

**IN THE DISTRICT COURT IN AND FOR TULSA COUNTY
STATE OF OKLAHOMA**

THE STATE OF OKLAHOMA,)
Plaintiff,)
)
vs.)
)
)
Defendant.)

**MOTION FOR *DAUBERT/TAYLOR* HEARING ON ADMISSIBILITY
OF CONCLUSIONS OF A CHEMIST, OFFICER AND NURSE, IN ALCOHOL
TESTING and OBTAIN SERVICES OF DEFENSE FORENSIC EXPERT**

COMES NOW the Defendant through undersigned counsel and respectfully moves this Court to grant a hearing on the reliability and admissibility of the conclusion of the _____, that the _____. This hearing is requested pursuant to *Taylor v. State*, 1995 OK CR 10, 889 P.2d 319, which is the Oklahoma adoption of *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 113 S.Ct. 2786, 125 L.Ed.2d 469 (1993), and pursuant to *Harris v. State*, 2004 OK CR 1, 84 P.3d 731,745, which adopted the holding of *Kumho Tire Company, LTD v. Carmichael*, 526 U.S. 137, 119 S.Ct. 1167, 143 L.Ed. 238 (1999).

“In all cases, a court must exercise its gatekeeping obligation so that the expert, whether relying on "professional studies or personal experience," will, when testifying, employ "the same level of intellectual rigor" that the expert would use outside the courtroom when working in the relevant discipline. . . . A trial court must . . . make a determination of the appropriate factors of reliability for the particular controversy before it based upon the nature of that controversy.” *Christian v. Gray*, 2003 OK 10, 65 P.3d 591. A *Daubert* hearing is the usual tool for a Court to perform this gatekeeping task^{1[1]}.

^{1[1]}“The Tenth Circuit federal court has stated that federal courts may decide whether a *Daubert* challenge is decided upon special briefing or some other procedure, and has further explained that a common method is a *Daubert* hearing, although such a hearing is not specifically mandated.” *Christian v.*

STATEMENT OF PERTINENT FACTS

The report of the Chemist regarding the Quantity of alcohol in _____ improperly concludes that the Alcohol level was _____. This cannot be concluded based on the forensic findings contained in the Report Of Investigation By Chemist prepared by _____. The following statements are taken from this report:^{2[2]}

. The Conclusion does not meet scientific or specialized knowledge standards of admissibility as required by *Taylor* and *Harris, supra*. The standards of admissibility under *Daubert* and *Kumho* clearly are not met by this Conclusion. Certainly it has nowhere been validated by peer review, and has no acceptance in the *scientific* community. The rate of error cannot be determined because it has not been tested since it is on its face insupportable logically and rationally. Therefore this Conclusion fails all four prongs of the *Daubert/Taylor* test.

The question then arises whether the Conclusion can meet *Kumho* standards of specialized knowledge in this case. Again the Conclusion must fail this test, because there can be no specialized knowledge not based on direct observation. Everything in the Conclusion was in fact based on a third-party report.

In this hearing Defendant proposes to examine by cross-examination of the CHEMIST and the validity of their conclusion as to alcohol content, asserting that such a connective rationale would involve a novel theory of inductive reasoning of highly questionable reliability since it is not based on direct observation but on representations of law enforcement officers which are not verifiable.

Defendant respectfully moves for a continuance of at least several days in order adequately to prepare for this hearing, which is required under the authorities above-cited.

If this continuance and/or Motion for Daubert Hearing are both denied, then Defendant further moves for a continuance to explore the necessity of obtaining his own expert with a view to challenging the conclusions of the State's witness _____, the above referenced.

CONCLUSION

The charge in this case is. The issues are serious, and

Respectfully submitted,

BY:

ATTORNEY FOR DEFENDANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that on the ____ day of _____, 200 __, copies of the foregoing Motion were placed in the _____
