

Outline For Expert Testimony

Rule 702: Testimony by Experts

If *scientific, technical, or other specialized knowledge*

Hartman v. State, 946 S.W.2d 60 (Tex. Cr. App. 1997)

Emerson v. State, 880 S.W.2d 759 (Tex. Cr. App. 1994)

Kelly v. State, 824 S.W.2d 568 (Tex. Cr. App. 1992)

Fowler v. State, ___ S.W.2d ___, 1997 WL 765763 (Tex. App. — Waco 1997)

will *assist the trier of fact* to understand the evidence or to determine a fact in issue,

Jordan v. State, 928 S.W.2d 550 (Tex. Cr. App. 1996)

a witness *qualified as an expert* by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

Concepts:

The rules of evidence favor admissibility.

Testimony must also be relevant under Rule 401.

Rendering an opinion on an “ultimate issue” is expressly allowed by Rule 704. There is no longer an objection that such testimony is “bolstering” or that it “invades the province of the jury.”

An expert may render an opinion upon facts and data that are not admissible at trial. Rule 703.

Use Rule 705 to test qualifications of expert, soundness of the scientific theory (*Kelly* requirements), and to discover the facts and data underlying the expert’s opinion. The result may be that all or part of the expert’s opinion may be suppressed (Rule 705(c)) and/or the facts and data may be suppressed to the extent that they are not admissible in evidence for any purpose other than to form the basis of the expert’s opinion. Rule 705(d).