

EXPERT TESTIMONY IN CHILD VICTIM CASES
JESSICA SMITH, UNC CHAPEL HILL

SCORECARD & SCENARIOS

Circle one

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| 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 |

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."

Was 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.

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

Was 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?