



gatekeeping function extends beyond scientific testimony to "testimony based on . . . 'technical' and 'other specialized' knowledge." Kumho Tire Co. v. Carmichael, 526 U.S. 137, 141 (1999).

The Court of Appeals for the Third Circuit has established that Federal Rule of Evidence 702 as interpreted by Daubert and its progeny embodies "three distinct substantive restrictions on the admission of expert testimony: qualifications, reliability, and fit." United States v. Mathis, 264 F.3d 321, 335 (3d Cir. 2001), cert. denied, 535 U.S. 908 (2002) (quoting Elcock v. Kmart Corp., 233 F.3d 734, 741 (3d Cir. 2000)). The proponent of the expert testimony bears the burden of establishing its admissibility by a preponderance of the evidence. See Oddi v. Ford Motor Co., 234 F.3d 136, 144 (3d Cir. 2000), cert. denied, 532 U.S. 921 (2001).

The Third Circuit Court of Appeals has set the following standard to qualify as an expert:

Rule 702 requires the witness to have "specialized knowledge" regarding the area of testimony. The basis of this specialized knowledge "can be practical experience as well as academic training and credentials." We have interpreted the specialized knowledge requirement liberally, and have stated that this policy of liberal admissibility of expert testimony "extends to the substantive as well as the formal qualification of experts." However, "at a minimum, a proffered expert witness . . . must possess skill or knowledge greater than the average layman. . . ."

Elcock, 233 F.3d at 741 (quoting Waldorf v. Shuta, 142 F.3d 601, 625 (3d Cir. 1998)).

The factors which govern reliability are as follows:

(1) whether a method consists of a testable hypothesis; (2) whether the method has been subject to peer review; (3) the known or potential rate of error; (4) the existence and maintenance of standards controlling the technique's operation; (5) whether the method is generally accepted; (6) the relationship of the technique to methods which have been established to be reliable; (7) the qualifications of the expert witness testifying based on the methodology; and (8) the non-judicial uses to which the method has been put.

Id. at 745-46. It has been noted that Daubert:

make[s] certain that an expert, whether basing testimony upon professional

studies or personal experience, employs in the courtroom the same level of intellectual rigor that characterizes the practice of an expert in the relevant field. . . . [T]he trial judge must have considerable leeway in deciding in a particular case how to go about determining whether particular expert testimony is reliable. That is to say, a trial court should consider the specific factors identified in Daubert where they are reasonable measures of the reliability of expert testimony.

Id. at 746 (quoting Kumho Tire, 526 U.S. at 152). Thus, the factors outlined above are not exhaustive and the inquiry remains flexible. See Elcock, 233 F.3d at 746. Where the testimony is not scientific in nature, "relevant reliability concerns may focus upon personal knowledge or experience," as opposed to "scientific foundations." Kumho Tire, 526 U.S. at 150.

The fit requirement stems from the textual provision that "scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue." Mathis, 264 F.3d at 335 (quoting F.R.E. 702). Admissibility under this factor turns on "the proffered connection between the scientific research or test result to be presented and particular disputed factual issues in the case." Oddi, 234 F.3d at 145. This measure is "not intended to be a high one." Id. Its standard is not dissimilar to the general liberal standard of relevance under the Rules. See Mathis, 264 F.3d at 335.

According to his curriculum vitae, Mr. Sutor graduated with an associate degree in police administration from Temple University in 1970 and an undergraduate degree from Temple University School of Business Administration in 1976. Sutor Deposition, Exhibit 1, Sutor C.V. at 4. He worked for the Philadelphia Police Department from 1960-1980. Id. at 2. During his tenure with the Philadelphia Police Department, Sutor held the ranks of police officer, detective, patrol sergeant, lieutenant, captain, and staff inspector and served on various police boards. Id. From 1980 to 1983, Sutor was the director of security for Harrah's Marina Casino, which was

owned by the Holiday Inn Corporation. Id. at 1. See Sutor Deposition at 67. After the Trump Organization purchased Harrah's Marina in 1983, he worked as the casino's assistant general manager until 1984. Id. From 1984 until 1989, Sutor served as the president and general manager of JWB Development Corporation. In this position he was responsible for the planning, organization, and the staffing and surveillance departments for a proposed casino hotel. Id. See also Sutor Deposition, Exhibit 1, Sutor C.V. at 1. In addition, Sutor worked as a deputy director for the Pennsylvania Bureau of Narcotic Investigation between 1989 and 1992. Sutor Deposition, Exhibit 1, Sutor C.V. at 1. In 1992, he founded the casino security consultant company, US Casino Management, Inc. Id. He currently is its sole officer and president. Id. See also Sutor Deposition at 20. In this capacity, he developed security and surveillance systems and has testified as an expert witness about casino security and surveillance. Sutor Deposition, Exhibit 1, Sutor C.V. at 1.

Under the applicable standard, the specialized knowledge of the expert may be derived from practical experience. In light of the practical experience and background in providing security services for casinos, this court is satisfied that Sutor possesses specialized knowledge beyond the ken of the average layman in the area of security for casino properties. Therefore, this court concludes that Sutor is preliminarily and generally qualified to testify at trial as an expert witness on the subject of what security measures would make the activities of patrons at casinos safe during their intended visit.

Next, this court must consider whether Sutor's expert testimony satisfies the reliability requirement for admissibility. See Mathis, 264 F.3d at 335. In the present case, plaintiff has the burden to establish that the reliability requirement is met by a preponderance of the evidence.

See Oddi, 234 F.3d at 144. “Because the proffered testimony is not scientific in nature, the methodology need not be subjected to rigorous testing for scientific foundation or peer review. Nevertheless, the expert must still provide a methodology that can be proven to be reliable.”<sup>1</sup>  
Bethea v. Bristol Lodge, 2002 WL 31859434 (E.D. Pa. Dec. 18, 2002) at \*5.

Sutor's expert report cites the following deficiencies in the defendants' security as contributing factors to defendants' failure to deter the sexual assault of plaintiff Jamie Murray and resulting attack of plaintiff Sara Matin: (1) the failure of the security department to place the alleged attacker under covert or overt physical surveillance when his suspicious behavior was first detected in the casino; (2) the failure of the security department to notify the Atlantic City police about alleged attacker's suspicious activity in the casino occurring prior to the attack; (3) the failure of the security department and the Fire Command Center security personnel to monitor the movements of the alleged attacker within the parking lot; (4) the failure of Borgata Casino staff to fully and completely investigate the sexual assault as soon as the complaint was made; (5) the failure of the Borgata Casino to notify state law enforcement officials about the sexual assault complaint in a timely manner; (6) the failure of the Borgata Casino to employ sufficient qualified personnel to utilize pan, tilt, and zoom cameras to follow the initial incident more closely and tape the individual involved, and (7) the failure of individual Borgata security personnel to notify the security department by radio to take appropriate action to the initial incident. Sutor Report at 2-3.

Sutor has failed to demonstrate the reliability of the methodology which he uses to

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<sup>1</sup> Methodology is defined as a “body of methods, rules, and postulates employed by a discipline: a particular procedure [or] set of procedures.” Oddi, 234 F.3d at 1157 n. 20.

evaluate the quality of the Borgata's security services. In his expert report, he declares that: "[i]n my expert opinion, there were obvious deviations from industry standards by Borgata personnel in connection with this incident." Sutor Report at 1. However, Sutor does not address or discuss the industry standards for casino security applied in this report.

During his deposition, he acknowledged that there were very few standard that exist at present for security in the hospitality industry. Sutor Deposition at 47. He stated that there has very little written about casino and hotel security that is available to the public. Id. at 48. As a result, he drafted a summary of contents for a future book about casino security. Id. at 47. Sutor testified at his deposition that he was "writing the standards." Id. When asked by defense counsel "can we agree that there are no published standards on how many [security] cameras one operator can operate at present," he responded that "It's a work in progress. It's in my book. I'm writing a book on the standards." Id. at 177. In response, defense counsel asked if there were no other published standards other than his work to which Sutor answered, "Yeah, I guess so, that's why I'm writing it." Id. Nevertheless, he acknowledged that the Casino Control Commission and the Department of Gaming Enforcement regulate casino security matters in the state of New Jersey. Id. at 49.

Sutor fails to demonstrate that he has a reliable methodology for evaluating security measures in casinos given the fact that: (1) he did not cite to any established industry standard for his opinions on requisite necessities for adequate security, and (2) he did not provide any explanation that could be tested or subjected to peer review as to how he reached his opinions. See Bethea, 2002 WL 31859434 at \*8. In Bethea, the court stated that "the expert must explain the means by which he reached his conclusions, and such means must satisfy at least one of the

Daubert factors of reliability.” Id. at \*8. Sutor’s report and deposition testimony failed to meet any of the standards set forth in Daubert or Elcock. See Elcock, 233 F.3d at 745-46 (citing the Daubert reliability factors). As a result, his testimony would be no more than a “subjective belief or unsupported speculation” rather than “methods or procedures of science.” See Oddi, 234 F.3d at 158.

This court determines that the proffered opinion poses no benefit in assisting "the trier of fact to understand or determine a fact in issue" as required under Rule 104(a) and Daubert.<sup>2</sup> The jury here can use its own common sense as juries do daily in deciding whether defendants were negligent.

Therefore, this court concludes that Sutor’s testimony is inadmissible as expert testimony under Rule 702 and it is hereby **ORDERED** that the Defendant’s motion to preclude the testimony of Plaintiff’s expert is **GRANTED**.

By the Court:

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L. Felipe Restrepo  
United States Magistrate Judge

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<sup>2</sup>Additionally, where matters may be elucidated without specialized knowledge through "probing cross-examination and arguments pitched to the common sense of the jury," the probative value of a proffered opinion may be outweighed by considerations of "undue delay, waste of time, or needless presentation of cumulative evidence" and may therefore be excluded under Rule 403. United States v. Stevens, 935 F.2d 1380, 1399-1400 (3d Cir. 1991).