



**IN THE CIRCUIT COURT OF MOBILE COUNTY
STATE OF ALABAMA
THIRTEENTH JUDICIAL CIRCUIT**

STATE OF ALABAMA,

PLAINTIFF,

V.

JONATHAN NAKHLA,

DEFENDANT.

CASE NO. CC-21-2477

**MOTION TO CONTINUE DAUBERT MOTION IN OPPOSITION OF
ADMISSIBILITY OF EXPERT TESTIMONY, MOTION TO CONTINUE
TRIAL**

COMES NOW the Defendant, Jonathan Nakhla, by and through his attorney, Dennis J. Knizley, and hereby moves this Honorable Court pursuant to the 6th Amendment of the United States Constitution and Article 1 Section 6 of the Alabama Constitution to continue the *Daubert* Motion in Opposition of Admissibility of Expert Testimony presently set on Friday, February 10, 2023, and to continue the trial of this case presently set on Monday, February 27, 2023, to ensure the effective assistance of counsel. As grounds therefore, Defendant states as follows:

1. On or about January 16, 2023, the undersigned e-mailed prosecuting attorney Ashley Rich requesting supplemental discovery related to the opinions of the experts she had listed as potential witnesses at trial.

2. On January 25, 2023, the State responded that "all reports" the State had were previously made available to the defense.

3. Those reports did not include an opinion or basis of opinion of potential experts Curt Harper, Brandon Orso, Cameron Smith, Jerry Lewis, David McCullough, Dr. Cameron Snider, and only a partial report from former State Trooper Ronnie Redding.

4. Defense counsel filed a Motion in Opposition of Admissibility of Expert Testimony based upon *Daubert v. Merrell Pharmaceuticals, Inc.*, 509 U.S. 579, 112 S. Ct. 2786, 125 L.Ed 2 (1993) based on the unavailability of opinion testimony and failure to meet the standard for admissibility set out in *Daubert*.

5. This Honorable Court held a zoom conference to discuss the scheduling of a *Daubert* hearing.

6. During that hearing, the State represented that there were certain videos and diagrams prepared by former State Trooper Ronnie Redding that would be presented at the *Daubert* hearing. Defense counsel represented at said hearing that such documentation may not have been made available to the defendant.

7. In addition, counsel learned the State intends to elicit the expert opinion of Dr. Curt Harper as it relates to retrograde extrapolation. Dr. Harper is a presumed neutral party who works for the Alabama Department of Forensic Sciences. He has failed to disclose his opinion or the basis of such opinion as it relates to this issue. The State has also failed to disclose this opinion and the basis of such opinion.

8. The defendant corresponded with the State by email on Tuesday,

January 31, 2023, confirming that the initial discovery in this case was received by the defendant on October 18, 2021, and the only supplemental discovery that had been made available to the defendant was on September 21, 2022, and there was no production of any reconstruction videos or diagrams that had been mentioned in the court hearing earlier that day.

9. The following day, Wednesday, February 1, 2023, the State sent by e-mail a notification that the videos and diagrams were available for the defendant.

10. The defendant received such diagram and videos and upon review the videos seem to suggest that former State Trooper Ronnie Redding would give an opinion that if the defendant's vehicle had been operating at the 45-m.p.h. speed limit the accident would not have occurred.

11. The defendant has received no opinion whatsoever that seems to be suggested by the videos.

12. The videos seem to be of such a nature that it would require extensive data to form such opinion and the opinion could only be concluded by scientific methodology, thus making the opinion subject to a *Daubert* review.

13. The State has informed the Court that Trooper Redding's opinion may be subject to a *Daubert* analysis.

14. After the receipt of the videos and suggested opinion on February 1, 2023, defense counsel immediately contacted an expert and made the video available to the expert.

15. The expert's initial analysis of the video was that the conclusions indicating that if the defendant's automobile had been traveling at the speed limit the accident would not have happened are potentially incorrect.

16. The expert indicated that without the underlying data and scientific methodology used to form such opinion the expert could not appear at a *Daubert* hearing on February 10, 2023, to testify regarding the reliability of the scientific methodology used nor could he be prepared to testify at the trial to rebut such an opinion.

17. Assuming there would be a production of the opinion by Trooper Redding, and the data supporting the opinion, by Monday, February 6, 2023, that would only be five days before the *Daubert* hearing and three weeks before the commencement of the trial.

18. The same is true for retrograde extrapolation. Counsel needs additional time to provide Dr. Valentine the opinion and basis of opinion of Dr. Curt Harper in order to effectively present testimony/evidence at the upcoming *Daubert* hearing as well as trial.

19. The defendant cannot be properly prepared to rebut such testimony before the *Daubert* hearing or the trial of the case due to the timing of the disclosure of the videos, and retrograde extrapolation and the fact that the opinion nor the data supporting the opinion reflected in the videos or retrograde extrapolation have yet to be disclosed to the defendant.

WHEREFORE, premises considered, the defendant respectfully requests

this Honorable Court to continue the *Daubert* hearing presently set on Friday, February 10, 2023, and to continue the trial of this case presently set on Monday, February 27, 2023, and for such other, further, different relief, premises considered.

Respectfully submitted,

/s/ Dennis J. Knizley
Dennis J. Knizley (KNI012)
Attorney for the Defendant
7 N. Lawrence Street
Mobile, Alabama 36602
Phone: (251) 432-3799
Fax: (251) 432-4539

/s/ Richard S. Jaffe
Richard S. Jaffe (JAF004)
Attorney for the Defendant
2320 Arlington Ave S.
Birmingham, AL 35205
Phone: (205) 930-9800
Fax: (205) 980-9809

CERTIFICATE OF SERVICE

I hereby certify that I have on this 3rd day of February, 2023, served a true and correct copy of the foregoing pleading upon District Attorney of Mobile County via the AlaFile System.

/s/ Dennis J. Knizley
Dennis J. Knizley (KNI012)

/s/ Richard S. Jaffe
Richard S. Jaffe (JAF004)