

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: 512014CF000

v.

DIVISION: 1

CURTIS REEVES,

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

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

THIS CAUSE came before the Court on State's "Daubert Motion to Exclude the Testimony of Defense Expert Dr. Philip Hayden, Ph. D.," filed on June 24, 2020, the Defense's Response, filed on September 17, 2020, and the State's Reply to Defense's Response filed January 13, 2022. Having reviewed the motion, response and reply to response, the record, 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 June 24, 2020, the State filed the instant motion. On September 17, 2020, the Defense filed its "Response to State's Motion to Exclude the Testimony of Defense Expert Dr. Philip Hayden, Ph. D." On January 13, 2022, the State filed a "Reply to Defendant's Response to Exclude the Testimony of Defense Expert Dr. Philip Hayden, Ph. D."

**Issue and Summary of the Argument**

The State seeks to exclude the testimony and opinions of Defense expert witness, Dr. Philip Hayden, Ph. D., at Defendant's upcoming jury trial. In addition, the State seeks to have the Court enter an order instructing the attorney for the Defendant and any witnesses not to mention or refer to, or interrogate concerning, or attempt to convey to the jury in any manner either directly or indirectly, any of the facts named in the motion without first obtaining the Court's permission outside the presence of the jury. The State's motion argues that Dr. Hayden's testimony will not aid the jury in deciding facts at issue and improperly bolsters the credibility of the Defendant. In

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addition, the State argues that Dr. Hayden's other opinions are not relevant and will only mislead or confuse the jury. The State also asserts that Dr. Hayden has no special expertise in analyzing and interpreting video images and his testimony is solely a conduit for inadmissible evidence.

The Defense argues in its response that the testimony by Dr. Hayden meets the requirements set forth in *Daubert*<sup>1</sup>, and therefore should be admitted for the jury to determine its weight to be given to its contents.

#### **The Defendant's Expert Opinion**

The Defense has called Dr. Philip Hayden as a use of force expert. Dr. Hayden began his law enforcement career as a Special Agent with the FBI in 1973. He became a Supervisory Agent as well as a researcher and teacher. According to his curriculum vitae, Dr. Hayden has been testifying and consulting in the field of Force Science as an expert witness since 1999. The Defense states that Dr. Hayden is prepared to testify to officer safety and use of force principles taught to federal, state, county, and municipal law enforcement attendees of the FBI Academy and the Law Enforcement Training for Safety and Survival Program from 1983 to 1993. The Defense states that Dr. Hayden is prepared to testify to officer safety and use of force principles and protocols that were utilized throughout the United States from 1983 to 1993. The Defense states that Dr. Hayden will testify as to the Defendant's response to the events on January 13, 2014 from the Defendant's background as a former law enforcement officer.

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

The State presents several arguments relating to the testimony of Dr. Hayden. First, The State argues that any testimony that may be offered by Dr. Hayden relating to whether or not the use of force was justified impinges on the province of the jury. The State argues that Dr. Hayden's testimony will not aid or assist the fact finder in understanding or determining a material issue of fact, Dr. Hayden's opinions are not beyond the common understating of the average person, and Dr. Hayden'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. Hayden's opinions and testimony are a conduit for inadmissible evidence for several reasons. First, the State argues that the opinions are based solely on the self-serving statements of the Defendant. Second, Dr. Hayden's testimony regarding the

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<sup>1</sup> *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993).

prior consistent statements of the Defendant is not admissible. The State argues that Dr. Hayden'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. Hayden's testimony regarding police officer training is not relevant and would only confuse or mislead the jury.

Finally, the State argues that all of Dr. Hayden's testimony and opinions do not pass the *Daubert* inquiry.

### **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). Although some expert opinions may be difficult to analyze under *Daubert*, because *Daubert* employs a flexible approach, the *Daubert* factors assist the Court in evaluating those opinions. *Andrews v. State*, 181 So. 3d 526, 528 (Fla. 5th DCA 2015).

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.

“[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).

**Findings and Conclusions**

The State argues that the jury does not need any additional expert testimony to assist and specifically Dr. Hayden'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. Hayden's expert testimony will assist the jury in understanding the response of a law enforcement officer.

The State argues that Dr. Hayden's testimony is inadmissible for several reasons cited above. The Defense has stated that Dr. Hayden will not alter the video but instead Dr. Hayden will narrate what is depicted in the video. In addition, the Defense has argued 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 facts or data underlying the opinion will be admissible at the trial will be a decision at trial.

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

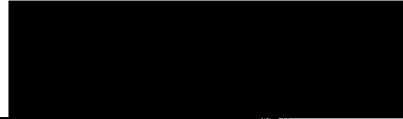
The *Daubert* standard has been codified in Florida Statutes Chapter 90. The Court must determine whether the subject matter will assist the jury in understanding the evidence and whether the witness is adequately qualified to render an opinion as to the subject matter. The Court finds that the subject matter will assist the jury in understanding the evidence, and that the witness is adequately qualified to render an opinion as to the subject matter.

This Court finds that Dr. Hayden is unquestionably qualified to give his opinion as to the Defendant's response to the events of January 13, 2014. As such, Dr. Hayden may give his expert opinion about justifiable use of force.

Accordingly it is,

**ORDERED AND ADJUDGED** that the 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.



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**Kemba Lewis, Circuit Judge**

cc:

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