

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

JENNIFER SPIVEY FOLEY, as
Personal Representative of the Estate of
SCOTT RYAN SPIVEY,

Plaintiff,

vs.

CHARLES WELDON BOYD and
KENNETH WILLIAMS,

Defendants.

IN THE COURT OF COMMON PLEAS

FIFTEENTH JUDICIAL CIRCUIT

CASE NO.: 2024-CP-26-03798

**PLAINTIFF'S MEMORANDUM IN
OPPOSITION TO DEFENDANTS' MOTION
IN LIMINE SEEKING EXCLUSION OF
PLAINTIFF'S EXPERT**

INTRODUCTION

This matter comes before the Court on Defendants' motion to exclude the testimony and findings of Plaintiff's audio forensic expert, Dr. Robert C. Maher, Ph.D., P.E., prior to the non-jury Stand Your Ground immunity hearing. Defendants do not contend that Dr. Maher lacks qualifications, nor do they argue that he employed novel or discredited methods. Instead, they ask the Court to preemptively exclude expert testimony because Defendants dispute what the audio evidence shows and how it should be interpreted, both of which are unfavorable to their immunity claim. Every alleged "defect" they identify—acknowledged limitations, qualified language, refusal to opine beyond expertise—actually demonstrates the reliability and restraint Rule 702 requires. Expert testimony that acknowledges limitations is more reliable, not less. Further, any qualifying language reflects scientific restraint, not speculation or methodological failures.

Defendants' Motion in Limine should be denied in full. Defendants' motion reflects a fundamental misunderstanding of both Rule 702, as well as the function of the immunity hearing. South Carolina law draws a clear distinction between the Court's gatekeeping role—determining whether expert testimony is reliable and relevant—and the factfinder's role—resolving disputes

over interpretation, credibility, and weight. At the immunity hearing, the Court will sit as the factfinder, hear competing evidence, weigh the evidence, determine credibility, and resolve factual conflicts, not avoid them by exclusion. *State v. Dennis*, 444 S.C. 353, 368–69, 907 S.E.2d 142, 150–51 (Ct. App. 2024).¹ It is improper to avoid the role as factfinder by excluding Dr. Maher’s expert testimony and findings.

Plaintiff offers Dr. Maher for a narrow, proper, and highly probative purpose of assisting the Court, as factfinder, in examining and understanding what the audio recordings do and do not contain, including the timing, sequencing, and audibility of gunshot sounds captured during the incident at issue. Plaintiff does not offer Dr. Maher to identify specific firearms, shooters, calibers, magazine capacity, or to reconstruct the physical scene, nor does Dr. Maher testify on those topics.

South Carolina law is settled that once expert testimony satisfies Rule 702, disputes regarding interpretation, assumptions, data limitations, or alternative explanations are matters for the factfinder’s evaluation of weight rather than grounds for exclusion. *State v. Council*, 335 S.C. 1, 20–21, 515 S.E.2d 508, 518–19 (1999). That principle applies with particular force in the context of the immunity hearing, where the Court is statutorily required to hear and weigh competing evidence to determine the entitlement to immunity, including factual issues of escalation, imminence, and reasonableness. *Dennis*, 444 S.C. at 368–69. Defendants’ motion asks the Court to resolve those disputes in advance by exclusion. South Carolina law does not support that result.

¹ The Court of Appeals’ decision in *State v. Dennis* was reversed by the South Carolina Supreme Court on the limited issue of whether a mistrial entitles a defendant to a second immunity hearing under the Protection of Persons and Property Act. *State v. Dennis*, ___ S.C. ___, ___ S.E.2d ___, 2026 WL 218221 (S.C. Jan. 28, 2026). The Supreme Court reaffirmed that a Stand Your Ground immunity hearing is a pretrial, independent proceeding at which the circuit court serves as the factfinder and determines entitlement to immunity under a preponderance of the evidence standard.

Defendants' present position is also fundamentally inconsistent with their prior successful argument in this same case. Previously, Defendants urged this Court to admit raw audio recordings for the immunity hearing on the express ground that the Court, as factfinder, is capable of evaluating reliability, credibility, and evidentiary limitations. This Court accepted that premise and ruled accordingly. Defendants now ask the Court to abandon this premise arguing the testimony may confuse the Court, when the reality is their inconsistent position is because the evidence is unfavorable to their immunity claim. The Rules of Evidence and case law do not permit that result.

FACTUAL BACKGROUND

1. Dr. Robert Maher, Ph.D., P.E. is an expert in audio engineering, which is the field of using electronics to record, process and interpret audio. In his consulting practice, Dr. Maher deals with interpreting audio forensic analysis of audio recordings, videos, and other evidence of that type. *See* Deposition of Maher, p.9, line 13. Further, he teaches this subject at the University of Montana. *Id.* at p. 9, line 17. He has given testimony as an expert in many states in the area of audio forensic analysis. *Id.* at p. 10, line 12. Plaintiff offered Dr. Maher as an expert in audio forensic analysis and digital signal processing, without objection from Defendants. *See* Deposition of Maher, p. 12, line 10.

2. Dr. Maher testified he analyzed a mobile phone audio recording made by Weldon Boyd and the 911 call center recording associated with the September 9, 2023, shooting.

3. Using standard audio forensic techniques—including critical listening, waveform analysis, and spectrographic analysis—Dr. Maher identified:

- a. There was no gunshot recorded prior to the first clearly audible gunshot in the mobile phone recording which came from inside the truck;
- b. Twenty-nine clearly discernible gunshot sounds were recorded in the truck;

- c. The first 17 of those gunshots most likely were made by the same gun, and the last 12 of those clearly discernible gunshot sounds were most likely made by a different gun;
 - d. There are certain utterances during the call; and
 - e. There are three subtle impulses, all of which occur after the first clearly audible gunshots, that more likely than not can be explained by gunshots originating outside the cabin of Boyd's truck, (i.e., assuming Spivey fired his weapon, then he has an opinion that more likely than not these three impulses could be explained by these impulses. *Id.* at p. 54, line 5.
4. Dr. Maher expressly acknowledged, documented, and considered limitations inherent in the recordings, including MP3 compression and unknown device characteristics, and confined his opinions accordingly.
5. Dr. Maher expressly disclaimed reliance on physical evidence such as spent casing counts or firearm capacity, explaining that audio analysis and ballistic analysis capture different dimensions of an incident and that his role was limited to an audio forensic analysis.

ARGUMENT

I. Legal Standard

In *State v. Council*, the court held: “When admitting scientific evidence under Rule 702, SCRE, the trial judge must find [1] the evidence will assist the trier of fact, [2] the expert witness is qualified, and [3] the underlying science is reliable.” *State v. Council*, 335 S.C. 1, 20–21, 515 S.E.2d 508, 518 (1999). To determine the reliability of the underlying science, the trial judge should apply the *Jones* factors: (1) the publications and peer review of the technique; (2) prior application of the method to the type of evidence involved in the case; (3) the quality control procedures used to ensure reliability; and (4) the consistency of the method with recognized scientific laws and procedures.” *Id.* (citing *State v. Ford*, 301 S.C. 485, 392 S.E.2d 781 (1990); *State v. Jones*, 273 S.C. 723, 259 S.E.2d 120 (1979)). “Further, if the evidence is admissible under

Rule 702, SCRE, the trial judge should determine if its probative value is outweighed by its prejudicial effect. Rule 403, SCRE. Once the evidence is admitted under these standards, the jury may give it such weight as it deems appropriate.” *Id.* The admission of expert testimony is within the sound discretion of the trial court. *Id.*

Council makes it clear that in performing its gatekeeping function, the Court determines admissibility as a matter of law by assessing whether the expert is qualified, and his methodology is reliable, and the expert testimony will assist the factfinder; the Court does **not** resolve disputes over interpretation, credibility, or competing inferences that go to the weight of the evidence at this stage. *See Council*, 335 S.C. at 20–21, 515 S.E.2d at 518–19 (explaining that the trial court’s role is to assess qualifications, reliability, and relevance, not to weigh evidence as the gatekeeper); *see also State v. White*, 382 S.C. 265, 274, 676 S.E.2d 684, 689 (2009) (explaining that weight determinations, as opposed to admissibility arguments apply only after the court has vetted qualifications and reliability and admitted the evidence). Each of those threshold Rule 702 requirements is satisfied here, and Defendants do not identify any failure of qualification, methodology, or relevance that would justify exclusion under Rule 702.

Further, the procedural framework of this immunity hearing informs how the Court must apply the standards of Rules 702 and 403. South Carolina case law recognizes that an immunity determination is a pretrial evidentiary decision made by the court under a preponderance of the evidence standard, and that “the evidentiary hearing standard is a flexible one,” such that “there may be times that a trial court requires more evidence, be it testimonial or otherwise, to make the immunity determination.” *State v. Manning*, 418 S.C. 38, 44, 791 S.E.2d 148, 151 (2016) (holding that the scope and necessity of the evidentiary hearing at an immunity determination is determined on a case-by-case basis).

A. Rule 702

a. Dr. Maher is qualified.

Significantly, Defendants offered no objection in Dr. Maher's deposition when Plaintiff's counsel offered Dr. Maher as an expert in the field of audio forensic analysis and digital signal processing. As such, Defendants have waived any objection and cannot now argue about his qualifications. In fact, in their motion, Defendants do not argue he is not qualified. However, because the extent of his qualifications and knowledge illustrates not only why the underlying science of a audio forensic analysis is reliable but also why the accepted methodology was reliably applied to the audio evidence he analyzed, his qualifications are relevant here.

Dr. Maher is a, if not "the", nationally recognized audio forensic expert with decades of experience in audio enhancement, synchronization, and analysis; a tenured professor of electrical engineering; and the author of a leading treatise on audio forensic analysis as well as numerous other publications. *See*, Deposition of Dr. Maher and Curriculum Vitae. His methodology, using audio preservation, enhancement, waveform analysis, spectrographic examination, and temporal sequencing, is foundational to audio forensic science, routinely employed in forensic investigations and court proceedings, and subject to verification and cross-examination. *Id.* Further, he has years of experience applying the accepted methodology to audio evidence.

b. The underlying science itself is reliable and Dr. Maher's testimony and findings are likewise reliable.

The underlying science of audio forensic analysis is obviously reliable and meets each of the *Jones* factors: (1) the publications and peer review of the technique; (2) prior application of the method to the type of evidence involved in the case; (3) the quality control procedures used to ensure reliability; and (4) the consistency of the method with recognized scientific laws and procedures. *See*, Deposition of Dr. Maher. For that reason, in challenging reliability, Defendants

do not contend that audio forensic analysis itself is an unrecognized or unreliable discipline, nor do they identify any novel or experimental technique employed by Dr. Maher.² Rather, they attempt to repackage what is actually a challenge to his conclusions, his assumptions, and the inferences Plaintiff urges the Court to draw as an improper challenge to reliability.³ Defendants' concerns are properly dealt with through cross-examination and presenting evidence and testimony, which they have done here, through experts or otherwise, to challenge the opinions and findings of Dr. Maher. As the Deposition of Dr. Maher shows, Defendants took full advantage of cross-examining Dr. Maher. The trial court's gatekeeping function under Rule 702 is limited to determining whether the expert's methodology is reliable and relevant; it does not permit exclusion simply because the testimony is contested or because the opposing party disputes the expert's interpretation of the evidence. *Council*, 335 S.C. at 20–21, 515 S.E.2d at 518–19 (setting forth the admissibility framework under Rule 702 and distinguishing the court's gatekeeping role from the factfinder's evaluation of weight); *State v. Douglas*, 380 S.C. 499, 503–04, 671 S.E.2d 606, 608–09 (2009) (explaining that weaknesses in expert testimony affect persuasiveness, not admissibility). Where, as here, the expert employs accepted methodology and confines his opinions to matters within his expertise, Rule 702 requires admission so that any disputes may be

² Defendants' motion effectively repackages a *Daubert*-style challenge, which is designed to shield juries from unreliable expert testimony, as a motion in limine directed to a bench immunity hearing. South Carolina law does not require the Court to resolve contested factual questions or competing expert interpretations at the admissibility stage, particularly where the Court itself is the factfinder and must weigh evidence to determine immunity. *See Council*, 335 S.C. at 20–22, 515 S.E.2d at 518–19 (explaining that once scientific evidence is admitted under Rule 702, “the jury may give it such weight as it deems appropriate,” and that “vigorous cross examination [and] presentation of contrary evidence . . . are the traditional appropriate means of attacking shaky but admissible evidence”); *Dennis*, 444 S.C. at 368.

³ Defendants' exclusion theory depends entirely on converting disputed factual questions, such as competing interpretations of audio evidence and disagreements over what inferences should be drawn, into supposed defects in admissibility. South Carolina law does not permit the use of Rule 702 as a mechanism for resolving factual disputes that are properly reserved for the factfinder.

evaluated by the factfinder. Defendants have offered no proof or legitimate challenge to Dr. Maher's methodology.

Importantly, Dr. Maher does not overstate his conclusions. In both his written report and sworn deposition testimony, he expressly disclaims opinions regarding firearm identification, caliber, shooter identity, magazine capacity, or the attribution of specific audio events to particular weapons or individuals, explaining that such determinations require physical evidence and firearms examination beyond the scope of forensic audio analysis. He candidly acknowledges limitations inherent in the recordings, including compression artifacts, unknown recording device characteristics, and environmental noise, and he confines his opinions to what can reliably be determined from the audio evidence itself, employing qualified language where scientific certainty is not justified.

This disciplined confinement of opinion stands in sharp contrast to cases in which South Carolina courts have excluded expert testimony because the witness exceeded the scope of his or her expertise or offered opinions that effectively resolved ultimate self-defense issues without proper qualification. *See State v. Andrews*, 424 S.C. 304, 317–19, 818 S.E.2d 227, 234–36 (Ct. App. 2018), *aff'd as modified*, 427 S.C. 178, 830 S.E.2d 12 (2019) (excluding testimony where the witness's opinion exceeded the scope of her expertise and effectively addressed the ultimate issue of self-defense). Dr. Maher does neither. He offers no opinion on intent, reasonableness, imminence, or immunity; rather, he provides technical analysis of the audio evidence alone so that the Court, sitting as factfinder, may understand what the audio evidence is and then properly weigh the audio evidence gleaned from the recording with other evidence presented in the hearing.

Defendants argue that Dr. Maher's opinions must be excluded because he did not know the precise recording device, did not conduct scene recreations, and did not reconcile audio impulses

with physical casing counts. Again, these arguments do not identify any flaw in Dr. Maher's methodology; they instead reflect disagreement with the scope of his analysis and the conclusions drawn from the audio evidence he analyzed. Rule 702 does not require an expert to possess perfect or ideal data, nor does it mandate reconstruction or corroboration through every other category of evidence. Rather, the pertinent question is whether Dr. Maher properly applied the vetted methodology in his analysis.

Defendants have produced no evidence that he failed to properly apply the methodology to the recording he analyzed. Defendants further argue Dr. Maher's opinions are unreliable because his opinions are not consistent with Defendants' view of the physical evidence, i.e. he identified 29 "clearly discernible" gunshot sounds in the mobile phone recording, but law enforcement recovered only 23 spent 9mm casings. Defendants further contend that Dr. Maher's opinion that the first 17 audible shots most probably came from one firearm is impossible because no firearm in evidence held 17 rounds. Again, Defendants' argument misses the mark. One purpose of Dr. Maher's analysis was to identify the presence of any audible gunshots prior to the first clearly discernible gunshot sounds, without regard to what physical evidence was recovered, or not, at the scene, and without regard to other testimony that could taint his findings. As Dr. Maher testified, his analysis would be corrupted by consideration of evidence that is extraneous to his well-defined task of determining without outside influence what the audio recording shows or does not show. *Id.* at p. 14, lines 17-25. Excluding expert testimony simply because it is not completely consistent with other proffered evidence, or rather another party's view of the other evidence, contradicts not only the purpose of Rule 702 but also the entire fact-finding purpose of this immunity hearing. Defendants' argument in its simplest form would allow the Court to exclude one witness'

testimony because it is inconsistent with the testimony of another witness. That is not the purpose of any rule of evidence, and certainly not Rule 702.⁴

Dr. Maher identified audible impulses in a recording: sounds captured by a mobile phone microphone under unknown conditions, compressed via MP3 encoding, and subject to environmental variables. He did not count spent casings, identify firearms, or reconstruct the physical scene. Audio and ballistic evidence capture different dimensions of an incident. One is not a "check" on the other; they are independent sources of information that the factfinder must weigh. *Council*, 335 S.C. at 20–21, 515 S.E.2d at 518–19 (disputes over incomplete data go to weight). A discrepancy between the number of audible impulses in a recording and the number of casings recovered does not demonstrate methodological failure; it simply reflects two different types of evidence that should be presented to the factfinder.⁵ Nothing in Dr. Maher's testimony or report demonstrates a flaw in his methodology.

⁴ Citing *Gen. Elec. Co. v. Joiner*, 522 U.S. 136, 146 (1997) and *Graves v. CAS Med. Sys., Inc.*, 401 S.C. 63, 735 S.E.2d 650 (2012), Defendants argue Dr. Maher's opinions should be excluded because they are connected to the evidence only by the *ipse dixit*, i.e. bare, unsupported assertions. Those cases hold that exclusion is warranted only where an expert's opinion is connected to the facts **solely** by the *ipse dixit* of the expert, creating an impermissible analytical gap between the data and the conclusion. 522 U.S. 136, 146 (1997); *see also Graves v. CAS Med. Sys., Inc.*, 401 S.C. 63, 735 S.E.2d 650 (2012) (excluding expert testimony where experts assumed the product failed based **solely** on the plaintiffs' assertion) (*Graves* has a limited application and does not in any way stand for the proposition that expert testimony must be excluded whenever data is incomplete or when other experts might disagree). Here, there is no gap. Dr. Maher has employed accepted methodology to analyze the audio recording. Dr. Maher thoroughly explains how impulsive sounds were identified and how audibility was assessed, while expressly acknowledging limitations. His conclusions are the product of articulated reasoning grounded in accepted audio forensic principles. That the audio recording reveals evidence that is inconsistent with Defendants' narrative is a topic for cross-examination and presentation of their own evidence.

⁵ At one point in his testimony, Dr. Maher explains how masking can account for the absence of findings in the audio forensic analysis, i.e., how the loud shots from inside the truck can mask shots from farther away.

Dr. Maher appropriately confined his analysis to the domain in which he is qualified: audio forensic analysis. Defendants are free to present ballistic evidence, firearms examination, and scene reconstruction testimony. They are also free to present their own expert on audio forensic analysis to rebut the findings and conclusions of Dr. Maher; that they have not secured a competing expert witness likely means they have been unable to find one who can rebut Dr. Maher's opinions. This likely explains why they have resorted to an improper motion to exclude his opinions.

Defendants cite *United States v. Angleton*, 269 F. Supp. 2d 892 (S.D. Tex. 2003) to support their position that the audio forensic evidence is unreliable. That reliance is misplaced for three independent reasons. First, *Angleton* was a federal district court decision from the Southern District of Texas, which is not binding on a South Carolina court. Second, *Angleton* addressed spectrographic voice identification—a pattern-matching technique also known as “voiceprints”—which attempted to identify individual speakers by comparing spectrograms of unknown voices to known exemplars. In that case, the court found this specific technique, as applied to voice identification, was subject to significant reliability concerns; the method has not been generally accepted by the scientific community, unlike Dr. Maher's methodology; and peer review had become increasingly difficult because of the dwindling number of practitioners and sparsely attended professional meetings. *Angleton*, 269 F. Supp. 2d at 902. Third, and most importantly, Dr. Maher does not employ spectrographic voiceprint identification or purport to match acoustic signatures to specific firearms. Rather, he uses well-established forensic methodology: waveform analysis, spectrographic examination for temporal sequencing and frequency content, amplitude envelope comparison, and critical listening, which are all techniques routinely employed in audio forensic analysis. These are generally accepted techniques in the field of audio forensic analysis

and are fundamentally different from the discredited voiceprint identification method at issue in *Angleton*. *Angleton* is therefore inapposite and, in any event, not binding on this Court.

Defendants also argue that Dr. Maher's opinions concerning whether the audio recordings evidence any gunshots originating from outside Boyd's truck are speculative and should therefore be excluded under Rule 702. The specific question posed to Dr. Maher that Defendants take issue with is whether there are sounds in the background of the phone recording that would correspond to gunshots from outside the cabin of the vehicle in which the mobile phone recording was made. Throughout his report and deposition, Dr. Maher expressed his opinions to a reasonable degree of audio forensic/scientific certainty and more probably than not that all of the 29 clearly discernible gunshot sounds detected on the recording originated from inside the cabin of Boyd's truck and that there is no evidence of any gunshot sounds, subtle or otherwise, either from inside the cabin or out, **prior** to the first clearly discernible gunshot sound on the recording. He also testified that he detected three background sounds, each of which occurred after the first clearly audible gunshot sound. When asked, assuming hypothetically that Scott Spivey fired his weapon at some point during the incident, whether he had an opinion more probably than not that those background sounds could be explained by gunshots made by Scott Spivey, Dr. Maher answered yes. *See*, Deposition of Maher, p. 54, lines 5-10. His opinion is that assuming it to be true that Scott Spivey fired his weapon, it is most probable that the background sounds are explained by Spivey's gunshots. That is not speculative. It is a reasoned opinion to a reasonable degree of scientific certainty that the audio evidence most probably supports that hypothetical.

c. Dr. Maher's testimony will assist the Court in performing its factfinding role.

The immunity hearing requires the Court to determine whether the defendants are entitled to immunity under common law self-defense, § 16-11-440 (A), or § 16-11-440 (C). As the

factfinder, the Court is tasked with weighing the evidence and the credibility of witnesses to determine whether the defendants prove by a preponderance of the evidence each necessary element of their claim for immunity. Dr. Maher's testimony is relevant to many of those elements.

For example, defendants claim with certainty that Spivey fired first. They rely on that purported fact to prove the second and third elements of self-defense, i.e. that they were in imminent danger and that the circumstances would have warranted a man of ordinary prudence, firmness and courage to strike the fatal blow in order to save himself from serious bodily harm or death. *State v. Glenn*, add cite; *State v. Duncan*, 392 S.C. 404, 408–11, 709 S.E.2d 662, 663–65 (2011); *State v. Curry*, 406 S.C. 364, 371–72, 752 S.E.2d 263, 267 (2013). However, neither the forensic evidence nor the disinterested eyewitness testimony supports Defendants' claim that Spivey fired first. Dr. Maher's testimony is relevant to this issue and provides additional evidence for the Court to weigh to determine the credibility of the Defendants' claim that Spivey fired first.

Similarly, the issue of who shot first may determine whether Defendants were attacked by Spivey, an element that is required for immunity under subsection (C) of the Act. Each of these determinations necessarily involves factual assessments concerning timing, escalation, sequence of events, and the reasonableness of the defendants' actions.

Dr. Maher's testimony directly assists the Court in making those determinations. His analysis provides technical context regarding whether gunfire was audible before Defendants began firing and the temporal sequencing and cadence of gunfire once it began and identification of shots that likely were made by the same weapon. He does not opine on intent, imminence, or

reasonableness; rather, he supplies the Court with reliable technical information necessary to evaluate those issues when compared to or weighed with other evidence and testimony.⁶

That is precisely the type of assistance contemplated by Rule 702, particularly in a bench proceeding where the Court must synthesize technical evidence with testimonial and circumstantial evidence to resolve disputed facts. *Dennis*, 444 S.C. at 368–69 (recognizing the trial court’s obligation to weigh evidence and credibility at an immunity hearing).

B. Rule 403 does not authorize exclusion in a non-jury SYG hearing.

Rule 403 permits exclusion only where the probative value of evidence is substantially outweighed by the danger of unfair prejudice, confusion, or misleading the factfinder. Those concerns are significantly diminished where, as here, the Court—not a jury—serves as factfinder. *See Douglas*, 380 S.C. at 503–04, 671 S.E.2d at 608–09 (finding no prejudice from expert testimony where the witness testified to personal observations, did not vouch for the victim’s veracity, and the factfinder remained free to assess the testimony’s weight).

At the immunity hearing, the Court is expected to hear contested evidence, assess credibility, and resolve factual disputes under a preponderance of the evidence standard. Excluding expert testimony because it is technical, disputed, or subject to competing interpretations would improperly short-circuit the process mandated by *Dennis* and the Protection of Persons and Property Act. Rule 403 does not authorize shielding the Court from evidence it is fully capable of weighing during its fact-finding role. In fact, The Protection of Persons and Property Act contemplates that the trial court will hear evidence, resolve conflicts, and make

⁶ Dr. Maher does not offer any opinion regarding Defendants’ intent, state of mind, reasonableness, or entitlement to immunity. Those determinations are reserved to the Court. His testimony is limited to technical analysis of audio evidence to assist the Court in evaluating timing, sequencing, and escalation—factual predicates relevant to, but distinct from, the ultimate legal questions before the Court.

factual determinations at an immunity hearing. Defendants' Rule 403 argument rests almost entirely on the assertion that Dr. Maher's testimony may "mislead" the factfinder. That concern is misplaced in a non-jury proceeding. Rule 403's prejudice and confusion safeguards are primarily designed to protect juries, not to prevent trial courts from hearing contested or technical evidence. In the context of this immunity hearing—where the Court is expressly tasked with weighing credibility, resolving factual disputes, and evaluating competing interpretations and where the Court, as factfinder, is highly qualified to understand the expert testimony—arguments that the Court may be "misled" by expert testimony do not support exclusion of Dr. Maher's opinions.

Even if Defendants had identified legitimate concerns about the admissibility of some part of Dr. Maher's testimony at a jury trial, which they have not, such concerns do not justify exclusion at this stage. Our Supreme Court has recognized that the evidence presented at a pretrial immunity hearing and the evidence presented at a jury trial "may be considerably different." *Cervantes-Pavon*, 426 S.C. at 452-53, 827 S.E.2d at 569 (other citations omitted); *see also Chhith-Berry*, 437 S.C. at 542, 878 S.E.2d at 360. As our courts have routinely recognized, Rule 403 prejudice concerns rarely arise in the context of a bench trial where the court sits as factfinder. The language in *State v. White* is instructive in considering admissibility of evidence and prejudice concerns in a bench trial:

Moreover, in the present case, this court's assessment of prejudice 'must be viewed from the posture of a bench trial as opposed to a jury trial.' *State v. Inman*, 395 S.C. 539, 565, 720 S.E.2d 31, 45 (2011). 'It is well-established that it is near insurmountable burden for a defendant to prove prejudice in the context of a bench trial as a judge is presumed to disregard prejudicial or inadmissible evidence.' *Id.* *See also Cole v. Commonwealth*, 16 Va.App. 113, 428 S.E.2d 303, 305 (1993) (reviewing an evidentiary ruling in a bench trial and stating, 'A judge, unlike a juror is uniquely suited by training, experience[,] and judicial discipline to disregard

potentially prejudicial comments and to separate, during the mental process of adjudication, the admissible from the inadmissible, even though he has heard both.’

State v. White, 446 S.C. 276, 919 S.E.2d 37 (Ct.App. 2025).

Accordingly, it is entirely appropriate for the Court to consider Dr. Maher’s expert testimony at the immunity hearing for the purpose of making the pretrial immunity determination, while holding in abeyance the separate question of whether and to what extent the same testimony should be admitted in any subsequent jury trial. The concerns Defendants raise—about potential confusion, the “aura of scientific certainty,” or the risk of “misleading” the factfinder—have no force in the context of this immunity hearing where the very able-minded Court is the factfinder.

The proper way for Defendants to challenge Dr. Maher’s testimony and opinions is through “vigorous cross examination” and “presentation of contrary evidence,” which are the well-accepted means of attacking expert testimony. *Council*, 335 S.C. at 21-22, 515 S.E.2d at 519 (other citations omitted). Further, while careful jury instructions might be necessary in the context of a jury trial if there are any Rule 403 concerns, such concerns are not present here, where the Court, obviously well-versed in the applicable burden of proof, sits as factfinder.

CONCLUSION

For the reasons set forth above, Plaintiff respectfully requests the Court deny Defendants’ Motion in Limine in its entirety.

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