

IN THE CIRCUIT COURT OF THE FIFTEENTH
JUDICIAL CIRCUIT, CRIMINAL DIVISION
IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE NO. 2017CF008722AMB DIVISION: "X"

STATE OF FLORIDA

vs.

SHEILA KEEN WARREN,

Defendant.

**STATE'S MOTION IN LIMINE TO EXCLUDE TESTIMONY OF MICHAEL
LAFORTE, IN PART, PURSUANT TO DAUBERT MERRELL DOW
PHARMACEUTICALS**

COMES NOW, Dave Aronberg on behalf of the State of Florida, by and through the undersigned Assistant State Attorney, Reid Scott, and files this State's Motion in Limine to Exclude Testimony of Michael LaForte, in part, as some of his opinions constitute inadmissible "pure opinion" testimony and asks this Honorable Court to **GRANT** the State's Motion, and in support would state the following:

I. STATEMENT OF THE CASE

At approximately 10:45 AM on Saturday May 26th, 1990 Sheila Keen ("Defendant") walked up to the front door of 15470 Take-Off Place in Wellington, Florida dressed as a clown carrying a red and white flower arrangement, two balloons, and a handgun. The Defendant knocked on the door; Mrs. Marlene Warren ("Victim") opened the front door and was handed the flowers and the balloons by the Defendant. Witnesses in the home stated that they observed the clown hand the flowers and the balloons to Warren, and then they heard gun shots. After shooting the Victim, witnesses observed the clown walk calmly back to a late model white, full-top,

Chrysler LeBaron parked in the driveway and flee the scene. Law enforcement and emergency medical professionals responded and found the Victim just inside the front door of her home. She died two days later at Palms West Hospital from a gunshot wound to the head.

Several officers and crime scene investigators proceeded to the scene to assist with witness interviews, photographs and the collection of evidence. Detective Michael Harrison (Harrison) of the Palm Beach County Sheriff's Office responded to the scene along with Sgt. Lou Sessa, Detective Dwayne Kelley and Detective Bill Williams. Harrison was the lead crime-scene investigator at the scene that day. Harrison took a series of photographs of the outside of the residence as well as the inside of the scene.¹ Detective Harrison took photographs of a red Pontiac Firebird in the driveway, the driveway itself, tire marks leading away from the driveway, the front porch and the entryway into the Warren home.²

Detective Harrison testified in deposition that it had rained the morning of May 26, 1990.³ Based on the "inclement weather" Detective Harrison, based on his training and experience, did not attempt to develop tire impressions from tire tracks leading away from the residence or for any latent impressions not visible on the concrete driveway.^{4 5} Detective Harrison also took into account information relayed to him by lead Detective Williams that a red Pontiac firebird made the tire impressions not the suspect vehicle.⁶ Detective Harrison relied, in part, on information

¹ It is important to note that in 1990, crime-scene investigators were using cameras containing film rather than modern digital cameras so the number of photographs taken in a scene from 1990 is far less than in 2023.

² State's Exhibit "A": Photographs

³ State's Exhibit "B": Depo. Michael Harrison P. 24 Ln. 22-24.

⁴ State's Exhibit "B": Depo. Michael Harrison P. 44 Ln. 13-17.

⁵ State's Exhibit "B": Depo. Michael Harrison P. 51 Ln. 1-3; P. 52 Ln. 10-15

⁶ State's Exhibit "B": Depo. Michael Harrison P. 46 Ln. 6-23.

provided to him by Detective Williams in determining what areas could possibly yield relevant evidence.

In the immediate crime scene, just at the threshold of the front door, Detective Harrison took additional photographs of the area where the victim was shot.⁷ Detective Harrison testified that he looked for possible blood spatter near the front door but observed none.⁸ Detective Harrison made notes and take photographs of the scene of the homicide to include blood on the floor and rug, a flower basket, two mylar balloons, and a pair of gloves.

Detective Harrison also processed the outside of the front door of the residence with black power for the presence of fingerprints without success.^{9 10} Detective Harrison also testified that based on the witness statements and the physical evidence at the crime scene, there was no indication that the shooter ever stepped inside of the residence.¹¹ Based on the information that he had at that time, Detective Harrison did not further process the inside of the house beyond the threshold of the door. Further, as previously stated, based on the information from Detective Williams, the inclement weather, and his own observations, Detective Harrison did not attempt to process the concrete driveway, the tire marks in the grass or attempt to develop latent footwear impressions. His decision on how to process the scene was based on his training and experience as well as direction from other detectives and other evidence.

The Defendant, through her attorney has listed Mr. Michael LaForte as an expert witness. Mr. LaForte holds himself out as an expert in crime scene reconstruction. Mr. LaForte reviewed

⁷ State's Exhibit "C": Photographs.

⁸ State's Exhibit "B": Depo. Michael Harrison P. 61 Ln. 11 – P. 62 Ln. 5.

⁹ State's Exhibit "B": Depo. Michael Harrison P. 85 Ln. 21-P. 86 Ln. 4

¹⁰ State's Exhibit "B": Depo. Michael Harrison P. 86 Ln. 20-P. 87 Ln. 2

¹¹ State's Exhibit "B": Depo. Michael Harrison P. 91 Ln. 2-P. 92 Ln. 5

the photographs from the crime scene, multiple crime scene reports, autopsy photographs, CSI reports and lab reports.

While Mr. LaForte does provide some opinions that are based on relevant and reliable science and data, he also provides what are “pure opinions” based on nothing more than his own personal experiences.

When asked about his opinions of the crime scene or the work performed, Mr. LaForte stated that his opinion was that “basically the crime scene was not processed adequately.”¹² LaForte elaborated stating that Detective Harrison “let the scene at 1:14 PM, which put him on scene for less than two hours . . . being a homicide scene, that’s an inadequate amount of time to spend. You can’t do anything in an hour in fifty minutes.”¹³

Mr. LaForte stated that in his opinion, even though he was never at the crime scene, Detective Harrison should’ve attempted to gather shoe pattern impressions and tire impression. This despite Harrison’s testimony that he didn’t observe any impressions and that it had rained. What asked what evidence he had to suggest that there was any surface conducive to pattern impressions, LaForte stated “Well, I don’t have any evidence because to process was ever done.”¹⁴ LaForte dismissed the judgment of Detective Harrison, who was actually at the scene, of not trying process the sidewalk because he observed that it was wet and saw no reason to process a wet surface.¹⁵

¹² State’s Exhibit “D”: Depo. Michael LaForte P. 10 Ln. 15-22.

¹³ State’s Exhibit “D”: Depo. Michael LaForte P. 11 Ln. 14-21.

¹⁴ State’s Exhibit “D”: Depo. Michael LaForte P. 13 Ln. 21-25

¹⁵ State’s Exhibit “D”: Depo. Michael LaForte P. 18 Ln. 22-25.

When questioned if he was merely relying on his own anecdotal experiences on crime scene as to why he believed that the processing of the scene was inadequate LaForte acknowledged that it was just his opinion.¹⁶

Even when confronted with evidence that there was no evidence to suggest that the clown entered the Warren home, LaForte asserted that it didn't matter whether or not the clown entered the home, it was his opinion that Detective Harrison should've processed the inside of the home.¹⁷

Later in his deposition, LaForte stated his opinion that the crime scene should have been processed for high-velocity spatter¹⁸, even though no blood spatter was observed on the door, the door frame or around the immediate scene.

Mr. LaForte did not cite any reliable scientific method or procedure on which he was relying on giving his "opinion" that the scene was not processed adequately.

AUTHORITY AND ANALYSIS

In 2013, the Florida Legislature modified section 90.702 to adopt the standards for admissibility of expert testimony as provided in Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993); General Electric v. Joiner, 522 U.S. 136 (1997), and Kumho Tire Co., Ltd. v. Carmichael, 526 U.S. 127 (1999). The State of Florida no longer applies the standard in Frye v. United States, 293 F. 1013 (D.C. Cir. 1923). The role of the Court in engaging in a Daubert analysis is that of an evidentiary "gatekeeper," that is, the one who determines whether the expert's testimony meets the Daubert test. Booker v. Sumter County Sheriff's Office, 166 So. 3d 189, 192 (Fla. 1st DCA 2015); citing Daubert, 509 U.S. at 597; Kumho Tire, 526 U.S. at 152.

¹⁶ State's Exhibit "D": Depo. Michael LaForte P. 20 Ln. 6-12.

¹⁷ State's Exhibit "D": Depo. Michael LaForte P. 25 Ln. 17-P. 26 Ln. 3.

¹⁸ State's Exhibit "D": Depo. Michael LaForte P. 54 Ln. 6-22.

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 if certain criteria are satisfied. Booker, 166 So. 3d at 191-92. The expert testimony should be permitted if:

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

The adoption of the Daubert standard by the Florida Legislature made it clear that “pure opinion” testimony by expert witnesses was no longer admissible. Id. at 193. “Pure opinion” testimony is testimony that is based only on the personal experience and training of the expert. Id.; Citing Marsh v. Valyou, 977 So. 2d 543, 549 (Fla. 2007). The First District examined a portion of an expert’s testimony illustrative of “pure opinion” testimony in Gaiamo v. Florida Auto Sports, Inc., 154 So. 3d 385 (Fla. 1st DCA 2014). In Gaiamo, when asked about how he came to his opinion, the witness testified that “when I was asked about it, and thought about it that’s what I came up with.” Gaiamo, 154 So 2d at 388. The Court determined that the expert provided no insight as to how he arrived at his opinion or whether he applied reliable methodologies and principals to facts to arrive at his conclusions. Id. The First District found no abuse of discretion in the trial court’s rejection of the expert’s “pure opinion” testimony.

While Mr. LaForte does opine on some issues that are supported by valid methodology and procedures, he should not be permitted to offer his “pure opinion” that the crime scene was not processed adequately. This offering is simply his opinion that he disagrees with the judgment calls made by the detectives at the scene, even though he was not present at the scene when it was processed. LaForte provided no methodologies, procedures or insights as to how he arrived at his

conclusions other than his own anecdotally based opinions. LaForte provided no reliable principals or methods and did not explain how any methods or principals would apply to any of the facts at the scene. Further, he disregarded clearly observable facts that would contradict his opinions. LaForte disregarded the fact that it had rained that morning and that multiple surfaces were wet making capturing latent prints highly unlikely. He further disregarded witness statements to Detective Williams that the red Pontiac Firebird was the car that made tire track marks in the grass next to the Warren home. This would have negated any need to attempt to capture tire track impressions from the marks. Moreover, LaForte ignores that testimony of Detective Harrison in that he attempted to dust for latent prints on the front door without success and that he did not observe any high velocity spatter in the immediate area of the crime scene.

CONCLUSION

While Mr. LaForte does offer opinions that are valid and admissible, this is not one of them. A witness is not permitted to simply substitute their hind sight judgement that they would have done the job differently or better. While this line of reasoning may be a valid argument made by counsel at trial, it is not the kind of testimony permitted pursuant to Daubert. Therefore the Court should prohibit the defense witness from testifying to a “pure opinion.”

WHEREFORE, the undersigned Assistant State Attorney requests this Honorable Court to GRANT the State’s Motion and Exclude the Testimony of Michael LaForte in part.

CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY THAT a true and correct copy of the foregoing Motion has been furnished by E-SERVICE to AMY MORSE ESQ at AMY@MORSELEGAL.COM, this the __22__ day of February, 2023.

Respectfully submitted,

DAVID ARONBERG
STATE ATTORNEY

/s/ 

By: _____
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