IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PASCO COUNTY, STATE OF FLORIDA
CRIMINAL FELONY DIVISION

STATE OF FLORIDA,
Plaintiff,

v.

CURTIS J. REEVES,
Defendant.

_____/

Case No.: CRC-1400216FAES

Division: 1

DEFENDANT'S MOTION TO STRIKE STATE'S DAUBERT MOTIONS TO EXCLUDE THE TESTIMONY OF DEFENSE EXPERT WITNESSES DR. DONNA COHEN, PH.D., DR. PHILIP HAYDEN, PH.D., AND MICHAEL KNOX

COMES NOW the Defendant, Curtis J. Reeves, by and through undersigned counsel moves this court to strike the State's motions to exclude testimony of defense experts, Dr. Donna Cohen, Ph.D., Dr. Philip Hayden, Ph.D., and Michael Knox filed on June 24, 2020, and in support states the following:

1. On February 9, 2017, the State filed two initial motions, State's Motion *In Limine* to Exclude the Testimony of Defense Expert Dr. Donna Cohen, Ph.D. and State's Motion *In Limine* to Exclude Evidence Generated by Michael Knox.
2. On February 11, 2017, the State also filed State's Second Motion *In Limine* to Exclude Evidence Generated by Michael Knox.
3. The Defendant then filed Defendant's Response to State's Motion *In Limine* to Exclude the Testimony of Defense Expert Dr. Donna Cohen, Ph.D. on February 17, 2017 and Defendant's Response to State's First and Second Motions *In Limine* to Exclude Evidence Generated by Michael Knox on February 27, 2017.

4. The State filed a Reply to Defendant's Response to State's Motion *In Limine* to Exclude the Testimony of Defense Expert Dr. Donna Cohen, Ph.D. on February 20, 2017 on the eve of hearing for Defendant's Motion to Dismiss Based on Statutory Immunity Pursuant to Sections 776.032(1), 776.013(3), and 776.012(1)-(2), Fla. Stat. (2013) which was held February 20, 2017 through March 3, 2017.
5. The Court took the State's motions under advisement and Dr. Cohen, Dr. Hayden, and Michael Knox all testified at the Immunity hearing.
6. An order denying Defendant's immunity motion followed on March 10, 2017. The order is attached hereto as Exhibit A.
7. In issuing the Order, the Court specifically stated it had "carefully considered the witnesses' testimony, the transcript and recording of defendant's statement to detectives, all of the exhibits offered into evidence, including a personal view of the scene, argument of counsel, and current legal authority..." The Court later reiterates at the end of the order that it considered the testimony of the Defendant's experts and stated it denied the Defendant's motion to dismiss "[a]fter careful consideration of all the evidence provided in this case." See Exhibit A.
8. Judge Susan Barthle presided over the previously filed motions and the Immunity Hearing. Judge Kemba Johnson Lewis was subsequently assigned this case on or about February 25, 2019.
9. On June 24, 2020, the State again filed motions to exclude the testimony and evidence generated from defense experts by filing State's *Daubert* Motion to Exclude the Testimony of Defense Expert Dr. Philip Hayden, Ph.D., State's *Daubert* Motion to

Exclude the Testimony of Defense Expert Dr. Donna Cohen, Ph.D., and State's *Daubert* Motion to Exclude the Testimony and Evidence of Defense Expert Michael Knox.

ARGUMENT

The State's *Daubert* motions to exclude expert testimony presently before this Court are factually the same or similar to the State's motions filed in 2017 before the Immunity hearing. The State referred to its previous motions as "*Daubert* based." (Status Conference Tr. at 15, March 11, 2020.) This Court took the State's previously filed motions under advisement and the witnesses, Dr. Cohen, Dr. Hayden, and Michael Knox, all testified on behalf of the Defendant at the immunity hearing. Judge Barthle referenced portions of the testimony elicited from these witnesses in the order denying Defendant's motion to dismiss, showing that she considered their testimony in her findings and that she denied the State's motions *in limine*. Judge Barthle also stated that she in fact relied upon "the witnesses' testimony" and based the denial upon review of "all the evidence provided in the case" See Exhibit A. The order would not have referenced the witnesses' testimony if the Court had excluded these witnesses from her consideration. The Court would have properly put the Defendant on notice of such exclusion of his evidence so as to allow appellate review of these issues. The Court did neither.

The State wants this Court to believe that it should rehear its *Daubert* motions because, according to the State, "[w]e had the unfortunate timing that right at that time we didn't know if we were going to be a *Daubert* state or a *Frye* state." Status Conference Tr. at 15, March 11, 2020. The State seems to be purporting that the motions were not considered under *Daubert*. The Florida Supreme Court issued an opinion days before the immunity hearing on February 16, 2017, wherein the Court declined to adopt the *Daubert* Amendment and left the issue for "a proper case or controversy." *In re Amendments To Florida Evidence Code*, 210 So.3d 1231,

1239 (2017). It was not until 2018 that the Florida Supreme Court ruled that the legislative amendment to Florida Statute 90.702 was unconstitutional. *DeLisle v. Crane Co.*, 258 So. 3d 1219, 1223 (Fla. 2018), *reh'g denied*, SC16-2182, 2018 WL 6433137 (Fla. Dec. 6, 2018). From February 16, 2017 to 2018, the rule 90.702 as amended by the legislature remained in effect. The State submitted "*Daubert* based" motions *in limine,* the Defendant's responses to these motions were *Daubert* based. The Court considered the State's motions and relied upon the experts' testimony and other evidence in denying the Defendant's Motion to Dismiss.

- Collateral Estoppel Principles

Because the issues have been raised and litigated previously, the principles of the doctrine of collateral estoppel are informative to this situation. Stand Your Ground is often a two-part defense. The legislature of the State of Florida has provided the means for a pre-trial determination of immunity under Stand Your Ground and, upon denial, the Florida Supreme Court has provided an instruction to present the very same defense to the jury. As the Court explained:

> "Collateral estoppel is a judicial doctrine which in general terms prevents identical parties from relitigating the same issues that have already been decided." *Department of Health & Rehabilitative Services v. B.J.M.*, 656 So.2d 906, 910 (Fla.1995). Under Florida law, collateral estoppel, or issue preclusion, applies when "the identical issue has been litigated between the same parties or their privies." *Gentile v. Bauder*, 718 So.2d 781, 783 (Fla.1998). In addition, the particular matter must be fully litigated and determined in a contest that results in a final decision of a court of competent jurisdiction. *See B.J.M.*, 656 So.2d at 910.

City of Oldsmar v. State, 790 So.2d 1042, 1046 n. 4 (Fla. 2001). Collateral estoppel applies to criminal as well as civil cases. *State v. McBride*, n. 1, No. SC02-672, WL # (Fla. S. Ct., May 15, 2003). This efficiency rule, though historically inapplicable to the same proceeding, should attach to a situation such as this since it applies when "(1) The identical issues were presented in a prior proceeding; (2) there was a full and fair opportunity to litigate the issues in the prior

proceeding; (3) the issues in the prior litigation were a critical and necessary part of the prior determination; (4) the parties in the two proceedings were identical; and (5) the issues were actually litigated in the prior proceeding." *Pearce v. Sandler*, 219 So.3d 961, 965 (Fla. 3d DCA 2017) *quoting Topps v. State*, 865 So.2d 1253, 1255 (Fla. 2004). All five elements have been met with the caveat that it has never been applied to proceedings within a proceeding.

The issues regarding the testimony of expert witnesses presently raised were previously ruled upon and the State now seeks to relitigate to get "another bite at the apple." No new evidence or facts have been presented or developed since the State's motions were first filed in 2017. As such, the State's motions are merely an attempt to relitigate a decided matter with a new judge. In situations where a new judge is assigned to a case due to disqualification of the prior judge, which is not the case here, the Florida Rules of Administrative Procedure require that all motions for reconsideration of the prior judge's rulings be raised within 20 days of the new appointment. Fla. R. Admin. P. 2.330(h) (2009), *see also Blackpool Assoc. Ltd. v. SM-106, Ltd.*, 839 So.2d 837 (Fla. 4th DCA 2003). A Rule 2.330 motion for reconsideration would have been time barred long ago. Though Judge Barthle was not disqualified from this case, the State seeks the same benefit of a new judge to reconsider prior rulings and should be held to the same rules.

- Vague and Conclusory

The State has not sufficiently pled its *Daubert* motions as the State has mostly made unsupported assertions that all three experts' opinions are inadmissible, listed cases under headings containing its assertions, then reiterated its assertion that the opinions are not reliable. *See Booker v. Sumpter Co. Sheriff's Office/North America Risk Services*, 166 So.3d 189 (Fla. 1st DCA 2015) ("Depending on the specific basis for the challenge, the objection should include, for

instance, citation to 'conflicting medical literature and expert testimony.'") quoting *Tanner v. Westbrook*, 174 F.3d 542, 546 (5th Cir. 1999) (superseded in part by rule on other grounds in *Mathis v. Exxon Corp.* 302 F.3d 448, 459 N. 16 (5th Cir. 2002)). "A Daubert objection must set forth the specific defects in the expert's opinion. **When the motion is vague and conclusory** and not accompanied by expert depositions or reports, professional articles or other materials raising a significant issue concerning the relevancy or reliability of the testimony, a hearing will not be necessary." Ehrhardt, *Florida Evidence* (2019) at 849 (emphasis added). "Setting forth unsubstantiated facts, suspicions, or theoretical questions regarding the expert's qualifications are not sufficient." *Booker* at 193, *citing Rushing v. Kansas City Ry.*, 185 F.3d 496, 506 (5th Cir. 1999) (superseded by statute on other grounds). The circular reasoning set forth by the State does not meet the sufficiency of notice as required by *Booker*.

WHEREFORE the reasons stated above, the Defendant respectfully requests this court to grant Defendant's Motion to Strike the State's *Daubert* Motions to Exclude the Testimony of Defense Experts Dr. Donna Cohen, Ph.D., Dr. Philip Hayden, Ph.D., and Michael Knox.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of this has been furnished by Electronic Submission and United States Postal Service to: the Office of the State Attorney for the Sixth Judicial Circuit, P.O. Box 5028, Clearwater, Florida 33758, this 11th day of September, 2020.

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IN THE CIRCUIT COURT OF THE SIXTH JUDICAL CIRCUIT

OF THE STATE OF FLORIDA IN AND FOR PASCO COUNTY

Case No. 2014-216CFAES

STATE OF FLORIDA

vs

CURTIS JUDSON REEVES

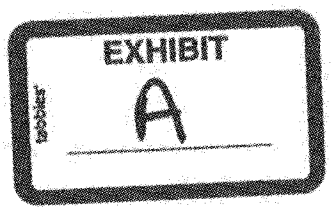
ORDER DENYING DEFENDANT'S MOTION TO DISMISS PURSUANT TO FLORIDA STATUTE §776.013(3) (STAND YOUR GROUND MOTION)

This matter came before the court during evidentiary hearing upon defendant's motion commencing on February 20, 2017, and heard through March 3, 2017. Having carefully considered the witnesses' testimony, the transcript and recording of defendant's statement to detectives, all of the exhibits offered into evidence, including a personal view of the scene, argument of counsel, and current legal authority, this court determined that Mr. Reeves has not shown by a preponderance of the evidence that immunity attaches. In reaching this conclusion, this court states the following:

A defendant must establish entitlement to immunity by a preponderance of the evidence. Under §776.013(3), Fla. Stat., a person is justified in using deadly force when that person (1) is attacked in a place where he has a right to be, (2) is not engaged in any unlawful activity, and (3) reasonably believes it is necessary to use force to prevent death or great bodily harm. The first two factors are not at issue, since the defendant was inside a movie theater as an admission-paying patron; and there was no indication that the defendant was involved in any illegal activity at the time of the altercation.

This court does find issue with the Mr. Reeves' testimony in support of the third factor, and denies this motion for the following reasons:

The physical evidence contradicts the defendant's version of events. For instance, the defendant testified that he was hit in the outside corner of his left eye with a cell phone or a fist. The video evidence contradicts this assertion, clearly showing that there was no hit from a fist, and the item argued by the defense to be a cell phone was simply a reflection from the defendant's shoes. Despite hours of testimony by the defense's crime scene reconstruction expert in an effort to prove that the reflections seen in the video were those of a cell phone, other images of the defendant in the movie theater clearly show the same rectangle-shaped reflection on his shoes. In addition, common sense and the credible testimony of the medical examiner casts grave doubt on the likelihood of anything hitting the defendant in the eye beneath his glasses in the manner the defendant described. Which begs the question, why did the defendant say he was hit in the left eye, to the point of being dazed, when the video images and basic physics indicate that he did not



get hit in the left eye with anything? The logical conclusion is that he was trying to justify his actions after the fact.

The defendant testified that the alleged victim was virtually on top of him, and that he was grabbing the alleged victim's chest or body with his left hand while he fired the fatal shot with his right hand, and even stated that he was surprised he did not shoot himself in the hand while doing so. The video evidence and other witness testimony contradicts this assertion also. In fact, the video clearly shows that the closest the alleged victim ever came to the defendant was when his hand reached for and grabbed the defendant's popcorn and threw it on him. The video then shows the defendant lunge forward with his right arm extended, and fire at the alleged victim, who at that point was so far back from the defendant that he could not even be seen in the video anymore. He certainly was not on top of the defendant, and plainly the defendant's left hand was nowhere near the alleged victim's body.

In addition to the video evidence and testimony that directly contradicted the defendant's testimony, other facts tended to show that he was not in fear of great bodily harm or death. His conduct demonstrated that he was not afraid of the alleged victim: the defendant initiated contact with the alleged victim on at least three occasions and was not concerned about leaving his wife there alone when he went to talk to the manager. As he was trained extensively in handling firearms and dealing with conflict situations, he was far better prepared than the average person to deal with situations such as this one. Furthermore, the defendant did not appear to be frail by any means; on the contrary he is quite a large and robust man. He also appeared quite self-assured when he was testifying, and certainly did not appear to be a man who was afraid of anyone.

Because the defendant's testimony was significantly at odds with the physical evidence and other witness testimony, this court has considerable doubts about his credibility, and is not willing to come to the conclusion that these circumstances are those envisioned by the legislature when the "stand your ground" law was enacted.

After careful consideration of all of the evidence provided in this case, this court finds that the defendant did not credibly demonstrate that he reasonably believed it was necessary for him to use deadly force in this situation, therefore, defendant's motion is DENIED.

DONE AND ORDERED in Pasco County, Florida, this 10th day of March, 2017.

Susan G. Barthle, Circuit Judge

Copies to:
State Attorney's Office
Defendant's attorney, Escobar and Associates, P.A.