

Expert Admissibility in the Fourth Circuit: Coming Full Circle

by Lee Mickus

Two recent rulings signal that the Fourth Circuit's interpretation of the expert gatekeeping standard is returning to alignment with amended Federal Rule of Evidence 702. A 2025 decision, *Sommerville v. Union Carbide Corp.*,¹ created concern that the Fourth Circuit had fallen into the trap of relying on problematic and outdated caselaw rather than the text of Rule 702 to assess if an expert's opinions were admissible.² In particular, the *Sommerville* majority opinion repeatedly brushed aside the district court's determination that the factual basis for the expert's opinions was lacking as amounting to mere credibility considerations.³ This conception of the gatekeeping requirement expressed in *Sommerville* put the Fourth Circuit squarely at odds with Rule 702(b).

Just as *Sommerville* was beginning to influence district court rulings, however, other currents emerged in the Fourth Circuit that have nudged Rule 702's status as the governing authority back to the forefront. First, a series of expert admissibility opinions issued by James C. Dever III of the Eastern District of North Carolina addressed the *Sommerville* majority opinion in the context of the 2023 amendment to Rule 702 along with decisions other Circuits have issued in the aftermath of that amendment. Doing so reveals *Sommerville*'s statements that an expert's "factual underpinnings" affect only the "weight and credibility" of the opinion testimony and "not its admissibility" to be inconsistent with the recognized gatekeeping requirements. Next, the Fourth Circuit this summer published two decisions—*Near v. Enerco Group, Inc.*⁴ and *O'Connor v. Fairfax Taxi, Inc.*⁵—that explicitly identified inadequate factual basis as a proper ground for excluding an expert's opinions. These developments limit *Sommerville*'s reach and should cause courts and litigants to steer clear of its problematic characterization of an expert's factual basis. An upcoming case, *Williams v. Sig Sauer, Inc.*, gives the Fourth Circuit the chance to solidify its alignment with amended Rule 702's directions.

This *Legal Backgrounder* will describe the arc in the Fourth Circuit's conception of proper judicial gatekeeping. By tracing the progression from pre-amendment decisions, through the misstep reflected by the *Sommerville* majority opinion, and ultimately to the recent decisions that come back into alignment with Rule 702, one can see the Fourth Circuit's commitment to gatekeeping that recognizes assessment of the expert's factual basis and methodological application as an essential judicial function.

¹ 149 F.4th 408 (4th Cir. 2025).

² See, e.g., Lee Mickus, Mark Behrens, and Chris Appel, *The Early Returns Are In: A Review of the First Two Years of Amended Federal Rule of Evidence 702*, 94 U. Cin. L. Rev. 915, 937 (2026) (*Sommerville* "overlooked the Rule's status as the governing authority, as well as the corrective purposes of the 2023 amendments.").

³ 149 F.4th at 423, 424.

⁴ 182 F.4th 341 (4th Cir. July 17, 2026).

⁵ 188 F.4th 336 (4th Cir. Aug. 19, 2026).

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The Fourth Circuit's Gatekeeping Standard Prior to the 2023 Amendment

Even before the finalization of the 2023 amendment of Rule 702, the Fourth Circuit voiced its approval of the thorough gatekeeping approach reflected in the forthcoming tightening of the standard. In *Sardis v. Overhead Door Corp.*,⁶ the court reversed a multi-million-dollar jury verdict based in part on the opinions of packaging-design and human-factors experts whose testimony the court admitted over the defendant's Rule 702 reliability objections. The district court admitted the experts' opinions without making any findings about the reliability of their analysis and discounted the Rule 702-based challenges as merely "affecting the weight of the evidence, not its admissibility."⁷ On appeal, however, the Fourth Circuit found that the trial court had "improperly abdicated its gatekeeping role to the jury" by admitting the opinion testimony "without engaging in the required Rule 702 analysis."⁸

Reviewing "Rule 702's plain gatekeeping requirement,"⁹ the Fourth Circuit observed that the Advisory Committee on Evidence Rules had agreed to amend Rule 702 to address a "pervasive problem" that had emerged:

[U]fortunately many courts have held that the critical questions of the sufficiency of an expert's basis [for his testimony], and the application of the expert's methodology, are generally questions of weight and not admissibility. These rulings are an incorrect application of Rules 702 and 104(a) and are rejected by this amendment.¹⁰

The court observed that the Advisory Committee's guidance "clearly echoes the existing law on the issue" and, in light of the district court's failure to scrutinize meaningfully whether the experts' opinions fulfilled Rule 702's reliability requirements, confirmed "the indispensable nature of district courts' Rule 702 gatekeeping function in all cases in which expert testimony is challenged on relevance and/or reliability grounds."¹¹ Fulfilling this responsibility requires judges to examine and conclude that the expert has met each of the admissibility prerequisites enumerated in Rule 702.¹² With *Sardis*, the Fourth Circuit boldly positioned itself as a champion of the gatekeeping approach reflected in the amendment to Rule 702 that was then still forthcoming.

The Unexpected Change in Direction Reflected in *Sommerville*

The Fourth Circuit's history of strong adherence to rule-focused gatekeeping made the decision in *Sommerville v. Union Carbide Corp.* even more surprising. The *Sommerville* majority opinion entirely overlooked the corrective purpose of the 2023 changes to Rule 702 and instead followed problematic pre-amendment caselaw to overturn the district court's Rule 702(b)-based exclusion. In doing so, the appellate court overlooked both the rule's status as the governing authority and the very point of the 2023 amendments.

The Fourth Circuit's *Sommerville* ruling considered a district court's exclusion of an engineer's estimates of toxic emissions and their dispersal.¹³ Rejecting the plaintiffs' contention that the motions only

⁶ 10 F.4th 268 (4th Cir. 2021).

⁷ *Id.* at 278-79.

⁸ *Id.* at 279.

⁹ *Id.* at 283.

¹⁰ *Id.* at 284 (quoting Memorandum from Daniel J. Capra and Liesa L. Richter, Reporters, Advisory Comm. on Evidence Rules, to Advisory Comm. on Evidence Rules, *Possible Amendment to Rule 702* (Apr. 1, 2021) at 18 in ADVISORY COMMITTEE ON EVIDENCE RULES APRIL 2021 AGENDA BOOK 90 (2021), https://www.uscourts.gov/sites/default/files/advisory_committee_on_evidence_rules_-_agenda_book_spring_2021.pdf). With minor modification, the referenced Draft Committee Note was adopted as the final Advisory Committee's Note to the 2023 amendments.

¹¹ *Id.* at 284.

¹² *Id.*

¹³ See *Sommerville v. Union Carbide Corp.*, No. 2:19-cv-00878, 2024 WL 1204094, at *2 - *4 (S.D. W.Va. Mar. 20, 2024).

“raise questions affecting *the weight and credibility* of [the expert’s] opinions rather than their *admissibility*,”¹⁴ the trial court correctly observed that Rule 702(b) mandates courts to “verify that expert testimony is ‘based on sufficient facts or data’ and Rule 702(d) requires reliable application of the expert’s methodology to the facts of the case. Accordingly, a motion targeting “the validity of the underlying data” and the “methods in applying that data to the facts of the case” presents gatekeeping challenges that the court, not the jury, must decide.¹⁵ Ultimately, the district judge concluded that the opinions were “not based upon sufficient facts or data” and that the expert’s “*application* of the data to the facts of this case was methodologically flawed, full of unsubstantiated assumptions, and not scientifically sound.”¹⁶ The opinions consequently failed to meet either Rule 702(b) or Rule 702(d).

On review, the *Sommerville* majority held that the district court had abused its discretion by engaging in a “credibility determination,” because “questions regarding the factual underpinnings of the [expert witness] opinion affect the weight and credibility of the witness’ assessment, not its admissibility.”¹⁷ This statement was lifted from the Fourth Circuit’s pre-amendment decision in *Bresler v. Wilmington Trust Co.*,¹⁸ and in fact, the majority repeated this *Bresler* statement three times in explaining its reversal of the district court.¹⁹ But as Chief Judge Diaz pointed out in dissent, the text of Rule 702(b) explicitly makes the sufficiency of an expert’s factual basis an admissibility requirement, and so the majority opinion “can’t possibly mean that district courts may not decide that an expert’s opinion lacks sufficient support in the record.”²⁰ Also, the *Bresler* “factual underpinnings” statement is actually pulled forward from cases that pre-date not just the 2023 amendment but even *Daubert* itself.²¹ The *Sommerville* majority’s conception of gatekeeping turned its back on the 2023 amendments²² and the Rule 702-focused approach the court previously approved, creating an inconsistency in the Fourth Circuit’s gatekeeping guidance.

District Courts in the Fourth Circuit Attempt to Find Direction

In the aftermath of *Sommerville*, district courts in the Fourth Circuit have faced a confusing situation. Some courts followed the lead of the *Sommerville* majority opinion and openly disregarded the sufficiency of experts’ factual basis as an admissibility consideration for the judge to decide. For example, in *Michael’s Fabrics, LLC v. Donegal Mut. Ins. Co.* the court cited *Sommerville* and rejected a Rule 702 challenge to the expert’s factual basis as affecting only “the weight and credibility of the witness’ assessment, not its admissibility.”²³ Similarly, the court in *Mincey v. Se. Farm Equip., Co.* denied the defendant’s motion to exclude based on *Sommerville*, and found that the objections raised went only “to the weight, not the admissibility” of the expert’s opinions.²⁴ This line of *Sommerville*-influenced rulings threaten to undermine the 2023 amendment and allow reversion to the widespread errors that it was enacted to correct.

¹⁴ *Id.* at *4, *6 (emphasis in original).

¹⁵ *Id.* at *5–*7.

¹⁶ *Id.* at *19 (emphasis in original).

¹⁷ *Id.* at 423, 424.

¹⁸ *Bresler v. Wilmington Trust Co.*, 855 F.3d 178, 195 (4th Cir. 2017).

¹⁹ *Sommerville*, 149 F.4th at 423, 424, 427 n.7.

²⁰ *Id.* at 431 (Diaz, C.J., dissenting).

²¹ See *Hurst v. United States*, 882 F.2d 306, 311 (8th Cir. 1989) (“Any weaknesses in the factual underpinnings of (the expert’s) opinion go to the weight and credibility of his testimony, not to its admissibility.”).

²² Judge Thomas Schroeder, Chair of the Advisory Committee on Evidence Rules’ Subcommittee on Rule 702 during the rulemaking process that produced the 2023 amendment, observed that *Bresler* was among the “illustrative cases that have been identified to the Advisory Committee as evidence that courts are abdicating their gatekeeper role,” and he criticized the very statement reiterated by the *Sommerville* majority as having “effectively vitiated the application of Rule 104(a) to Rule 702(b).” See Thomas D. Schroeder, *Toward a More Apparent Approach to Considering the Admission of Expert Testimony*, 95 NOTRE DAME L. REV. 2039, 2044, 2051 (2020).

²³ No. 1:24-cv-01585-JRR, 2025 WL 2624280, at *4 (D. Md. Sept. 11, 2025).

²⁴ No. 4:24-cv-05121-JD, 2025 WL 2450913, at *10 (D.S.C. Aug. 26, 2025).

Other district courts in the Fourth Circuit, however, have attempted to cabin the effect of *Sommerville*. For example, a series of decisions from Judge James C. Dever, III²⁵ acknowledge the *Sommerville* decision but focus the gatekeeping analysis on the elements enumerated in Rule 702. The month after *Sommerville* was published, Judge Dever in *Moore v. Barnes* took note of *Sommerville*'s statement about an expert's "factual underpinnings" but proceeded to reference the Advisory Committee's note to the 2023 amendment and observe that "[t]he proponent of an expert witness, however, must first demonstrate by a preponderance of the evidence that the expert's testimony answers the critical questions of the sufficiency of an expert's basis, and the application of the expert's methodology."²⁶ Because that was found lacking in *Moore*, Judge Dever held the expert's opinions inadmissible.²⁷

In more recent decisions, Judge Dever has emphasized that "Federal Rule of Evidence 702 governs the admission of expert testimony" and noted the 2023 amendment and its purposes.²⁸ Additionally, these rulings cite to *Sardis*, along with a range of post-amendment cases that address Rule 702, to flesh out the reliability prerequisites for admission.²⁹ Critically, these cases hold that, in the absence of a showing that the expert has "a sufficient methodology or factual basis" for the opinions expressed, "they do not satisfy Rule 702's threshold requirements."³⁰ This gatekeeping approach laid out by Judge Dever adheres to the rule-based analysis that the Fourth Circuit had followed prior to *Sommerville*. Other district courts have begun to follow Judge Dever's banner.³¹

Recent Decisions Suggest a Return to the *Sardis* Conception of Gatekeeping

Two cases decided by the Fourth Circuit in the summer of 2026 seem to signal the Fourth Circuit has moved past its *Sommerville* stumble and returned to the Rule 702-centered gatekeeping approach directed by *Sardis*. In *Near v. Enerco Grp., Inc.*,³² decided July 17, 2026, the court examined the exclusion of a human factors expert's opinions that a propane heater lacked adequate warnings. The court began its analysis by noting that Rule 702 demands that courts scrutinize "not only the principles and methodology used by the expert, but also the expert's application of those principles and methods to the case."³³ Both Rule 702(d) and *Sardis* mandate these assessments.³⁴ Further, Rule 702(b) requires the expert's testimony to be "based on sufficient facts or data."³⁵ Because the warnings expert "lacked sufficient product specific facts about the heater's operation and warning environment," and did not "reliably connect her principles and methods to the facts of the case," the district court properly concluded that the mandates of Rule 702(b) and 702(d) were not met.³⁶

²⁵ Judge Dever is currently the Chair of the Judicial Conference's Committee on Rules of Practice and Procedure, the body that oversees the work of the Advisory Committee on Evidence Rules.

²⁶ *Moore v. Barnes*, No. 2:23-CV-56-D, 2025 WL2841495, at *10 (E.D.N.C. Sept. 30, 2025).

²⁷ *Id.*

²⁸ *Dew v. E.I. Du Pont De Nemours & Co.*, ___ F. Supp. 3d ___, No. 5:18-CV-73-D, 2026 WL 2019412, at *1 (E.D.N.C. July 2, 2026); *Cape Fear Public Utility Authority v. Chemours Co. FC, LLC*, No. 7:17-CV-195-D, 2026 WL 2323094, at *3 (E.D.N.C. Apr. 20, 2026).

²⁹ See, e.g., *Dew*, 2026 WL 2019412, at *3, *5; *Cape Fear*, 2026 WL 2323094, at *4, *6.

³⁰ *Cape Fear*, 2026 WL 2323094, at *9.

³¹ See, e.g., *McCall v. Experian Information Sols., Inc.*, No. 4:24-cv-00011, 2026 WL 1999278 (S.D.W. Va. July 10, 2026) (citing *Sardis* for the proposition that Rule 702 reliability factors "are well-established prerequisites for the admissibility of expert testimony," and excluding opinions "insufficiently based in fact" because they do not meet "the requirements of Rule 702.>").

³² 182 F.4th 341 (4th Cir. 2026).

³³ *Id.* at 360.

³⁴ *Id.*

³⁵ *Id.* (quoting Rule 702(b)).

³⁶ *Id.* at 60 – 62.

On August 19, 2026, a Fourth Circuit panel made up of different judges applied almost the same analysis in *O'Connor v. Fairfax Taxi, Inc.*³⁷ The court started by noting the core conclusion of *Sardis*: courts have a gatekeeping obligation to ensure the reliability of expert opinions presented to a jury, and the text of amended Rule 702 sets forth the admissibility prerequisites and “governs our review.”³⁸ The expert “may testify only” if those prerequisites are met, and they include Rule 702(b)’s mandate for “sufficient facts or data” underlying the opinions, as well as Rule 702(d)’s requirement of a reliable methodological application to the facts of the case.³⁹ Because the accident reconstruction expert’s opinions “depended on facts the record did not supply,” his conclusions did not meet Rule 702(b) and were properly excluded on that basis.

Critically, neither *Near* nor *O'Connor* referenced *Sommerville* or the *Bresler* statement about an expert’s “factual underpinnings” on which the *Sommerville* holding depends. And contrary to *Sommerville*, both *Near* and *O'Connor* observe Rule 702(b)’s directive that the court must ensure the expert’s opinions have a sufficient factual basis to be an essential admissibility element for the court to decide. In the absence of such a showing, district courts may properly exclude expert opinions. The Fourth Circuit’s rulings in *Near* and *O'Connor* have quietly boxed up *Sommerville*’s misguided and overly limited view of the judicial gatekeeping role and re-focused the admissibility analysis on Rule 702, as *Sardis* had instructed.

Williams v. Sig Sauer May Resolve Lingering Confusion

A case set for argument on October 14, 2026, *Williams v. Sig Sauer, Inc.*,⁴⁰ will give the Fourth Circuit the opportunity to say the quiet part out loud: *Sommerville*’s reliance on the *Bresler* declaration cannot be reconciled with Rule 702 and was a mistake. The district court’s ruling, written by Judge Dever, places Rule 702 and the corrective purposes of the 2023 amendment in the spotlight while both acknowledging and minimizing *Sommerville*, which had been issued less than one month earlier.⁴¹ The district court’s framing of the admissibility standard will require the Fourth Circuit to decide if proper judicial gatekeeping involves applying Rule 702(b) as written or deference to outdated caselaw.

The *Williams* trial court ruling considered the admissibility of opinions from the plaintiff’s expert gunsmith. Judge Dever began his analysis, as he did in *Moore* and *Cape Fear*, by observing that Rule 702 “governs the admission of expert testimony.”⁴² The decision also acknowledged that the 2023 amendment’s purpose was to clarify that the proponent bears the burden of establishing admissibility of the opinions and to ensure that opinions expressed to the jury “stay within the bounds of a reliable application of the expert’s basis and methodology.”⁴³

In addressing whether the gunsmith’s opinions fulfill the reliability standard, the court noted the *Sommerville* pronouncement that “‘questions regarding the factual underpinnings of’ an expert’s opinion ‘affect the weight and credibility of the witness’s assessment, not its admissibility.’”⁴⁴ But rather than either dismissing the *Sommerville* statement as irreconcilable with Rule 702 or embracing it as a limitation on the scope of acceptable judicial gatekeeping inquiries, Judge Dever identified this as something to be considered only *after* the proponent “first demonstrate[s] by a preponderance of the evidence” that the “expert’s testimony answers the ‘critical questions of the sufficiency of an expert’s basis, and the application of the expert’s methodology.’”⁴⁵ The approach echoes the description of proper gatekeeping under the Rule 702 standard given by the Reporter to the Advisory Committee on Evidence Rules, Professor Daniel J. Capra,

³⁷ 188 F.4th 338 (4th. Cir. Aug. 19, 2026).

³⁸ *Id.* at 354.

³⁹ *Id.*

⁴⁰ Case No. 25-2196.

⁴¹ 799 F. Supp. 3d 470 (E.D.N.C. 2025).

⁴² *Id.* at 477.

⁴³ *Id.* at 478 (quoting FED. R. EVID. 702 advisory committee’s note to 2023 amendment).

⁴⁴ *Id.* at 483 (quoting *Sommerville*, 149 F.4th at 423).

⁴⁵ *Id.* at 483-84 (quoting FED. R. EVID. 702 advisory committee’s note to 2023 amendment).

during the rulemaking process that led to the 2023 amendment:

It is not the case that the judge can say ‘I see the problems, but they go to the weight of the evidence.’ After a *preponderance* is found, then any slight defect in either of these factors becomes a question of weight. But not before.⁴⁶

Sommerville went too far in discounting the significance of an expert’s factual foundation; *Williams* returned that consideration to its rightful place as a necessary component of admissible expert testimony—and found it lacking in the opinions of the plaintiff’s gunsmith.⁴⁷

On appeal, the Fourth Circuit will need to address the proper judicial role in deciding expert admissibility. Consistent with *Sommerville*, the plaintiff’s brief argues that the “District Court’s findings speak to the weight to be afforded [the gunsmith’s] testimony, not its admissibility.”⁴⁸ Sig Sauer’s brief, in contrast, emphasizes that Rule 702 sets the admissibility standard courts must follow, and so the district court’s finding that the gunsmith had an insufficient factual basis represents a failure to fulfill Rule 702(b) and an appropriate justification for exclusion.⁴⁹

Two *amicus* briefs filed in the case urge the Fourth Circuit to articulate clearly how trial court judges should address the factual foundation for a challenged expert’s opinions. Washington Legal Foundation asserts that, because “the district court’s decision comports fully with Federal Rule of Evidence 702’s requirement[s],” the Fourth Circuit should affirm, “align this Circuit with Rule 702’s clarified demands,” and declare that certain pre-amendment opinions that do not reflect Rule 702’s admissibility standard to be superseded by adoption of the 2023 amendment.⁵⁰ Lawyers for Civil Justice asks the Fourth Circuit to address the *Sommerville* statement about “factual underpinnings” in order to “dispel the gatekeeping confusion that presently exists” among district courts, and to “provide explicit guidance that trial judges must determine admissibility based on Rule 702 and allow opinion evidence only when all elements of the rule have been established by a preponderance of evidence.”⁵¹

Given the briefings’ emphasis on the contours of the admissibility standard, the contours of appropriate gatekeeping considerations will likely feature when the court hears oral arguments.

Conclusion

The Fourth Circuit’s pattern of conforming to the directives of Rule 702 was disrupted by the problematic majority opinion in *Sommerville*. Litigants and district courts are understandably torn between following the indications set forth in *Sommerville* that an expert’s factual foundation is merely a matter of credibility and cannot be a basis for exclusion or taking guidance from the text of Rule 702(b) identifying the sufficiency of the expert’s factual basis as an admissibility condition that the judge must determine. The rulings in *Near* and *O’Connor* signal that the Fourth Circuit has travelled far down the pathway to realignment with Rule 702. The Fourth Circuit’s forthcoming ruling in *Williams* should complete that journey.

⁴⁶ Memorandum from Daniel J. Capra, Reporter, Advisory Comm. on Evidence Rules, to Advisory Comm. on Evidence Rules, *Forensic Evidence, Daubert and Rule 702* (Apr. 1, 2018) at 43 (emphasis original) in ADVISORY COMMITTEE ON EVIDENCE RULES APRIL 2018 AGENDA BOOK 49 (2018).

⁴⁷ *Id.* at 484.

⁴⁸ Brief of Appellant at 20.

⁴⁹ Response Brief of Defendant-Appellee Sig Sauer, Inc. at 20, 33.

⁵⁰ Brief of Washington Legal Foundation as *Amicus Curiae* at 6, 15.

⁵¹ Brief of Lawyers for Civil Justice as *Amicus Curiae* at 19.