

UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF
PENNSYLVANIA

Giuli v. Montagna

Giuli v. Montagna · No. 3:23-CV-1785 · Decided January 8, 2026

SUMMARY

The United States District Court for the Middle District of Pennsylvania addresses Defendants’ motion to exclude Plaintiff’s use-of-force expert, Thomas Shea, under Federal Rule of Evidence 702 and Daubert. The Court finds Shea qualified to testify but limits his testimony, precluding opinions on witness credibility, prevailing national use-of-force standards, the Pennsylvania Mental Health Procedures Act, and the reasonableness of Defendants’ conduct. The motion is granted in part and denied in part.

CASE DETAILS

COURT	United States District Court for the Middle District of Pennsylvania
WRITING FOR THE COURT	Robert D. Mariani
JURISDICTION	United States District Court for the Middle District of Pennsylvania
DECIDED	January 8, 2026
DOCKET	3:23-CV-1785
DISPOSITION	other
PROCEDURAL POSTURE	Defendants moved in limine under Federal Rule of Evidence 702 and Daubert to exclude plaintiff's proffered use-of-force expert, Thomas Shea. After a Daubert hearing and supplemental briefing, the court ruled that Shea could testify in a limited capacity.
STANDARD OF REVIEW	The court applied Federal Rule of Evidence 702 and the Daubert gatekeeping standard, evaluating the expert's qualification, reliability, and fit. Motions in limine are discretionary and ordinarily should be granted only when evidence is clearly inadmissible on all potential grounds.
PRECEDENTIAL VALUE	unpublished
PARTIES	Defendants Joseph Montagna, Christopher Teetsel, and other defendants v. Carl Giuli

TOPICS

daubert standard

expert testimony

evidence

section 1983

police misconduct

PRACTICE AREAS

evidence

civil rights litigation

police misconduct

constitutional litigation

QUESTIONS PRESENTED

1. Whether Thomas Shea was qualified to testify as an expert under Federal Rule of Evidence 702.
2. Whether alleged factual errors, inconsistencies, and methodological problems rendered Shea's opinions unreliable.
3. Whether Shea could testify about the credibility of fact witnesses.
4. Whether Shea could testify about prevailing national use-of-force standards, the President's Task Force on 21st Century Policing report, or Law Enforcement Best Practices: Lessons from the Field.
5. Whether Shea could testify about compliance with the Pennsylvania Mental Health Procedures Act.
6. Whether Shea could testify about compliance with Pennsylvania State Police policy or de-escalation practices.
7. Whether Shea could testify that the defendants' use of force was reasonable, unreasonable, or excessive.

HOLDINGS

1. Shea was qualified to testify as an expert because his knowledge and experience in police practices and use of force satisfied the qualification requirement of Rule 702.
2. The report's inaccuracies and inconsistencies did not require exclusion of Shea's testimony in its entirety; those matters could be addressed through cross-examination, but they limited the permissible scope of his testimony.
3. Shea was precluded from offering any opinions on the credibility of fact witnesses.
4. Shea was precluded from relying on or testifying about standards in The President's Task Force on 21st Century Policing, Law Enforcement Best Practices: Lessons from the Field, or generically identified prevailing national use-of-force standards.
5. Shea was precluded from referencing or offering testimony about compliance with the Pennsylvania Mental Health Procedures Act.
6. Shea was not categorically precluded from offering an expert opinion concerning compliance with pertinent Pennsylvania State Police policies.
7. Shea was precluded from testifying about the reasonableness or unreasonableness of the defendants' actions regarding the use of force.

KEY QUOTATIONS

“The jury has the exclusive function of appraising credibility, determining the weight to be given to the testimony, drawing inferences from the facts established, resolving conflicts in evidence, and reaching ultimate conclusions of fact.” (9-10)

“For the foregoing reasons, Defendants’ Motion to Exclude Plaintiffs Use of Force Expert (Doc. 23) is granted in part and denied in part.” (17)

FACTUAL BACKGROUND

Pennsylvania State Police troopers Joseph Montagna and Christopher Teetsel served a section 302 warrant on Carl Giuli after his wife reported that he was experiencing a mental-health crisis. An altercation occurred inside Giuli's home, during which Giuli sustained injuries that he attributed to excessive force by the troopers. The parties disputed what occurred during the altercation, and Giuli sought to present Thomas Shea as an expert on police practices and use of force.

PROCEDURAL HISTORY

Giuli brought a civil-rights action alleging that Pennsylvania State Police troopers used excessive force while serving a warrant under section 302 of the Pennsylvania Mental Health Procedures Act. Defendants moved to exclude Giuli's use-of-force expert in its entirety. Following a December 4, 2025 Daubert hearing, the court granted the motion in part and denied it in part, allowing limited expert testimony subject to specified exclusions.

DISPOSITION

other

CASES CITED

- United States v. Tartaglione, 228 F. Supp. 3d 402, 406 (E.D. Pa. 2017)
- In re Japanese Electronic Products Antitrust Litigation, 723 F.2d 238, 260 (3d Cir. 1983), rev'd on other grounds sub nom. Matsushita Electric Industrial Co. v. Zenith Radio Corp., 475 U.S. 574 (1986)
- Ohler v. United States, 529 U.S. 753, 758 n.3 (2000)
- Frintner v. TruePosition, 892 F. Supp. 2d 699, 707 (E.D. Pa. 2012)
- Walden v. Georgia-Pacific Corp., 126 F.3d 506, 518 n.10 (3d Cir. 1997)
- Leonard v. Stemtech Health Sciences, Inc., 981 F. Supp. 2d 273, 276 (D. Del. 2013)
- In re Paoli R.R. Yard PCB Litigation, 916 F.2d 829, 859 (3d Cir. 1990)
- In re Paoli R.R. Yard PCB Litigation, 35 F.3d 717, 741-44 & n.8 (3d Cir. 1994)
- Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579, 590-95 (1993)
- Schneider ex rel. Estate of Schneider v. Fried, 320 F.3d 396, 404-05 (3d Cir. 2003)
- ZF Meritor, LLC v. Eaton Corp., 696 F.3d 254, 291 (3d Cir. 2012)
- Oddi v. Ford Motor Co., 234 F.3d 136, 145 (3d Cir. 2000)
- Jackson v. City of Pittsburgh, No. 07-111, 2010 WL 3222137, at *9 (W.D. Pa. Aug. 13, 2010)
- Roberson v. City of Philadelphia, No. 99-3574, 2001 WL 210294, at *5 n.10 (E.D. Pa. Mar. 1, 2001)
- Ezeibe v. Chivers, Civ. A. No. 1:19-CV-00189, 2022 WL 882732, at *4 (M.D. Pa. Mar. 24, 2022)
- Timko v. Traugh, Civ. A. No. 4:22-CV-1195, 2024 WL 4351458, at *3, *5 (M.D. Pa. Sept. 30, 2024)

- Betz v. Temple Health System, 659 F. App'x 137, 140-41 (3d Cir. 2016)
- Withrow v. Spears, 967 F. Supp. 2d 982, 998-99 (D. Del. 2013)
- Sufer v. General Accident Insurance Co. of America, 424 F. Supp. 2d 781, 793 (D.N.J. 2006)
- Hill v. NSB Niederelbe Schiffahrtsgesellschaft MBH & Co., Civ. A. No. 02-2713, 2004 WL 569908, at *1 (E.D. Pa. Mar. 5, 2004)
- Griggs v. BIC Corp., 844 F. Supp. 190, 201 (M.D. Pa. 1994), aff'd, 37 F.3d 1486 (3d Cir. 1994)
- Wood v. Showers, Civ. A. No. 4:16-CV-1923, 2019 WL 5847836, at *2 (M.D. Pa. Aug. 6, 2019)
- Wood v. Showers, 822 F. App'x 122, 124-25 (3d Cir. 2020)
- Berkeley Investment Group, Ltd. v. Colkitt, 455 F.3d 195, 217-18 (3d Cir. 2006)
- United States v. Agnes, 753 F.2d 293, 303 (3d Cir. 1985), abrogated on other grounds by Smith v. Borough of Wilkesburg, 147 F.3d 272 (3d Cir. 1998)
- United States v. Leo, 941 F.2d 181, 195-96 (3d Cir. 1991)
- First National State Bank v. Reliance Electric Co., 668 F.2d 725, 731 (3d Cir. 1981) (per curiam)
- Patrick v. Moorman, 536 F. App'x 255, 258 (3d Cir. 2013)

OPINION

THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA CARL GIULI, Plaintiff, 3:23-CV-1785: (JUDGE MARIANI) v. JOSEPH MONTAGNA, et al. Defendants.: MEMORANDUM OPINION |. INTRODUCTION Defendants' Motion to Exclude Plaintiff's Use of Force Expert (Doc. 23) is pending before the Court. With the Motion, Defendants seek to preclude Thomas Shea, Plaintiff's proffered use of force expert, on several grounds.

In their Motion, Defendants state that Dr. Shea's expert report is not appropriately considered by the jury on several grounds: 1) he was a municipal officer rather than a state police trooper as are Defendants in this case (*id.* { 5}); 2) he uses "amorphous methodologies with no reliability" (*id.*); 3) he "invades the province of the jury by declaring that excessive force was used and the testimony of the troopers is not credible" (*id.*); and 4) his opinions about trooper training are not supported (*id.*).

The Court held a Daubert Hearing on the admissibility of Plaintiffs use of force expert on December 4, 2025. (See Doc. 55.) Defendants have now filed their supplemental brief in support of the Motion to Exclude Plaintiffs Use of Force Expert (Doc. 23). (Doc. 56.) Defendants now assert that Plaintiff should be precluded from calling Thomas Shea as an "expert" for numerous reasons, including because: his report contains inaccuracies and factual errors that cast serious doubt on the reliability of his opinion; his testimony will not resolve a factual dispute; he bases his opinion on inappropriate credibility determinations, and; he seeks to provide an opinion on the ultimate conclusion of reasonableness.

Plaintiffs attempts to offer his opinion in particularized categories also fail. (Doc. 56 at 1.) In deciding the pending Motion, the Court focuses on Defendants' post-hearing arguments. Having considered the parties arguments on the Daubert issue raised in their briefs and at the December 4, 2025, Daubert Hearing, the Court concludes that Dr. Shea is qualified to testify but his testimony will be limited in accordance with this Memorandum Opinion. II.

BACKGROUND The Court assumes the parties' familiarity with the facts and will only recount the facts relevant to the instant motion in limine. Defendants are Pennsylvania State Police Troopers accused of using excessive force when they served a 302 warrant on Plaintiff based on his wife's reports that Plaintiff was experiencing a mental health crisis. (Complaint, Doc.

1-2.) While serving the warrant, an altercation occurred in Plaintiffs house involving Plaintiff and Pennsylvania State Police Troopers Joseph Montagna and Christopher Teetsel. Plaintiff sustained injuries in the course of the altercation which he alleges are due to the use of excessive force by Troopers Montagna and Teetsel. Details regarding what transpired at Plaintiffs house are in dispute.

III. STANDARD OF REVIEW In a motion in limine, the court "rule[s] in advance of trial on the admissibility and relevance of certain forecasted evidence." *United States v. Tartaglione*, 228 F. Supp. 3d 402, 406 (E.D. Pa. 2017). A court may exercise its discretion to rule in limine on evidentiary issues "in appropriate cases." *In re Japanese Elec. Prods. Antitrust Litig.*, 723 F.2d 238, 260 (3d Cir.

1983), rev'd on other grounds sub nom. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574 (1986). Nevertheless, a "trial court should exclude evidence on a motion in limine only when the evidence is clearly inadmissible on all potential grounds." *Tartaglione*, 228 F. Supp. 3d at 406. "[I]n limine rulings are not binding on the trial judge, and the judge may always change his mind during the course of a trial." *Ohler v. United States*, 529 U.S. 753, 758 n.3 (2000).

Further, while motions in limine may serve as a useful pretrial tool that enables more in-depth briefing than would be available at trial, a court may defer ruling on such motions "if the context of trial would provide clarity." *Frintner v. TruePosition*, 892 F. Supp. 2d 699, 707 (E.D. Pa. 2012). Indeed, "motions in limine often present issues for which final decision is best reserved for a specific trial situation." *Walden v. Georgia-Pacific Corp.*, 126 F.3d 506, 518 n.10 (3d Cir.

1997). Thus, certain motions, "especially ones that encompass broad classes of evidence, should generally be deferred until trial to allow for the resolution of questions of foundation, relevancy, and potential prejudice in proper context." *Leonard v. Stemtech Health Scis., Inc.*, 981 F. Supp. 2d 273, 276 (D. Del. 2013).

Moreover, "pretrial Rule 403 exclusions should rarely be granted... [A] court cannot fairly ascertain the potential relevance of evidence for Rule 403 purposes until it has a full record

relevant to the putatively objectionable evidence.” /n re Paoli R.R. Yard PCB Litig., 916 F.2d 829, 859 (3d Cir. 1990) (emphasis in original). IV. ANALYSIS As set out above, Defendants now contend that Plaintiffs Use of Force Law Enforcement expert’s opinion should be precluded because his report contains inaccuracies and factual errors that cast serious doubt on the reliability of his opinion; his testimony will not resolve a factual dispute; he bases his opinion on inappropriate credibility determinations, and; he seeks to provide an opinion on the ultimate conclusion of reasonableness.

Plaintiffs attempts to offer his opinion in particularized categories also fail. (Doc. 56 at 1.) Federal Rule of Evidence 702, governs the admissibility of expert witnesses. A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if the proponent demonstrates to the court that it is more likely than not that: (a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue; (b) the testimony is based on sufficient facts or data; (c) the testimony is the product of reliable principles and methods; and (d) the expert's opinion reflects a reliable application of the principles and methods to the facts of the case.

Fed. R. Evid. 702. The Court of Appeals for the Third Circuit has explained that Rule 702 embodies a trilogy of restrictions on expert testimony: qualification, reliability and fit. [In re Paoli R.R. Yard PCB Litigation, 35 F.3d 717, 741-743 (3d Cir. 1994) (“Paoli I”)] (citing Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579, (1993)). Qualification refers to the requirement that the witness possess specialized expertise.

We have interpreted this requirement liberally, holding that “a broad range of knowledge, skills, and training qualify an expert.” /d. Secondly, the testimony must be reliable; it “must be based on the ‘methods and procedures of science’ rather than on ‘subjective belief or unsupported speculation’; the expert must have ‘good grounds’ for his or her belief.

In sum, Daubert holds that an inquiry into the reliability of scientific evidence under Rule 702 requires a determination as to its scientific validity.” Paoli I, 35 F.3d at 742 (quoting Daubert, 509 U.S. at 590, 113 S.Ct. 2786).

Finally, Rule 702 requires that the expert testimony must fit the issues: in the case. In other words, the expert's testimony must be relevant for the purposes of the case and must assist the trier of fact. The Supreme Court explained in Daubert that “Rule 702’s ‘helpfulness’ standard requires a valid scientific connection to the pertinent inquiry as a precondition to admissibility.” 509 U.S. at 591-92.

By means of a so-called “Daubert hearing,” the district court acts as a gatekeeper, preventing opinion testimony that does not meet the requirements of qualification, reliability and fit from

reaching the jury. See *Daubert*, 509 U.S. at 592, 113 S.Ct. 2786 (“Faced with a proffer of expert scientific testimony, then, the trial judge must determine at the outset, pursuant to Rule 104(a) [of the Federal Rules of Evidence] whether the expert is proposing to testify to (1) scientific knowledge that (2) will assist the trier of fact to understand or determine a fact in issue.”).

Schneider ex rel. Estate of Schneider v. Fried, 320 F.3d 396, 404-05 (3d Cir. 2003). A. Reliability Defendants first assert that Dr. Shea’s report contains inaccuracies and factual errors that cast serious doubt on the reliability of his opinion. (Doc. 56 at 3.) *Daubert*’s reliability analysis requires a Court to consider, among other things: (1) whether a method consists of a testable hypothesis; (2) whether the method has been subjected to peer review; (3) the known or potential rate of error; (4) the existence and maintenance of standards controlling the technique’s operation; (5) whether the method is generally accepted; (6) the relationship of the technique to methods which have been established to be reliable; (7) the qualifications of the expert witness testifying based on the methodology; and (8) the non-judicial uses to which the methods have been put.

In *re Paoli*, 35 F.3d at 742 n.8. However, *Daubert* did not set out a definitive checklist or test, and no single factor was deemed dispositive. *Daubert*, 509 U.S. at 593. The inquiry’s “overarching subject is the scientific validity and thus the evidentiary relevance and reliability - of the principles that underlie a proposed submission.” /d. at 594-595. “The focus, of course, must be solely on principles and methodology, not on the conclusions that they generate.” /d. “[T]he reliability analysis applies to all aspects of an expert’s testimony: the methodology, the facts underlying the expert’s opinion, [and] the link between the facts and the conclusion.” *ZF Meritor, LLC v. Eaton Corp.*, 696 F.3d 254, 291 (3d Cir.

2012) (quoting *Heller v. Shaw Indus., Inc.*, 167 F.3d 146, 155 (3d Cir. 1999)). The expert’s testimony must also “fit, in that it must assist the trier of fact.” *Oddi v. Ford Motor Co.*, 234 F.3d 136, 145 (3d Cir. 2000) (quoting /n *re Paoli*, 35 F.3d at 744).

The *Daubert* standard “is not intended to be a high one, nor is it to be applied in a manner that requires the plaintiffs ‘to prove their case twice—they do not have to demonstrate to the judge by a preponderance of the evidence that the assessments of their experts are correct, they only have to demonstrate by a preponderance of evidence that their opinions are reliable.’” /d. (quoting /n *re Paoli*, 35 F.3d at 74).

In a case where the plaintiff offered an expert in “law enforcement practices,” the court noted pertinent considerations on the issue of reliability: In cases like this one “where an expert is proffered to testify regarding non- scientific matters, ‘[t]he relevant reliability concerns [will] focus upon personal knowledge [and] experience’ of the witness and the methodology used will be applying that experience to the facts of the case.” See *Jackson v. City of Pittsburgh*, No. 07-111, 2010 WL 3222137, at *9 (W.D.

Pa. Aug. 13, 2010) (quoting *Roberson v. City of Philadelphia*, No. 99-3574, 2001 WL 210294, at *5 n.10 (E.D. Pa. Mar. 1, 2001) (internal quotation omitted)); see also Fed. R. Evid. 702, Advisory Comm. Notes, 2000 Amd. (stating that “when a law enforcement agent testifies regarding the use of code words in a drug transaction, the principle used by the agent is that participants in such transactions regularly use code words to conceal the nature of their activities.

The method used by the agent is the application of extensive experience to analyze the meaning of conversations.”). Accordingly, when testimony is proffered regarding non-scientific matters, the expert's qualifications and experience set the boundaries for his or her — testimony. *Ezeibe v. Chivers*, Civ. A. No. 1:19-CV-00189, 2022 WL 882732, at *4 (M.D. Pa. Mar.

24, 2022). Defendants maintain that Dr. Shea’s reliability is doubtful on several specific grounds: Shea did not use the New Jersey Law Enforcement Handbook in making his determinations despite his report saying that he did. Daubert Hearing Transcript at 29:2-12. Shea's report also lists that he used five publications but then only lists four. /d. at 30:11-21.

Critically, Shea’s report states that it was Defendant Montagna who pushed Plaintiff Giuli up against the refrigerator in the course of this incident; there is no allegation of this in the record,' and Shea offered inconsistent explanations for why this factual averment appears in his report. *Id.* at 38:20-25, 39:1-22.2 Shea also stated that he credited Plaintiff Giuli’s version of events as credible in offering his opinion while simultaneously stating that he didn’t take anything Plaintiff said into account.

Id. at 40:25, 41:1- 5. Simply put, this “rush job,” [Daubert Hearing Transcript at 30:20] to use Shea’s words, led to a report that does not accurately consider the facts of the case and has enough errors that it is impossible to conclude his opinions could flow from the facts or any of the publications on which Shea bases his opinions. (Doc. 56 at 3-4.)

The Court acknowledges that Dr. Shea’s report is problematic for multiple reasons, including those cited. However, focusing on Dr. Shea’s knowledge and experience summarized at the Daubert Hearing (Daubert Hr’g Tr. 5:18-14:2 (Doc. 55)) and set out in his Curriculum Vitae (Doc. 28-1), the Court finds that Dr. Shea has a breadth of knowledge and experience in police practices and use of force which render him qualified to testify as an expert.

See, e.g., *Ezeibe*, 2022 WL 882732, at*4. The inconsistencies found in his report 'In a footnote, Defendants add: “In fact, Plaintiff’s guilty plea on his related criminal case indicates the opposite.” (Doc. 56 at 4 n.1.) 2 Defendants provide the following additional information on this issue in a footnote: Shea initially seemed to indicate that he surmised this by the nature of the incident as “mutual combat.” [Daubert Hearing Transcript] at 39:4-7.

When explicitly asked where in the record this was established, Shea said he did not know and then said that one of the defendants stated that Plaintiff's leg had caught under the refrigerator. /d.

at 39:8-16. When asked if that is why he believed it was Defendant Montagna who pinned Plaintiff Giuli rather than the reverse, Shea said “I don’t know.” /d. at 39:19-20.

(Doc. 56 at 4 n.2.) and other matters that relate to the reliability of his opinions are properly the subject of cross-examination to the extent he is allowed to testify on those matters at trial. B. Credibility Determinations Defendants next argue that Dr. Shea’s opinions regarding credibility are inappropriate. (Doc. 56 at 4-5 (citing *Timko v. Traugh*, Civ.

A. No. 4:22-CV-1195, 2024 WL 4351458, at “5 (M.D. Pa. 2024)).) As a general matter, “[t]he jury has the exclusive function of appraising credibility, determining the weight to be given to the testimony, drawing inferences from the facts established, resolving conflicts in evidence, and reaching ultimate conclusions of fact.”” *Betz v. Temple Health Sys.*, 659 F. App’x 137, 140-41 (3d Cir.

2016) (emphasis added) (quoting *Garrison v. Baker Hughes Oilfield Operations, Inc.*, 287 F.3d 955, 959 (10th Cir. 2002) (internal quotation marks omitted)). Therefore, “pursuant to Rule 702, it is generally inappropriate for an expert witness to offer an opinion on the credibility of fact witnesses.” *Timko*, 2024 WL 4351458, at *3 (M.D. Pa. Sept. 30, 2024) (citing *Withrow v. Spears*, 967 F. Supp. 2d 982, 998-99 (D.

Del. 2013); *Sufer v. Gen. Accident Ins. Co. of Am.*, 424 F. Supp. 2d 781, 793 (D.N.J. 2006); *Hill v. NSB Niederelbe Schiffahrtsges.MBH & Co.*, Civ. A. No. 02-2713, 2004 WL 569908, at *1 (E.D. Pa. Mar. 5, 2004); *Griggs v. BIC Corp.*, 844 F. Supp. 190, 201 (M.D. Pa. 1994), *affd* 37 F.3d 1486 (3d Cir.1994)).

The Court agrees with Defendants that “the case presented to the Court is one of credibility—ultimately the jury will have to determine if Defendants maliciously assaulted Plaintiff or if they used appropriate force after he attacked them.” (Doc. 56 at 4.) Regarding the different versions of events offered by Plaintiff and Defendants, Dr. Shea confirmed at the Daubert Hearing that the parties’ “stories differ in some aspects” and that he “intend[ed] to offer an opinion to the jury as to who they should believe or find credible.” (Daubert Hr’g Tr.

21:5-11.) Dr. Shea also acknowledged that he made other credibility determinations in the course of his report, including those related to the cause of Plaintiffs injuries, and he believed that was “a typical purview of a use of force expert.” (/d. 39:23- 42:11.) Pursuant to the caselaw set out above, Dr. Shea is precluded from offering any opinions on credibility at trial.

Plaintiffs’ counsel is cautioned that the Court’s preclusion of testimony regarding the credibility of another witness will be strictly enforced. C. Specific Opinions Defendants’ final argument is that the specific opinions Plaintiffs counsel identified at the Daubert Hearing as those which Plaintiff intends to introduce at trial should be excluded as unreliable.

(Doc. 56 at 5.) Plaintiff's counsel stated that he intended to elicit several Opinions from Dr. Shea at trial: whether the actions of the defendants complied with your education, training, and experience in the use of force, complied with... prevailing national standards in the field of use of force, complied with the Pennsylvania Mental Health Procedures Act, complied with Pennsylvania State Police policy, 10 sufficiently deescalated the situation or attempted to de-escalate the situation; and then, finally, the last opinion would be, based on your training and experience, was it reasonable and necessary, with no mention of the word, excessive, no mention of the case law, no mention of the factors.

(Daubert Hr'g Tr. 56:25-57:10.) The Court agrees that many of the opinions which Plaintiff proposes to elicit at trial do not satisfy Daubert requirements or are contrary to Third Circuit caselaw. First, the Court finds that several of the proposed opinions do not satisfy Daubert's "reliability" and "fit" requirements. 1. Compliance with Non-Relevant Standards Defendants assert that Plaintiff seeks to admit Dr. Shea's opinion regarding Defendants' compliance with non-relevant standards.

(Doc. 56 at 6.) The Court finds that Plaintiff has not shown that "prevailing national standards in the use of force" are relevant in this case or that the specifically identified President's Task Force on 21st Century Policing Final Report and Law Enforcement Best Practices: Lessons from the Field are relevant. (Daubert Hr'g Tr. 31:1-8, 57:2-3.)

In *Wood v. Showers*, Civ. A. No. 4:16-CV-1923, 2019 WL 5847836 (M.D. Pa. Aug. 6, 2019), the court found that "the international model for law enforcement's model use of force does not fit the jury's need to know the PSP [Pennsylvania State Police] policy on the use of force." *Id.* at*2.

On appeal, a panel of the Circuit Court found that the expert's report did not establish the reliability of the policies promulgated by the International Association of Chiefs of Police or the National Institute of Justice because the report "did not describe 11 those organizations, the process by which they developed their standards, or the general acceptance of those standards." *Wood v. Showers*, 822 F. App'x 122, 124-25 (3d Cir.

2020). The same is true in this case regarding Dr. Shea's reliance on The President's Task Force on 21st Policing Final Report and Law Enforcement Best Practices: Lessons from the Field. (See Doc. 28-2 at 5-6.) Therefore, Dr. Shea is precluded from relying on these publications and testifying about standards promulgated therein, i.e., the goal of "avoid[ing] the use of force if at all possible, even when it is allowed by law and policy" identified in The President's Task Force on 21st Century Policing and the "principles of de-escalation" identified in Law Enforcement Best Practices, (Doc.

28-1 at 6 (emphasis in Shea Report).) Similarly, Dr. Shea is precluded from testifying about Plaintiff's generically identified intent to elicit an opinion on "prevailing national standards in the

field of use of force.” (Daubert Hr’g Tr. 57:2-3.) 2. Pennsylvania Mental Health Procedures Act Plaintiff’s intent to elicit an opinion regarding compliance with the Pennsylvania Mental Health Procedures Act (“Act”) is problematic under “fit” considerations pursuant to Daubert.

As set out above, Rule 702 requires that the expert testimony must fit the issues in the case. In other words, the expert’s testimony must be relevant for the purposes of the case and must assist the trier of fact. The Supreme Court explained in Daubert that “Rule 702’s ‘helpfulness’ standard requires a valid scientific connection to the pertinent inquiry as a precondition to admissibility.” 509 U.S. at 591-92.

12 Schneider, 320 F.3d at 404. Although Plaintiff was being served a “302 warrant” — meaning a warrant pursuant to section 302 of the Pennsylvania Mental Health Procedures Act -- Plaintiff has not shown the relevance of the Pennsylvania Mental Health Procedures Act to the charge against the Pennsylvania State Troopers executing the warrant and has not shown how testimony about provisions in the Act would assist the trier of fact as required under Daubert.

Dr. Shea’s testimony about the Act at the Daubert Hearing made no direct connection between the Act and the facts of this case, opining generally that “what he took” from the Act is that “you have to take extra, extra precautions to communicate more thoroughly. You have to be more patient than you normally would during a call because lots of people going through these crisis events aren’t aware... of their actions and decisions.” (Daubert Hr’g Tr.

26:7-24.) This is not a State Police policy, it is not presented as a policy statement found in the Act or one that is applicable to officers issuing a 302 warrant. Therefore, the Court finds that reference to the Act is properly precluded based on relevance and fit grounds. 3. Compliance with Pennsylvania State Police Policy Defendants next take issue with Plaintiffs proposed opinion as to whether Defendants were compliant with Pennsylvania State Police policy.

(Doc. 56 at 9.) Defendants specifically assert that Dr. Shea “should be prevented from testifying as to whether or not Defendants complied with the PSP policy, as he has not established his opinion is any more reliable than a lay witness simply reading the Pennsylvania State Police 13 policies and opining on whether or not they were followed in this case.” (/d.)

As set out above, the Court finds that Dr. Shea has a breadth of knowledge and experience in police practices and use of force which render him qualified to testify as an expert as limited herein. See supra p. 8. Further, Pennsylvania State Police policies are relevant for purposes of this case and an expert’s review of pertinent policies will assist the trier of fact.

Schneider, 320 F.3d at 404. 4. Compliance with De-escalation Policy Defendants relatedly contend that it does not appear that Dr. Shea based his opinion regarding de-escalation on Pennsylvania State Police policy; “rather he based his opinion on ‘Law Enforcement Best Practices: Lessons

from the Field... [and] only on Plaintiffs version of events as he made a credibility determination regarding the Defendants' narrative." (Doc.

56 at 9-10.) For the reasons discussed above, an opinion based on Law Enforcement Best Practices is precluded and an opinion based on a credibility determination is also precluded. See supra pp. 9-10, 12. 5. Use of Excessive Force Language Finally, Defendants object to the Plaintiff's intention to elicit Dr. Shea's opinion on whether the force used was "reasonable and necessary, with no mention of the word, excessive, no mention of the case law, no mention of factors." (Doc.

56 at 9; Daubert Hr'g Tr. 57:6-10.) The Court concludes that Dr. Shea is appropriately precluded from use of the words "reasonable" or "unreasonable" in rendering his opinion regarding excessive force. 14 As stated in *Berkeley Inv. Grp., Ltd. v. Colkitt*, 455 F.3d 195, 217-18 (3d Cir. 2006), The District Court has discretion to determine whether expert testimony will help the trier of fact.

United States v. Agnes, 753 F.2d 293, 303 (3d Cir.1985), abrogated on other grounds by *Smith v. Borough of Wilkesburg*, 147 F.3d 272 (3d Cir.1998). In utilizing that discretion, however, the District Court must ensure that an expert does not testify as to the governing law of the case.

Although Federal Rule of Evidence 704 permits an expert witness to give expert testimony that "embraces an ultimate issue to be decided by the trier of fact," an expert witness is prohibited from rendering a legal opinion. *United States v. Leo*, 941 F.2d 181, 195-96 (3d Cir.1991). Such testimony is prohibited because it would usurp the District Court's pivotal role in explaining the law to the jury.

First National State Bank v. Reliance Elec. Co., 668 F.2d 725, 731 (3d Cir.1981) (per curiam). Notwithstanding this admonition, the line between admissible and inadmissible expert testimony as to the customs and practices of a particular industry often becomes blurred when the testimony concerns a party's compliance with customs and practices that implicate legal duties.

Berkeley Inv. Grp., Ltd., 455 F.3d at 217-18. This principle was considered in the context of an expert's opinion on excessive force in *Patrick v. Moorman*, 536 F. App'x 255, 258 (3d Cir. 2013): The boundaries of Rule 704 are often hazy, so our Circuit has established that expert testimony becomes impermissible if the expert's opinion would interfere with the district court's "pivotal role in explaining the law to the jury".

Berkeley, 455 F.3d at 217. In his testimony, Baranowski [the expert witness] essentially opined that Deputy Moorman's actions were unreasonable and about what a reasonable officer would have done. In a § 1983 suit, "reasonableness" is practically interchangeable with "excessiveness", so Baranowski might as well have opined that Deputy Moorman's use of force was excessive.

Accordingly, in navigating this hazy Rule 704 line, the District Court did not abuse its discretion in excluding those parts of Baranowski's testimony which opined on the reasonableness of Deputy Moorman's actions. Patrick, 536 F. App'x at 258. 15 “(All claims that law enforcement officers have used excessive force... in the course of an arrest, investigatory stop, or other ‘seizure’ of a free citizen should be analyzed under the Fourth Amendment and its ‘reasonableness’ standard...

Graham v. Connor, 490 U.S. 386, 395 (1989). This Fourth Amendment “reasonableness’ inquiry in an excessive force case is an objective one: the question is whether the officers’ actions are ‘objectively reasonable’ in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation.” /d. at 397.

The Third Circuit's Model Civil Jury Instruction regarding Section 1983 Excessive Force repeatedly uses the words “reasonable” and “unreasonable”: In determining whether [defendant's] acts constituted excessive force, you must ask whether the amount of force [defendant] used was the amount which a reasonable officer would have used in [making the arrest] [conducting the stop] under similar circumstances....

The reasonableness of [defendant's] acts must be judged from the perspective of a reasonable officer on the scene. The law permits the officer to use only that degree of force necessary to [make the arrest] [conduct the stop].... If the force [defendant] used was unreasonable, it does not matter whether [defendant] had good motivations. And an officer's improper motive will not establish excessive force if the force used was objectively reasonable.

What matters is whether [defendant's] acts were objectively reasonable in light of the facts and circumstances confronting the defendant. 3d Cir. Model Civil Jury Instruction 4 (emphasis added). The foregoing jury charge shows that the concept of reasonableness is central to the Court's explanation of the relevant law on excessive force to the jury in this case.

Therefore, testimony by Dr. Shea regarding reasonableness “would usurp the District Court's pivotal role in explaining the law to the jury.” Berckelely, 455 F.3d at 217. 16 Therefore, as approved in Patrick, 536 F. App'x at 258, the Court will preclude Dr. Shea from testifying on the reasonableness of Defendants’ actions regarding the use of force.

V. CONCLUSION For the foregoing reasons, Defendants’ Motion to Exclude Plaintiffs Use of Force Expert (Doc. 23) is granted in part and denied in part. Defendants’ Motion is denied insofar as Defendants seek to exclude Dr. Shea’s testimony in this case in its entirety. (See Doc. 23 at 3.)

The Motion is granted to the extent that Dr. Shea is precluded from offering testimony as set out in the body of this Memorandum Opinion. See supra pp. 9-17.3 A separate Order is entered. A WF to “4 Robert D. Mariani— United States District Judge 3 Dr. Shea may not offer any opinions on credibility. See supra pp. 9-10. Dr. Shea may not rely on, or testify about standards set out in, The

President's Task Force on 21st Century Policing, Law Enforcement Best Practices: Lessons from the Field, or "prevailing national standards in the field of use of force." See supra pp. 11-12.

Dr. Shea is precluded from referencing the Pennsylvania Mental Health Procedures Act. See supra pp. 12-13. Dr. Shea may not testify on the reasonableness of Defendants' actions regarding the use of force. 17