EXPERT TESTIMONY IN CHILD VICTIM CASES: SCENARIOS

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		Circle one	
1.	Is Dr. Prakash's testimony proper?	YES	NO
2.	a. Is Dr. Pringle's testimony proper as to the rape charge?	YES	NO
	b. Is Dr. Pringle's testimony proper as to the sexual offense charge?	YES	NO
3.	Is Dr. Everett's testimony proper?	YES	NO
4.	Is Dr. Loughlin's testimony proper?	YES	NO
5.	Is Dr. Jones' testimony proper?	YES	NO
6.	Is Dr. Powell's testimony proper?	YES	NO
7.	Is Dr. Moore's testimony proper?	YES	NO
8.	Is Dr. List's testimony proper?	YES	NO
9.	Is Dr. Everson's testimony proper?	YES	NO
10.	Is Ms. Fiore's testimony proper?	YES	NO
11.	Is Dr. Fine's testimony proper?	YES	NO
12.	Is Dr. St. Claire's testimony proper?	YES	NO
13.	a. Is Dr. Hendrix's testimony proper?	YES	NO
	b. Is Ms. Sullivan's testimony proper?	YES	NO
14.	Is Dr. Rothe's testimony proper?	YES	NO
15.	Is the nurse's testimony proper?	YES	NO
16.	Is Dr. Artigues's testimony proper?	YES	NO

Scenario 1: State v. Stancil, 355 N.C. 266 (2002)

A child went to a friend's home to play. The friend's uncle was there. She fell asleep on the couch. She then felt something "wet and yucky." The child looked down and saw the defendant licking her vaginal area.

The child went home and told her father, who immediately called the police. After being interviewed by the police, the child's parents took her to a medical center for treatment. She was interviewed by Chris Ragsdale, a psychologist and Dr. Prakash, a pediatrician who also performed a physical examination.

At trial, Dr. Prakash testified as an expert in pediatric medicine specializing in child abuse. Prakash testified that the child related the same facts that she had previously told her parents and the psychologist. Prakash noted that the child was very intelligent and articulate. The physical examination itself revealed no abnormalities. However, Prakash testified that in 60-80% of cases with similar facts, the physical examinations were normal. She added that, in her opinion, the child's history, demeanor, and exam were consistent with sexual abuse.

Prakah saw the child again five days after first examining her. The child reported abdominal pains and headaches. No physical causes were found. Prakash attributed the symptoms to anxiety from the earlier events. When asked if they were symptoms of "someone who had been abused," she responded, "Yes, it can be."

Prakash's overall conclusion was that the child "was sexually assaulted and [that there was] maltreatment, emotionally, physically and sexually."

Is Dr. Prakash's testimony proper?

Scenario 2: State v. Streater, 197 N.C. App. 632 (2009)

PROSECUTOR: Please describe what you found during your examination of the victim's vaginal opening.

DR. PRINGLE: The victim's vaginal opening was abnormal in several ways. It was slightly larger than a child of her age. There were deep notches at the upper part of the vaginal opening at 10:00 o'clock and 2:00 o'clock. And there was a small scar just inside the rim of the vaginal opening that looked like a healed laceration. This was a significant finding.

PROSECUTOR: Would you find that based on the victim's statements that the defendant did penetrate her with his penis on many occasions, would you find that that is consistent with a finding of two deep notches in the vaginal tissue?

DR. PRINGLE: Yes, I would think so. The penetration split the opening at the margins of the vaginal opening and created the tears that resulted in these notches as they healed.

PROSECUTOR: Based on the history that you received from the victim of repeated penile intercourse by the defendant, did you find that's consistent with that history?

DR. PRINGLE: I believe so. It was not a normal finding.

PROSECUTOR: Moving to the next part of that examination, you also had a history from the victim, as you indicated in your testimony, of anal penetration by the defendant's penis; is that correct?

DR. PRINGLE: That is correct.

PROSECUTOR: After you finished your vaginal examination did you examine her anal area?

DR. PRINGLE: Yes, I did.

PROSECUTOR: And in reviewing of the examination at that time, did you make any significant findings there?

DR. PRINGLE: No. I thought her anal opening looked normal in her size, shape and caliber. There were no hemorrhoids or fissures or splits in the anal wall. It looked normal.

PROSECUTOR: Based on the history that you received from the victim, potentially repeated penetration of the defendant's penis into the anal area, would you find that inconsistent with your medical findings of no trauma or would you find that consistent with it?

DR. PRINGLE: I think it was consistent with the findings. She may not, despite having been anally penetrated, she may not have had any physical findings. In many cases it is common to have a normal exam even after an allegation of physical sexual abuse in that area.

Is Dr. Pringle's testimony proper as to the rape charge?

Is Dr. Pringle's testimony proper as to the sexual offense charge?

Scenario 3: State v. Towe, 366 N.C. 56 (2012)

PROSECUTOR: Do you have an opinion, ma'am, based upon your knowledge, experience and training, and the articles that you have read in your professional capacity as to the percentage of children who report sexual abuse who exhibit no physical findings of abuse?

DR. EVERETT: I would say approximately 70 to 75% of the children who have been sexually abused have no abnormal findings, meaning that the exams are either completely normal or very non-specific findings, such as redness.

PROSECUTOR: And that's the category that you would place Shirley in; is that correct?

DR. EVERETT: Yes, correct.

Is Dr. Everett's testimony proper?

Scenario 4: State v. Ray, 197 N.C. App. 662 (2009)

L.G. was examined by Dr. Loughlin, an expert in pediatrics and child abuse pediatrics. Loughlin testified that his examination of L.G. included an interview and a physical examination. L.G. told Dr. Loughlin that the defendant had "touched [her] down there" while she was using the bathroom at the defendant's

house. She said that the defendant came into the bathroom and “put his finger in [my] private” and described the penetration as painful. Dr. Loughlin testified that L.G. experienced “intrusive thoughts” about the incident. Dr. Loughlin also interviewed L.G.'s mother and a Detective.

Although Dr. Loughlin's examination revealed no physical indicia of sexual abuse or trauma, he offered an expert opinion that L.G.'s history was “consistent” with having been sexually abused. His opinion was based in part upon the consistency between L.G.'s statements to him and to others. He also noted L.G.'s description of digital penetration as painful, her bad dreams and intrusive thoughts about the incident, and unspecified behavioral changes reported by her mother.

Is Dr. Loughlin’s testimony proper?

Scenario 5: State v. Jennings, 209 N.C. App. 329 (2011)

Dr. Jones testified on direct-examination about the healing process of the vaginal orifice. Using a “hair scrunchie,” Dr. Jones illustrated how the vaginal opening in mature females stretches and retracts after they begin “making estrogen.” Dr. Jones also showed the jury a time-lapse photographic display of an “obvious [hymen] tear” healing over a four month period to the extent that the tear is no longer visible. Based on her illustrations, Dr. Jones explained that if she performed an initial examination of a child four months after an alleged incident of sexual abuse, she would be unable to conclude “one way or the other” as to whether the child had been sexually abused. The prosecutor then asked Dr. Jones about her examination of Anna:

PROSECUTOR: Dr. Jones, when [Anna] presented to your office, it was one year after this event, correct?

DR. JONES: Yes.

PROSECUTOR: Is it possible that she could have had a tear or some of these items that you just pointed out, but by the time you get her a year later, it could be gone?

DR. JONES: More than possible, probable.

PROSECUTOR: Is it also possible because she was estrogenized like you talked about with the scrunchie that there wasn't any injuries at all to begin with?

DR. JONES: It is possible.

PROSECUTOR: That he just didn't cause any [injury] when he—if—if he engaged in sexual activity with her?

DR. JONES: It's possible.

Is Dr. Jones’ testimony proper?

Scenario 6: State v. Wallace, 179 N.C. App. 710 (2006)

The State presented testimony from Dr. Powell, a clinical psychologist with a specialization in child sex abuse cases. Dr. Powell met the victim A.W. after she was expelled from school for drug possession.

During these meetings Dr. Powell learned about defendant's conduct with the victim. He testified that A.W.'s behaviors were consistent with those of a sexually abused child. Specifically, he stated that A.W.'s behavior, sense of trust, & emotional problems were consistent with behaviors of other sexually molested children.

Is Dr. Powell's testimony proper?

Scenario 7: State v. Khouri, 214 N.C. App. 389 (2011)

DR MOORE: [T]he statements and my observation of her testimony today showed me that there is a lot of confusion not in the details so much as just in her emotions. What I noticed was that there were times when she appeared to be trying to hold back emotional display, lips quivering, those kinds of things and you know this is -- making this sort of allegation if it is true and facing one's abuser is a very difficult and painful thing to do and sometimes what victims will do is sort of shut off emotions and become rather stoic looking as a defense, psychological defense against having to be in this situation. Just sort of turn it off momentarily and I witnessed that about her behavior on the stand.

Is Dr. Moore's testimony proper?

Scenario 8: State v. Webb, 197 N.C. App. 619 (2009)

Defendant's daughter was referred by her pediatrician to a child psychologist, Dr. List, after exhibiting anger problems. At trial, on direct examination, the following occurred:

PROSECUTOR: In your expert opinion, does the victim fit the profile of a child who has been exposed to trauma and sexual abuse?

DR. LIST: In my opinion, and in the time that I spent with her, and the manner in which she reported and described things, and her emotional responses, all suggested to me that yes, she had been exposed to trauma. And the manner of her description gave me no reason to doubt that there—make sure I phrase it—I believe that yes, she had been exposed to sexual abuse.

Is Dr. List's testimony proper?

Scenario 9: State v. Figured, 116 N.C. App. 1 (1994)

PROSECUTOR: What if anything did Child B tell you in the course of treatment about these incidents?

DR. EVERSON: Child B told me that the defendant inserted a screwdriver into his bottom and into Child C's bottom, inserted his penis into the bottoms of all three children, made Child B and Child C lick white powder off defendant's penis, and threatened them to keep them from telling.

PROSECUTOR: What if anything did Child A tell you in the course of treatment about these incidents?

DR. EVERSON: Child A told me that she saw white stuff come out of the defendant's penis when he stuck it in Child C's bottom.

PROSECUTOR: Did the children tell you anything else?

DR. EVERSON: Child A and Child B told me that the defendant threatened to kill their parents if they told on him.

PROSECUTOR: On the basis of your medical treatment of the children have you formed an opinion about whether they were sexually abused by the defendant?

DR. EVERSON: In my opinion, Child A and Child B were sexually abused by the defendant.

Is Dr. Everson's testimony proper?

Scenario 10: State v. Horton, 200 N.C. App. 74 (2009)

MS. FIORE: Over the course of counseling, the child described details of the alleged sexual abuse. She was very specific in her descriptions of the various events. For example, the child described an incident in which the defendant's knee was hurting the child's hip. The child told me that the defendant said he was sorry for hurting the child.

PROSECUTOR: As far as treatment for victims, for counseling victims, why would that detail be significant?

MS. FIORE: In all of my training and experience, when children provide those types of specific details it enhances their credibility.

Is Ms. Fiore's testimony proper?

Scenario 11: State v. Hensley, 120 N.C. App. 313 (1995)

DR. FINE: I first examined J.C. at the recommendation of the Haywood County Department of Social Services. I saw J.C. on several occasions following the initial interview.

PROSECUTOR: Based on your treatment of J.C., were you able to diagnose J.C.?

DR. FINE: Yes.

PROSECUTOR: What was your diagnosis?

DR. FINE: My clinical opinion and clinical diagnosis of J.C. actually consisted of three diagnoses: sexual abuse by history, adjustment disorder with mixed disturbance of emotions and conduct, and post-traumatic stress disorder.

PROSECUTOR: Did you form an opinion as to the possible cause of J.C.'s post-traumatic stress disorder?

DR. FINE: Yes. The cause would be the sexual abuse that he received, was the victim of, specifically anal penetration.

Is Dr. Fine's testimony proper?

Scenario 12: State v. Crabtree, 249 N.C. App. 395 (2016)

Dr. St. Claire testified as an expert witness. During her initial exam of L.R., St. Claire received L.R.'s medical history from the grandmother while Scott Snyder, St. Claire's child interviewer, interviewed L.R. about the alleged abuse. St. Claire's physical examination of L.R. revealed no physical signs of trauma or infection to L.R.'s vagina or anal area.

Dr. St. Claire testified about the clinic's five-tier rating system for evaluating an alleged child victim's description of sexual abuse. She testified, "[w]e have sort of five categories all the way from, you know, we're really sure [sexual abuse] didn't happen to yes, we're really sure that [sexual abuse] happened." St. Claire and Snyder each classified L.R.'s description as level five, the "most diagnostic" category. St. Claire testified that L.R.'s description provided a "clear disclosure" and a "clear indication" of sexual abuse. She testified that her team's "final conclusion [was] that [L.R.] had given a very clear disclosure of what had happened to her and who had done this to her."

Is Dr. St. Claire's testimony proper?

Scenario 13: State v. Worley, 268 N.C. App. 300 (2019)

Dr. Hendrix had practiced as a pediatrician for 24 years, and the State tendered her as an expert in the fields of pediatric medicine and child sexual abuse. When asked during direct examination whether "children tend to make up stories about sexual abuse," Dr. Hendrix answered in the negative. Dr. Hendrix then explained that Jane "gave excellent detail" regarding Defendant's illicit actions, and noted on cross-examination that "her story was very consistent."

The State tendered Ms. Sullivan as an expert in marriage and family counseling. She testified that trauma-focused therapy would be recommended "because of a specific event that happened to the child."

MS. SULLIVAN: In a therapeutic setting I'm not trying to investigate. I'm not—I'm there to sit with them with the feelings. We really work on how this certain incident that happened is going to impact her feelings and her thoughts in the long run. Not—I'm not trying to write a police report. Jane really needs that extra support for trauma-focused [therapy] because of the sexual abuse that she experienced.

MS. SULLIVAN: I believe [Jane].

Is Dr. Hendrix's testimony proper?

Is Ms. Sullivan's testimony proper?

Scenario 14: State v. Dye, 254 N.C. App. 161 (2017)

Dr. Rothe was accepted, without objection, as an expert in child sexual assault and in child medical examinations.

PROSECUTOR: [A]fter conducting the investigation, Dr. Roth[e], did you form any opinion regarding the possibility of sexual abuse?

DR. ROTHE: Right, so, like I said that having an absent hymen in that section of posterior rim is very suspicious for sexual abuse. Just for your background, the only time that as a clinical provider we can say sexual abuse happened is if we see that hymen within three days of the sexual abuse, and then we also track it [sic] healing. That's why the nomenclature becomes difficult because the hymen, like the inside of the mouth, heals very quickly. But [B.G.'s] exam with an absent posterior rim was very suspicious for sexual abuse and with the disclosure of sexual abuse—

Upon further questioning, Dr. Rothe twice reiterated that the results of the examination were "suspicious for vaginal penetration" due to the absence of the posterior rim of B.G.'s hymen. On cross-examination, Dr. Rothe admitted the results of her examination of B.G. were "suspicious but not conclusive" for vaginal penetration and that, without a "baseline" examination of B.G. conducted before the alleged abuse, it was "hard to tell" whether the trauma observed in the examination was "normal to [B.G.] or not."

Is Dr. Rothe's testimony proper?

Scenario 15: State v. Davis, 265 N.C. App. 512 (2019)

The State's expert was a nurse who had interviewed and examined Emma. During her examination of Emma, Emma did not act distraught and she denied counseling. Further, the nurse testified that Emma showed no physical signs of penetration or other sexual contact. On re-direct, the expert testified that the lack of physical indicators was still consistent with someone who had been sexually assaulted, testifying as follows:

PROSECUTOR: Now, in your training and experience, was this a consistent – was – was her exam consistent with people reporting of sexual abuse?

EXPERT: Yes.

PROSECUTOR: Okay. And [defense counsel] had asked you about the previous – different times you had actually examined other people in your training and experience, that they had had some physical findings; correct?

EXPERT: Correct.

PROSECUTOR: But you just told us that her exam was consistent with someone reporting a sexual assault; correct?

EXPERT: Correct.

PROSECUTOR: Can you explain that.

EXPERT: Some patients who have been assaulted may not have physical findings or there may not be physical evidence to suggest an assault took place. Sometimes it – there could be physical findings and sometimes there is not.

PROSECUTOR: Okay. In – in the times that you have been doing this, for the years you have been doing this, how many times have people come in with physical – actual physical – cuts, abrasions, all of that, that report this kind of complaint?

EXPERT: I can't really give a number, but it's less than those that do not have physical findings.

PROSECUTOR: So most that come that report being sexually assaulted, especially in the manner that she talked about ... don't present with physical findings like you are talking about?

EXPERT: That's correct.

PROSECUTOR: And that's why this is consistent; is that right?

EXPERT: That's correct.

Is the nurse's testimony proper?

Scenario 16: State v. Walston, 244 N.C. App. 299 (2015)

[Defense expert] Dr. Artigues testified on *voir dire* concerning her opinion regarding why the children may have believed they remembered being sexually assaulted by Defendant after periods of time in which they seemed to have forgotten these alleged incidents:

DR. ARTIGUES: [W]hat influenced my opinion about that was seeing that [their mother] had grilled the children, that she had told them, I will be here for you if you ever—or if you're ready to disclose this, that shortly after that they were shown a good touch, bad touch video, that the [ir] grandmother figure ... had cussed [J.C.] out for not disclosing, which applies a lot of emotional pressure to a child. That in 1994 DSS did an investigation in which both girls were interviewed by law enforcement. Again, we have these children being sexualized, is what we call it in therapist lingo, meaning they are given an identity around this claim that they have somehow been sexually abused or sexually harmed, which may not be true. But this is such a powerful influence and it keeps happening in their lives that they begin to take it on as true. It was also noted in [another witness'] statement that [their mother] talked about it frequently, that she'd talked about it over the years. There was a mention in the discovery that [their mother] had mentioned it at the post office to others. That [their mother] said, I knew it as soon as the girls made this disclosure. So it looked to me as though there were many things that happened that could have influenced memory and many ways in which emotional pressure was applied to these very young children that could result in the production of memories that are not true…

[Researchers] can get [people] to believe that they were lost in a mall, get them to believe that many things happened to them in childhood through suggestion that simply were not true. The other thing the research showed was that over time the subjects become more confident in their stories and the stories become more detailed. So even in the research setting they would interview the research subject the first time and they would give the outline of memory that [had] been implanted. But then later the

research subject interviewed the second time would provide more details. So what this illustrates is that memory is not a tape recorder in our brain. There's not a location in the brain for memory. Memory is stored all throughout our brain and thus cannot help but be influenced by other things. Memory is actually a recent production of a lot of things that are going on in our brain and highly suggestible to influence. One other thing I would mention is this has also been studied extensively in terms of eyewitness testimony, how they can be influenced. There have been many, many studies about memory and showing how memory reliability can be pretty shaky.

DEFENSE COUNSEL: Did you find, in reviewing the discovery, that the stories, the description that each of the ... girls gave regarding incident became more detailed, appeared to become more elaborate each time?

DR. ARTIGUES: Yes, it did.

DEFENSE COUNSEL: In your opinion, would this be consistent with a memory that has been suggested or invoked by some outside influences?

DR. ARTIGUES: It is consistent with that, yes.

Is Dr. Artigues's testimony proper?