NO. 25-2196

IN THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

JACK ANTHONY WILLIAMS,

Plaintiff-Appellant,

v.

SIG SAUER, INC.,

Defendant-Appellee.

On Appeal from the United States District Court
for the Eastern District of North Carolina
Case No. 4:22-cv-48-D
(Hon. James C. Dever III)

BRIEF OF WASHINGTON LEGAL FOUNDATION AS AMICUS CURIAE SUPPORTING DEFENDANT-APPELLEE AND AFFIRMANCE

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WLF's Legal Studies Division, the foundation's publishing arm, routinely publishes articles by outside experts on the proper reliability threshold for expert testimony. *See, e.g.,* Lee Mickus, *Amended Rule 702 in 2025: Circuit Courts Embrace the Changed Standard*, WLF Legal Backgrounder (Oct. 7, 2025), https://perma.cc/Z5SY-JPSH; Lee Mickus, *Amended Fed. R. Evid. 702: One Year In, Ten Themes Emerge*, WLF Working Paper (Dec. 1, 2024), https://perma.cc/E5TU-EC4S.

* No party's counsel authored any part of this brief. No one, apart from WLF and its counsel, contributed money intended to fund the brief's preparation or submission. A motion for leave to file accompanies this brief.

STATEMENT OF THE CASE

Jack Anthony Williams alleges that his Sig Sauer P320 pistol discharged without a trigger pull while holstered in his pocket—without the concealed carry permit required by North Carolina law—and injured his right leg. (JA 20, 22–24) Williams sued Sig Sauer, asserting claims under North Carolina law for, among other things, defective design, defective warning, negligence and gross negligence, intentional and negligent infliction of emotional distress, and punitive damages. (JA 23)

To support his claims, Williams proffered expert testimony from Timothy Whealton, a gunsmith, and Joshua Harrison, Ph.D., a mechanical engineer. (JA 20, 23, 31, 35) Whealton opined that the Sig Sauer P320 has several safety-related deficiencies or design defects that might allow debris or foreign matter to accumulate on its internal components, potentially causing an unintentional discharge without a trigger pull. (JA 33) Dr. Harrison opined that the discharge of Williams's P320 was caused by one of three plausible mechanisms: (1) a holster deformation contacting the trigger sides, (2) the gun's translating longitudinally inside the holster to depress the trigger and disable the striker safety leading to incidental disengagement, or (3) migrating

debris preventing the safety lever or striker safety from retracting fully. (JA 36)

On Sig Sauer's motion, the district court excluded Whealton's report and testimony. (JA 21, 34) The court held that Whealton was unqualified to opine on the design or manufacture of consumer firearms like the P320. (JA 31–32) His experience focused on gun repair, modification, and competition—not on consumer products. (JA 31)

The court further held that Whealton's opinions on defects like debris vulnerability were unreliable because they weren't based on sufficient data, divorced from reliable principles and methods, and failed to reliably apply those principles and methods to the facts of the case. (JA 32–34) He failed, for example, to test or link his conclusions to case facts, instead relying on unconnected simulations like a plastic straw on the sear—a critical part of the trigger mechanism. (JA 32–34)

The district court also excluded Dr. Harrison's report and testimony. (JA 21, 38) The court held that Dr. Harrison was unqualified to opine on firearm design. (Order at 16) Despite his advanced degree and patent-law background, he lacked any gun-design or manufacturing experience. (JA 35)

The court also held that Dr. Harrison's opinions were unreliable because, like Whealton's, they weren't based on sufficient data, divorced from reliable principles and methods, and failed to reliably apply those principles and methods to the facts of the case. (JA 35–38) His three causation theories—holster deformation, gun translation, or debris—all lacked testing, failed to rule out alternatives, and inexplicably ignored that no debris was found in Williams's P320. (JA 36–38)

Because Williams could not prove the existence of a defect or causation without admissible expert testimony, the district court granted summary judgment for Sig Sauer. (JA 21, 38–49)

At all events, the Protection of Lawful Commerce in Arms Act, 15 U.S.C. §§ 7901–7903 (PLCAA), independently barred all claims. (JA 43–48) Williams's unpermitted concealed carry violated N.C. Gen. Stat. § 14-269, qualifying as "unlawful misuse" with no charge or conviction required by the statute. (JA 44–46) His intentional choice to carry concealed was a "volitional act" constituting a criminal offense and the "sole proximate cause" of his injuries under the PLCAA's design-defect exception. (JA 46–48). This brief addresses only the Rule 702 exclusions.

INTRODUCTION AND SUMMARY OF ARGUMENT

Courts seek truth. Unreliable expert evidence undermines that venerable aim. Indeed, the quality of decision-making in federal courts hinges on the willingness of district judges to stop unreliable expert testimony from ever becoming evidence. Allowing flawed testimony to proceed as a matter for jury weight, rather than barring it as inadmissible, precludes fair outcomes.

The district court got it right. Judge Dever properly excluded the testimony of gunsmith Timothy Whealton based on his lack of qualification in consumer firearm design and the unreliability of his opinions. Those findings lacked testing and failed to connect to the facts of the case, as underscored by his use of a plastic straw to simulate debris on the sear. Judge Dever also properly excluded Dr. Joshua Harrison's testimony for insufficient expertise in firearm design and manufacturing, as well as for offering speculative causation theories that were untested, failed to eliminate alternative explanations, and didn't align with the evidence—including failing to account for the absence of debris in the P320 pistol. These exclusions are entitled to great deference. This Court may not reverse "merely because it would have come to a different result

in the first instance." *Le Doux v. W. Express, Inc.*, 126 F.4th 978, 983 (4th Cir. 2025).

Above all, the district court's decision comports fully with Federal Rule of Evidence 702's requirement that proponents must establish by a preponderance of the evidence that their experts' opinions rest on sufficient facts or data, employ reliable principles and methods, and apply those methods reliably to the facts. Fed R. Evid. 702. And the Advisory Committee's latest commentary confirms that these threshold issues must be resolved by court as matters of admissibility rather than deferred to the jury for consideration as questions of weight. Fed. R. Evid. 702, 2023 Advisory Comm. Note.

Even so, on appeal Williams insists (at 7) that the district court's rationale was based on evidentiary defects that "pertain to the weight of the evidence and testimony, not its admissibility." But Rule 702 was amended in 2023 precisely to clarify this role, insisting that proponents of expert evidence prove to "the court that it is more likely than not" that all reliability criteria are met. Fed. R. Evid. 702. Contrary to Williams's view, this is a judicial obligation, not a jury's prerogative. Only "once the court has found it more likely than not that the admissibility requirement

has been met," will "any attack by the opponent . . . go only to the weight of the evidence." Fed. R. Evid. 702, 2023 Advisory Comm. Note.

Worse still, Williams relies on outdated, pre-amendment precedent. He cites cases such as *Martin v. Fleissner GMBH*, 741 F.2d 61 (4th Cir. 1984) and *In re Paoli R.R. Yard PCB Litig*ation, 35 F.3d 717 (3d Cir. 1994), which treat factual gaps and methodological soundness as jury issues. But the 2023 amendment squarely rejects that approach, insisting that judges, not juries, scrutinize reliability. These throwback cases thus conflict with Rule 702's renewed rigor and are no longer good law. *See* 28 U.S.C. § 2072(b) ("All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect."). Shockingly, Williams cites *no* authority decided after Rule 702's latest amendment.

That amendment emphasizes that unreliable evidence is entitled to *no* weight and thus should never reach the jury. Although cross-examination has its benefits, it cannot help jurors readily distinguish valid expert conclusions from junk science, nor can it supplant the court's duty to ensure that expert evidence is sufficiently relevant and reliable when it is submitted to the jury. As the district court rightly recognized,

that vital task must fall only on the court's shoulders. This Court should affirm.

ARGUMENT

I. Cross-examination is no substitute for judicial gatekeeping.

Williams insists (at 20) that while Sig Sauer "is entitled to cross-examine" Williams's experts, it is "not entitled to the Draconian measure of having [their] testimony declared inadmissible." But that gets it backwards. Under Rule 702, it is not enough to invoke the "cross-examination" of expert testimony while leaving any dispute about reliability to the "weight" a jury decides to give that testimony. Rule 702 explicitly assigns the task of ensuring that expert testimony meets reliability standards to the district judge alone.

In 2023, the Judicial Conference amended the Rule to clarify the gatekeeping role of district judges. The advisory committee emphasized that many courts were wrongly treating defects in the basis and methodology of an expert's opinion as a question of weight, not admissibility, misapplying Rules 702 and 104(a). *See* Fed. R. Evid. 702, 2023 Advisory Comm. Note ("These rulings are an incorrect application of Rules 702 and 104(a)."); *see also* see Hon. Patrick J. Schiltz, *Report of*

the Advisory Committee, at 6 (May 15, 2022), https://perma.cc/QN6N-KEHA (explaining that "treating these questions as ones of weight rather than admissibility . . . is contrary to the Supreme Court's holdings"). Williams's insistence on appeal that the district court should have punted expert reliability to the jury defies this command.

"The application of the expert's methodology cannot be considered merely a question of weight." *James v. Thompson/Ctr. Arms*, 2024 WL 1328738, at *2 (N.D. Ohio Mar. 28, 2024) (applying the recently amended Rule 702). This approach to gatekeeping also comports with experience and common sense. While cross-examination has its benefits, it is no panacea; it cannot readily distinguish valid expert opinions from junk science, and thus it cannot take the court's place in determining an expert's reliability in the first instance. As Professor Jules Epstein has explained:

> This treatment of cross-examination as the palliative of choice has its flaws, not merely in its expectation that cross-examination without other resources can fairly respond to an expert witness. The mythic status of cross-examination in this regard actually impedes accurate fact-finding because leading questions are not always an appropriate or sufficient tool for truth finding. Courts have not acknowledged these limitations.

Jules Epstein, *Cross-Examination: Seemingly Ubiquitous, Purportedly Omnipotent, and "At Risk,"* 14 Widener L. Rev. 427, 437 (2009) (internal citations omitted).

As this Court acknowledged even before the latest amendment, the mere "fact that an expert witness was 'subject to a thorough and extensive examination' does not ensure the reliability of the expert's testimony; such testimony must still be assessed *before* it is presented to the jury." *Nease v. Ford Motor Co*, 848 F.3d 219, 231 (4th Cir. 2017) (emphasis added) (citation omitted). Indeed, this Court has faulted district courts for "abdicat[ing] [their] responsibility" with respect to expert testimony based on the belief "that the question of whether an expert's opinion had an adequate basis in fact should be handled by opposing counsel through cross examination and in jury argument." *Tyger Constr. Co. v. Pensacola Constr. Co.*, 29 F.3d 137, 143 (4th Cir. 1994); *see also Sardis v. Overhead Door Corp.*, 10 F.4th 268, 281–82 (4th Cir. 2021).

Urging the admission of patently unreliable expert testimony on appeal, Williams contends that a jury can somehow muddle through the relevant science with the aid of competing expert evidence and cross-

examination. But dismissing key, demonstrable, and objective flaws in expert evidence as bearing only upon the weight of that evidence inevitably leaves jurors with the rarefied task of resolving the basic *reliability* of the expert's testimony. Jurors cannot be expected—and should not be allowed—to make those sorts of reliability determinations. Unreliable, inadmissible evidence "contributes nothing to a 'legally sufficient evidentiary basis'" for a jury verdict. *Weisgram v. Marley Co.*, 528 U.S. 440, 454 (2000) (internal citation omitted). As for how much "weight" a jury should give unreliable expert evidence, the only acceptable answer is *none*: it must never reach the jury in the first place.

Indeed, legal scholars have long noted that "cross-examination does little to affect jury appraisals of expert testimony." Christopher B. Mueller, Daubert *Asks the Right Questions: Now Appellate Courts Should Help Find the Right Answers*, 33 Seton Hall L. Rev. 987, 993 (2003). On the contrary, studies have revealed jurors' commonly held assumption that, because the trial judge admitted the expert evidence, it must have passed at least some minimal threshold of reliability. *See, e.g.,* N.J. Schweitzer & Michael J. Saks, *The Gatekeeper Effect: The Impact of Judges' Admissibility Decisions on the Persuasiveness of Expert*

Testimony, 15 Psychol. Pub. Pol'y & L. 1, 7 (2009). This is precisely why trial judges have a duty to avoid "dumping a barrage of questionable" evidence on a jury likely to be "awestruck by the expert's mystique." *Allison v. McGhan Med. Corp.*, 184 F.3d 1300, 1310 (11th Cir. 1999).

Again, the only way to ensure that a jury does not give too much weight to unreliable evidence is not to admit it. "The basic calipers that jurors use to evaluate testimony—their own life experience—are of little value when jurors evaluate whether an expert is telling the truth." Victor E. Schwartz & Cary Silverman, *The Draining of* Daubert *and the Recidivism of Junk Science in Federal and State Courts*, 35 Hofstra L. Rev. 217, 220 (2006). Any questions about the "factual basis, data, principles, [or] methods" of expert testimony—or "their application"—require the trial judge to determine whether that testimony is reliable *before* sending it to the jury. *Kumho Tire Co.*, 526 U.S. at 149 (emphasis added). Because that is precisely what the trial judge did here, the district court's well-reasoned decision should be affirmed.

II. Williams improperly relies on defunct precedent superseded by Rule 702's latest amendment.

The 2023 amendment to Rule 702 was a corrective force, ensuring that courts block flawed expert opinions. *See* Mark A. Behrens & Andrew

J. Trask, *Federal Rule of Evidence 702: A History and Guide to the 2023 Amendments Governing Expert Evidence*, 12 Tex. A&M L. Rev. 43, 45 (2024). Enacted to "correct misconceptions that had taken hold in the caselaw," Mickus, *One Year In*, *supra*, at 4, the amended rule supersedes conflicting caselaw, nullifying decisions that misapply its standards. *See* 28 U.S.C. § 2072(b) ("All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect.").

Citing not a single authority decided after Rule 702's latest amendment, Williams relies solely on pre-amendment cases that still embody the lenient "weight, not admissibility" approach that Rule 702 explicitly rejects. Very old cases like *Martin* (1984)—issued without even the benefit of *Daubert* (1993)—and *Paoli* (1994)—issued without the Supreme Court's further clarification in *Joiner* (1997) and *Kumho Tire* (1999)—explicitly treat factual gaps as weight issues for the jury, not barriers to admissibility. That antiquated view no longer has purchase under Rule 702, which was not amended to account for the *Daubert* trilogy until 2000. *See* Fed. R. Evid. 702, 2000 Advisory Comm. Note.

Courts "are not obliged to follow precedent which represents an erroneous application of Rule 702." *Knight v. Avco Corp.*, 2024 WL 3746269, at *7 (N.D. Ill. Aug. 9, 2024). Instead, when the Advisory Committee or Congress amends a rule, courts must look to the Advisory Committee Notes to determine intent. *See Tome v. United States*, 513 U.S. 150, 160 (1995). "The Committee's commentary is particularly relevant in determining the meaning of the [rule] Congress enacted." *Beech Aircraft Corp. v. Rainey*, 488 U.S. 153, 165–66 n.9 (1988). Here the 2023 advisory notes confirm that the amendment was intended to clarify that sufficiency and methodological rigor are admissibility issues, not jury questions, and that any cases holding otherwise "are an incorrect application of Rules 702 and 104(a)." *See* Fed. R. Evid. 702, 2023 Advisory Comm. Note.

While pre-amendment precedents that align with the revised Rule 702's rigor—like the *Daubert* trilogy and this Court's decisions in *Nease, Tyger*, and *Sardis*—remain authoritative, cases like *Martin* and *Paoli* are obsolete. *See* 28 U.S.C. § 2072(b). They are also "contrary to the Supreme Court's holdings." Hon. Patrick J. Schiltz, *Report of the Advisory Committee*, at 6 (May 15, 2022), https://perma.cc/QN6N-KEHA.

This Court should affirm, declare *Martin* and *Paoli* superseded under 28 U.S.C. § 2072(b), and align this Circuit with Rule 702's clarified demands. Reversal would perpetuate the very errors the amendment sought to end.

III. This Court's sister circuits have tightened their admissibility standards since the 2023 amendment, bolstering the district court's exclusion here.

The district court's order also aligns with federal circuit court decisions applying Rule 702's amendment. These cases support the district court's rigorous gatekeeping approach. They emphasize that deficiencies in factual bases, methodological applications, testing, or qualifications warrant exclusion, rather than admission followed by cross-examination.

The following cases confirm this alignment, as this Court's sister circuits have increasingly shifted toward rigorous enforcement of Rule 702's gatekeeping scrutiny in the wake of the 2023 amendment:

Fifth Circuit: *Nairne v. Landry*, 151 F.4th 666 (5th Cir. 2025); *Williams v. BP Exploration & Production, Inc.*, 143 F.4th 593 (5th Cir. 2025); *Harris v. FedEx Corp. Servs., Inc.*, 92 F.4th 286 (5th Cir. 2024). The Fifth Circuit has now repeatedly clarified that there is no

presumption favoring the admission of expert evidence. Proponents of expert testimony must always prove by a preponderance a sufficient factual basis under Rule 702(b) and a reliable methodological application under subsection (d). In *Nairne*, the court excluded an expert's testimony whose "conclusions [did] not reflect a reliable application of his methods to the facts of the case." 151 F.4th at 697. *Williams* likewise rejected causation testimony that failed "to evaluate whether any of the potential alternate causes" could have caused the plaintiff's injury. 143 F.4th at 599. And *Harris* reversed the district court for "abdicat[ing] its role as gatekeeper" by allowing an expert "to testify without a proper foundation." 92 F.4th at 303. These precedents align with the district court's exclusions here, where Whealton's claims rested on unsupported assertions while Dr. Harrison's theories involved improper extrapolation without testing or consideration of alternatives—deficiencies akin to the sorts of cherry-picked data and analytical gaps that Rule 702 rejects.

Sixth Circuit: *Baker v. Blackhawk Mining, LLC*, 141 F.4th 760 (6th Cir. 2025); *In re Onglyza (Saxagliptin) & Kombiglyze (Saxagliptin & Metformin) Prods. Liab. Litig.*, 93 F.4th 339 (6th Cir. 2024). *Baker* emphasized that analytical deficiencies, including

failure to conduct testing and a lack of site-specific data, preclude admissibility. 141 F. 4th at 770–71. And *In re Onglyza* required district courts to independently verify reliable principles and methods and to exclude cherry-picked data, especially by an expert who is opining outside his area of expertise. 93 F.4th at 347–48. The Sixth Circuit's insistence on reliable testing and factual fit in these cases strongly supports the district court's approach here.

Eighth Circuit: *Sprafka v. Medical Device Bus. Servs.*, 139 F.4th 656 (8th Cir. 2025). Breaking from its prior pattern of liberally admitting expert testimony, the Eighth Circuit now recognizes that an insufficient factual basis renders opinions unreliable and therefore inadmissible under the amended Rule 702. In this medical device litigation, the court excluded testimony that was unsupported by adequate data, citing the Advisory Committee's note that such deficiencies are admissibility concerns, not mere credibility issues for the jury. *Id.* at 660–61. This approach tracks the district court's determination that because Williams's expert evidence lacked sufficient factual grounding and reliable ties to the facts of the case, it failed to meet amended Rule 702's admissibility threshold.

Ninth Circuit: *Engilis v. Monsanto Co.*, 151 F.4th 1040 (9th Cir. 2025); *Bulone v. Monsanto Co.*, 2025 WL 2730843 (9th Cir. Sept. 25, 2025). Abandoning its former "liberal thrust" toward admission, *Wendell v. GlaxoSmithKline LLC*, 858 F.3d 1227, 1232 (9th Cir. 2017), the Ninth Circuit requires proponents to prove all four prongs of Rule 702 by a preponderance, with no deference to credentials alone. In *Engilis*, a toxic tort case, the court affirmed the exclusion of causation testimony for insufficient data and failure to rule out alternatives, citing the 2023 amendment's demand for rigorous gatekeeping on reliability. 151 F.4th at 1047–50. The Court also cautioned that its pre-amendment "caselaw should not be understood to suggest a presumption of admission." *Id*. at 1050. *Bulone* similarly excluded opinions where methods were not reliably applied, even though the underlying principles were sound. 2025 WL 2730843, at *2–3. These cases reinforce Judge Dever's rulings below.

Federal Circuit: *EcoFactor, Inc. v. Google LLC*, 137 F.4th 1333 (Fed. Cir. 2025). In this en banc decision, the Federal Circuit reversed the district court's admission of damages testimony that lacked adequate factual support, concluding that the trial judge had failed to perform the required gatekeeping analysis and citing the 2023

amendment. 137 F.4th at 1338–41. The Court reiterated that questions "of admissibility, which fall within the gatekeeping role of the court, are separate from determinations of weight and credibility, which are within the province of the jury in a jury case." *Id*. at 1339. This ruling underscores that opinions without a reliable evidentiary foundation are inadmissible. The decision tracks the district court's exclusions here, where both experts' opinions were deemed unreliable due to their disconnection from the case-specific evidence.

These decisions confirm a growing consensus among the circuits for enhanced gatekeeping under the amended Rule 702, validating the district court's exclusions here as consistent with the rule's requirements. Simply put, Williams has shown no abuse of discretion by the district judge.

CONCLUSION

"Expert evidence can be both powerful and quite misleading." *Daubert*, 509 U.S. at 595 (cleaned up). This Court should honor Rule 702's text, including the 2023 amendment, and affirm.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the type-volume limits of Federal Rule of Appellate Procedure 29(a)(5) because it contains _____ words, excluding the parts exempted by Federal Rule of Appellate Procedure 32(f).

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CERTIFICATE OF SERVICE

I certify that on February 27, 2026, I filed the foregoing brief with the Clerk of the Court for the United States Court of Appeals for the Fourth Circuit using the CM/ECF system. All participants in this case are registered CM/ECF users, and service will be accomplished by the CM/ECF system.

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