



Jurisprudence Section - 2016

F42 Dealing With *Daubert*: The Change to and Application of a New Evidential Standard in Alcohol- and Drug-Impaired Driving Cases

Garett M. Berman, JD*, Florida Traffic Safety Resource, Prosecutor Program, PO Box 32, Dania Beach, FL 33004

After attending this presentation, attendees will understand the differences regarding the admissibility of expert testimony under the *Daubert* and *Frye* standards of evidence in Driving Under the Influence (DUI) and other alcohol- and drug-impaired-related litigation.

This presentation will impact the forensic science community by examining the recent change in evidential standards in Florida in July 2014, through a comprehensive review of cases involving challenges to expert testimony in the areas of standardized field sobriety testing, breath-alcohol testing, urine testing, and blood-alcohol testing both pre- and post-adoption of the *Daubert* standard.

Prior to July 1, 2013, Florida adhered to the *Frye* standard regarding expert testimony. The *Frye* standard requires that an expert's opinion testimony be generally accepted in the scientific community as a prerequisite to admissibility. Essentially, this allowed for an expert's "pure opinion testimony" to be admissible without any showing of the testimony to be the product of reliable scientific principles or methodologies. In adopting the *Daubert* standard, expert testimony is admissible only if it is based on sufficient facts or data, is the product of reliable principles and methods, and the expert has applied the principles and methods reliably to the facts of the case.

There is debate among courts, counsel, and legal commentators over whether the *Daubert* standard is more lenient or more strict than *Frye*. Nonetheless, since the adoption of the *Daubert* standard, defense expert testimony regarding breath-alcohol and blood-alcohol testing has significantly been curtailed in criminal impaired-driving prosecutions. No longer are defense experts allowed to testify about factors that could possibly affect breath test results, without being able to testify that these possible factors actually did occur or affect the results reported. What was once admissible under *Frye* is no longer admissible under *Daubert*.

In one of the most significant rulings, a court recently precluded an expert's proposed testimony regarding the use of a certain type of needle gauge to collect a DUI manslaughter defendant's blood sample. The expert opined that the gauge of the needle caused hemolysis of the blood sample. In a ruling that drastically affected the defense's presentation of their case, the court sustained the State's objection and precluded the expert's testimony, as well as the testimony of two other defense experts whose testimony was based in part or in whole on the other expert's testimony.

This presentation will examine several recent objections pursuant to, and attempts to meet, the *Daubert* standard and the resulting court rulings in alcohol- and drug-impaired driving prosecutions.

Daubert, Evidence, Breath Testing