

THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT  
OF THE STATE OF FLORIDA IN AND FOR PINELLAS COUNTY

15-00226-CF-I  
522015CF000226000APC

STATE OF FLORIDA

MURDER IN THE FIRST DEGREE

v.

JOHN NICHOLAS JONCHUCK, JR  
PID: 2923683

STATE'S MOTION TO STRIKE THE DEFENDANT'S MOTION TO EXCLUDE  
TESTIMONY

Comes now, BERNIE McCABE, State Attorney for the Sixth Judicial Circuit of Florida, and moves this Honorable Court to strike the Defendant's Motion to Exclude Testimony, and as grounds would therefore show:

1. On September 17, 2018, the Defendant filed a motion to exclude the testimony of Dr. Emily Lazarou, who is a state witness in this case.
2. Dr. Emily Lazarou is a board certified forensic psychiatrist who is qualified to conduct forensic evaluations regarding an insanity defense. The Defendant's motion does not question the qualifications or credentials of Dr. Lazarou.

3. The Defendant attacks the methods employed by Dr. Lazarou and states that her evaluation was "conducted in a fashion that would produce unreliable and biased information." The Defendant argues that Dr. Lazarou "should be precluded from offering an expert opinion in this case" based on these assertions.
4. While the Defense has represented in court that this motion is not a Daubert motion, the State of Florida argues that this motion is predicated entirely on Daubert v. Merrell Dow Pharmaceuticals, 509 U.S. 579 (1993) and its progeny, and Florida Statute 90.702, which codified the Daubert standard in Florida. The case law cited throughout the Defendant's motion states that the Daubert standard is the appropriate test for expert testimony. The Defendant's motion applies a Daubert analysis to Dr. Lazarou's evaluation, and argues that Dr. Lazarou did not employ reliable methodology in her evaluation. The Defendant argues that under Florida Statute 90.702, Dr. Lazarou's opinion is not the product of reliable principles and methods and that she has not applied scientific principles and methods reliably to this case. The Defense attempted to underscore this argument with the testimony of Dr. Ryan Wagoner in his deposition on October 8, 2018. The legal analysis in this motion uses the

Daubert standard that was codified in Florida Statute 90.702.

5. Subsequent to the filing of the Defendant's motion, the Florida Supreme Court issued its opinion in Delisle v. Crane on October 15, 2018. In Delisle, the Florida Supreme Court ruled that Daubert and its progeny are no longer the appropriate test in Florida for expert testimony. Specifically, the Court ruled that the Florida Legislature did not have the constitutional authority to codify the Daubert standard in the Florida evidence code in 2013. Pursuant to this ruling, the Daubert standard enunciated in Florida Statute 90.702 no longer applies, and Frye is now the appropriate test in all Florida courts. Id.
6. Since October 15, 2018, the Defendant has not filed an amended motion to reflect this change in the law.
7. Accordingly, the legal framework for expert testimony has reverted to the Frye standard, which allows for pure opinion testimony based on an expert's training and experience. Under this standard, a Frye hearing is required only if the testimony deals with new or novel scientific principles. See Marsh v. Valyou, 977 So.2d 543 (Fla 2008); Florida Power and Light v. Tursi, 729 So.2d 995 (4<sup>th</sup> DCA 1999); Gelsthorpe v. Weinstein, 897 So.2d 504 (2<sup>nd</sup> DCA 2005); State v. Demeniuk, 888 So.2d 655 (5<sup>th</sup> DCA

- 2004); Jones v. Goodyear, 871 So.2d 899 (3<sup>rd</sup> DCA 2004); U.S. Sugar v. Henson, 823 So.2d 104 (Fla 2002).
8. Insanity evaluations performed by qualified psychiatrists and psychologists have been admissible in criminal trials in Florida for many years. Reynolds v. State, 837 So.2d 1044 (4<sup>th</sup> DCA 2002). There is nothing new or novel about an insanity evaluation that would warrant a Frye hearing to determine the general acceptance of the underlying scientific principles or methodology. The Defense has listed three experts that have also conducted insanity evaluations of the Defendant. Frye is not applicable in this case as the methodology is not new or novel.
9. The Defendant attacks Dr. Lazarou's use of the PCLR instrument, both in the Defendant's motion and through the testimony of Dr. Wagoner. However, the PCLR has previously been "Frye tested" under Florida law and is not subject to a Frye challenge by the Defense. Ortega-Mantilla v. State, 898 So.2d 1164 (3<sup>rd</sup> DCA 2005).
10. Any argument regarding Dr. Lazarou's conclusions go the weight of the evidence, and not the admissibility of the evidence at trial. Once the novel scientific principles and novel methodology have been "Frye tested," it is not necessary that the expert's deductions also be accepted. Gelsthorpe v. Weinstein, 897 So.2d 504 (2<sup>nd</sup> DCA 2005). Once

the Frye test is satisfied the expert's opinions are to be evaluated by the finder of fact and properly assessed as a matter of weight not admissibility. US Sugar Corp v. Henson, 823 So.2d 104 (2002).

11. Daubert no longer applies and Frye is not applicable to this case. Therefore, there is no *legal framework* for excluding the testimony of Dr. Emily Lazarou merely because another expert disagrees with her conclusions.

12. Therefore, the Defendant's motion does not comport with the laws of Florida and is legally insufficient. The Defendant's motion does not present a legal basis for the exclusion of Dr. Lazarou's testimony and should be stricken. There is no legal basis to argue for the exclusion of Dr. Lazarou as a state witness, and the State cannot adequately prepare for, or argue the merits of a motion that does not comport with current Florida law. Wherefore, the State of Florida respectfully prays that the Defendant's motion be stricken.

I HEREBY CERTIFY that a copy of the above has been furnished to Jessica Manuele, Assistant Public Defender, Attn:

PUBLIC DEFENDERS OFFICE, CLEARWATER, FLORIDA 33762,  
pubdef-efiling@co.pinellas.fl.us, by e-service or personal  
service or U.S. Mail this 4th day of December, 2018.

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