

Evidence

Experts

[*State v. Walston*](#), ___ N.C. ___, ___ S.E.2d ___ (May 5, 2017). Reversing the Court of Appeals in a case in which the amended version of Rule 702 applied, the Supreme Court held that the trial court did not abuse its discretion in excluding defense expert testimony regarding repressed memory and the suggestibility of memory. The case involved a number of child sex offense charges. Before trial, the State successfully moved to suppress testimony from a defense expert, Moina Artigues, M.D., regarding repressed memory and the suggestibility of children. The Court of Appeals had reversed the trial court and remanded for a new trial, finding that the trial court improperly excluded the expert's testimony based on the erroneous belief it was inadmissible as a matter of law because the expert had not interviewed the victims. The State petitioned the Supreme Court for discretionary review. Holding that the trial court did not abuse its discretion in excluding Dr. Artigues's testimony, the Court found that "the Court of Appeals was correct to clarify that a defendant's expert witness is not required to examine or interview the prosecuting witness as a prerequisite to testifying about issues relating to the prosecuting witness at trial." The Court noted: "Such a requirement would create a troubling predicament given that defendants do not have the ability to compel the State's witnesses to be evaluated by defense experts." The Court disagreed however with the Court of Appeals' determination that the trial court based its decision to exclude defendant's proffered expert testimony solely on an incorrect understanding of the law. It found that the Court of Appeals presumed that the testimony was excluded based on an erroneous belief that there was a per se rule of exclusion when an expert has not interviewed the victim. However, the trial court never stated that such a rule existed or that it based its decision to exclude the testimony solely on that rule. The Court went on to note that Rule 702 does not mandate any particular procedural requirements for evaluating expert testimony. Here, the trial court ordered arguments from both parties, conducted voir dire, considered the proffered testimony, and considered the parties' arguments regarding whether the evidence could be excluded under Rule 403 even if it was admissible under Rule 702. With respect to the latter issue, the Court noted that Rule 403 allows for the exclusion of evidence that is otherwise admissible under Rule 702. The Court concluded that there is evidence to support the trial court's decision to exclude the testimony and that it properly acted as a gatekeeper in determining the admissibility of expert testimony.