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CIRCUIT COURT OF  
MOBILE COUNTY, ALABAMA  
SHARLA KNOX, CLERK

**IN THE CIRCUIT COURT OF MOBILE COUNTY, ALABAMA**

STATE OF ALABAMA

V.

JONATHAN PISHOI NAKHLA,  
Defendant.

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) Case No.: CC-2021-002477.00

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**ORDER**

This case came before the Court for Virtual Hearing on January 31, 2023. The State attended in person through Special District Attorney Ashley Rich and Assistant District Attorney Clayton Williams. The Defendant attended virtually along with his Attorneys Dennis Knizley, Michael Whisonant and Brett Knight. The Court Reporter was Jamie McCracken.

Pending at the time of the Virtual Hearing were a number of motions filed by the Defendant. However, by Order of January 30, 2023 the Court had set the Virtual Hearing only as to the Defendant's "Daubert Motion in Opposition of Admissibility of Testimony of Proposed Experts" in order to hear the positions of the parties as to whether the listed experts would be offering "scientific" testimony such that a Rule 702(b) analysis would be required. The Court heard the positions of the parties.

As to the experts listed in Defendant's Motion (Doc. 124), the following is ORDERED:

1. Dr. Steven Dunton

The State advised that this witness would testify as to the autopsy results and cause of death of the decedent.

The parties conceded that the expected testimony would not be "scientific." Therefore, at this time the Court will not conduct a *Daubert* Hearing/Rule 702(b) hearing and related analysis as to this witness testimony.

2. Dr. Curt Harper

The State advised that Dr. Harper would be tendered to testify regarding the Defendant's blood alcohol level and, further, would be tendered to testify as to an "extrapolation." The State asserted that the testimony would not be scientific. The Defendant agreed that testimony simply as to the Defendant's blood alcohol level would not be deemed scientific but argued that any extrapolation would be scientific in nature and require a Rule 702(b) hearing.

It is ORDERED that the State shall make Dr. Harper available at the Hearing on February 10, 2023 for a proffer of his testimony in order that the Court may directly hear his testimony and determine: 1.) whether any portion of the testimony is "scientific" in nature; and 2.) if the testimony is held to be "scientific" in nature, then whether that testimony sufficiently meets *Daubert* requirements as to relevance, reliability and credibility, and Rule 702(b).

3. Cpl. Brandon Orso

The State advised that this witness would be tendered to testify as to a “phone dump.” Both parties agreed that the expected testimony would not be “scientific.” Therefore, at this time the Court will not conduct a *Daubert* Hearing/Rule 702(b) hearing and related analysis as to this witness testimony.

4. Trooper Ronnie Redding

The State advised that this witness would be tendered to testify as an “accident reconstruction” expert. The State conceded that some portion of the testimony could be found to be “scientific.”

It is ORDERED that the State shall make Trooper Redding available at the Hearing on February 10, 2023 for a proffer of his testimony in order that the Court may directly hear his testimony and determine: 1.) whether any portion of the testimony is “scientific” in nature; and 2.) if the testimony is held to be “scientific” in nature, then whether that testimony sufficiently meets *Daubert* requirements as to relevance, reliability and credibility, and Rule 702(b).

5. Cameron Smith

The State said this witness would testify as to the mechanics of a vehicle like that being driven by the Defendant at the time of the incident at issue. The witness was also apparently present when the CDR was downloaded.

The parties conceded that the expected testimony would not be “scientific.” Therefore, at this time the Court will not conduct a *Daubert* Hearing/Rule 702(b) hearing and related analysis as to this witness testimony.

6. Cpl. Jerry Lewis

The State advised that this witness would be tendered to testify as to his observations of the Defendant after the accident and as to whether the Defendant was under the influence of alcohol. The State asserted that the testimony would not be “scientific.” The Defendant’s Attorney asserted that he could not determine at this point if the testimony is “scientific.” Based on the representations by the State the Court is inclined to find that the testimony is not “scientific” though the Court is not at this point issuing a formal ruling.

Out of an abundance of caution, it is ORDERED that the State shall make Cpl. Lewis available at the Hearing on February 10, 2023 for a proffer of his testimony in order that the Court may directly hear his testimony and determine: 1.) whether any portion of the testimony is “scientific” in nature; and 2.) if the testimony is held to be “scientific” in nature, then whether that testimony sufficiently meets *Daubert* requirements as to relevance, reliability and credibility, and Rule 702(b).

7. Detective David McCullough

The State advised that this witness would be tendered to testify as an “accident reconstruction” expert. The State conceded that some portion of the testimony could be found to be “scientific.”

It is ORDERED that the State shall make Detective McCullough available at the Hearing on February 10, 2023 for a proffer of his testimony in order that the Court may



directly hear his testimony and determine: 1.) whether any portion of the testimony is “scientific” in nature; and 2.) if the testimony is held to be “scientific” in nature, then whether that testimony sufficiently meets *Daubert* requirements as to relevance, reliability and credibility, and Rule 702(b).

It is further ORDERED that each party shall file a brief as to whether the expected testimonies of experts Harper, Redding, Lewis, and McCullough constitute “scientific” testimony. See, e.g., *Mazda v. Hurst*, 261 So.3d 167, 182-185 (Ala. 2017); *ArvinMeritor, Inc. v. Johnson*, 1 So.3d 77 (Ala. Civ. App. 2008); *Barber v. State*, 952 So.2d 393, 416-417 (Ala. Crim. App. 2005); *Minor v. State*, 914 So.2d 372 (Ala. Crim. App. 2004); *Tomlin v. State*, 909 So.2d 213 (Ala. Crim. App. 2002); *Hodges v. State*, 856 So.2d 875 (Ala. Crim. App. 2001); *Simmons v. State*, 797 So.2d 1134 (Ala. Crim. App. 1999). See also C. Gamble and R. Goodwin, *McElroy’s Alabama Evidence* §490.01(2) (6<sup>th</sup> ed. 2009).

The briefs shall be filed no later than February 6, 2023 at 5:00 p.m.

**DONE this 31<sup>st</sup> day of January, 2023.**

**/s/ BEN H. BROOKS**  
**CIRCUIT JUDGE**