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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

The Honorable William H. Seals, Jr., Circuit Court Judge

Appellate Case Number 2023-001308

Jane E. Vohringer,.....Appellant,

v.

Robert C. Watford and Watford's Wrecker Service, Inc.,..... Respondents.

APPELLANT'S PETITION FOR REHEARING

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By and through her undersigned counsel, pursuant to Rule 221(a), SCACR, Appellant Jane E. Vohringer respectfully petitions this Honorable Court for rehearing of this matter, decided by Unpublished Opinion No. 2026-UP-333 (S.C. Ct. App. Filed July 1, 2026) (the “Subject Opinion”). Appellant respectfully submits the Court overlooked or misapprehended material points of law and fact concerning the reliability of Respondents’ expert testimony under Rule 702, SCRE, *State v. Council*, 335 S.C. 1, 515 S.E.2d 508 (1999), *Watson v. Ford Motor Co.*, 389 S.C. 434, 699 S.E.2d 169 (2010), and *State v. Warner*, 430 S.C. 76, 842 S.E.2d 361 (Ct. App. 2020).

The Court’s Subject Opinion affirmed the trial court's denial of Appellant's motion for new trial, new trial nisi additur, and new trial absolute. As relevant here, the Subject Opinion held that Marc Paradiso's methodology satisfied Rule 702 and *Council*, and separately held Appellant's challenge to Dr. Ian Campbell's testimony unpreserved because Appellant did not contemporaneously object when Dr. Campbell testified. Appellant respectfully seeks rehearing on those rulings.

BACKGROUND

This appeal arises from a March 30, 2019 motor vehicle collision in Surfside Beach, South Carolina. Liability was not disputed at trial, and the trial court granted Appellant’s motion for directed verdict on liability. The jury returned a verdict for Appellant in the amount of \$30,000.00.

Before trial, Appellant moved *in limine* to exclude the testimony of Respondents’ experts Marc Paradiso, a registered professional engineer, and Dr. Ian Campbell, a biomechanical engineering consultant. The motion challenged the reliability of both experts’ opinions. The trial court permitted Respondents to proffer their experts' testimony, denied Appellant’s motion, and allowed both experts to testify. After trial, Appellant moved for new trial, new trial *nisi additur*, and new trial absolute. The trial court denied that motion, and Appellant appealed.

Appellant's appellate briefing focused on the reliability of the methodology Paradiso used to generate his delta-v opinion and on the derivative unreliability of Dr. Campbell's opinions because Campbell relied upon Paradiso's crash-severity and delta-v opinions. Appellant argued that Paradiso did not calculate the speed of either vehicle, did not rely on crash-specific testing, did not disclose calculations showing how he arrived at his 12-mph delta-v opinion, and instead compared photographs of Appellant's vehicle to an IIHS crash-test exemplar while relying on an estimated crush measurement. Appellant also argued that Campbell's biomechanical opinions depended on Paradiso's crash-severity opinions and therefore could not stand if Paradiso's foundational opinions were unreliable.

LEGAL STANDARD

Rule 221(a), SCACR provides that a petition for rehearing "shall state with particularity the points supposed to have been overlooked or misapprehended by the court." Rule 221(a), SCACR. Rehearing is therefore appropriate where the Court has overlooked or misapprehended a material point of fact or law. *See Protestant Episcopal Church in Diocese of S.C. v. Episcopal Church*, No. 2020-000986, 2022 WL 2, at *3560664 (S.C. Aug. 17, 2022) (granting petition for rehearing in part); *S.C. Coastal Conservation League v. Dominion Energy S.C., Inc.*, 432 S.C. 217, 219, 851 S.E.2d 699, 700 (2020) (granting petition for rehearing).

Rule 702 requires the trial court to make three preliminary determinations before expert testimony may be admitted: (1) the subject matter is beyond the ordinary knowledge of the jury; (2) the witness has acquired the requisite knowledge and skill to qualify as an expert in the particular subject matter; and (3) the substance of the expert's testimony is reliable. *Watson*, 389 S.C. at 446, 699 S.E.2d at 175 (2010). Expert testimony is inadmissible unless all three (3) requirements are met. *Id.*

Reliability is therefore a threshold admissibility requirement, not merely an issue of weight for the jury. In *State v. White*, the Supreme Court held that the familiar principle that defects go to “weight, not admissibility” may be invoked only after the trial court has first vetted the threshold Rule 702 requirements of qualification and reliability. 382 S.C. 265, 274, 676 S.E.2d 684, 689 (2009).

For scientific expert testimony, the trial court must apply the *Council* 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.” *State v. Council*, 335 S.C. 1, 19, 515 S.E.2d 508, 517 (1999).

The reliability inquiry is not satisfied by general qualifications or by acceptance of the expert’s field in the abstract. The court must evaluate the reliability of the substance of the opinion and whether the expert reliably applied the method to the facts. *Watson*, 389 S.C. at 446, 699 S.E.2d at 175; *Warner*, 430 S.C. at 86–87, 842 S.E.2d at 365–66. In *Graves v. CAS Medical Systems, Inc.*, the Supreme Court affirmed exclusion of expert opinions where the experts’ causal reasoning lacked objective support, failed to reliably account for alternative causes, and rested on assumptions rather than reliable application. 401 S.C. 63, 77–82, 735 S.E.2d 650, 657–60 (2012).

These authorities frame the issue presented by this petition: whether Respondents demonstrated the reliability of the specific comparison-and-estimation method Paradiso actually used to derive a 12-mph delta-v opinion from photographs, a different IIHS crash-test exemplar, an estimated crush measurement, and undisclosed calculations.

ARGUMENT

I. The Court overlooked or misapprehended the central reliability issue: whether Paradiso reliably applied a reliable method to the facts of this crash.

The Subject Opinion states that Paradiso used a standardized IIHS test, compared the energy and damage from that test to the damage in Appellant's vehicle, and used that comparison with his engineering knowledge to determine Appellant's delta-v. The Subject Opinion explains that this satisfied *Council* because Paradiso pointed to publications and peer review, testified his method was customarily and regularly used in the field, stated the method complied with physics and engineering principles, and described his quality-control step as "putting a bound on [his] calculation."

Respectfully, that analysis overlooks Appellant's central point. Appellant did not argue that accident reconstruction or delta-v analysis is categorically unreliable. Appellant argued that the specific method Paradiso used in this case was not shown to be reliable under Rule 702 and *Council* because the record did not demonstrate a reliable bridge between the photographs, the IIHS exemplar, the estimated crush measurement, and the specific 12-mph delta-v opinion offered to the jury.

As Appellant's opening brief explained, Paradiso did not determine the speed or velocity of either vehicle, did not rely on crash-specific testing, did not review crash-test data for Respondents' vehicle, and did not provide the jury or counsel with calculations showing how he arrived at his 12-mph delta-v opinion. Instead, he compared photographs of Appellant's vehicle to an IIHS crash test involving a different vehicle and used his own estimate of crush or engagement to support his opinion. Appellant's brief further explained that Paradiso admitted the six-inch figure was an estimate and could not identify when certain vehicle structures would begin to engage or fail.

Those points were not merely attacks on the weight of Paradiso’s conclusion. They were attacks on the threshold reliability of the substance of the testimony. Rule 702 requires the trial court to determine, before admitting expert testimony, that the subject matter is beyond the ordinary knowledge of the jury, that the witness is qualified in the particular subject matter, and that the substance of the expert’s testimony is reliable. *Watson*, 389 S.C. at 446, 699 S.E.2d at 175. “Expert testimony is not admissible unless it satisfies all three requirements.” *Id.*

This distinction matters because South Carolina law does not allow a court to send reliability defects to the jury as matters of weight until the trial court first performs its gatekeeping function. In *White*, the Supreme Court held that the familiar statement that defects go to “weight, not admissibility” may be invoked only after the trial court has vetted the threshold Rule 702 requirements of qualification and reliability. 382 S.C. at 274, 676 S.E.2d at 689. Likewise, this Court has explained that expert testimony is reliable only when it “adheres to the rigors of the method” and consists of “a reliable method faithfully and reliably applied.” *Warner*, 430 S.C. at 86–87, 842 S.E.2d at 365–66.

For scientific testimony, *Council* requires examination of the technique actually used, including “(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.” *State v. Council*, 335 S.C. 1, 19, 515 S.E.2d 508, 517 (1999). Thus, the relevant inquiry was not whether accident reconstruction, delta-v analysis, physics, or engineering principles are generally reliable in the abstract. The relevant inquiry was whether Respondents showed that the particular method Paradiso used—visual comparison of vehicle damage to a different crash-test exemplar, coupled with an estimated crush measurement and undisclosed

calculations—satisfied *Council* and was faithfully and reliably applied to the facts of this collision.

South Carolina authority reinforces that an expert's conclusion cannot rest on assumptions or a method insufficiently tested against the facts. In *Graves*, the Supreme Court affirmed exclusion of expert opinions where the experts did not objectively support their causation analysis, failed to reliably account for an alternative cause, and began from assumptions not reliably tested against contrary evidence. 401 S.C. at 77–82, 735 S.E.2d at 657–60. That same problem is presented here: Respondents had to show how Paradiso's method objectively and reliably moved from the available vehicle-damage evidence to the specific 12-mph delta-v opinion.

Persuasive authority confirms that delta-v opinions derived from visual damage assessment require a demonstrated reliable methodology, not merely an expert's assurance that the approach is grounded in engineering. In *Real v. Mazda Motor of America, Inc.*, the court excluded a 12-mph delta-v opinion where the expert derived the figure “in large part from eyeballing accident photographs” and the proponent offered no record evidence that this was an acceptable way to determine delta-v. 106 F. Supp. 2d 75, 78–79 (D. Me. 2000). Likewise, in *Parker v. NGM Insurance Co.*, the court excluded a collision-analysis opinion where the proponent failed to provide objective, independent validation of the expert's methodology and the expert failed to account for variables affecting velocity and force, including vehicle damage, vehicle size and weight, bumper height, road conditions, and crush resistance. 2016 WL 3546325, at *8–9 (E.D. La. June 23, 2016).

Additional persuasive authority confirms that visual inspection or photograph-based inference cannot replace validated methodology. In *Riley v. Tesla, Inc.*, the court excluded a biomechanical opinion where the proponent failed to show that visual inspection of the vehicle was a reliable methodology under the *Daubert* factors, including testing, peer review, error rate,

or general acceptance. 603 F. Supp. 3d 1259, 1278–79 (S.D. Fla. 2022); *see also Hamlett v. Carroll Fulmer Logistics Corp.*, 176 F. Supp. 3d 1360, 1366–70 (S.D. Ga. 2016) (excluding accident-reconstruction opinions where scene review and experience did not supply necessary speed, distance, perception, and reaction calculations); *Smith v. BMW N. Am., Inc.*, 308 F.3d 913, 919–22 (8th Cir. 2002) (recognizing that flawed vehicle-deformation measurements could render the resulting accident-reconstruction calculation unreliable).

The trial record here reflects the same defect. Paradiso testified generally that “a lot of the information” he relied on was peer reviewed, including publications, literature, and accepted accident-reconstruction textbooks. (R. p. 112). But when asked to identify a publication or peer-reviewed study supporting the same methodology used here—comparing photographs of Appellant’s vehicle to a different-vehicle IIHS wall test to derive crash energy and delta-v—he did not identify such a study. Instead, he testified that the method was “based in engineering physics” and “based on [his] degrees in mechanical engineering.” (R. p. 114). Paradiso further acknowledged that the IIHS test involved a different vehicle striking a wall, not a Peterbilt truck, and that he had no crash-test data for a Nissan Versa hitting a Peterbilt. (R. p. 114). He also testified that his “bound” was based on pictures, his accident-reconstruction knowledge, physics, engineering, and the IIHS crash test. (R. p. 120). Critically, he admitted he lacked enough information to determine how much energy was absorbed by individual components. (R. p. 120). Thus, as in *Parker*, the problem is not the absence of credentials or general engineering concepts; it is the absence of objective, independent validation of the particular method used to move from the available physical evidence to the specific crash-severity opinion offered.

The record also shows that Paradiso used a six-inch engagement figure for Appellant’s collision and compared it to the 17-inch engagement in the IIHS test, while acknowledging that

the IIHS test engaged more structure and absorbed more energy than Appellant's vehicle most likely did. (R. pp. 145, 149–50). That testimony goes directly to the omitted *Council* questions: whether Respondents showed that this comparison-and-estimation method had been peer reviewed or previously applied to this type of evidence, whether the method had meaningful quality-control procedures, and whether the record demonstrated a reliable application of that method to the facts of this collision.

Appellant respectfully submits the Subject Opinion overlooked those questions. Appellant's record-based challenge was not that Paradiso's 12-mph conclusion was merely incorrect. It was that Respondents did not carry their Rule 702 burden to show how Paradiso reliably moved from photographs, a different IIHS crash-test exemplar, an estimated crush measurement, and undisclosed calculations to that specific delta-v opinion. Without that demonstrated analytical bridge, Paradiso's opinion rested on subjective estimation rather than the faithful and reliable application of a reliable methodology.

Rehearing is warranted so the Court may reconsider whether the record actually demonstrates Rule 702 and *Council* compliance as applied to Paradiso's specific method in this case, rather than to accident reconstruction principles in general.

II. The Court overlooked or misapprehended the distinction between a jury-weight challenge and a Rule 702 foundation challenge.

The Subject Opinion correctly observes that once the trial court determines an expert's testimony is reliable, the correctness of the expert's conclusion and the weight to be given the opinion are matters for the jury. Appellant respectfully submits, however, that the Subject Opinion overlooked that Appellant's challenge preceded that jury-weight inquiry.

Appellant's argument was that the trial court should not have opened the gate because Respondents did not establish the reliability of Paradiso's application of his method. The challenge

concerned the foundation for admissibility: the absence of disclosed calculations, the reliance on an estimated six-inch engagement figure, the comparison to a different IIHS crash test, the inability to identify when relevant structures would engage, and the lack of meaningful quality controls. Those issues go to whether Paradiso’s testimony consisted of a reliable method faithfully and reliably applied. *Warner*, 430 S.C. at 86–87, 842 S.E.2d at 365–66.

South Carolina law treats that inquiry as a threshold admissibility question, not merely a jury-weight question. In *White*, the Supreme Court held that the familiar “weight, not admissibility” principle may be invoked only after the trial court first vets the threshold Rule 702 requirements of qualification and reliability. 382 S.C. at 274, 676 S.E.2d at 689. Likewise, *Watson* holds that expert testimony is not admissible unless all Rule 702 requirements are satisfied, including reliability of the substance of the testimony. 389 S.C. at 446, 699 S.E.2d at 175. And in *State v. Jones*, the Supreme Court explained that trial courts must determine whether the basis for the expert’s opinion is sufficiently reliable before the opinion may be offered into evidence; only then does the jury decide whether to accept it. 423 S.C. 631, 639–40, 817 S.E.2d 268, 272 (2018).

This distinction matters here. If the record shows only that the witness is generally qualified and that his field uses engineering principles but does not show reliable application of a reliable technique to the particular facts, then the issue remains a Rule 702 gatekeeping question rather than a jury-weight question. *See Watson*, 389 S.C. at 455–56, 699 S.E.2d at 180 (finding error where the trial court focused on the expert’s general electrical-engineering qualifications rather than the reliability of the specific EMI and alternative-design testimony offered); *Graves*, 401 S.C. at 77–82, 735 S.E.2d at 657–60 (affirming exclusion of expert opinions that lacked objective support for their causation analysis).

Most respectfully, Appellant submits the Court misapprehended this distinction by

concluding that Paradiso's explanation that he did not need vehicle speeds, together with generalized reliability testimony, ended the Rule 702 inquiry. Appellant's point was not merely that Paradiso lacked vehicle speeds. Appellant's point was that Paradiso used the absence of speed data as part of a larger estimation-based methodology that Respondents did not demonstrate was reliable under *Council* when applied to this crash. *See Reali*, 106 F. Supp. 2d at 78–79 (excluding delta-v opinion derived largely from “eyeballing accident photographs” where the proponent offered no evidence that this was an acceptable method for determining delta-v).

The trial court therefore was required to determine whether the specific comparison-and-estimation method used here was reliable before the jury could be asked to weigh Paradiso's ultimate conclusion. Rehearing is appropriate because the Subject Opinion's reliance on the jury's role in weighing expert testimony overlooks the threshold nature of Appellant's Rule 702 challenge.

III. The Court overlooked or misapprehended the derivative nature of Appellant's challenge to Dr. Campbell's testimony.

The Subject Opinion holds Appellant's challenge to Dr. Campbell's testimony unpreserved because Appellant challenged Campbell in the motion *in limine* and at the motion hearing but did not contemporaneously object when Campbell testified and did not object during Campbell's testimony on the ground that it was unreliable due to its reliance on Paradiso's prior testimony.

Appellant respectfully submits this analysis overlooks the nature of the issue presented. Appellant's challenge to Campbell was not advanced as an isolated, freestanding attack on a separate biomechanical methodology. Appellant's position was that Campbell's opinions were derivative of Paradiso's crash-severity and delta-v opinions and rose or fell with Paradiso's Rule 702 foundation. Appellant's opening brief expressly argued that “Dr. Campbell's opinion is wholly dependent on the reliability of Mr. Paradiso's severity opinion, and, specifically, the change in

velocity of Appellant's vehicle and the direction of force." The record confirms that point: Campbell agreed that his opinion was "wholly dependent on Mr. Paradiso's delta-v number and his direction of force being accurate." (R. p. 230). Appellant's reply brief likewise framed the issue as one in which reliability objections were made to both experts and Respondents failed to establish the reliability of their methods.

Courts addressing derivative expert opinions have excluded dependent opinions when the underlying opinion fails Rule 702. *See S.V. Gopalratnam v. Hewlett-Packard Co.*, 877 F.3d 771, 789–90 (7th Cir. 2017) (affirming exclusion of a fire-origin expert's causation opinion where it relied on a battery expert's excluded causation opinion, explaining that plaintiffs could not "admit through [one expert] what they could not offer through [the excluded expert]"); *Parker*, 2016 WL 3546325, at *13–14 (excluding medical-causation opinions premised on excluded collision-analysis opinions concerning vehicle velocities and forces); *see also Sardis v. Overhead Door Corp.*, 10 F.4th 268, 291–96 & n.8 (4th Cir. 2021) (excluding expert opinions lacking reliable defect-and-causation foundations and noting that one expert's reliance on another expert's deficient testimony did not supply the missing reliable foundation).

Thus, if Paradiso's foundational crash-severity and delta-v opinions do not satisfy Rule 702, Campbell's biomechanical opinions cannot be treated as analytically independent merely because they were offered by a different expert. Appellant's challenge to Campbell therefore necessarily followed from, and was embedded within, the challenge to Paradiso.

Most respectfully, the Subject Opinion disposes of Campbell solely as a standalone preservation problem without addressing this derivative-foundation point. That omission matters because Campbell's opinions were based upon Paradiso's opinions concerning the severity of the collision. If rehearing is granted as to Paradiso, the Court should also reconsider Campbell because

Campbell's dependent opinions cannot remain admissible on a foundation that does not satisfy Rule 702.

At minimum, Appellant respectfully submits the Court overlooked that the Campbell issue was argued as dependent upon the Paradiso issue, not as an entirely separate reliability question requiring the Court to disregard the challenged foundation on which Campbell relied.

IV. Rehearing is appropriate because the Subject Opinion did not address the specific record-based Rule 702 issues Appellant presented.

Appellant does not seek rehearing merely to reargue matters already considered and rejected. Rather, Appellant respectfully seeks rehearing because the Subject Opinion appears to have overlooked material aspects of the record and how Appellant framed the Rule 702 challenge. *See* Rule 221(a), SCACR.

Appellant's appellate briefing argued that:

- reliability objections were specifically raised in limine and renewed when the experts were offered;
- Paradiso's method was not shown to satisfy Council because it relied on estimation, comparison to dissimilar crash-test data, and undisclosed calculations;
- the quality-control showing was inadequate because "putting a bound" on an estimated calculation did not demonstrate a reliable procedure for ensuring accuracy; and
- Campbell's opinions depended on Paradiso's opinions and therefore could not stand if Paradiso's foundation was unreliable.

The trial record confirms those arguments. Paradiso's methodology depended on comparing photographs of Appellant's vehicle to a different-vehicle IIHS wall test, using that comparison to estimate crash energy and derive a 12-mph delta-v opinion. (R. pp. 113–14, 120, 145, 149–50). When asked for peer-reviewed support for that same methodology, Paradiso testified generally that it was based on "engineering physics" and his mechanical-engineering

degrees. (R. p. 114). And Campbell confirmed that his opinion was “wholly dependent” on Paradiso’s delta-v number and principal direction of force being accurate. (R. p. 230).

The Subject Opinion resolved Paradiso by emphasizing general references to engineering principles, publications, peer review, customary use, and the jury’s role in weighing expert testimony. Respectfully, that approach does not address Appellant’s specific argument that Respondents failed to show the reliability of the particular method Paradiso actually applied to this crash. The Subject Opinion then resolved Campbell by treating him separately from the reliability of the foundation on which he relied. Respectfully, that approach overlooks Appellant’s derivative-foundation argument.

Because Rule 702 requires a reliable method faithfully and reliably applied, and because the challenged biomechanical opinions depended on the challenged accident-reconstruction foundation, Appellant respectfully submits rehearing is warranted.

CONCLUSION

For these reasons, Appellant respectfully asks this Court to grant rehearing, withdraw Unpublished Opinion No. 2026-UP-333, and reconsider its decision affirming the admission of Respondents’ expert testimony under Rule 702, SCRE.

Respectfully submitted,

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