

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA IN AND FOR PASCO COUNTY
2014CF000216CFAXES-1

Filed For Record
Pasco County, Florida
2020 SEP 18 PM 1:49

FILED
CLERK OF CIRCUIT COURT
PASCO COUNTY, FLORIDA

STATE OF FLORIDA

V.

CURTIS JUDSON REEVES

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

COMES NOW, Bernie McCabe, State Attorney, for the Sixth Judicial Circuit in and for Pasco County, Florida, by and through the undersigned Assistant State Attorney hereby responds to the *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* as follows:

State's Position

The Court has not ruled on the *Daubert* motions filed by the State. Thus, no collateral estoppel applies.

In addition, as outlined below, all of these motions are amended to include additional facts and evidence, and thus, also cannot be barred by collateral estoppel.

Facts

The State adopts the facts stated in paragraphs one through four of the Defendant's motion.

The State's initial *Daubert* motion (2017) regarding Dr. Cohen was based solely on her deposition testimony. The State's second *Daubert* motion (2020) adopted the arguments in the State's initial motion and challenged her opinions during the immunity hearing.

The State's initial *Daubert* motion (2017) regarding Mr. Knox was based solely on his deposition testimony. The State's second *Daubert* motion (2020) adopted the argument regarding "back-lighting" set forth in the initial motion and challenged his testimony regarding his opinions regarding "video interpretation" and "path of bullet" expressed during his immunity hearing.

Prior to the immunity hearing in 2017, the State **did not** file a *Daubert* motion relating to Dr. Hayden.

On February 20, 2017, prior to the taking of testimony the State and the defense discussed with the Court, the status of the State's *Daubert* motions. Initially the discussion regarded the testimony of Dr. Cohen. See, Exhibit #1, attached. (Excerpt, Immunity hearing transcript, Volume I, pages 1, 5-10.

During the direct testimony of Dr. Cohen, the State objected to defense's hypothetical question. See, Exhibit #2, attached. (Excerpt, Immunity hearing transcript, Volume II, pages 223-233.) After hearing arguments of counsel, the Court stated:

"All right. Mr. Martin's objection really rings to me to be a *Daubert*-type objection. At least that's kind of what I'm hearing.

I'm going to overrule at this point for reason we've already discussed. Any ruling I make as to that issue, I'm not - is for this - purposes of this hearing.

As far as hearing further testimony and the proffers, I'm not going to make any. I'm not going to be held to the same exact procedure. Should we have further proceeds such as a jury trial in this case, we will have to readdress issues such as that.

Again, obviously I'm the trier of fact here for *Daubert*, Frye, determination, so I'm going to - we're going to proceed in the manner that we indicated previously, so I'm going to overrule." See, Exhibit #2, (Excerpt, Immunity hearing transcript, Volume II, pages 228-229.) (Emphasis added)

After a break, the discussion continued regarding the status of the Cohen *Daubert* motion. Confusion began with the

Court indicating she was going to overrule and deny the State's Motion in Limine (Cohen). The Court clarified "No, I'm going to - we're not going to forward - I mean, I'm not going to address it". ... And as far as further, my only concern with reserving on that is that I don't want that to be an open invitation for more submissions by either side on that issue at this point." See, Exhibit #2, (Excerpt, Immunity hearing transcript, Volume II, pages 231-233.)

During the direct testimony of Mr. Knox concern his experience in video equipment and recording the State objected reminding the Court of its motion regarding the exhibits generating by Mr. Knox relating to "lighting". See, Exhibit #3, (Excerpt, Immunity hearing transcript, Volume XII, pages 1408-1409.)

During the discussion regarding the State's objection the Court stated "All right. As you both know, I'm reserving those on the motion and the response so shall we consider this as the proffer at this point?" See, Exhibit #3, (Excerpt, Immunity hearing transcript, Volume XII, page 1410.) The defense agreed it would be a proffer and motion is under advisement. See, Exhibit #3, (Excerpt, Immunity hearing transcript, Volume XII, pages 1410 - 1411.)

The direct testimony of Mr. Knox continued until the defense was ready to present testimony and exhibits that was subject to the State's motion. The parties discussed how the Court would receive the evidence. The testimony was proffered and the ruling reserved. See, Exhibit #3, (Excerpt, Immunity hearing transcript, Volume XII, pages 1461 - 1464.)

The State adopts the facts stated in paragraph six of the Defendant's motion. (Order denying Defendant's immunity motion)

Argument

Collateral estoppel does not apply because the Judge failed to rule on the State's initial *Daubert* motions and the subsequent motions contain new facts.

Yet, even so, the Defendant relies on the Court's order denying his motion for immunity as proof the Court ruled on the State's initial *Daubert* motions. There is no express written ruling in the Judge's written order. And there is no express oral ruling in the transcripts of the hearing. In fact, the

previous judge repeatedly states that she is reserving ruling and then never does rule on those motions before being replaced by the current judge on the case, Kemba Lewis. Nor can a two page order denying a motion to dismiss for immunity be taken as granting or denying the State's *Daubert* motions, even impliedly when there are no finding of the defense experts credibility or if the court even considered their testimony under a *Frye* or *Daubert* standard (since the law continued to be in flux at that time).

In the first paragraph of the order, the Court, in finding the Defendant did not meet his burden in proving he was entitled to immunity stated "[h]aving carefully considered **the** witnesses' testimony ... " The phrase indicated she "considered" the witnesses', but is silent on how, if at all, she ruled on the matters that were proffered and taken under advisement. The Judge's order does not specifically address how she resolved her "gatekeeping" function under *Daubert* or *Frye*. She even mentions in the transcript that she wanted to readdress the issues at trial. It cannot be assumed that the State's motions were denied in total.

Going forward, the State or this current judge has no guidance as to what the prior judge considered admissible or inadmissible. The only way to rectify this situation is for this Court to conduct *Daubert* hearings on all pending motions. To ask this judge to use an order, with no express findings on the State's *Daubert* motions, to make conclusion about what a previous judge was thinking is unfair to both this judge and the State.


WHEREFORE, the State respectfully asks this Honorable Court to enter its order denying the *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.*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing *State's Response To 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* was furnished to Richard Escobar, Esq., Attorney for the Defendant,

at 2917 West Kennedy Blvd., Suite 100, Tampa, FL 33609-3163, by
U.S. Mail or Personal Service this 16th day of September,
2020.

BERNIE McCABE, State Attorney
Sixth Judicial Circuit of Florida



Glenn L. Martin, Jr.
Assistant State Attorney
Bar No. 435988
P.O. Box 5028
Clearwater, FL 33758
(727) 464-6221

EXHIBIT #1

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT OF
THE STATE FLORIDA, IN AND FOR PASCO COUNTY
CASE NO. CRC14-0216CFAES

STATE OF FLORIDA,

Plaintiff,

vs.

VOLUME I

CURTIS J. REEVES,

Defendant.

PROCEEDINGS: Stand Your Ground Motion

DATE: February 20, 2017

BEFORE: The Honorable Susan Barthle
Circuit Court Judge

PLACE: Robert D. Sumner Judicial Center
38053 Live Oak Avenue
Dade City, Florida 33523

REPORTED BY: Charlene M. Eannel, RPR
Court Reporter
PAGES 1 - 129

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(727) 442-7288

P-R-O-C-E-E-D-I-N-G-S

1
2 THE COURT: All right. Everybody is present
3 here on State of Florida versus Curtis Reeves. We
4 have Mr. Garcia, Ms. Sumner and Mr. Martin for the
5 State. Mr. Escobar. I see Mr. Reeves is present.
6 Mr. Michaels and Mr. Shah for the Defense.

7 Are we ready to begin?

8 MR. MICHAELS: We're ready to begin, Your
9 Honor, Defense is.

10 THE COURT: All right.

11 MR. MARTIN: I think there's just a couple
12 matters, then we can get started.

13 THE COURT: All right. What do we need to
14 address first?

15 MR. MARTIN: Yesterday, as you know, the State
16 filed a response -- filed a Motion in Limine to
17 exclude the testimony of Dr. Cohen. It was based not
18 only on my opinion under 701, but also under 702,
19 and also citing Daubert.

20 As the Court's well aware, Friday -- about
21 10:00 in the morning last Friday, the Florida
22 Supreme Court declined to adapt the Daubert standard
23 as it applies to procedural matters in the state of
24 Florida.

25 That's kind of put us in a little bit of a

1 flux. I don't believe that Dr. Cohen is going to be
2 the first witness. The Defense has filed a response
3 to my motion. I have filed a reply to that
4 addressing specifically now the three opinions that
5 they're going to call Dr. Cohen on.

6 What I'd like to do is provide you with a
7 courtesy copy at this point. I'd also like to file
8 my original pleading, and I would suggest to the
9 Court that prior to Dr. Cohen testifying this
10 morning, if we can just take a short five-minute
11 break to discuss logistically how we're going to
12 proceed, I think that would help both Mr. Michaels
13 and myself as to our presentation, both in direct
14 and cross, not only for Your Honor's benefit, but
15 for the appellate record.

16 Is that acceptable to the Court?

17 THE COURT: That sounds fine. Defense?

18 MR. MICHAELS: Good morning, Your Honor. One
19 of the problems here is that we got this Motion in
20 Limine last week, a week before trial, which forced
21 us to respond. As the Court knows, we responded
22 with case law -- tabbed and provided the case law,
23 provided some -- some transcripts of some of the
24 depositions.

25 The State, I don't recall the date, but this

1 was a deposition that was taken on June 30, 2016,
2 and now we're having these issues. I think the last
3 time we were here the Court decided that we would
4 have Dr. Cohen testify. The Court has both the
5 State's Motion in Limine, our response, and now the
6 State's reply, which we received some time after
7 11:00 last night. So frankly, Your Honor, I'm not
8 in a position to be able to intelligently argue
9 that.

10 I was up, but I still had not had an
11 opportunity to research the issues that Mr. Martin
12 broached in that reply. It looks kind of like
13 they're just kind of the same objections as before,
14 and I know that's what he was kind enough to speak
15 to me about.

16 So what I would suggest, we proceed as we -- as
17 we planned before, have Dr. Cohen testify, and have
18 the Court make the decision. The State said, I'm
19 not going to argue anything else. I provided my
20 Motion in Limine. We're in a similar position.

21 We've argued in our motion that's a response to
22 their motion. We intend on calling her this
23 afternoon, so certainly there's -- there's no issue
24 in addressing it right now. So I would suggest that
25 we proceed as we planned last week, have her

1 testify, and then have the Court make a decision
2 after the State has the opportunity to cross-examine
3 her after my direct examination.

4 THE COURT: Response, Mr. Martin?

5 MR. MARTIN: I don't think that's anything
6 different than what I suggested to the Court. The
7 only nuance is, is try to figure out exactly how we
8 are going to proceed procedurally now that, as of
9 Friday of last week, we're in a little bit of a
10 quandary, as far as the gatekeeping standards, that
11 the Court has to apply.

12 I have some suggestions on that, but I don't
13 think we need to do that now. That's why I suggest
14 if I can just file my response, if we could take a
15 break at the appropriate time, let's talk through
16 logistically how we're going to do this now, since,
17 at the time we made that decision, we didn't have
18 the Florida Supreme Court pulling the rug out from
19 under our feet right before we're going to have a
20 hearing.

21 And I don't say that disparagingly, but that's
22 what happened. This placed us in a position where
23 we drafted everything, researched everything, and
24 now we need some Court direction from the Court.

25 So I don't think anything that I said is any

1 different from what Mr. Michaels said. We're just
2 going to need some time with the Court to
3 logistically go through it, and then we're going to
4 proceed. That's all.

5 MR. MICHAELS: If it's just going to take a
6 couple minutes, Judge, I don't have a problem with
7 that, but if we're going to be arguing the merits of
8 Dr. Cohen's potential testimony, then that I do have
9 a problem with.

10 So if we're just going to talk about, you know,
11 we'll let her testify and we'll be able to file some
12 legal argument concerning both standards and that
13 sort of thing, then I'm fine with that so we can do
14 that later on, if the Court's is amenable to that.

15 THE COURT: All right. We're going to just
16 proceed as we had previously indicated. It is a
17 little snag that the Supreme Court came out with
18 that decision Friday, but we will deal with it. We
19 are well familiar with both standards, and we can
20 proceed accordingly.

21 So more than likely, we're going to proceed
22 just as we indicated earlier, and obviously, we
23 don't have a jury, so I'm going to be the gatekeeper
24 either way, so there's no sense in us doing Frey and
25 Daubert hearings separately. We're just probably

1 going to proceed and we will go from there.

2 MR. MARTIN: May I approach the Court with a
3 courtesy copy of my reply?

4 THE COURT: Yes, you may.

5 MR. MARTIN: May I file the original with the
6 clerk?

7 THE COURT: And obviously with the late filing,
8 I haven't had a chance to review it as -- the same
9 with Defense's, I think it was about 600 pages that
10 were filed on Friday that I received late Friday. I
11 did not get through much of it.

12 MR. ESCOBAR: We have also hard copies for you
13 with the tabbed cases.

14 THE COURT: I've got them.

15 MR. ESCOBAR: You do? Okay.

16 THE COURT: Yeah. Fran printed them out for me
17 on Friday.

18 And one other housekeeping matter, please be
19 mindful of our stenographer over here. I know
20 sometimes Counsel gets rattling off quickly and
21 she's got a rough job as it is, and it's going to be
22 a long two weeks for her, so please be mindful of
23 her.

24 I may interrupt if you get going too quickly,
25 particularly when you're reading stuff, so.

EXHIBIT #2

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT OF
THE STATE FLORIDA, IN AND FOR PASCO COUNTY
CASE NO. CRC14-0216CFAES

STATE OF FLORIDA,
Plaintiff,

vs.

VOLUME II

CURTIS J. REEVES,
Defendant.

PROCEEDINGS: Stand Your Ground Motion

DATE: February 20, 2017

BEFORE: The Honorable Susan Barthle
Circuit Court Judge

PLACE: Robert D. Sumner Judicial Center
38053 Live Oak Avenue
Dade City, Florida 33523

REPORTED BY: Charlene M. Eannel, RPR
Court Reporter
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1 MR. MICHAELS: She's not going to say what
2 Mr. Reeves said. She's just going to say she
3 interviewed him.

4 THE COURT: What is your --

5 MR. MARTIN: Well, what Mr. Reeves said,
6 there's certainly nuances that may come into play,
7 but we need to ferret those out.

8 THE COURT: All right. For purposes of the
9 moment, we will -- I will overrule it.

10 BY MR. MICHAELS:

11 Q. Did you interview Mr. Reeves?

12 A. Yes, I did.

13 Q. And where did that take place?

14 A. That took place in your law office.

15 Q. And how long did that interview last?

16 A. An hour and a half plus.

17 Q. Okay. Now, let me ask you a hypothetical:

18 If an individual was healthy and robust when he
19 was younger, and over the years suffered degenerative
20 changes to his body, and that person had some kind of
21 cognitive recognition of those degenerative changes,
22 would that person perceive his own vulnerability in a
23 one-on-one stressful situation?

24 A. Yes.

25 MR. MARTIN: Your Honor, I'm going to object to

1 the hypothetical, assuming facts not in evidence,
2 the specific part that is not in evidence is that he
3 had cognitive ability -- awareness of those medical
4 issues.

5 I know we've had the testimony from Dr. Foley,
6 but he embellished upon that in this hypothetical
7 because we have no testimony whatsoever as to
8 exactly what and to what extent Mr. Reeves had any
9 knowledge of any of this.

10 So I object to the form of the question for
11 that very limited purpose when he added cognitive
12 recognition, because we've had no testimony as of
13 yet of that.

14 MR. MICHAELS: Judge, that's the very nature of
15 a hypothetical. He doesn't want me to ask if she
16 formed an opinion based on Mr. Reeves' interview. I
17 know he doesn't want me to ask that, so I'm asking a
18 hypothetical.

19 I'll change the hypothetical a little bit if it
20 will make the prosecutor more comfortable.

21 BY MR. MICHAELS:

22 Q. Let me ask it to you this way, Dr. Cohen:

23 If -- and this is a hypothetical -- if I'm a
24 person who was very active through my 40s and through my
25 50s, and then as I got to be 50, 60 and 70 all of a

1 sudden I wake up in the morning and my knees hurt a
2 little bit. I wake up in the morning and I can't ride my
3 bike like I used to. I wake up in the morning and I
4 can't run like I use to.

5 I wake up in the morning and I'm having trouble
6 with my hands, my joints. My shoulder hurts, my feet
7 hurt, my back hurts, and I realize this because I'm going
8 through this, and now I'm 70, and I've been through that.

9 I've been healthy, I've been okay, and now I'm
10 getting a little weaker as I go, and I realize these
11 things are happening to me because I feel them every day.

12 Am I a person -- as a 70-something-year-old, as
13 an elder citizen, am I somebody who's going to be --
14 first, let's say -- let me ask you this way: Is that a
15 person that's going to be more vulnerable than like a
16 40-year-old?

17 A. Yes.

18 Q. Well --

19 MR. MARTIN: Excuse me, Judge. I object to --
20 we're talking about more vulnerable than what?

21 I mean, we have to have a hypothetical that is
22 based on the facts that are in evidence. So when we
23 talk about more vulnerable, we haven't talked about
24 vulnerable as to what?

25 Vulnerable stepping out of the shower and

1 slipping and falling? Twisting my knee when I get
2 out of my car? I mean, more vulnerable is so broad.
3 How are we supposed to know what the answer is?

4 MR. MICHAELS: Did he want me to ask if I'm
5 sitting in a movie theater and a six-foot guy
6 attacked me? I'll be happy to ask that.

7 MR. MARTIN: Okay. Hopefully that was tongue
8 in cheek.

9 BY MR. MICHAELS:

10 Q. I'm a 70-something-year-old, and I'm in a quiet
11 place or maybe a noisy place or a dark place, but I'm
12 seated, and somebody who doesn't appear to me to have any
13 sort of malady, perfectly healthy, is larger than me --
14 if they're coming after me and attacking me, is it
15 reasonable for me as a 70-year-old -- describing what I
16 did to you?

17 Is it reasonable for me to perceive my own
18 vulnerability?

19 A. Yes.

20 MR. MARTIN: Your Honor, again, I'm going to
21 object because we don't have any of those facts in
22 evidence.

23 What you've heard from Dr. Cohen is her ability
24 and her research deals with vulnerability, and if
25 you listen carefully to what she said her research

1 was, it was vulnerability -- so that society would
2 recognize vulnerability so industries and cottage
3 industries could be set up in order to take care of
4 those individuals so they wouldn't hurt themselves.

5 That's what her research is about. That's what
6 she has testified to, and now we're adding -- all of
7 a sudden, we've got people coming at them and people
8 are going to attack them. She's never, ever, ever
9 indicated there's any research in which she has done
10 that.

11 It's only recognizing the elderly are
12 vulnerable and society has to recognize that,
13 because we are becoming an older society and we need
14 to develop the industry in order to take care of
15 them. That's her research. And how it applies to
16 this particular case I fail to understand.

17 MR. MICHAELS: It's like somebody inventing a
18 seat belt and then say they can't talk about the
19 nylon they used to invent it. She's talking about
20 her research. She's talking about -- certainly, the
21 great breadth of literature. She's mentioned
22 several authors she's depending on. She's been
23 doing this for 40 years.

24 What the prosecutor says is true, that's part
25 of what she does, but she's doing something else

1 here and she's trying to educate the public for
2 other reasons, too. Not just so somebody doesn't
3 slip and fall in a nursing home because she's
4 designed a shower rug a non-slip floor. But it's so
5 that society becomes aware that older people are
6 more vulnerable and they should not be picked on by
7 other people that are bigger, stronger and younger,
8 because that part of society also has a
9 responsibility.

10 And I think she -- that's what Dr. Cohen is
11 also trying to educate the public and these students
12 on. So that's my argument, Judge.

13 THE COURT: All right. Mr. Martin's objection
14 really rings to me to be a Daubert-type objection.
15 At least that's kind of what I'm hearing.

16 I'm going to overrule at this point for reasons
17 we've already discussed. And any ruling I make as
18 to that issue, I'm not -- is for this -- the
19 purposes of this hearing.

20 As far as hearing further testimony and the
21 proffers, I'm not going to make any. I'm not going
22 to be held to the same exact procedure. Should we
23 have further proceedings such as a jury trial in
24 this case, we will have to readdress issues such as
25 that.

1 Again, obviously I'm the trier of fact here for
2 Daubert, Frey, determinations, so I'm going to --
3 we're going to proceed in the manner that we
4 indicated previously, so I'm going to overrule.

5 MR. MARTIN: Thank you, Judge.

6 BY MR. MICHAELS:

7 Q. So your answer was would an individual in that
8 situation be vulnerable, number one?

9 A. Yes. And it goes right to the heart of Michael
10 Taylor's analysis of physiologic changes with aging.

11 There are four different kinds. There's the
12 ones that are total, like high hearing, vision at some
13 point. Then there are those that are structural like
14 muscle mass.

15 Then there are changes in efficiency, like the
16 conducting velocity that I referred to with the
17 nerve/brain connection. And the fourth is the incapacity
18 to respond to highly stressful situations.

19 Q. What do you mean by that?

20 A. Referring to the fact that the -- it's not just
21 the muscles that are changing, that there's systemic
22 changes. And the various parts of the body work together
23 so that you can be healthy or function.

24 What happens is that the fourth kind of change
25 really refers to the fact that the system -- the body's

1 system can't mobilize itself as efficiently or as quickly
2 to respond to stress.

3 MR. MICHAELS: Thank you.

4 May I have a moment, Your Honor?

5 THE COURT: You may.

6 MR. MICHAELS: I don't have any further
7 questions of Dr. Cohen.

8 Thank you.

9 THE COURT: Cross?

10 MR. MARTIN: I would ask a favor of the Court:
11 Could we take five minutes and let Mr. Garcia and I
12 have a discussion somewhere in private? I think
13 then I'll know how I want to proceed based on the
14 Court's ruling.

15 And based on the testimony that we've heard, I
16 may have a certain direction that I want it go, and
17 I think a five-minute break would help me with that
18 and I would greatly appreciate it.

19 THE COURT: Okay. I will allow that.

20 MR. MARTIN: Thank you, Judge, very much.

21 THE WITNESS: We'll take five minutes.

22 MR. MARTIN: Thank you.

23 (Recess taken.)

24 THE BAILIFF: All rise.

25 Court is back in session.

1 You may be seated. Thank you.

2 MR. MARTIN: Judge, thank you for the five
3 minutes.

4 After speaking with my colleagues -- and I know
5 that you indicated that my last objection sounded
6 like a Daubert and Frey. Who knows where we're at
7 now in the State of Florida as of Friday.

8 But the bottom line is, Judge, I think, at this
9 point, in order to preserve the appellate record,
10 I'm going to ask that you consider my Motion in
11 Limine to exclude the testimony of Defense expert,
12 Dr. Donna Cohen -- to consider that, along with my
13 reply to the Defense response to my motion, and I
14 will -- and I'm sure you're going to say, "Same
15 ruling," or whatever, and then once you do that, I
16 will have no cross of Dr. Cohen.

17 THE COURT: Okay. Any input as to that?

18 MR. ESCOBAR: No, Your Honor.

19 THE COURT: All right. I'm going to reserve,
20 as I indicated, on that issue, and so I am going to
21 overrule and deny the State's Motion in Limine at
22 this time.

23 MR. MARTIN: I'm a little confused, because you
24 said you were going to reserve and then deny it.

25 THE COURT: No, I'm going to -- we're not going

1 to go forward -- I mean, I'm not going to address
2 it.

3 MR. MICHAELS: Correct.

4 THE COURT: So I'm going to --

5 MR. MARTIN: I think what we decided in this
6 process is that you'll take it under advisement.

7 THE COURT: Uh-huh.

8 MR. MARTIN: You'll make a determination as to
9 whether or not your initial role as a Judge and how
10 you're going to fulfill that as to whether or not it
11 would be admissible. And then once you make that
12 determination, then, as the trier of fact, you will
13 apply the rules as the trier of fact, and you, at
14 your own discretion, can either accept or reject her
15 testimony just like any other trier of fact would.

16 THE COURT: Correct.

17 MR. MARTIN: Okay. That's acceptable to the
18 State.

19 THE COURT: And as far as further, my only
20 concern with reserving on that is that I don't want
21 that to be an open invitation for more submissions
22 by either side on that issue at this point.

23 MR. MARTIN: No.

24 THE COURT: You know, I'm good with that, and
25 we'll-- we'll have a little bit more discussion as

1 to what's the appropriate analysis in light of the
2 fact that Supreme just ruled Friday, but in my brief
3 overview of it, it appears that we fall back to
4 Frey. So...

5 MR. ESCOBAR: Which is an easier standard.

6 THE COURT: Correct.

7 MR. MARTIN: Colleagues differ on that, so I
8 don't know, but hopefully in a week we'll have some
9 guidance.

10 THE COURT: Let's hope.

11 MR. MARTIN: Let's hope.

12 THE COURT: Either way, I'm going to reserve --

13 MR. MARTIN: Thank you, Judge.

14 THE COURT: -- as to that.

15 MR. MARTIN: All right.

16 THE COURT: So no further cross?

17 MR. MARTIN: No, ma'am. I'm going to rely on
18 my motion, and then let you decide as we discussed.

19 THE COURT: Okay. May this witness be
20 released?

21 MR. ESCOBAR: Yes, Your Honor.

22 THE COURT: Thank you.

23 Dr. Cohen, you're free to go.

24 THE WITNESS: Thank you.

25 (Witness excused.)

EXHIBIT #3

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT OF
THE STATE FLORIDA, IN AND FOR PASCO COUNTY
CASE NO. CRC14-0216CFAES

STATE OF FLORIDA,

Plaintiff,

vs.

VOLUME XII

CURTIS J. REEVES,

Defendant.

PROCEEDINGS: Stand Your Ground Motion

DATE: February 27, 2017

BEFORE: The Honorable Susan Barthle
Circuit Court Judge

PLACE: Robert D. Sumner Judicial Center
38053 Live Oak Avenue
Dade City, Florida 33523

REPORTED BY: Charlene M. Eannel, RPR
Court Reporter
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VERBATIM PROFESSIONAL REPORTERS, INC.
601 Cleveland Street, Suite 380
Clearwater, Florida 33765
(727) 442-7288

1 I've also used video quite extensively
2 throughout the entire time that I've done both private
3 consulting and even prior to that when I did cases for law
4 enforcement, both in -- as a traffic homicide investigator
5 where I've used a lot of videos for reconstruction of
6 traffic accidents, and then also prior to that using video
7 with -- when it was available in crime scene cases.

8 Q. And have you been taught concepts concerning the
9 techniques necessary for accuracy, not only in the
10 capturing of the evidence but also in the presentation?

11 A. Yes.

12 Q. Now --

13 MR. MARTIN: Judge, I'm still going to object.
14 All he said was, "I've used it."

15 I have filed a motion, a valid motion, and he
16 used his camera. He used it to capture what he
17 perceived to be the lighting. I have an extensive
18 brief on it, so you can understand my objection when
19 he tells us, a very dogmatic statement, "I've used
20 it, therefore, I know what's going on," but I'm not
21 going to take that for face value. Just saying, "I
22 used it," that doesn't mean anything.

23 MR. ESCOBAR: Judge, you know, Mr. Martin
24 selects little tiny bits and pieces of testimony in
25 order to make his arguments. He's not -- in other

1 words, you know, in our area of practice, it's called
2 the doctrine of completeness. He doesn't use the
3 doctrine of completeness.

4 He testified about the courses that he took, the
5 courses that were taught to him in order to have a
6 solid foundation in the issues -- with the issues of
7 the video, how to make precise video and how to, you
8 know, determine that the video that you're taking is,
9 in fact, of evidentiary value.

10 For Mr. Martin to say, "Oh, well, he just used
11 video," that's not being genuine. That's just not
12 being genuine. That's not the record here, and I'm
13 going to rely not only on the record but if the Court
14 remembers, we also filed a response to his motion in
15 this particular case, and so we would also rely
16 obviously on our motion and memorandum of law.

17 THE COURT: All right. And as you both know,
18 I'm reserving those on the motion and the response,
19 so shall we consider this as the proffer at this
20 point?

21 MR. ESCOBAR: Your Honor, he's going to proffer
22 it on the stand because, yes, in all of our segments
23 we have to have a record.

24 THE COURT: Right.

25 MR. ESCOBAR: So we've -- I've got my memo, he's

1 got his argument and we're ready to move on.

2 THE COURT: All right. Very good. I'll take --

3 MR. MARTIN: We agreed that would be the
4 procedure.

5 THE COURT: Under advisement, correct.

6 Go ahead.

7 BY MR. ESCOBAR:

8 Q. Now, Mr. Knox, in the reconstruction of a
9 shooting incident process, what does it mean by
10 considering the environment?

11 A. Well, you have to take into account where a
12 shooting took place to be able to fully reconstruct it.
13 By that, I mean you need to know geometrically what that
14 scene is; so where are things, you know, how are things
15 positioned, what are the distances. You need to
16 understand lighting conditions and visibility, line of
17 sight.

18 You need to be aware of obstructions or things
19 that would be in the way of how somebody would respond or
20 how physical evidence would be deposited, and you need to
21 have a thorough understanding of basically what all is
22 there at that location that could have an influencing
23 factor on what took place.

24 Q. When you have a location like a theater and it
25 has seats, are you interested in where the witnesses were

1 Q. Is that an exhibit of what?

2 A. It's a PowerPoint slide presentation that I
3 prepared.

4 Q. Is that of some of the work that you did in this
5 particular case?

6 A. Yes.

7 Q. More importantly, of the work that you did in
8 this case in order to show the lighting effect within the
9 Cobb Theater on January 13th of 2014?

10 A. Yes.

11 MR. ESCOBAR: Your Honor, at this point in time,
12 we would introduce this into evidence. I will tell
13 you that the entire presentation, with the exception
14 of the mannequin photos that are contained within
15 this exhibit, has been stipulated to.

16 There is a memo, I believe, on the mannequin
17 photos that I know the Court will consider both the
18 government's motion as well as the Defense's motion,
19 and whether you will be using those in your analysis
20 in this case.

21 MR. MARTIN: Judge, that's not entirely correct.
22 I also filed a separate Daubert motion regarding the
23 photographs of the general seating area without the
24 mannequin in it dealing with the lighting issue, and
25 that's also on Your Honor's desk, and a copy has been

1 provided to Mr. Escobar.

2 MR. ESCOBAR: I'm not sure that these contain
3 those, but I'm sure that counsel will certainly alert
4 the Court if, in fact, some of those photos are
5 contained within his objection to his motion.

6 MR. MARTIN: The only thing that I would ask is
7 that -- this is where we've agreed that you've got to
8 hear it anyway --

9 THE COURT: Yes.

10 MR. MARTIN: -- so I will go ahead and make my
11 motion now regarding the Daubert issue on the
12 lighting conditions that I thoroughly briefed and
13 provided to the Court with attachments.

14 THE COURT: Uh-huh.

15 MR. MARTIN: So when we come to the mannequins,
16 if it's all right with the Judge, or with the
17 specific photographs dealing with lighting in the
18 general area, I will just -- if it's all right, I'll
19 just stand and say, "That would reference one of my
20 Daubert motions," and then I'll sit down, and that
21 way you can mark in your notes exactly what we're
22 talking about.

23 THE COURT: All right. So you're going to
24 reference that specifically when we come to it,
25 right?

1 MR. MARTIN: I will, so I'm going to object to
2 the introduction of this particular exhibit --

3 THE COURT: Okay.

4 MR. MARTIN: -- based on the -- my two Daubert
5 motions. When we come to that point, that will be
6 considered as a proffer, like the Court said, and
7 then you will either accept or reject the proffer and
8 use the information or not. I believe that was our
9 agreement.

10 THE COURT: Very good. So this will be admitted
11 over objection for proffer purposes and perhaps
12 others afterwards. And shall we give it the same
13 numbering, I guess, 37?

14 MR. MARTIN: I would, but may I suggest to the
15 Court that -- that you're going to reserve ruling on
16 the exhibit --

17 THE COURT: I am.

18 MR. MARTIN: -- and just leave it at that. Then
19 at that point -- I know the ones that are coming in,
20 all the measurements and everything that are coming
21 in, but I think the record is cleaner that way.
22 You're either to accept it in total or reject it in
23 total.

24 THE COURT: Okay. I'll do that.

25 MR. MARTIN: That way the appellate record is

1 very clear that I objected to this and you're
2 reserving on the admissibility of that entire thing
3 until the proffer is over and you've had a chance to
4 review the memorandum.

5 THE COURT: All right. So that's 37?

6 THE CLERK: Yes.

7 MR. ESCOBAR: Yes, it's 37.

8 THE COURT: Under those parameters, all right.

9 (Whereupon, Defense Exhibit 37 for
10 identification was received in evidence by the
11 Court.)

12 BY MR. ESCOBAR:

13 Q. Mr. Knox, I'm going to show you what has been
14 marked as, now, Defense Exhibit Number 37, that there has
15 been a reserved ruling by the Court as to certain segments
16 of this particular exhibit.

17 Tell me what that exhibit is.

18 A. Well, this is a slide presentation that I've
19 prepared.

20 Q. Okay. Let's go to the next slide. What is this
21 a picture of?

22 A. This is just a general reference photograph.
23 This is outside of the Cobb Theater showing the front
24 entrance of the theater.

25 Q. Okay. And 4 of 40. I'm going to actually have