expert reports by October 1, 2010. The Respondent was then given until November 1, 2010, to file his reports. Thereafter, Petitioner was allowed until December 1, 2010, to file any rebuttal reports. Discovery in all respects was ordered to conclude by December 31, 2010. The parties have complied with the Court's deadlines.

2) On January 18, 2011, the Petitioner filed a witness list with the Court. (DN 92). The Petitioner disclosed that he intended to call Ms. E. Kelly Firesheets. Ms. Firesheets' address is listed as her business address with the Health Foundation of Greater Cincinnati.

3) It has come to the attention of the Respondent that Ms. Firesheets is formally known as Ms. Kelly Carneal, the Petitioner's older biological sister. At the time of the Petitioner's crimes, Ms. Firesheets was a senior at Heath High School. Her name appears throughout the record in this case due to her relation to the Petitioner and the fact that she transported him and his cache of weapons to Heath High School on the day of the murders.

4) That in and of itself is no cause for a motion *in limine*. However, the Respondent has also discovered that Ms. Firesheets should properly be referred to as Dr. Firesheets. Dr. Firesheets is a mental health professional. According to the website of her employer:

Kelly holds a PsyD<sup>[1]</sup> in Clinical Psychology with a Certificate in Organizational Concepts and Management from Xavier University, where her primary research focused on teachers' perceptions of gifted education. She completed her Post-Doctoral training at the University of Cincinnati. Kelly is a member of the National Association for Gifted Children, the Ohio Program Evaluator's Group and the American Psychological Association.<sup>2</sup>

Furthermore, her employer reveals that "[p]rior to coming to the Health Foundation, Kelly provided counseling and psychological assessment services for youth."<sup>3</sup>

5) Since the mental health and status of Dr. Firesheets' brother is the obvious issue in the evidentiary hearing, and Dr. Firesheets is a potential expert witness in the field of psychology, the Respondent must assume she may testify in an expert capacity. The Petitioner

---

<sup>1</sup>This is a professional doctorate in psychology, with an emphasis on clinical practice, as opposed to a Ph.D. with which places more emphasis on research. *see* <http://www.xavier.edu/psychology-doctorate/> (last accessed January 19, 2011).

<sup>2</sup><http://www.healthfoundation.org/bios/granteeevalsvcs.html> (last accessed January 19, 2011).

<sup>3</sup>*Id.*

disclosed Dr. Firesheets's professional business address rather than her personal address, but listed her as "Ms." instead of "Dr." Respondent has no way of knowing the substance of Dr. Firesheets's testimony. Thus, this motion *in limine* is being filed in an abundance of caution.

6) Provided that Dr. Firesheets has any relevant information as to the issues in this case, she can testify as a *lay* witness. However, the Respondent does not believe that she should be allowed offer any testimony of a scientific, technical, or other specialized nature. Dr. Firesheets was not disclosed pursuant to this Court's order, nor was any report produced. The deadlines for such disclosure have long passed, and discovery in the case is now closed. Dr. Firesheets cannot be allowed to testify as a mental health professional, nor offer medical conclusions or comments regarding the Petitioner's mental state. It is certainly true that she views her brother through the eyes of a psychologist, but since she is not an expert witness here, she should be directed to limit her testimony to factual matters within her direct observation. To allow anything beyond such would be to permit the Petitioner to make a end-run around this Court's directives and create a fundamentally unfair situation for the Respondent. Though any testimony that she may offer would be tainted by familial bias, allowing her to testify to medical conclusions would violate the spirit and letter of this Court's expert disclosure orders.

WHEREFORE, Respondent respectfully requests the Court GRANT the motion  
*in limine.*

Respectfully submitted,

**JACK CONWAY**  
Attorney General of Kentucky

s/ Ken W. Riggs  
**KEN W. RIGGS**

s/ Christian K. R. Miller  
**CHRISTIAN K.R. MILLER**  
Assistant Attorney General  
Office of Criminal Appeals  
1024 Capital Center Drive  
Frankfort, Ky. 40601  
(502) 696-5342  
[christian.miller@ag.ky.gov](mailto:christian.miller@ag.ky.gov)  
[ken.riggs@ag.ky.gov](mailto:ken.riggs@ag.ky.gov)  
Commonwealth of Kentucky

Counsel for Respondent

**NOTICE**

Please take notice that the foregoing Motion *In Limine* was filed with the Clerk of the United States District Court, Western District of Kentucky at Paducah, by using the CM/ECF system on the 25th day of January, 2011.

s/ Ken W. Riggs  
**KEN W. RIGGS**  
Assistant Attorney General

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing Emergency Motion For Relief From Order Granting Evidentiary Hearing was filed on the 25th day of January, 2011, with notice of electronic filing being given to the following CM/ECF participants, as generated by the CM/ECF system: Hon. David H. Harshaw III ([david.harshaw@ky.gov](mailto:david.harshaw@ky.gov)) and Hon. Timothy Arnold ([tim.arnold@ky.gov](mailto:tim.arnold@ky.gov)), counsel for the Petitioner.

s/ Ken W. Riggs  
**KEN W. RIGGS**  
Assistant Attorney General

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF KENTUCKY  
AT PADUCAH  
CIVIL ACTION NO. 5:09-CV-00032-TBR

MICHAEL ADAM CARNEAL

PETITIONER

V.

COOKIE CREWS, WARDEN

RESPONDENT

**ORDER GRANTING MOTION *IN LIMINE***

The Court, having considered Respondent's Motion *In Limine*, and being sufficiently advised, does hereby GRANT the motion. Dr. E. Kelly Firesheets is excluded from presenting any testimony of a scientific, technical, or other specialized nature, including any medical conclusions or comments regarding Petitioner's mental state.

So ordered, this the \_\_\_\_\_ day of \_\_\_\_\_, 2011.