

1 Robert K. Lewis, SBN 016625
2 Shannon O'Connell, SBN 023386
3 **ALLEN & LEWIS, PLC**
4 3300 North Central Avenue, Suite 2500
5 Phoenix, Arizona 85012
6 Telephone: (602) 443-0402
7 Facsimile: (602) 443-0403
8 rlewis@allenandlewis.com
9 soconnell@allenandlewis.com
10 Attorneys for Defendants

6 SUPERIOR COURT OF ARIZONA

7 COUNTY OF MARICOPA

8 REBECCA BEASLEY, individually as the
9 surviving spouse of ORVILLE THOMAS
10 BEASLEY, III, and as personal
11 representative of the ESTATE OF ORVILLE
12 THOMAS BEASLEY, III; and ORVILLE
13 THOMAS, II and ANNA ELIZABETH
14 BEASLEY, husband and wife and parents of
15 ORVILLE THOMAS BEASLEY, III,

12 Plaintiffs,

13 vs.

14 JOHN C. STUART and JANE DOE
15 STUART, a married couple; JOHN and
16 JANE DOES I-V; BLACK & WHITE
17 CORPORATIONS VI-X; and ABC
18 PARTNERSHIPS XI-XV,

17 Defendants.

No. CV2010-050624

**OPPOSITION TO MOTION TO
STRIKE AFFIDAVIT OF JOE
COLLIER**

AND

MOTION FOR SANCTIONS

(Oral Argument Requested)

(Assigned to the Honorable Linda
Miles)

19 Defendant John Stuart opposes Plaintiffs' Motion to Strike the Affidavit of Joe
20 Collier. The motion should be denied as the opinions are within Mr. Collier field of
21 expertise, the opinions are supported by proper foundation and are admissible both at trial
22 and for the purpose of the motion for partial summary judgment.

23 A. **Joe Collier is Qualified to Testify about the Effects of Alcohol on the
24 Human Body.**

24 Plaintiffs complain that Joe Collier is not qualified to testify about the issue of
25 toxicology because he is not a doctor, medical provider, psychologist, nor does he have
26

1 experience treating patients. He does not have to be, however. Rule 702 requires that an
2 expert witness qualify as such by reason of “knowledge, skill, experience, training or
3 education.” *Ulibarrie v. Gerstenberger*, 178 Ariz. 151, 871 P.2d 698 (App. 1993).
4 Educational attainments are not a prerequisite and a person can be qualified as an expert
5 by reason of experience alone. *Godwin v. Famers Ins. Co. of America*, 129 Ariz. 416, 631
6 P.2d 571 (App. 1981). Mr. Collier has been a forensic toxicologist for forty-seven (47)
7 years. His Curriculum Vitae was attached to the affidavit. This objection is ridiculous.

8 To be clear, Mr. Collier’s opinion is that someone with 15 shots of 100 proof
9 whiskey in his system he is going to be aggressive, loud, and do and say things he would
10 not ordinarily do or say. This is hardly some great revelation. If Plaintiffs want a more
11 detailed summary of how Mr. Collier has become familiar with the effects of alcohol on a
12 person, they should take his deposition. They would discover that this is textbook
13 toxicology. (*See Exhibit “1”*).

14 Plaintiffs also complain that the opinions do not coincide with the evidence.
15 Namely, they claim that there is no evidence that Mr. Beasley was aggressive. They even
16 deny the confrontation. This argument is absurd. There were multiple witnesses (Spade,
17 Cantrell, and Strachan) to the incident who said Mr. Beasley was enraged, that he got out
18 of his car, and physically attacked Mr. Stuart by reaching to the Stuart vehicle. After
19 interviewing witnesses and conducting an investigation as the primary homicide detective,
20 Detective Dalton testified:

21 **During the physical confrontation between Mr. Beasley and Mr.**
22 **Stuart, both could have stopped it Mr. Beasley walking away,**
23 **you’ve had enough, or Mr. Stuart Driving away, I’ve had**
24 **enough. So a specific criticism of Mr. Stuart, it works both**
ways. It’s a criticism on both, so...

25 **Q. You agree with me that this was partially Mr. Beasley’s**
26 **fault; Correct?**

1 **A. I can't blame fault on – the whole incident was both their**
2 **faults. (132:12-23)**

3 **So it's kind of – you know? Is it his fault? Yeah. He came out**
4 **of the car and he's now dead.**

5 (132: 124-135:2 speaking of Beasley's contribution to the accident)

6 **B. Joe Collier's Opinions have Appropriate Foundation.**

7 Plaintiffs' second criticism is that the opinions lack foundation because Mr Collier
8 does not have "personal knowledge." Plaintiffs ignores Rule 703, which provides that an
9 expert can base an opinion on (1) facts personally observed by the expert; (2) on facts
10 received in evidence and made known to the expert at or before the hearing, and/or (3) on
11 facts of a type reasonably relied by experts in the particular field which need not be
12 admissible in evidence. *Cervantes v. Rijlaarsdam*, 190 Ariz. 396, 949 P.2d 56 (App.
13 1997). It is a basic axiom that experts are permitted to rely upon medical laboratory
14 reports prepared by others. *State v. Villafuerte*, 142 Ariz. 323, 690 P.2d 42 (1984). Here,
15 Joe Collier took the blood alcohol reading directly from the autopsy report and toxicology
16 report by the medical examiner's office. He explains this in his affidavit.

17 **C. Plaintiffs' Motion is Sanctionable.**

18 To make foundation objections to force one's adversary to "do it the hard way"
19 wastes court time and client dollars. This conduct is sanctionable. *Theyppard v. Crow*
20 *Barker Paul No. 1 Ltd. Partnership*, 192 Ariz. 539, 968 P.2d 612 (App 1998). Here, the
21 two objections are directly contrary basic axioms of law. Plaintiffs are simply not
22 forthright with the Court when discussing the evidence. They deny facts that are simply
23 undeniable. The truth is Mr. Beasley was drunk, he verbally assaulted Stuart, and then he
24 physically attacked him. The objections were made to harass, and were a waste of time.

ALLEN & LEWIS, PLC

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

DATED this 15th day of February, 2011.

ALLEN & LEWIS, PLC

By /s/Robert K. Lewis
Robert K. Lewis
Shannon O'Connell
Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on February 15, 2011, I electronically filed the foregoing document with the Court and mailed a copy this same date to the following:

John C. Doyle
Jonathan L. Sullivan
Doyle Law Group
5010 E. Theya, Suite A-106
Scottsdale, Arizona 85254
Attorneys for Plaintiffss

By /s/ Jamie Tanner