

FILED IN COURTROOM

NORTH CAROLINA

[REDACTED] COUNTY

DATE 12-6-13

BY [Signature]

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

FILE NO.: [REDACTED]

STATE OF NORTH CAROLINA,)
)
 vs.)
)
 [REDACTED])
 Defendant.)

ORDER

THIS motion coming on to be heard and being heard before the Honorable Julia S. Gullett, Judge presiding over the December 2, 2013, Criminal Jury Session of the Superior Court Division; the State of North Carolina being represented by Attorney Jennifer A. Suneson; the Defendant being present and represented by Attorney James A. Davis; and the Court, having received evidence and heard arguments of counsel, hereby makes the following:

FINDINGS OF FACT

1. The Court conducted a *voir dire* on the State's proposed expert testimony from Paul L. Glover.
2. Among other things, and of note to the Court, Mr. Glover testified:
 - a. He did not know what type of alcohol was consumed in this case (*e.g.*, beer, wine, or liquor);
 - b. He did not prepare a report in this case because he was unaware what he was going to be asked;
 - c. He did not know what theory he would use or the expert opinion he would render;
 - d. Regarding the absorption rate of alcohol, there is no simple straight line analysis, and it is hard to say what the rate of absorption is;
 - e. The rate of absorption of alcohol varies in each individual;
 - f. He cannot tell what Defendant's blood or breath alcohol concentration was at the time of driving;

3. Mr. Glover is neither a medical doctor nor has a doctorate in physiology or pharmacology.

4. Mr. Glover's factual basis for any opinion to be rendered varied from the facts in evidence.

5. Mr. Glover utilized the scientific method and conceded he could not tell Defendant's true blood or breath alcohol concentration at the time of driving without making assumptions.

6. Mr. Glover has not been peer-reviewed.

7. Mr. Glover did not use visual aids.

8. Mr. Glover did not produce any documentation of reliable authority in any relevant field.

9. Considering amended N.C. R. Evid. 702, the Court considered whether Mr. Glover had specialized knowledge which would assist the trier of fact, including whether his testimony is based upon sufficient facts or data, is the product of reliable principles and methods, and whether he has applied the principles and methods reliably to the facts of the case.

10. The Court further considered relevant case law employing a three-step inquiry for evaluating admissibility of expert testimony, including whether the proffered expert's method of proof is sufficiently reliable as an area for expert testimony, whether the witness is qualified as an expert in that area of testimony, and whether the witnesses' testimony is relevant.

11. The Court further considered nonexclusive indices of reliability, including court precedent; established, or novel, scientific theories or techniques; compelling new perspectives on otherwise settled theories of techniques; the proffered expert's use of established techniques; his professional background in the field; the use of visual aids so the jury is not asked to sacrifice

its independence by accepting scientific hypotheses on faith; and independent research conducted by the proffered expert.

12. Defendant was provided notice of the prosecution's intent to call Mr. Glover as an expert in blood alcohol physiology and pharmacology.

13. The Court does not accept Mr. Glover as an expert in this case.

Based on the foregoing FINDINGS OF FACT, the Court makes the following:

CONCLUSIONS OF LAW

1. The Court has jurisdiction of the parties hereto and of the subject matter herein.

2. The State failed to meet its burden that the proffered expert testimony from Mr. Glover is based upon sufficient facts or data. N. C. R. Evid. 702(a)(1).


3. The State failed to meet its burden that the proffered expert testimony from Mr. Glover is the product of reliable principles and methods. N.C. R. Evid. 702(a)(2).

4. The State failed to meet its burden that the proffered expert testimony from Mr. Glover applied the principles and methods reliable to the facts of this case. N.C. R. Evid. 702(a)(3).

WHEREFORE, THE COURT HEREBY ORDERS, ADJUDGES, AND DECREES:

1. The State's proffered expert testimony from Paul L. Glover is excluded.

Entered in open Court the 4th day of December, 2013, and signed this the 5th day of December, 2013.



HONORABLE JULIA S. GULLETT
SUPERIOR COURT JUDGE PRESIDING