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

STATE OF ALABAMA,	)	
	)	
PLAINTIFF,	)	
	)	
V.	)	**CASE NO. CC-21-2477**
	)	
JONATHAN NAKHLA,	)	
	)	
DEFENDANT.	)	

DAUBERT MOTION IN OPPOSITION OF ADMISSIBILITY OF TESTIMONY OF PROPOSED EXPERTS

COMES NOW, Jonathan Nakhla, by and through undersigned counsel of record, and hereby moves this Honorable Court, pursuant to Ala. R. Evid. 702, Ala. Code § 12-21-160 (1975), and *Daubert v. Merrell Dow Pharmaceuticals, Inc.,* 509 U.S. 579 (1993), to exclude the following expert testimony:

Expert Disclosures provided:

On February 9, 2022, the State filed their notice of potential expert witnesses. Doc. 56. This list included the following:

1. Dr. Steven Dunton - ADFS Medical Examiner

2. Dr. Curt Harper – ADFS Toxicology

3. Cpl. Brandon Orso – Mobile Police Department, Cellular Technology Investigation

4. Trooper Ronnie Redding – Alabama State Trooper CDR Technician

5. Cameron Smith – Gulf Coast Auto Group

6. Cpl. Jerry Lewis – Mobile Police Department Drug Recognition Expert

7. Det. David McCullough – Mobile Police Department.

On December 12, 2022, an amended expert notice was filed, with the lone change being that "Dr. Cameron Snider – ADFS Medical Examiner" replaced Dr. Steven Dunton.

An autopsy report has been provided. Counsel has received reports from Det. McCullough and Mr. Redding as it relates to the CDR (crash data retrieval) data and analysis. Report of two forensic blood draws have also been provided.

Law:

"Whether a witness is qualified to testify as an expert is a question within the sound discretion of the trial court." *Payne v. State,* 239 So. 3d 1173, 1184 (Ala. Crim. App. 2017).

Rule 702(a), Ala. R. Evid., provides:

> If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

In 2011, the Alabama Supreme Court added Rule 702(b), which adopted *Daubert* as the standard in place of *Frye* for most scientific expert testimony. Rule 702(b) applies to expert testimony only if it is "based on a scientific theory, principle, methodology, or procedure." Rule 702(b) states:

> (b) In addition to the requirements in section (a), expert testimony based on a scientific theory, principle, methodology, or procedure is admissible only if:
> (1) The testimony is based on 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.

Determining whether expert testimony is scientific evidence is guided by statute and case law. Ala. Code § 12-21-160 defines scientific evidence as "expert testimony based on a scientific theory, principle, methodology, or procedure." As written by this Honorable Court in the Alabama Lawyer:

> Consideration was given to providing additional definitions of 'scientific evidence' beyond that in the statute, but most agreed that this was better left to the Alabama court system to develop. The Honorable Ben H. Brooks III and K. Megan Brooks, *Alabama's Version of Daubert -- A Legislative History*, 74 Ala. Law. 44, 46–47 (Jan. 2013).

The Alabama Supreme Court's decision in *Mazda Motor Corp. v. Hurst,* quoting with approval an Alabama Lawyer article developed additional guidance. 261 So. 3d 167 (Ala. 2017).

> As amended, Rule 702 requires courts to make two separate but related determinations regarding scientific evidence. First, pursuant to the first sentence in Rule 702(b), the trial court must determine whether proffered expert testimony purports to be scientific. If so, a Daubert admissibility inquiry is triggered, and the trial court then must determine whether the purportedly scientific evidence is 'reliable' -- that is, meets the three-pronged admissibility standard imposed by Rule 702(b)(l)-(3)….
>
> Fortunately, this task is not new to Alabama courts. Because the *Frye [v. United States*, 54 App. D.C. 46, 293 F. 1013 (1923),] general acceptance test also applies to scientific evidence only, Alabama courts were required to make this same distinction under *Frye*. Accordingly, a well-developed line of Alabama judicial authority exists that address whether a specific type of expert or evidence is considered 'scientific' for purposes of applying the *Frye* standard. Previous Alabama case law developed under the Frye standard will remain instructive -- if not controlling -- for determining whether expert testimony is scientific and subject to Rule 702(b)'s *Daubert*-based admissibility standard. The language used in Rule 702(b) to describe scientific evidence subject to the *Daubert* standard -- 'expert testimony based on a scientific theory, principle, methodology, or procedure' -- is the same language Alabama courts have used when describing scientific testimony subject to the Frye standard.

Robert J. Goodwin, *An Overview of Alabama's New Daubert-Based Admissibility Standard*, 73 Ala. Law. 196, 199 (May 2012) (footnotes omitted).

The Alabama Supreme Court recently provided further guidance as to what is and is not scientific evidence:

> What, then, is the difference between scientific and non-scientific expert testimony? **In short, a scientific expert is an expert who relies on the application of scientific principles, rather than on skill- or experience-based observation, for the basis of his opinion**. *Ex parte George*, No. 1190490, 2021 WL 68997, at *10 (Ala. Jan. 8, 2021); Daubert [v. Merrell Dow Pharmaceuticals, Inc.], 509 U.S. [579,] 590, 113 S. Ct. [2786,] 2795 [(1993)].

Argument:

As addressed below, counsel has not received any opinion or report for some of the experts disclosed by the state. In the event the proposed expert intends to offer any such opinion that has not been disclosed, it should be excluded.

Cameron Snider

Cameron Snider did not conduct the autopsy in this case and should be prohibited from testifying to the autopsy and findings contained in the autopsy report. Dr. Snider was added to the state's expert disclosure list, in place of Dr. Dunton. The autopsy was conducted by Dr. Eugene L. Hart. Counsel has received no report prepared by Dr. Snider. Given that Dr. Snider has no personal knowledge of the autopsy conducted and would presumably testify to what is contained in the autopsy prepared by Dr. Hart, this would be a violation of Dr. Nakhla's Sixth Amendment, and the Supreme Court's holding in *Bullcoming v. New Mexico.* 564 U.S. 647 (2011) (holding that a defendant has the right to confront the analyst who certified a forensic report and that said report was testimonial within the meaning of the Confrontation Clause.).

Dr. Curt Harper

Counsel has been provided the results of two (2) blood draws conducted in this case. Presumably, Dr. Harper will testify to those results. Dr. Harper should not be permitted to extrapolate or offer an opinion to anything other than what is contained in the two (2) "Toxicology Analysis Reports", as there has been no report provided to counsel offering any such opinion.

Cpl. Brandon Orso

Cpl. Brandon Orso is a "forensic examiner" and has received training in digital evidence. Counsel has received no report or opinion by him as it relates to this matter. Therefore, any

testimony and/or opinion by Cpl. Orso, other than him simply extracting information from a phone, should be excluded[1].

Ronald J. Redding

Ronald Redding is a retired trooper who has received training in accident reconstruction and is certified as a CDR tool technician. The only report received regarding Mr. Redding is his opinion on the EDR downloaded in this case. Counsel has received no other written report relative to the EDR download, nor has counsel received any written report containing Redding's opinion as it relates to data downloaded from the EDR or any other accident reconstruction related opinion testimony.

As it relates to the CDR, data and any opinion testimony related to this data should be excluded. EDR is the 'event data recorder' in cars that is then used to image the data into a CDR. EDR/CDR and the evaluation of such is "scientific," therefore, Rule 702(a), Rule 702(b) and the *Daubert* standard would apply. Before the expert testimony can be heard by a jury, the Court as a gatekeeper, must evaluate and ensure the scientific testimony satisfies three requirements specified in *Daubert* and codified in Rule 702(b)(1), (b)(2), and (b)(3):

(1) The testimony is based on sufficient facts or data.

The testimony in this case is solely based on the data contained in the EDR. As mentioned below, this data is incomplete, inaccurate and therefore unreliable. Making any opinion as it relates to this data not based on sufficient facts or data.

(2) The testimony is the product of reliable principles and methods.

[1] Counsel filed a motion to suppress the contents of the cell phone that was illegally searched in this matter.

This subsection "embodies the reliability, or scientific validity, requirement that lies at the heart of the holding in *Daubert*." Robert J. Goodwin, *An Overview of Alabama's New Daubert-Based Admissibility Standard*, 73 Ala. Law. 196, 199 (May 2012) (footnotes omitted).

> In assessing reliability, trial courts should look to several guiding factors, including: (I) whether the "theory or technique ... has been ... tested"; (2) whether the "theory or technique has been subjected to peer review and publication"; (3) whether the technique's "known or potential rate of error ... and ... standards controlling the technique's operation" are acceptable; and (4) whether the theory or technique has gained "general acceptance" in the relevant scientific community.
> *Turner v. State,* 746 So.2d 355, 358-59 (Ala. 1998) [quoting *Daubert;* citations omitted]

In this case, the expert testimony the state wishes to elicit satisfies none of the above. The opinion and data have not been independently verified for accuracy, nor is there a known error rate. The vehicle in this case is a 2018 Audi R8. There has been no documentation of this specific type of vehicle's EDR being tested to ensure it works properly and is accurate. In fact, there has been no showing that this particular model of EDR has *ever* been tested to ensure its validity and accuracy. The State has failed to provide any documentation setting forth or detailing the accuracy of data recovered from this vehicle's EDR or this model of EDR for a vehicle that is claimed to have been traveling in excess of 100 mph. There has been no additional testing done to determine the accuracy and reliability of the EDR data downloaded from this vehicle. Because the State has failed to sustain their burden of providing this critical information, the Court must exclude the evidence and testimony of Redding on this subject.

Furthermore, the data provided to counsel does not match up with certain undisputed events that are known to the parties. For example, the evidence will show the passenger airbag deployed during the accident at issue in this case. The EDR data downloaded by Redding does not show that event taking place. Therefore, not only is there no peer review or independent testing for accuracy,

the data from this particular EDR is flawed and therefore fails the reliability standard expected by *Daubert*.

Last, there is no "general acceptance" of EDR data for a 2018 Audi R8 that is alleged to have been traveling at over 100 mph. The general acceptance of EDR data for cars that may have been tested and verified at speeds well under 100 mph is not the same as the vehicle in this case traveling at the speeds alleged.

(3) The witness has applied the principles and methods reliably to the facts of the case.

As stated above, the 'facts' used to formulate the opinion on speed are not validated and are from an EDR that has not been tested for accuracy. Further, the software being used to read this data was not the latest software, therefore the methods were not applied reliably and in the proper way.

Cameron Smith

Cameron Smith works for Gulf Coast Automobile and was involved in the recovery of the vehicle crash data retrieval in this case. No report of an opinion has been provided by him, nor has a curriculum vitae been provided. Therefore, any expert opinion given by Mr. Smith should be excluded.

Cpl. Jerry Lewis

Cpl. Jerry Lewis is listed on the 'Toxicology Analysis Reports" mentioned in regard to Dr. Harper. There is no opinion from Cpl. Lewis that has been provided, therefore any expert opinion given by him should be excluded.

Det. David McCullough

Det. McCullough has received training in Crash Data Retrieval (CDR), as well as other Crash/Traffic homicide investigation training. His report in this case contains numerous opinions that should be excluded pursuant to Rule 702 and *Daubert.*

First, the objection to any analysis and opinion of CDR [EDR] data in this case argued above relative to Mr. Redding also applies to Det. McCullough. Both conducted an analysis, and counsel has not been advised by the State which, if either, they intend to call as an expert witness to testify at trial.

Second, Det. McCullough's report describes two "experiments/tests" that he conducted using a stopwatch and another officer. Using video obtained in this case, Cpl. Lewis and then Det. McCullough used a stopwatch on a cell phone to determine the amount of time it took the vehicle in this case to pass a certain point. According to Det. McCullough, two police Tahoes were placed at certain points on the roadway and viewed on a live stream of the same camera simultaneously with the recorded footage. To best describe the "experiment," Det. McCullough's report contains the following:

> I then played the footage of the Audi R8 traveling southbound on the service road on my MDT laptop with Michael Days cell phone streaming a live view of the Long and Long cameras. I then utilized Corporal Lewis's cell phone stopwatch feature. [] Corporal Lewis was advised to start the stopwatch when the Audi passed the starting line and stop the stopwatch when he passed the finish line. Corporal Lewis and I went through multiple attempts, both failed and successful due to the high speed of the car but we were able to record three different times during our attempts which were 0.76 seconds, 0.87 seconds, and 0.85 seconds. Based on the data collected I was able to conduct a basic average speed calculation which would show the average speed traveled in the specific distance…

This "experiment" was then conducted with a second camera and with different start and ending points. While this opinion clearly does not satisfy *Daubert* and Rule 702(b), if it is to be considered nonscientific, it does not satisfy Rule 702(a) either.

Rule 702(a) requires the expert to be qualified to give the opinion testimony they would provide. Det. McCullough has not received the training for this type of experiment to be qualified as an expert, as there is no training known to counsel that involves conducting an "experiment/test" such as this. While not required under Rule 702(a), clearly this 'experiment' is not generally accepted, taught, nor in any way accurate, given the human variables of manually stopping and starting a stopwatch as well as doing so based off a video from an angle. There is no information provided as to the frames per second of the video used, nor any detailed explanation of measurements. Further, in both experiments, the times recorded were less than a second, and Det. McCullough even notes the difficulties in starting and stopping a stopwatch in less than a second. This was essentially a test of how fast the 'tester' could stop and start the stopwatch. This is in no way an accurate or accepted test and no known training for such test based off a video simultaneously being compared to a second video that has been shown to counsel. Therefore, this "experiment" should not be heard by the jury in this case.

Conclusion:

WHEREFORE, premises considered, Dr. Nakhla prays this Honorable Court grants this motion to exclude certain expert opinions.

RESPECTFULLY SUBMITTED,

l/s Richard S. Jaffe
RICHARD S. JAFFE

l/s Michael W. Whisonant
MICHAEL W. WHISONANT

OF COUNSEL:
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l/s Dennis J. Knizley
DENNIS J. KNIZLEY

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CERTIFICATE OF SERVICE

I do hereby certify that I have on this the 27th day of January 2023 served a copy of the foregoing by electronically filing to all parties involved.

l/s Richard S. Jaffe
RICHARD S. JAFFE

IN THE CIRCUIT COURT OF MOBILE COUNTY
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STATE OF ALABAMA,	)	
	)	
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V.	)	**CASE NO. CC-21-2477**
	)	
JONATHAN NAKHLA,	)	
	)	
Defendant.	)	

MOTION IN LIMINE TO PREVENT SPECULATIVE TESTIMONY

COMES NOW, Dr. Jonathan Nakhla, by and through his attorney of record, and respectfully moves this Honorable Court to prohibit the State of Alabama from introducing speculative testimony as to whether that particular witness believed or had an opinion concerning Dr. Nakhla's demeanor, emotional state, etc. after the traffic accident at issue in this case. In support thereof, Dr. Nakhla would show the following:

1. Dr. Jonathan Nakhla has been charged with one (1) count of Reckless Murder. The facts and circumstances of the indictment surround a traffic accident that occurred on August 1, 2020. The majority of the events that transpired after the traffic accident, including statements by Dr. Nakhla, have been provided in discovery in the form of body camera footage.
2. While this evidence clearly demonstrates Dr. Nakhla's behavior and/or demeanor immediately after the traffic accident, Nakhla believes the State of Alabama intends to offer improper opinion testimony of lay witnesses describing Dr. Nakhla's behavior after the accident occurred (whether he appeared sad, remorseful, why he did certain things or did not do them, or how he should have reacted to certain things, potential beliefs that he was acting a certain way, etc.).

3. Dr. Nakhla respectfully moves the Honorable Court to prevent the State from asking questions that would understandably require the witness being questioned to be clairvoyant and a mind-reader. No one other than Dr. Nakhla knows what he was thinking moments after this tragic accident and no one knows how another person should be feeling after learning of their friend's tragic passing after such a catastrophic vehicle accident that he was also a party too.
4. To allow the State to ask direct examination questions concerning what Dr. Nakhla may have been thinking or how he should have been acting would be improper. Reason would dictate that any assertions by any witness as to what they believed Dr. Nakhla was thinking or how he should have been responding would be pure speculation, conjecture, and improper lay opinion testimony in light of the fact Dr. Nakhla was receiving medical treatment following a serious motor vehicle accident. It has long been held under Alabama law that witness speculation is not admissible and should be excluded from this trial.
5. This alleged opinion testimony serves no legitimate purpose and is irrelevant. Its only purpose is to paint Dr. Nakhla as a "bad guy" and is solely an attempt by the State to inflame the jury against Dr. Nakhla with improper character evidence. This testimony has no relevance to the indictment and is unfairly prejudicial as to whether Dr. Nakhla "drove at a high rate of speed and/or driving while under the influence of alcohol" and therefore recklessly "engage[d] in conduct which manifested extreme indifference" to [Ms. Thomas's] life and created a grave risk of death…" Doc. 1.

WHEREFORE, Dr. Nakhla respectfully requests this Court to prevent speculative lay opinion testimony about what any other person was thinking, how they should be responded or why this particular person might have behaved.

RESPECTFULLY SUBMITTED,

l/s Richard S. Jaffe
RICHARD S. JAFFE

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l/s Richard S. Jaffe
RICHARD S. JAFFE

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CIRCUIT COURT OF
MOBILE COUNTY, ALABAMA
SHARLA KNOX, CLERK

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

STATE OF ALABAMA,	)	
	)	
	)	
V.	)	**CASE NO. CC-21-2477**
	)	
JONATHAN NAKHLA,	)	
	)	
Defendant.	)	

MOTION IN LIMINE TO EXCLUDE
THE INTRODUCTION OF PHOTOGRAPHIC EVIDENCE

COMES NOW, the Defendant, Dr. Jonathan Nakhla, by and through his attorney of record, and respectfully moves this Honorable Court to prohibit the State of Alabama from introducing into evidence all photographs taken at the scene of the accident at issue and all photographs taken during the autopsy of the deceased. In support thereof, Dr. Nakhla would show the following:

1. Dr. Jonathan Nakhla has been charged with one (1) count of Reckless Murder. There is absolutely no evidence that Dr. Nakhla intended to cause the death of Ms. Thomas. Any and all injuries (or photographs of these injuries) sustained were the result of a tragic automobile accident and in no way bears on the issue of Dr. Nakhla's guilt or innocence in this case.
2. This case is currently set for a jury trial before this Honorable Court on February 27, 2023.
3. Pursuant to *Alabama Rules of Evidence*, Rule 401, evidence is relevant, and generally admissible under Rule 402 of the *Alabama Rules of Evidence* if the "offered evidence bears any logical relationship to the ultimate inference for which it is offered" *Aetna Life Ins. Co. v. Lavoie*, 470 So.2d 1060, 1078 (Ala.1984). The Court may, however, exclude

otherwise relevant evidence "if its probative value is substantially outweighed by the danger of unfair prejudice." *Ala. R. Evid.* 403. Further, evidence may be excluded when it becomes nothing more than inflammatory propensity evidence where there becomes a significant danger that the jury might base its decision on emotion rather than the actual evidence. *See Old Chief v. United States*, 519 U.S. 172 (1997)

4. During the discovery process, the State provided Dr. Nakhla with numerous photographs and/or video of the deceased in this case, both at the scene of the accident and during the autopsy. Although these photographs demonstrate the actual cause of Ms. Thomas' regrettable death, the photographs do not support an element of the charged offense and are not necessary or relevant for the State to prove a death. Rather, the photographs of Ms. Thomas serve no other purpose than to inflame the passions of the jury and are therefore more prejudicial than probative.
5. The photographs are post-mortem and depict no relevant evidence of the investigation or cause of death. Nakhla alleges these photographs are not relevant and material to the case but instead would be utilized as a "shock-and-awe moment" for the jurors to become emotionally invested and display anger towards Dr. Nakhla. The photographs would ultimately distract the jury from the real issues which they are sworn to decide, and the deliberative process employed to reach those decisions.
6. Dr. Nakhla is prepared to stipulate that Ms. Thomas died as a result of Blunt Force Trauma. Such a stipulation would avoid the necessity of presenting the testimony of the medical examiner on an issue not relevant to the charged conduct. Similarly, such a stipulation would avoid the prejudicial and inflammatory autopsy photographs that do not bear any logical relationship to the ultimate inference to be drawn by the jury, that is whether Dr.

Nakhla acted recklessly in causing the death of Ms. Thomas.

7. Neurological studies have concluded that during decisions surrounding moral judgments, the emotional rather than the cognitive areas of the brain are more active. *Salerno, J. M., & Bottoms, B. L.* (2009). Emotional evidence and jurors' judgments: The promise of neuroscience for informing psychology and law. *Behavioral Sciences and the Law, 27, 273* – 296. Thompson, C. M., & Dennison, S. (2004). Graphic evidence of violence: The impact on juror decision-making, the influence of judicial instructions and the effect of juror biases. *Psychiatry, Psychology, and Law, 11*(2), 323-337. When analyzing the potential graphic nature of certain pieces of evidence, these studies have shown that it can also translate into differences in punitiveness. In one particular scientific study, participants read a manuscript of an actual criminal case where a husband was accused of murdering his wife. After being read these transcripts, the participants were segmented into three categories: 1. Only reviewing the manuscript with no images, 2. Provided neutral images of the alleged crime scene, and 3. graphic images related to the scene and death. The results were clear. Results clearly demonstrated that when the participants were shown the graphic images as opposed to their counterparts, the largest number of guilty verdicts were produced. Furthermore, even when presented the participants with limiting instructions as it related to these images, it had the opposite effect by actual increasing conviction rates. Edwards, E. R., & Mottarella, K. E. (2014). Preserving the right to a fair trial: An examination of prejudicial value of visual and auditory evidence. *North American Journal of Psychology, 16*(2), 397-414.
8. For these reason, Dr. Nakhla respectfully moves this Honorable Court to prohibit the State

of Alabama from introducing into evidence all photographs taken of the scene of the accident and all photographs taken during the autopsy of the deceased. In the alternative, Dr. Nakhla respectfully moves this Honorable Court to limit the number of photographs the State may introduce into evidence as the cumulative nature of these photographs will only serve to inflame the passions of the jurors and a limiting instruction for any other purposes will not be sufficient to un-ring the bell. *Alabama Rules of Evidence* 401, 402, and 403.

WHEREFORE, the Defendant prays this Honorable Court exclude the evidence, or alternatively, set this issue for a hearing to determine the admissibility of evidence.

RESPECTFULLY SUBMITTED,

l/s Richard S. Jaffe
RICHARD S. JAFFE

l/s Michael W. Whisonant
MICHAEL W. WHISONANT

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l/s Richard S. Jaffe
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CIRCUIT COURT OF
MOBILE COUNTY, ALABAMA
SHARLA KNOX, CLERK

IN THE CIRCUIT COURT OF MOBILE COUNTY
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THIRTEENTH JUDICIAL CIRCUIT

STATE OF ALABAMA,	)	
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PLAINTIFF,	)	
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JONATHAN NAKHLA,	)	
	)	
DEFENDANT.	)	

MOTION IN LIMINE TO DETERMINE THE ADMISSIBILITY OF MEDICAL DOCUMENTS AND ANY POTENTIAL EXPERT TESTIMONY RELATED TO THESE DOCUMENTS

COMES NOW, Dr. Jonathan Nakhla, by and through the undersigned counsel, and files this Motion in Limine and in support thereof, states the grounds as follows:

1. Dr. Jonathan Nakhla has been charged with one (1) count of Murder in a case involving a traffic accident.

2. This case is currently set for a jury trial before this Honorable Court on the 27th day of February 2023. At the time of the incident made the basis of the indictment, Dr. Nakhla was transported to the emergency room for medical treatment. At the time Dr. Nakhla received said treatment, the Mobile Infirmary conducted a medical blood draw which also included an initial toxicology analysis for medical purposes.

3. While Dr. Nakhla has been provided in discovery certain medical records, which includes the analysis mentioned above, no chain of custody has been provided based on this blood draw and there has been no report or opinion related to the contents of this medical record.

4. For the above reasons, Dr. Nakhla will object to any testimony, documents and/or statistics, particularly of a general nature as until and unless the State can lay a proper predicate,

including a proper chain of custody, for the admission of same. *Brooks v. State,* 33 So.3d 1262, 71-73 (2007) (quoting *Suttle v. State, 565 So.2d 1197, 1199 (Ala. Crim. App. 1990):*

> In *Suttle v. State,* 565 So.2d 1197, 1199 (Ala.Crim.App.1990), we held that it was reversible error for the court to allow test results conducted on a **blood** sample to be admitted when there was not a sufficient **chain** of **custody** for the sample. We stated:
>
> "With regard to specimens taken from the human body, it is also incumbent upon the prosecution to show that the specimen analyzed was in fact the specimen taken from the defendant. In such cases, '[t]he "**chain** of **custody**" involves "the necessity of proving where and by whom the specimen was kept and through whose hands it passed." J. Richardson, *Modern Scientific Evidence,* Section 13.14a (2d ed.1974).' *Gothard v. State,* 452 So.2d 889, 890 (Ala.Cr.App.), cert. stricken, 450 So.2d 479 (Ala.1984). ... '[W]here the substance analyzed has passed through several hands *the evidence must not leave it to conjecture as to who had it and what was done with it between the taking and the analysis.*' *Rodgers v. Commonwealth,* 197 Va. 527, 90 S.E.2d 257, 260 (1955) (emphasis added).

5. Even then, considering there has been no expert opinion or report provided to the defense based upon the information found in this medical record, Dr. Nakhla would request that this information be excluded from trial. Furthermore, and as required per *Alabama Code 32-5A-194*, there has been no indication or documentation provided that the initial analysis performed by the Mobile Infirmary was approved by the Alabama Department of Forensic Sciences, ("Chemical analyses of the person's blood, breath, oral fluid, or other bodily substance to be considered valid shall have been performed according to methods approved by the Department of Forensic Sciences and by an individual possessing a valid permit issued by the Department of Forensic Sciences.")

6. For the above reasons, this evidence is to be excluded at trial. This evidence goes to the crux of the case against Dr. Nakhla: whether he was intoxicated at the time of the traffic accident. If the prosecution is allowed to illicit said testimony and/or admit said records in violation of the Court's Order to provide any expert opinions or reports the State intended

to offer and also without establishing a proper chain of custody, Dr Nakhla would be highly prejudiced and allowing such testimony would be a clear violation of his Sixth Amendment Right of the U.S. Constitution to receive a fair trial and a fair opportunity to confront witnesses against him.

WHEREFORE, premises considered, Defendant prays this Honorable Court will schedule a pre-trial hearing to determine the admissibility of the aforementioned evidence.

RESPECTFULLY SUBMITTED,

l/s Richard S. Jaffe
RICHARD S. JAFFE

l/s Michael W. Whisonant
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STATE OF ALABAMA,	)	
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V.	)	**CASE NO. CC-21-2477**
	)	
JONATHAN NAKHLA,	)	
	)	
Defendant.	)	

MOTION IN LIMINE TO EXCLUDE ANY MENTIONS OF AN ALLEGED EXTRAMARITAL RELATIONSHIP OR AFFAIR

COMES NOW, Dr. Jonathan Nakhla, by and through his attorney of record, and respectfully moves this Honorable Court to prohibit the State of Alabama from introducing in the form of physical evidence or witness testimony any evidence of an alleged extramarital relationship or affair between Dr. Nakhla and any third party. Such evidence and/or testimony is not relevant and unduly prejudicial to the facts and allegations raised in the indictment. In support thereof, Dr. Nakhla would show the following:

1. Dr. Jonathan Nakhla has been charged with one (1) count of Reckless Murder. This case is currently set for a jury trial before this Honorable Court on February 27, 2023.
2. Pursuant to Rule 401, *Alabama Rules of Evidence*, evidence is relevant, and generally admissible under Rule 402 if the "offered evidence bears any logical relationship to the ultimate inference for which it is offered" *Aetna Life Ins. Co. v. Lavoie*, 470 So.2d 1060, 1078 (Ala.1984). The Court may, however, exclude otherwise relevant evidence "if its probative value is substantially outweighed by the danger of unfair prejudice." *Ala. R. Evid.* 403. Further, evidence may be excluded when it becomes nothing more than inflammatory propensity evidence where there becomes a significant danger that the jury

might base its decision on emotion rather than the actual evidence. *See Old Chief v. United States*, 519 U.S. 172 (1997)

3. Based upon a previously filed Notice of 404B filed by the State, the State intends to introduce testimony involving an alleged attempt by Dr. Nakhla to have sexual relations with a witness prior to the accident at issue in this case. Upon information and belief, the State may attempt to offer additional evidence of other alleged extramarital relationships involving Dr. Nakhla. However, this type of evidence or testimony is not relevant and has no bearing on the issue of Dr. Nakhla's guilt or innocence as to the charge of Reckless Murder. Even if these allegations are true (which Nakhla denies), there is no legitimate basis between Dr. Nakhla attempting to initiate an illicit relationship with a witness that night prior to the traffic accident that occurred resulting in Ms. Thomas' death. Moreover, any attempt by the State to attribute similar conduct on the part of Dr. Nakhla would be speculative (at best) and clearly inadmissible as it relates to Ms. Thomas.
4. Rather, this is an attempt by the State to inflame the passions of the jury to not follow their oath and convict Dr. Nakhla not on the evidence, but on conduct that is irrelevant to the charges in the indictment. These allegations would ultimately distract the jury from the real issues which they are sworn to decide and the deliberative process employed to reach those decisions.
5. This alleged testimony serves no legitimate purpose other than to paint Dr. Nakhla as a "bad guy" and is solely an attempt by the State to inflame the jury against Dr. Nakhla with improper character evidence. In the end, this testimony has no relevance to the indictment and is unfairly prejudicial as to whether Dr. Nakhla "drove at a high rate of speed and/or driving while under the influence of alcohol" and therefore recklessly

"engage[d] in conduct which manifested extreme indifference" to [Ms. Thomas's] life and created a grave risk of death…" Doc. 1.

6. For these reason, Dr. Nakhla respectfully moves this Honorable Court to prohibit the State of Alabama from introducing into evidence any testimony or evidence alleging an extramarital affair or relationship as it is clearly irrelevant and unduly prejudicial. *Alabama Rules of Evidence* 401, 402, 403, and 404.

WHEREFORE, the Defendant prays this Honorable Court exclude this evidence, or alternatively, set this issue for a hearing to determine the admissibility of evidence.

RESPECTFULLY SUBMITTED,

l/s Richard S. Jaffe
RICHARD S. JAFFE

l/s Michael W. Whisonant
MICHAEL W. WHISONANT

OF COUNSEL:
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205-930-9800

l/s Dennis J. Knizley
DENNIS J. KNIZLEY

Dennis J. Knizley
7 N. Lawrence Street
Mobile, Alabama 36602
251-432-3799

CERTIFICATE OF SERVICE

I do hereby certify that I have on this the 27th day of January 2023 served a copy of the foregoing by electronically filing to all parties involved.

l/s Richard S. Jaffe
RICHARD S. JAFFE

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

STATE OF ALABAMA,	)	
	)	
PLAINTIFF,	)	
	)	
V.	)	**CASE NO. CC-21-2477**
	)	
JONATHAN NAKHLA,	)	
	)	
DEFENDANT.	)	

DEFENDANT'S MOTION IN LIMINE

COMES NOW, Jonathan Nakhla by and through his undersigned counsel of record, and respectfully moves this Honorable Court to issue an Order prohibiting counsel for the State, or any other person called to testify on behalf of the State from commenting on, arguing about, and/or testifying to in any manner, either directly or indirectly to the jury or while in its presence, any of the following:

1. Any mention, reference or question regarding any document or evidence, which has not been properly authenticated and admitted into evidence.

2. Any lay witness offering expert testimony and any witness offering expert testimony that has not been offered by the State in their "Notice of Experts."

3. Any hearsay statements made by any witness to the acts or allegations contained in the indictment who are not themselves testifying in court.

4. Any hearsay statements made to any witness by any individual other than Dr. Nakhla offered for the truth of the matter asserted.

5. Any mention, reference, or question regarding that would warrant a

speculative response,

6. Any and all evidence related to other acts that the State has not provided notice to the Defendant in a timely manner, pursuant to Alabama. R. Evid. 404. Since notice has not been provided as required, the State cannot and should not be allowed to offer any evidence of any alleged non-charged "crimes, wrongs, or other acts" as those terms are used in Alabama Rule of Evidence 404(b).

WHEREFORE PREMISES CONSIDERED, Jonathan Nakhla, respectfully request this Honorable Court enter an order granting this Motion in Limine. The Defendant reserves the right to amend or file an additional Motion in Limine based upon any filings by the State.

RESPECTFULLY SUBMITTED,

l/s Richard S. Jaffe
RICHARD S. JAFFE

l/s Michael W. Whisonant
MICHAEL W. WHISONANT

OF COUNSEL:
JAFFE, HANLE, WHISONANT & KNIGHT, P.C.
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l/s Richard S. Jaffe
RICHARD S. JAFFE