

Trying a B1 Sexual Assault Case
Physical Injury & *State v. Hinnant*

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TRYING A B1 SEXUAL ASSAULT CASE:

HINNANT ISSUES

OUTLINE OF DISCUSSION

- THE ORIGINAL MEDICAL EXCEPTION RULE BEFORE HINNANT
 - Whenever a child sex abuse victim has been taken to a doctor, or a psychologist, a social worker, etc. following an allegation of sexual abuse, the expert has been allowed to testify, as substantive evidence, to what the child sex abuse victim said including statements made with anatomically correct dolls. State v. Jones 89 N.C. App 584, 376 S.E.2d 139 (1988)
 - This principle extended to psychologists, other mental health professionals, social workers, assisting pediatricians and social workers acting as child evaluators. State v. Figured, 116 N.C. 1, 12, 446 S.E.2d 838 (1994)
- STATE OF NORTH CAROLINA vs. GEORGE ELTON HINNANT
 - Basic Facts – Case stemmed from an interview of the child victim by a **non-treating** psychologist **conducted two weeks after** the initial medical diagnosis and there was **no evidence that the child understood the purpose of the interview** held inadmissible by the North Carolina Supreme Court
 - Court discussed what statements were given to doctors and medical folks and what them inherently reliable because of treatment motive of the child not the prosecution motive of the adult
 - Testimony must affirmatively establish the declarant made the statements understanding that the statements would lead to medical diagnosis or treatment and applied objective standards

- If the declarant's statements are not pertinent to medical diagnosis, the declarant had no treatment-based motivation to be truthful
- The interview cannot be conducted for the sole purpose and use of trial preparation to prosecute the accused
- Post medical diagnosis statements by child victim are not reasonably pertinent to medical diagnosis or treatment

➤ **THE HINNANT TWO PART TEST**

- 1) The proponent of the evidence "must affirmatively establish that the declarant had the requisite intent by demonstrating that the declarant made the statements understanding that they would lead to medical diagnosis or treatment." When determining whether the requisite intent existed, the trial court considers "all objective circumstances surrounding the declarant's statements." State v. Hinnant, 315 N.C. 277, 523 S.E.2d 663 (2000)

FACTORS TO CONSIDER

- a) The setting of the interview
- b) Whether an adult explained to the child the need for treatment and the importance of truthfulness
- c) With whom, and under what circumstances, the child was speaking
- d) The nature of the questions

**** Dual Purpose is ok – State vs Isenberg, 148 N.C. App. 29, 557 S.E.2d 568 (2001)**

- 2) The proponent of the evidence must show that the statements were reasonably pertinent to medical diagnosis or treatment

**** a child sexual assault victim's identification of the perpetrator is reasonably pertinent to medical diagnosis and treatment as this identification is pertinent to continued treatment of the possible psychological and emotional problems resulting from the offense Isenberg, 148 N.C. App. at 39-39; State v. Lewis, 172 N.C. App. 97, 105 (2005)**

FACT PATTERNS

- 1) After disclosing the abuse by Randy, Kayla is taken by her mother to “The Children’s Place”. Kayla is interviewed by Nurse Jane Jones. Nurse Jones meets with Kayla in a standard patient room at the facility. Other than a few Dora the Explorer coloring books and artwork the room is non-descript. Before the interview, Nurse Jones who is dressed in a standard white nurse’s uniform, informs Kayla that the purpose of the interview today is to provide information to the doctor so the doctor can stop Kayla from hurting again and help her feel better. Nurse Jones tells Kayla the importance of telling the truth and the truth will allow Doctor Smith to help her and make her feel better. Nurse Jones then begins her interview and physical examination. Nurse Jones asks open ended questions and does not use any anatomical dolls while conducting the interview and examination. Law enforcement is not present. Kayla tells the nurse that Randy touched her private area with his hands, his mouth and his “thing”. Are these statements admissible?? State v. Lewis 172 N.C. App. 97, 616 S.E.2d 1 (2005)
- 2) After Nurse Jones conducts her examination and interview with Kayla, Dr. Smith reviews Kayla’s information and the examination. Dr. Smith conducts an additional physical examination of Kayla and finds physical evidence that Kayla has been sexually abused. The physical examination involves Kayla’s private areas. While conducting the examination Kayla tells Dr. Smith that Randy touched her private area with his hands, his mouth and his “thing”. What can Dr. Smith testify to at trial? State v. Brothers, 151 N.C. App. 71, 564 S.E.2d 603 (2002)
- 3) After disclosing the abuse Randy, Kayla is taken by her mother to the local police department. The head of the crimes against children unit at the police station contacts the local department of social services in order to get a licensed child therapist to interview Kayla. Upon

arrival at the department of social services Kayla is escorted to a child-friendly room and is introduced to the child therapist by the detective. Kayla is given anatomical dolls to play with as well as oreos and a juice box. Before leaving the detective tells Kayla to tell the therapist all the bad things Randy has done to her and for her to be truthful. Kayla tells the therapist that Randy touched her private area with his hands, his mouth and his “thing”. The therapist shows Kayla the anatomical dolls and asks her if this is where he touched her. Are these statements admissible? State v. Waddell 351 N.C. 413, 527 S.E.2d 649 (2000)

- 4) After the interview and examination by Dr. Smith and Nurse Jones, Kayla does not see any medical providers for nearly three months. Kayla’s maternal grandmother takes Kayla to a local counselor who has worked with Kayla’s family in the years prior to the accusations made against Randy. The counselor works at the local battered women’s shelter. The counselor conducts a play “therapy” session. The session takes place in a very colorful room filled with board games, art supplies, play doh, dolls, building blocks and all other types of toys for children to play with while sessions take place. During the session Kayla becomes tearful and indicates she misses Randy and wants to see him again. The therapist tells Kayla that if Randy did the things that he’s accused of then Kayla will not see Randy again. Kayla replies that she knows Randy wouldn’t do it and she knows she will see him again. At trial defendant Randy tries to introduce statements. Are the statements admissible? State v. Carter, 216 N.C.App. 453, 718 S.E.2d 687 (2011)
- 5) Assuming these new facts – Kayla has been acting out at school. Her teacher and mother have been concerned about Kayla’s violent outburst. Kayla’s teacher and mother decide to send Kayla to a licensed professional counselor for several counseling sessions. The counselor utilizes “draw” therapy with Kayla and Kayla draws several pictures of herself in the shower, a “sad” bed and a “happy” bed, penises and a picture of herself with no mouth. Kayla reports at the

last session that Randy has touched her privates with his thing and the counselor immediately contacts the local police department who in turn contacts the Child Advocacy Center. Kayla is interviewed by a pediatric nurse and is examined by Dr. Friday. The examination and interview are conducted in a generic examining room and the nurse and the doctor inform Kayla that the purpose of the interview and examination are to help her and treat her. Each professional emphasizes the importance of telling the truth. Kayla again reports that Randy has touched her in a bad way. Is the testimony of the counselor admissible? Is the testimony of the nurse and doctor admissible? What if Kayla refuses to testify at trial? State vs Isenberg, 148 N.C. App. 29, 557 S.E.2d 568 (2001)