

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

STATE OF FLORIDA,

UCN: 512014CF000260 FAXES

v.

DIVISION: 1

CURTIS REEVES,  
SPN: 683538, Defendant. \_\_\_\_\_ /

**ORDER DENYING "STATE'S DAUBERT MOTION TO EXCLUDE THE  
TESTIMONY OF DEFENSE EXPERT DR. ROY BEDARD, PH.D."**

THIS CAUSE came before the Court on "State's Daubert Motion to Exclude the Testimony of Defense Expert Dr. Roy Bedard, Ph.D.," filed on December 15, 2021, Defendant's response filed January 7, 2022, and the State's reply filed January 13, 2022. A hearing was held on the motion on December 15, 2021. Having reviewed the motion, response, and reply, the testimony, the record, argument of the parties, exhibits and applicable law, the Court finds as follows:

**Procedural History**

On January 31, 2014, the State filed its initial information charging Defendant with murder in the second degree (PBL) and aggravated battery. The State filed two subsequent amended informations, with the most recent on May 25, 2021 charging Defendant with murder in the second degree, life felony (count one), and aggravated battery, a second degree felony (count two). On December 15, 2021, the State filed the instant motion and on the same date the Court held a hearing on the motion. Thereafter, on January 7, 2022, Defendant filed "Defendant's Response to State's *Daubert* Motion to Exclude the Testimony of Defense Expert Dr. Roy Bedard, Ph.D." and on January 13, 2022, the State filed "State's Reply to Defendant's Response to State's *Daubert* Motion to Exclude the Testimony of Defense Expert Dr. Roy Bedard Ph.D."

**Issue and Summary of the Argument**

The State seeks to exclude the testimony of Defense expert witness, Roy Bedard, Ph.D. at Defendant's upcoming jury trial. The State objects to the Defense's second use of force expert in a case involving a claim of self-defense.<sup>1</sup> The State argues that Dr. Bedard's testimony and

<sup>1</sup> The Defense also listed Dr. Philip Hayden as a use of force expert. The State has filed a separate motion regarding Dr. Hayden and the Court will address that motion in a separate order.

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opinions impinges on the province of the jury, does not assist the jury in understanding the evidence or in determining a fact in issue, merely relays information that is within the common understanding of the jury, and that his legal conclusions are not proper subject matter for an expert. The State argues that the methods Dr. Bedard used to derive his conclusions or opinions do not meet *Daubert*<sup>2</sup> standards for admissibility and that the conclusions or opinions are not reliable, are based on self-serving statements of Defendant, and cannot be applied to the facts of this case.

The Defense argues in its response that Dr. Bedard's testimony meets the requirements set forth in *Daubert*, and therefore should be admitted for the jury to determine its weight.

#### **Dr. Bedard's Expert Opinion**

Dr. Roy Bedard testified that he is a professional police trainer. He has been qualified and testified as an expert approximately thirty times in Federal and Florida State courts and he has given his opinion in the fields of defensive tactics, threat assessment, use of force, perception reaction, and survival stress.<sup>3</sup> Dr. Bedard testified that in preparation for his testimony he reviewed video of the incident, police reports and interviews of Defendant, many statements and depositions, crime scene photos, the autopsy report and photos, and the transcript of the stand your ground hearing. He also interviewed Defendant. Dr. Bedard stated that expert testimony was necessary for the jury to understand whether Defendant reacted reasonably under the circumstances. The Defense states that Dr. Bedard will testify as to Defendant's response to the events on January 13, 2014 from the Defendant's background as a former law enforcement officer.

#### **State's Objections to the Admissibility of the Testimony**

The State presents several arguments relating to the testimony of Dr. Bedard. First, the State argues that any testimony that may be offered by Dr. Bedard relating to whether or not the use of force was justified impinges on the province of the jury. The State argues that Dr. Bedard's testimony will not aid or assist the fact finder in understanding or determining a material issue of fact, Dr. Bedard's opinions are not beyond the common understating of the average person, and Dr. Bedard's opinions are based on facts that are of such a nature that they do not require any special knowledge or experience in order for the jury to form its conclusions.

The State also argues that Dr. Bedard's opinions and testimony are a conduit for inadmissible evidence for several reasons. First, the State argues that the opinions are based solely

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<sup>2</sup> *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993).

<sup>3</sup> Dr. Bedard's *curriculum vitae* is attached to Defendant's Response.

on the self-serving statements of the Defendant. Second, Dr. Bedard's testimony regarding the prior consistent statements of the Defendant is not admissible. The State argues that Dr. Bedard's testimony regarding his interpretation of the content of the surveillance video is not admissible. Further, any testimony bolstering or vouching for the credibility of the Defendant is not admissible.

The State argues that Dr. Bedard's testimony regarding police officer training is not relevant and would only confuse or mislead the jury. The State argues that all of Dr. Bedard's testimony and opinions do not pass the *Daubert* inquiry. Additionally, the State raises several objections to the admissibility of Dr. Bedard's testimony that are not based on section 90.702, Florida Statutes, or *Daubert*.

### **Legal Considerations**

The four factors the Court must consider in determining whether the methods and principles applied are reliable are: 1) whether the evidence can be and has been tested; 2) whether the theory or technique has been subjected to peer review and publication; 3) the known or potential rate of error and the existence and maintenance of standards controlling the technique's operation; and 4) whether the technique has been generally accepted in the relevant scientific community. *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993). Section 90.702, Florida statutes codifies the *Daubert* standard as follows:

If scientific, technical, or other specialized knowledge will assist the trier of fact in understanding the evidence or in determining a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify about it in the form of an opinion or otherwise, if:

- (1) The testimony is based upon sufficient facts or data;
- (2) The testimony is the product of reliable principles and methods; and
- (3) The witness has applied the principles and methods reliably to the facts of the case.

§ 90.702, Fla. Stat.

The list of factors set forth in *Daubert*, however, neither "necessarily or exclusively appl[y] to all experts or in every case. *Kuhmo Tire Co. v. Carmichael*, 526 U.S. 137, 141 (1999). The reliability analysis in *Daubert* is flexible and the factors are not exhaustive. *Walker v. State*, 308 So. 3d 193 (Fla. 4th DCA 2020).

"[A]n expert's opinion must be based upon 'knowledge,' not merely 'subjective belief or unsupported speculation.'" *Kemp v. State*, 280 So. 3d 81, 89 (Fla. 4th DCA 2019), *review denied*, SC19-1931, 2020 WL 1066018 (Fla. Mar. 5, 2020) (citing *Daubert*, 509 U.S. at 590). "The party who proffers the expert testimony has the burden of establishing its admissibility 'by a

preponderance of proof.”” *Blanchard v. Eli Lilly & Co.*, 207 F. Supp. 2d 308, 314 (D. Vt. 2002) (citing *Daubert*, 509 U.S. at 592 n. 10).

The ultimate conclusion as to a witness’ credibility lies with the trier of fact, and an expert cannot impermissibly intrude into that jury function. *Page v. Zordan*, 564 So. 2d 500 (Fla. 2d DCA 1990); *Rhue v. State*, 603 So. 2d 613 (Fla. 2d DCA 1992). While expert testimony may be helpful to the trier of fact, it is impermissible for an expert witnesses to directly testify as to a person’s truthfulness or leave the trier of fact with the impression that the expert believes the person was telling the truth. *State v. Malarney*, 617 So. 2d 739, 742 (Fla. 4th DCA 1993) (citing *Tingle v. State*, 536 So. 2d 202 (Fla.1988)); *Geissler v. State*, 90 So. 3d 941, 947 (Fla. 2d DCA 2012). Likewise, when factual determinations are within the realm of an ordinary juror’s knowledge and experience, such determinations and the conclusions to be drawn therefrom must be made by the jury, not the expert witness. *Seymour v. State*, 187 So. 3d 356, 359 (Fla. 4th DCA 2016) (“[I]t is impossible to definitively identify what Appellant is holding in the video played for the jury. The officer’s observations were limited to what was captured on video—the same video that was available for the jury to watch. There was no record evidence that indicated the officer was in a better position than the jury to view the video and determine whether the object was a firearm.”).

### **Findings and Conclusions**

Under section 90.702, Florida Statutes, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify about it in the form of an opinion or otherwise, if the testimony is based upon sufficient facts or data, the testimony is the product of reliable principles and methods, and the witness has applied the principles and methods reliably to the facts of the case.

Dr. Roy Bedard possesses specialized knowledge as a professional police trainer with experience in the fields of defensive tactics, threat assessment, use of force tactics, perception reaction, and survival stress. He has testified as an expert in these subjects approximately thirty times in Federal and Florida State courts. He began his law enforcement career in 1986 and served as a police officer in the City of Tallahassee before starting his own police training company, RRB Systems International, in 1996. He testified that he has trained thousands of people in use of force and defensive tactics, taught at numerous seminars, conferences, schools, and universities, and authored trade articles and law enforcement training manuals. Dr. Bedard has been a subject matter expert and curriculum writer for the Florida Department of Law Enforcement for more than

twenty years. Based on Dr. Bedard's testimony and his *curriculum vitae*, the Court finds that his experience and training makes him well-qualified to render expert testimony as to use of force.

Dr. Bedard testified that in preparation for his testimony he reviewed video of the incident, police reports and interviews of Defendant, many statements and depositions, crime scene photos, the autopsy report and photos, and the transcript of the stand your ground hearing. He possesses sufficient facts and data based on reliable methods of training, and has applied the principles and methods to the facts of the case. Dr. Bedard is qualified to give his opinion as to the Defendant's response to the events of January 13, 2014.

The State argues that the jury does not need any additional expert testimony to assist and that Dr. Bedard's testimony will not be beyond the common understanding of the average person. The Defense responds that a use of force defense must account for the state of mind of the Defendant. The Defendant is a former law enforcement officer and the Defense argues that a law enforcement officer will have a different state of mind than the average person. As an expert in training of law enforcement officers, Dr. Bedard's expert testimony will assist the jury in understanding the response of a former law enforcement officer.

The State argues that any testimony by Dr. Bedard relating to law enforcement training is irrelevant and will mislead the jury. The Defendant is a former law enforcement officer, Dr. Bedard is an expert in law enforcement training and response. Dr. Bedard's expert testimony is relevant.

The Court must determine whether the subject matter will assist the jury in understanding the evidence and whether the witness is adequately qualified to render an opinion as to the subject matter. The Court finds that the subject matter will assist the jury in understanding the evidence. As such, Dr. Bedard may give his expert testimony as to use of force.

The State argues that Dr. Bedard's testimony is inadmissible for several reasons cited above, including that his opinions are based solely on Defendant's self-serving statements. The Defense argues that experts are allowed to base their opinions on a defendant's version of events. Florida Rule of Evidence 90.704 allows such expert opinion. As to whether any specific facts or data underlying Dr. Bedard's opinion or any specific testimony will be admissible at the trial will be a decision for the Court at the time of trial and subject to objection on any applicable grounds.

Accordingly it is,

**ORDERED AND ADJUDGED** that State's Motion is hereby **DENIED**.

**DONE AND ORDERED** in Chambers in Dade City, Pasco County, Florida, this 28<sup>th</sup> day of January, 2022. A true and correct copy of this order has been furnished to the parties listed below.



**Kemba Lewis, Circuit Judge**

cc:

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