

IN THE CIRCUIT COURT FOR PINELLAS COUNTY, FLORIDA
CRIMINAL DIVISION

CASE NO.: 21-01099-CF
SECTION: M
JUDGE: PHILLIP FEDERICO

STATE OF FLORIDA,

vs.

CORNELIUS WHITFIELD (PID: 1566510).

**MOTION TO EXCLUDE FIREARMS AND TOOLMARK
IDENTIFICATION EVIDENCE**

THE Defendant, Mr. Cornelius Whitfield, by and through undersigned counsel and pursuant to the Sixth and Fourteenth Amendments of the United States Constitution, Article I, sections 9 and 21 of the Florida Constitution, Florida Statutes §90.702 and §90.704 and §90.403, and the principles outlined in *Daubert v Merrell-Dow Pharms Inc*, 509 US 579 (1993), moves this honourable court to exclude certain firearms evidence and testimony of State witness FDLE Analyst Amara Drew.

The following facts are asserted in support of this motion:

STATEMENT OF FACTS

1. Mr. Whitfield is currently pending trial in two cases: 21-01099-CF and 21-01513-CF.¹
2. In both cases, Mr. Whitfield is accused of numerous counts of first-degree homicide. In Case No. 21-01513-CF, Mr. Whitfield is facing the death penalty as a possible penalty; the State has indicated a desire to use the facts of Case No. 21-01099-CF as an aggravator in the death penalty trial. It is undeniable that Mr. Whitfield's potential legal consequences are the most extreme contemplated by our criminal justice system.
3. As to Case No. 21-01099-CF, Mr. Whitfield is accused of the first-degree murder of Darren Barnes, the attempted first-degree murder of Rodney Green, and the armed

¹ Mr. Whitfield has an additional pending case – Case No. 21-08749-CF – a third-degree felony, Introduction of Contraband into a County Detention Facility; he has already served the statutory maximum for that charge awaiting trial on the other charges, and those charges do not bear on the issues presented in this motion.

robbery of Rodney Green. The mechanism of Mr. Barnes' death was a single gunshot wound to the back of his head; a projectile was later recovered from his body. Mr. Green suffered a single gunshot wound to his neck from which a projectile was later extracted by surgeons. Two cartridge casings were discovered in Apartment 113 at the Emerald Cove Apartment Complex, 175 73rd Ave. N., St. Petersburg, FL. Both the two projectiles and the two cartridge casings were impounded into St. Petersburg Police Department's Property and Evidence Unit for further analysis or testing to be determined by the lead investigators on the case.

4. As to Case No. 21-01513-CF, Mr. Whitfield is accused of the first-degree murders of Sallie Whitfield, Patricia Sharpe and Antonio Graham; he is also accused of the attempted first-degree murder of Shirleylene Harilal. The mechanism of death and injury for all were gunshot wounds. Some projectiles were recovered from the decedents' bodies at the Medical Examiner's Office and multiple cartridge casings were found on the scene. Four firearms were discovered in a backpack located on the porch of 2968 Emerson Ave. S., St. Petersburg, FL, the location where the crimes occurred.
5. On February 11, 2025, fully four years after the inception of these cases, the St. Petersburg Police Department submitted all firearms related evidence to the Florida Department of Law Enforcement requesting a comparison of the evidence between the criminal episodes of February 1 and 16, 2021 – this totaled more than 30 pieces of evidence. Functionally, this submission requested whether it could be determined that the projectiles and casings recovered in Case No. 21-01099-CF were fired from any of the guns discovered in Case No. 21-01513-CF.
6. The firearms analysis was done by Analyst Amara Drew of the FDLE who has been listed by the State as an expert witness. She authored two reports with reference to the work she completed, both dated April 2, 2025, as under FDLE Case Nos. 2025 0301256 and 2025 0301259. Defense counsel diligently requested the full files from FDLE in order to adequately continue discovery – this took a prolonged period of time to complete. Ms. Drew was finally deposed on March 11, 2026, under both case numbers following receipt of the complete files.
7. The items submitted under Case No. 2025 0301259 consist of evidence discovered in the investigation of Darren Barnes' homicide and Rodney Green's attempted homicide. Case No. 2025 0301256 contains the evidence recovered in the other case for which Mr.

Whitfield is pending trial – 21-01513-CF, and consists of numerous firearms, cartridge casings, unfired cartridges and projectiles.

8. The State has indicated their desire to use evidence recovered under Case No. 21-0513-CF (FDLE Case No. 2021 0301256) in the instant trial case of 21-01099-CF. There has been nothing filed to indicate the extent of the evidence which they will seek to introduce and additional motion has been filed to address this matter (Motion for Statement of Particulars).
9. Ms. Drew's conclusions regarding the items submitted in Case No. 2025 0301259 indicate the following:
 - a. Her belief that two cartridges (Items 1 and 2) recovered in that case were identified to Item No. 1 of Case No. 2025 0301256, a Smith & Wesson 45 Auto;
 - b. That the two bullets (projectiles – Items 3A and 4) impounded were inconclusive to each other.
 - c. That only one projectile – 3A – was identified to a pistol, Item 1 from 2025 0301256; the Smith & Wesson 45 Auto pistol.
 - d. The other projectile, No. 4, was inconclusive or eliminated when compared to the two 45 caliber pistols submitted under Case No. 2025 0301256. It does not appear to have been compared to any other firearms.
10. Ms. Drew's conclusions (as mentioned above in paragraph 9), were based upon her use of a comparison microscope to look at different spent cartridge casings (and projectiles) to conclude whether they were both fired by the same firearm. This work rests on two premises:
 - a. That two firearms – even those produced consecutively by the manufacturer, leave individually unique toolmarks on spent casings or projectiles, and
 - b. That an analyst can look at markings on those items to determine whether they were both created by the same firearm. *Id.* at pp. 22-23.
11. These presumptions rest upon the theory – developed by the Association of Firearms and Toolmarks Examiners (AFTE) – that an analyst can conclude that there is a common source for the marks imparted upon different casings/projectiles if there is “sufficient agreement” between those markings. “Sufficient agreement” is an entirely subjective determination. Such subjectivity in a purported scientific realm is readily admitted by Ms. Drew. She stated in her deposition: “Yeah. So this field does tend to be more

subjective than say another field that uses instrumentation. So we do tend to be subjective based on objective things. So, like, we do know objectively that these tools are marking, are, you know, changing as they are used, but seeing the patterns using the scope is a subjective manner because it's our eyes looking at it.” *Id.* at p. 25, 17-23.

12. Further, during her deposition, it was discovered that Ms. Drew had purposefully destroyed a piece of evidence during her work on these cases: an unfired cartridge which had untested bodily fluid upon it (Item No. 9 from 2025 0301256). *See* Deposition of Amara Drew, p. 79-80. Her destruction of evidence was done in part to generate additional evidence – a test fire – that was used in her cartridge and projectile comparisons and led to her ultimate conclusions as under paragraph 9.
13. Ms. Drew’s decision to destroy evidence in a death penalty case was made in the absence of seeking any other possible solution. She destroyed evidence without consulting either her colleagues or supervisors and never provided advance notice of such a decision to either the State or Defense in this case. Indeed, the discovery of this obliteration of evidence was only made nearly a year AFTER the destruction when defense counsel was finally provided with the full file for the analyst’s work which documented the use of evidence as a test fire.
14. The theory relied upon by Ms. Drew, and the methodology that she employed in Mr. Whitfield’s cases fail to meet the stringent requirements for scientific evidence that should be adhered to generally, but certainly even more so in the context of a death penalty case. As such, Ms. Drew’s testimony should be excluded from the instant trial.

Memorandum of Law

I. Forensic Testimony Identifying Fired Cartridge Casings and Projectiles as Having Been Fired from an Individual Firearm (Firearms-Identification Evidence) Must Meet the Foundational Requirements for Scientific Evidence as per *Daubert* and Florida Statutes §90.702 and §90.704.

Expert opinion must be based on actual knowledge, not subjective belief or unsupported speculation. *Daubert*, 509 U.S. at 590. The Supreme Court in *Daubert* set forth factors for a court to evaluate in determining the admissibility of scientific or expert testimony:

- (1) whether the expert's theory or technique can, or 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 of the technique for a particular scientific technique and the existence and maintenance of standards controlling the technique's operation; and
- (4) whether the theory or technique is generally accepted in the relevant scientific community.

Id. at 593-94. Of note, no single one of the above factors is necessarily dispositive of admissibility and other factors may be relevant. *See Id.* at 593; *see also Kumho Tire Co., Ltd. v. Carmichael*, 526 U.S. 137, 149 (1999).

The Court observed that scrutiny is a component of good science, in part because it increases the likelihood that substantive flaws in methodology will be detected. *Daubert*, 509 U.S. at 593-94. "Widespread acceptance can be an important factor in ruling particular evidence admissible, and '[a] known technique that has been able to draw only minimal support within community may properly be viewed with skepticism.'" *Id.* at 594. Importantly, "[s]cientific conclusions are subject to perpetual revision," and "[t]he scientific project is advanced by broad and wide-ranging hypotheses, for those that are incorrect will eventually be shown to be so[.]" *Id.* at 597.

Florida Statute §90.702 codifies *Daubert* in Florida law, and states that expert testimony – i.e. testimony in the form of an opinion – may be permitted only where “scientific, technical or other specialized knowledge will assist the trier of fact in understanding the evidence or in determining a fact in issue” so long as:

- (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.

Fl. Stat. §90.702.

This statute further requires the trial judge to act as a gatekeeper in determining whether the proposed expert's testimony "both rests on a reliable foundation and is relevant to the task at hand." *Daubert*, 509 at 597. This 'gatekeeping' role is intended to ensure that the jury does not hear speculative or unreliable testimony under the imprimatur of the appellation of 'expert testimony'. *Kemp v. State*, 280 So.3d 81, 88 (Fla. 4th DCA 2019)(quoting *Rink v. Cheminova*, 400 F.3d 1286, 1295 (11th Cir. 2005)). The purpose of this gatekeeping is to ensure that an expert "employs in the court room the same level of intellectual rigor that characterizes the practice of an expert in the relevant field." *Kumho Tire Co., Ltd. V. Carmichael*, 526 U.S. 137, 152 (1999).

Practically, the trial court must make the following preliminary finding: whether the reasoning or methodology which underpins the expert's testimony is scientifically valid and whether that reasoning or methodology applies to any issues material to the case. *Royal Caribbean Cruises, Ltd. v. Spearman*, 320 So.3d 276, 290 (Fla. 3d DCA 2021)(quoting *Kemp*, 280 So3d. at 88)(quoting *Daubert*, 509 U.S. at 592-93). And critically for the analysis in this case, the *Daubert* standard for admissibility applies to both the practice as well as the expert themselves – the test "is not the correctness of the expert's conclusions but the soundness of his methodology." *Id.*, 280 So.3d at 89. (quoting *Daubert v. Merrell Dow Pharm., Inc.*, 43 F.3d 1311, 1318 (9th Cir. 1995) ("*Daubert II*"). Critically, the court must "determine the reliability of the opinion, not merely the qualifications of the expert who offers it." *Cristin v. Everglades Correctional Institution*, 310 So.3d 951, 957 (Fla. 3d DCA 2020)(quoting *McClain v. Metabolige Int'l, Inc.*, 401 F3d 1233, 1238 & nn3-4 (11th Cir. 2005)). Where an expert's testimony fails to satisfy all three *Daubert* requirements – as in Fla. Stat. §90.702 – the trial court properly excludes such testimony. *See May v. State*, 326 So.3d 188 (Fla. 1st DCA 2021)(holding that the trial court properly excluded the expert's testimony where the expert did not rely upon sufficient facts, did not use a reliable method and did not apply the method reliably to the facts in the case).

A. FIREARMS IDENTIFICATION EVIDENCE IS SCIENTIFIC EVIDENCE AND MUST THEREFORE BE SUBJECT TO THE STRICTURES OF *DAUBERT* AND FLORIDA STATUTES §90.701 AND §90.702 PRIOR TO ADMISSION

Florida considers "scientific evidence" to be that which relies upon a scientific principle, theory or discovery – as opposed to evidence based simply upon an expert's personal experience or training. *See Ramirez v. State*, 810 So.2d 836 (Fla. 2001) The primary criterion for determining whether evidence is "scientific evidence" in the legal sense (such that it requires

a *Daubert* foundation) is whether it possesses the potential to influence the trier of fact as a scientific assertion. *See Kemp*, 280 So.3d at 88. In other words, is the factfinder likely to perceive it as science?

Here, the State is seeking to introduce the testimony of Ms. Amara Drew as an expert in the field of forensic firearms-identification. In her deposition, Ms. Drew described firearms-identification as one of the many fields of the forensic sciences, and one that requires specialized training and experience. *See* Deposition of Amara Drew, p. 7. She further spoke about the theories underpinning firearm toolmark examination, and how she uses specialized techniques in identifying the casings or projectiles recovered from a shooting as having been fired from a comparison firearm. *Id.* at pp. 20-22. As a purported expert in a specialized field, the jury is likely to view Ms. Drew's testimony and conclusions as scientific assertions and, therefore, prior to her conclusions being admitted in this trial, the State must show – and this court must conclude – that the theory and methodology utilized by Ms. Drew is scientifically valid.

B. FIREARM-IDENTIFICATION EVIDENCE LACKS FOUNDATIONAL VALIDITY

A seismic shift has occurred in the various forensic disciplines over the past few decades. The advent of sensitive DNA testing has resulted in numerous exonerations, in turn exposing numerous flaws in the criminal system, particularly with areas of forensics that were previously thought to be based upon empirical scientific methods and theories. *See* Sinha, Maneka, *Radically Reimagining Forensic Evidence*, 73 Alabama Law Review 879, 927 (2022). American courts face an “unpleasant reality that commonly used forensic techniques can be made to appear admissible by wrapping them in the trappings of science— as laid out by relevant admissibility standards— even when what lies beneath has hardly been established as reliable science.” *Id.* Innocent people have spent thousands of years behind bars in this country because of uncritical and reflexive admission of junk science in criminal cases.

The critique of firearm and toolmarks evidence has been especially pronounced. More than fifteen years ago, the National Academy of Sciences (“NAS”), funded by the United States Department of Justice, released a watershed report entitled *Strengthening Forensic Science in the United States: A Path Forward*, which provided the first scientific survey of the foundational validity of many forensic disciplines. Committee on Identifying the Needs of the Forensic Sciences Community, National Research Council, *Strengthening Forensic Science in the United States: A Path Forward* (Washington, DC: National Academies Press, 2009) (herein after referred

to as “NAS Report”).² The foundational theory of firearms and toolmark examination is that because of inherent defects in the manufacturing process, no two barrels or firing pins will impart the same markings on bullets or cartridge casings. *United States v Otero*, 849 F.Supp.2d 425, 427–28 (DNJ 2012). Notably, the NAS report found that “the decision of the toolmark examiner remains a subjective decision based on unarticulated standards and no statistical foundation for estimation of error rates.” NAS Report, pp.153–54. It found “the lack of a precisely defined process” and the absence of professional associations, “specific protocol[s]” which do “not even consider, let alone address, questions regarding variability, reliability, repeatability, or the number of correlations needed to achieve a given degree of confidence.” NAS Report, pp. 154–55. Ultimately, the NAS Report concluded that the “validity” of the “fundamental assumptions” of firearm and toolmark examination had “not yet been fully demonstrated.” NAS Report, 154.

Further, in 2016, firearm and toolmark examination was addressed again in a report to the President by his Council of Advisors on Science and Technology, or PCAST.³ The intervening seven years did little, if nothing, to address the critiques of the NAS Report. PCAST was tasked with determining whether additional steps should be taken, “beyond those already taken by the Administration in the aftermath of a highly critical 2009 National Research Council report on the state of the forensic sciences, that could help ensure the validity of forensic evidence used in the Nation’s legal system.”⁴ The report offered recommendations to the National Institutes of Standards and Technology (“NIST”), the White House, the FBI, the Attorney General, and the judiciary on “actions that could be taken to strengthen forensic science and promote its rigorous use in the courtroom.”⁵

Critically here, as respects firearms and toolmark evidence, PCAST focused on whether the discipline demonstrated both “foundational validity” and “validity as applied.” Foundational

² Available online at <https://www.ojp.gov/pdffiles1/nij/grants/228091.pdf>.

³ President’s Council of Advisors on Science and Technology, Report to the President, “Forensic Science in Criminal Courts: Ensuring Scientific Validity of Feature-Comparison Methods” (“PCAST Report”), located at https://obamawhitehouse.archives.gov/sites/default/files/microsites/ostp/PCAST/pcast_forensic_science_report_final.pdf (last accessed July 13, 2026).

⁴ The White House Blog, “PCAST Releases Report on Forensic Science in Criminal Courts,” located at <https://obamawhitehouse.archives.gov/blog/2016/09/20/pcast-releases-report-forensic-science-criminal-courts> (last accessed July 13, 2026).

⁵ PCAST Report, located at <https://obamawhitehouse.archives.gov/blog/2016/09/20/pcast-releases-report-forensic-science-criminal-courts> (last accessed July 13, 2026)

validity, according to PCAST, requires that the method “be shown, based on empirical studies, to be repeatable, reproducible, and accurate.” *Id.* Validity as applied requires “that the method has been reliably applied in practice.” *Id.* at 5. The PCAST Report worried that “[f]irearms analysts have long stated that their discipline has near-perfect accuracy.” PCAST Report, p. 105. PCAST noted that studies conducted in response to the NAS Report were “not appropriately designed.” PCAST Report, p. 106.

Even putting the flawed design aside, the report noted that “analysis of the empirical results...suggest that they may substantially underestimate the false positive rate.” *Id.* Alarming, one study noted by PCAST found that firearm and toolmark examiners failed to exclude ninety-seven percent of cartridge casings that were fired by different guns, instead calling them ‘inconclusive.’ *Id.* at 107. The only study which PCAST found was properly designed suggested that the false positive rate could be as high as 1 in 46, or 2.2 percent. *Id.* at 110. A similarly designed study published after the PCAST report assessed the error rate at 11.2 percent. Mattijssen et al., *Validity and Reliability of Forensic Firearm Examiners*, 307 *Forensic Sci Int* 110112 (2020). When considered in tandem with the practitioner-published trade journal claiming the impossible error rate of zero, the conclusion of the PCAST report is unsurprising: “current evidence falls short of the scientific criteria for foundational validity.” PCAST Report, p. 111; Cazes & Goudeau, *Validation Study Results from Hi-Point Consecutively Manufactured Slides*, 45 *AFTE J.* 175-177 (2013).

This tension — the acceptance of firearm and toolmark examination as competent testimony in criminal cases and the lack of foundational validity — has reached a boiling point. See Bell, et al, *A Call for More Science in Forensic Science*, *PNAS* May 1, 2018. 115 (18) 4541-44 (“Forensic science is at a crossroads. It is torn between the practices of science, which require empirical demonstration of the validity and accuracy of methods, and the practices of law, which accept methods based on historical precedent even if they have never been subjected to meaningful empirical validation.”). Scholars observed “firearms analysis serves as a useful case study for understanding how segments of the forensic community, aligned with law enforcement and insulated from the broader scientific community, have leveraged an understanding of the *Daubert* factors to manufacture a perception that their method is reliable — thereby winning it widespread admissibility — despite significant data to the contrary.” *See supra*, Sinha, Maneka, p. 927-928. Prof. Sinha notes that proponents of firearm and toolmark testimony will try to “check off” the testing factor of *Daubert* with “superficial satisfaction” because “design flaws plague the

majority of the studies that purport to establish the validity of forensic methods.” *Id.* at 929.

C. COURTS NATIONWIDE ARE EXCLUDING FIREARM IDENTIFICATION EVIDENCE AS UNRELIABLE UNDER *DAUBERT*

In *Abruquah v State of Maryland*, the Supreme Court of Maryland found it was an abuse of discretion for a trial court to conclude that firearm and toolmark evidence met the minimum threshold of reliability under *Daubert*, holding that the “analytical gap between the type of opinion firearms identification can reliably support and the opinion.” *Abruquah v. State*, 483 Md 637, 696 (2023). The Maryland Supreme Court offered an exhaustive analysis of the *Daubert* factors that track the lack of foundational validity, incalculable error rates, and significant design flaws of trade journal studies laid out in Part B, *supra*. *Abruquah*, 483 Md at 681-697.

The District of Columbia Court of Appeals, in *Williams v United States*, 210 A3d 734 (DC, 2019) (*Williams II*) reiterated a previous holding under Frye applied as well under *Daubert*, that it was error to admit unqualified testimony that an expert could testify without “any doubt” that a bullet was fired from a particular gun, noting “there is no question that it was error to admit this opinion testimony.” That previous case held that “a firearms and toolmark expert may not give an unqualified opinion...that based on ballistics pattern comparison matching a fatal shot was fired from one firearm, to the exclusion of all other firearms.” *Gardner v. United States*, 140 A3d 1172, 1184 (DC, 2016). Judge Easterly, the author of *Williams II* and *Williams I*, detailed the dangers of firearm and toolmark testimony:

We know that faulty forensic evidence, and in particular, objectively unfounded statements of certainty regarding forensic analysis, can contribute to wrongful convictions . . . **As matters currently stand, a certainty statement regarding toolmark pattern matching has the same probative value as the vision of a psychic: it reflects nothing more than the individual's foundationless faith in what he believes to be true.** This is not evidence on which we can in good conscience rely, particularly in criminal cases, where we demand proof—real proof—beyond a reasonable doubt, precisely because the stakes are so high...We cannot be complicit in their use.

Williams v. United States, 130 A3d 343, 355 (DC, 2016), on reh 210 A3d 734 (DC, 2019) (EASTERLY, J., concurring) (quotations and citations omitted) (emphasis added).

In *State v. Adams*, the Oregon Court of Appeals held the trial court erred in admitting the Association of Firearm and Toolmark Examiners (hereafter, “AFTE”) identification evidence. In so holding, the Oregon Court of Appeals stated:

“the state did not meet its burden to show that the AFTE method is scientifically valid ... That is so because the method does not actually *measure* the degree of

correspondence between shell cases or bullets; rather, **the practitioner’s decision on whether the degree of correspondence indicates a match ultimately depends entirely on subjective, unarticulated standards** ... the state did not show that the method is replicable and therefore reliable ... Multiple practitioners may analyze the same items and reach the same result, but each practitioner reaches that result based on application of their own subjective and unarticulated standards, not application of the same standards.”

State v. Adams, 340 Or App 661, 667 (2025).

II. Testimony By Analyst Amara Drew Regarding the Firearms Identification Evidence at Issue Should be Excluded for HER Failure to Meet Basic Reliability Requirements

At issue in the instant cause is whether Ms. Drew should be permitted to offer opinions on the identification of certain firearms evidence. Such testimony should be prohibited for the simple failure of Ms. Drew to adequately demonstrate that she meets the standards required under *Daubert* for admissibility.

An expert’s opinion is inadmissible where it is apparent that such testimony is based on insufficient data. *Dempsey v. Shell Oil Co.*, 589 So.2d 373, 380 (Fla. 4th DCA 1991). *See also Centex–Rooney Constr. Co., Inc. v. Martin County*, 706 So.2d 20 (Fla. 4th DCA 1997). This principle arises from Fla. Stat. §90.705(2), which states in part: “If the party establishes prima facie evidence that the expert does not have a sufficient basis for the opinion, the opinions and inferences of the expert are inadmissible unless the party offering the testimony establishes the underlying facts or data.” Where a party seeks to introduce otherwise inadmissible evidence before a jury by using an expert’s testimony as a conduit for that evidence, the trial court is correct to exclude its admission. *Doctors Co. v. State, Dept. of Ins.*, 940 So.2d 466, 470 (Fla. 1st DCA 2006). “An expert’s opinion testimony is inadmissible if it is grounded on speculation, conjecture, or incorrect assumptions.” *Id.* (citing *All Am. Pool Surface, Inc. v. Jordan*, 870 So.2d 885, 886 (Fla. 3d DCA 2004)). Expert opinion testimony will not be admissible unless such testimony is applicable to the evidence in the trial. *Riggins v. Mariner Boat Works, Inc.*, 545 So.2d 430, 432 (Fla. 2d DCA 1989). Further, Florida courts have held that it is only inadvertent or unavoidable consumption of testing material that does not trigger a constitutional violation. *Gordon v. State*, 863 So.2d 1215, 1220 (Fla. 2003) *citing State v. T.L.W.*, 457 So.2d 566 (Fla. 2d DCA 1984).

The analysis done by Ms. Drew stands in stark contrast to that contemplated by the law in this State. The theory rests upon shaky principles which have not been borne out in empirical studies as discussed at length above, and Ms. Drew’s actual practice in the instant case led to a

willful destruction of evidence which could not be considered innocent. *Contra Hooks v. State*, 956 So.2d 215 (Fla. 4th DCA 2007)(the unavoidable consumption of evidence during DNA testing – when done in good faith – does not violate due process).

III. THE FIREARM IDENTIFICATION EVIDENCE WOULD CONFUSE AND MISLEAD THE JURY AND SHOULD BE EXCLUDED UNDER FLORIDA STATUTE §90.403

A trial results in a “binding legal judgment—often of great consequence—about a particular set of events in the past.” *Daubert*, 509 U.S. at 597. The rules of evidence apply with equal force to questions of admissibility in criminal cases, where the consequence at stake is a wrongful conviction and attendant sentence.⁶ Although “[vigorous cross-examination, presentation of contrary evidence, and careful instruction on the burden of proof are the traditional and appropriate means of attacking shaky but admissible evidence,” *id.* at 596, sometimes, clear effective presentation to the jury will be impossible.

In addition to the requirements specific to expert testimony, a court must also serve as gatekeeper of relevant evidence. For evidence to be admissible, it must be relevant. Fla. Stat. §90.402. Evidence is relevant if it tends to make any fact of consequences any more or less likely than without such evidence. Fla. Stat. §90.401. Even if relevant, the court should exclude evidence if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury. Fla. Stat. §90.403. Courts have determined that firearm and toolmarks examination evidence are inadmissible on this basis.

An on-point example: in *People v. Kimberley*, a trial court in Cook County, Illinois, held firearm and toolmarks testimony creates a danger of prejudice against the defendant by using evidence against him that may not be technically sound. *People v. Diontay Kimberley*, 22-CR-02932-01, July 1, 2025, p. 51. Such evidence might confuse and mislead the jury because the evidence might not actually mean what it suggests. *Id.*

The overarching concern is that firearm identification evidence is presented to jurors as relevant and probative of whether a particular bullet or cartridge case was fired from a particular gun. In the abstract, such evidence could provide a link connecting Cornelius Whitfield to a first-degree homicide and attempted homicide. However, when presented as scientific evidence, the AFTE identification evidence—an “identification” purportedly derived from application of

⁶ For a survey of jurisprudential trends in the denial of criminal defendants’ post-*Daubert* challenges to prosecution evidence, see Risinger, *Navigating Expert Reliability: Are Criminal Standards of Certainty Being Left on the Dock?* 64 Albany L Rev 99, 125-28 (2000).

forensic science—impairs, rather than helps, the truth finding process because it presents as scientific a conclusion that, in reality, is a subjective judgment of the examiner based only on the examiner’s training and experience and not on any objective standards of criteria. *Adams*, 340 Or App at 668 (2025). Thus, when firearm and toolmarks evidence is presented to jurors cloaked with the aura of reliability of science – even though it is not actually derived from science – it creates a danger of unfair prejudice and misleading the jury.

Even if this court finds that Ms. Drew might somehow meet the strictures of *Daubert* under Fla. Stat. §90.702, an expert witness’ testimony – just like all other evidence – remains subject to the requirements of §§90.401 and 90.402 and is always subject to the balancing test set forth in §90.403. *Ramirez v. State*, 810 So. 2d 836 (Fla. 2001). While all relevant evidence is admissible except as provided by law, relevant evidence should be excluded if it is unreliable under the balancing test in §90.403, or the probative value of such evidence is substantially outweighed by the danger of unfair prejudice, confusion of issues, misleading the jury, or needless presentation of cumulative evidence. §90.403, Fla. Stat. (2022).

Here, there is a concern that the inherent bolstering of evidence that is accompanied by the tag of ‘expert testimony’ would permit opinions to be laid before the jury that would serve to unfairly prejudice Mr. Whitfield. There are significant problems with the collection and collation of data in this case owing to the analyst’s failures in best practices of record keeping (i.e. photographs and/or video of all work completed, etc.) as well as the critical decision to destroy evidence. In specific, Mr. Whitfield is charged with first degree premeditated homicide, attempted first degree homicide and armed robbery – all three of these charges carry life imprisonment minimum mandatories⁷, and the State has indicated that any qualifying conviction will be used as an aggravating factor at his death penalty trial. The consequences of admitting impermissible testimony could not be more grave for Mr. Whitfield. This underpins the danger of permitting Ms. Drew to testify as to conclusions about “matches” between evidence found at the scene of Mr. Barnes’ murder and that discovered at the scene of Mr. Whitfield’s arrest. Such testimony would undoubtedly mislead the jury as to their role, which is to determine whether the State proved beyond a reasonable doubt that Mr. Whitfield is guilty solely of the crimes charged in Case No. 21-01099-CF **without** the improper influence of the impression that Ms. Drew’s supposed expertise brings.

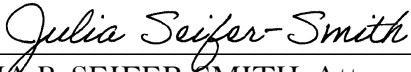
⁷ The life imprisonment minimum mandatory applies to Mr. Whitfield because of career criminal enhancements as under Fla. Stat. §775.082.

WHEREFORE, the defendant, Mr. Cornelius Whitfield, hereby requests that this honourable court GRANT his Motion to Exclude Firearms Evidence and to enter an Order to that effect.

NOTICE OF HEARING

YOU ARE NOTIFIED that the above will be heard before the Honorable Phillip Federico, County Justice Center, 14250 49th Street North, Clearwater, Fl 33762, on Friday, July 17, 2026, at **8.30am**.

I do certify that a copy hereof has been furnished by email/physical delivery to Thomas Koskinas, Theodora Taktikos-Danzig and Anthony Bradlow, Assistant State Attorneys at the Office of the State Attorney, County Justice Center, Clearwater, Florida, on July 13, 2026.



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