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FILED

STATE OF NORTH CAROLINA IN THE GENERAL COURT OF JUSTICE
2023 NOV 27 AM 9:58
SUPERIOR COURT DIVISION
YANCEY COUNTY FILE NO. 21 CRS 50084
YANCEY COUNTY, C.S.E.

BY _____
STATE OF NORTH CAROLINA) MOTION FOR PROTECTIVE ORDER
)
-vs-)
)
RICKY DALE MURPHY ,)
Defendant)
_____)

NOW COMES the Defendant, by his undersigned counsel, and pursuant to the provisions of the Fifth, Sixth and Fourteenth Amendments to the Constitution of the United States , Article I § 23 of the North Carolina Constitution and N.C.G.S. § 15A-1002 et. Seq., and respectfully moves the Court to enter an Order providing that (1) the contemplated court ordered commitment to examination by Dr. Wolfe for An insanity evaluation only (2) the Defendant cooperate fully, to the extent possible, with such evaluation; (3) information obtained from the Defendant by mental health professional from Central Regional Hospital shall not be disclosed to the State unless such disclosure is subsequently ordered by the Court; (4) in the event the Court does subsequently order disclosure to the State of any information provided by the Defendant to DR Wolfe , said information may not be used against the Defendant by the State as part of its case in chief in the guilt phase or in the penalty phase of the trial and may not be used by the State as evidence against the Defendant except for the limited purpose of rebuttal of expert testimony presented by the Defendant in support of an insanity defense or other claim of mental disease, defect, or other condition bearing on whether Defendant had the requisite mental state for the offense charged.

In support of said Motion, the Defendant shows the following:

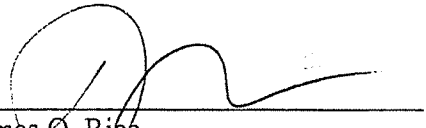
1. The Defendant has been indicted on charges of, among other things, First Degree Murder; the State has filed a Rule 24 Petition indicating its intent to seek the Death Penalty in this matter.
2. The State filed a Motion on November 27, 2023 requesting an examination by Dr. Nicole Wolfe, employed by North Carolina Central Regional Hospital.
3. A court ordered mental health evaluation implicates the Defendant's Fifth Amendment Rights against self-incrimination and Sixth Amendment right to counsel.
4. In order to protect the Defendant's constitutional right to be free from self-incrimination and right to a full and complete determination of his compe, it is

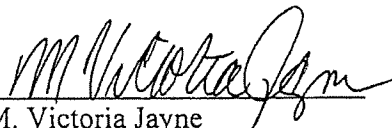
essential that the Court enter an Order limiting the scope and purpose of the evaluation and the circumstances in which any information provided by the defendant to Dr Wolfe at North Carolina Central Regional may be disclosed to, and used by the State.

WHEREFORE, the Defendant respectfully requests that the Court issue an Order providing the following:

- A. That the Court ordered evaluation by Dr. Wolfe be for an insanity (D.C) evaluation only.
- B. That the Defendant cooperate fully, to the extent possible, with such evaluation.
- C. That information obtained from the Defendant by Dr. Wolfe shall not be disclosed to the State unless such disclosure is subsequently ordered by the Court.
- D. That in the event the Court does subsequently order disclosure to the State of any information provided by the Defendant to Dr. Wolfe, said information may not be used against the Defendant by the State as part of its case in chief in the guilt phase or in the penalty phase of the trial and may not be used by the State as evidence against the Defendant except for the limited purpose of rebuttal of expert testimony presented by the Defendant in support of an insanity defense or other claim of mental health disease, defect, or other condition bearing on whether Defendant had the requisite mental state for the offense charged.
- E. That Counsel for the Defendant be present if requested by the Defendant during the evaluation by Dr. Wolfe and that the Defense be allowed to record a video taping of the evaluation.

This the 27 day of November 2023.


James O. Rice
1944 Hendersonville Rd
Asheville, NC 28801

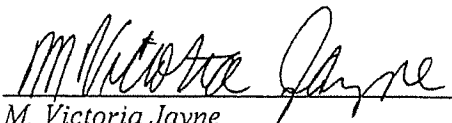

M. Victoria Jayne
Office of the Capital Defender
43 College Place, #203
Asheville, NC 28803

any info by LE or 4th + recorded

CERTIFICATE OF SERVICE

I certify that I served a copy of the foregoing **Motion for Protective Order** by hand delivery on the Yancey County District Attorney office.

This the ²⁷ day of November 2023.


M. Victoria Jayne

STATE OF NORTH CAROLINA
YANCEY COUNTY

FILED

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
21 CRS 50084

STATE OF NORTH CAROLINA 2023 DEC -1 PM 3: 58

V. YANCEY COUNTY, C.S.C. ORDER FOR EVALUATION
OF DEFENDANT

RICKY DALE MURPHY,
DEFENDANT.

THIS MATTER, having come on to be heard before the undersigned Superior Court Judge presiding in Yancey County, North Carolina, on the written motion of the State requesting a forensic psychological evaluation of the Defendant and the motion for Protective Order filed on behalf of the Defendant, the Court makes the following findings:

1. That Defendant was charged with Assault by Strangulation, Assault with a Deadly Weapon Inflicting Serious Injury, Resisting a Public Officer, and Murder.
2. Defendant has indicated intent to file notice of intent to offer defense of insanity and diminished capacity at the time of offenses.
3. Defendant has hired an expert psychologist, John Warren, Ph.D..
4. Defendant has hired an expert psychiatrist, Dr. George Corvin.
5. Defendant has hired an expert neuropharmacologist, Wilke Wilson, Ph.D..
6. Defendant has provided their reports to the State.
7. The State requested the Court order the Defendant to be evaluated by Dr. Nicole Wolfe, a forensic psychiatrist employed by Central Regional Hospital.
8. The best interest of justice would be served in allowing the State to adequately defend Defendant's claim by providing an examination of Defendant by the State's expert.

IT IS, THEREFORE, ORDERED, ADJUDGED and DECREED as FOLLOWS:

1. That the State is entitled to an independent evaluation of the Defendant.
2. That Defendant be evaluated by an Dr. Nicole Wolfe at Central Regional Hospital in regards to his present capacity and his capacity at the time of the offense.
3. That Defendant be committed to Central Regional Hospital for a period not to exceed sixty days for observation and treatment to determine the capacity of Defendant to proceed and his capacity at the time of the offense. The sheriff of Yancey County shall transfer Defendant to Central Regional Hospital and shall return Defendant to this county when notified that the evaluation has been completed.
4. That upon presentation of a copy of this Order by Dr. Nicole Wolfe of Central Regional Hospital, any physician or clinician, licensed health care facility, licensed health care provider, local management entity, area mental health program, the North Carolina Division of Adult Correction, the North Carolina Division of Juvenile Justice, any county detention facility, or any school district is hereby authorized and required to furnish copies of all records, including school records and records

containing information relating to alcohol abuse, drug abuse and psychological or psychiatric conditions, concerning defendant to the forensic evaluator designated by Central Regional Hospital.

5. That upon request of Dr. Nicole Wolfe or Central Regional Hospital, counsel for the State and defendant shall furnish to the forensic evaluator designated by Central Regional Hospital such records and information in counsel's possession as the evaluator requests, including but not limited to copies of law enforcement reports, investigations, witness statements, defendant's medical records, and prior psychiatric or psychological evaluations of defendant. Nothing herein shall be construed to require counsel to divulge any information, documents, notes, or memoranda that are protected by attorney-client privilege or work-product doctrine.
6. That Central Regional Hospital shall give counsel for the Defendant a 10-day notice of the date and time of any interviews of the Defendant and that counsel will be allowed to occupy a separate waiting area during any such interview. Counsel shall have confidential access to their client in the event that the Defendant makes a request to consult with his attorneys.
7. That any interviews of the Defendant that are conducted by personnel at Central Regional Hospital shall be video recorded by the staff at Central Regional.
8. In the event that Central Regional Hospital is unable to record any such interview, counsel for the Defense shall be permitted to record said interviews.
9. That whichever entity makes the recording of said interviews, that entity shall provide copies of said interviews to the State and to the defense via liquid files or other available means.
10. That Dr. Wolfe shall produce a report of her findings and provide a copy of that report to the District Attorney who will then provide a copy of said report and any underlying data or bench notes to the Defendant's counsel pursuant to the State's continuing obligation to voluntarily provide discovery under Article 48 of Chapter 15A of the General Statutes.

Signed and entered this 1 day of December RGH
~~November~~, 2023.



Honorable R. Gregory Horne
Superior Court Judge Presiding

STATE OF NORTH CAROLINA FILED COUNTY OF YANCEY	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION FILE NO. 21 CRS 50084
2024 AUG 23 P 2:45	
STATE OF NORTH CAROLINA YANCEY COUNTY, C.S.C. v. BY _____ RICKY DALE MURPHY	MOTION TO COMPEL ADDITIONAL DISCOVERY AND SANCTIONS FOR NONCOMPLAINT WITH COURT ORDER

NOW COMES Counsel for the defendant and moves the court to order that the following additional items of discovery be provided to the defense pursuant to NCGS 15A- 903 ff., and Order entered December 1, 2023, by the honorable R. Gregory Horne. In support of said motion counsel shows the court:

1. Judge Gregory Horne ordered on December 1, 2023, that the Defendant be transported to Central Regional Hospital for evaluation by Dr. Nicole Wolfe. Among other matters addressed, Judge Horne ordered the following:
 - " 7. That any interviews of the Defendant that are conducted by personnel at Central Regional Hospital shall be video recorded by the staff at Central Regional.
 8. In the event that Central Regional Hospital is unable to record any such interviews counsel for the Defense shall be permitted to record said interviews."
2. Once notified by Dr Wolfe of the evaluation dates for Mr. Murphy, Counsel Jayne and Private Investigator Cody Muse made arrangements to be present and available to Mr. Murphy for the evaluation dates provided by Dr Wolfe of Thursday Feb 8, 2024 and Friday, Feb 9, 2024 at Central Regional Hospital.
3. Upon arrival on Feb 8th, counsel Jayne and PI Muse were escorted to a room in the basement of the hospital where they saw Mr. Murphy briefly and then were escorted back to the lobby. Investigator Muse did leave recording equipment in the room in the event there was an issue with the hospital recording equipment, and to avoid disruption of the evaluation. Dr Wolfe did not meet with counsel nor was there any conversation related to the evaluation on the 8th. No one from Dr Wolfe's staff informed counsel or PI Muse when the evaluation started or

concluded. In fact, when they made inquiry to the front desk around 5pm on the 8th, they were informed that the evaluation for Thursday had been concluded over an hour earlier. Counsel insisted that they be taken to the room so Investigator Muse could remove his personal recording equipment. There was no discussion with Dr Wolfe or any other hospital staff about the hospital not recording the evaluation on February 8, 2024.

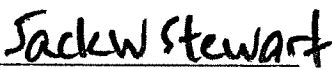
4. On Feb 9, 2024, Counsel and Investigator Muse returned to the hospital at 9 AM, requested to see Mr. Murphy and requested that they be placed closer to the exam room so they could be available to Mr. Murphy. Again, Dr Wolfe never spoke with counsel and Investigator Muse set up his equipment in the corner of the exam room in the event the hospital's equipment had issues. Again, no conversation occurred with Dr Wolfe; counsel was not informed when the evaluation started or concluded; both the client and Dr Wolfe had left the exam room with no notice to counsel and again Investigator Muse had to request to remove his equipment.
5. Per the Court Order, Counsel has requested that the videos and audio of the evaluations of Mr. Murphy on February 8 and 9, 2024 be provided to counsel and is now informed that the hospital did not video and / or record the evaluations.
6. Although Counsel was able to obtain some of the video due to Investigator Muse leaving his camera in the on position on the 8th and 9th, counsel intended to rely on the quality and completeness of the hospital recording not only for counsels' review but for review by the defense forensic experts. Had Counsel known that Dr Wolfe did not intend to comply with the court order and was not recording the evaluation, Investigator Muse would have placed the recorder in a closer position and checked his battery and audio regularly.
7. Prior to the evaluations Dr Wolfe received the order entered by Judge Horne. Counsel is informed and believes that she was also advised by the state of Judge Horne's Order. She advised counsel via an email on 2/7/2024 that "regarding videotaping, yesterday's recording was successful. We will manage the recordings on Thursday and Friday so it will not be necessary to bring this additional recording equipment." Counsel did advise her that the defense would bring equipment as well, but no discussion occurred that she would not record if we had our equipotent in the room.

8. Counsel previously requested all underlying data including all videos of all interviews with the defendant as ordered by the court. As of the filing of this motion counsel has not received the recordings of approximately 5 hours of interviews/evaluation.
9. Counsel has previously requested the CVs of both Nicole Wolfe, and Jessica Hill. Further, counsel has requested copies of any and all drafts of said final report; all emails or notes of texts between Dr Wolfe and Jessica Hill pertaining to the evaluation of the defendant, and any other interviews, emails and/or phone calls during which this case was discussed.
10. Counsel has requested notes of any conversations pertaining to a web ex between the District Attorney office and Dr Wolfe, referred to in emails dated February 16, 2024. Further Counsel requests confirmation as to whether Dr Wolfe or Dr Hill, who conducted much of the evaluation according to notes received, authored the final report.
11. Counsel has requested all other notes, emails, texts, documents, audios and videos pertaining to the evaluation of the defendant prior to, during and following the evaluation dates of 2/6/24 to 2/9/24.

WHEREFORE Counsel prays the court to compel the State to comply with all previous orders entered in this case for compliance and discovery related to the evaluation of Mr. Murphy by Dr. Nicole Wolfe or others at Central Regional Hospital and SANCTION the state in the event of any violations of Judge Horne's Court Order up to and including suppression of testimony by the state's rebuttal expert witness, Dr Nicole Wolfe or her associate, Dr. Jessica Hill.

This the 19 day of August 2024


Victoria Jayne
Office of the Capital Defender
43 College Place Suite 203
Asheville NC 28801


Jack W. Stewart
61 N Market St
Asheville, NC 28801

CERTIFICATE OF SERVICE

I, the undersigned, being an attorney duly licensed to practice in the state of North Carolina, hereby certify that I served a copy of the foregoing **Motion for Additional Discovery** by first class mail on::

Yancey County District Attorney
6 Town Sq.
Burnsville, NC 28714

This the 20 day of Aug 2024.



M. Victoria Jayne

STATE OF NORTH CAROLINA COUNTY OF YANCEY	FILED	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION FILE NO. 21 CRS 50084
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STATE OF NORTH CAROLINA v. RICKY DALE MURPHY	2025 FEB -5 P 2:18 YANCEY COUNTY, NC BY _____	SUPPLEMENT TO MOTION TO COMPEL ADDITIONAL DISCOVERY AND SANCTIONS FOR NONCOMPLIANCE WITH COURT ORDER

NOW COMES Counsel for the defendant and moves the court as follows:

1. Counsel previously filed a motion to compel court ordered discovery and requested sanctions for noncompliance with Judge Horne's order, dated December 1, 2023.
2. The court heard testimony from the proposed state rebuttal expert, Dr. Nicole Wolfe, on December 18, 2024, during which Dr Wolfe admitted that she did not video record the evaluations of the defendant she performed on February 8 and February 9, 2024. Further she testified that she had received and read Judge Horne's order and was aware that he had ordered her to video record any and all interviews with the defendant.
3. In addition, during her testimony, Dr Wolfe admitted that she had in fact recorded the interview/ evaluations with a handheld recorder on February 8 and February 9. She admitted that she did not preserve the recordings but, instead, relied on an unnamed third party to "transcribe" the recordings, and allowed the recordings to be deleted. Said transcriptions are not certified, are riddled with blanks and there are no dates or notification of times contained on the alleged transcriptions. The transcriber is unknown to counsel.
4. Counsel believes and alleges that Dr Wolfe's actions, including her decision not to video the evaluations and her decision to erase the recordings from her hand held device, were intentional and not the result of any malfunction of the recording equipment.
5. Further and of utmost concern to counsel for Mr. Murphy, Dr Wolfe testified falsely, under oath. Specifically, she testified that she had a conversation with

defense private investigator Cody Muse, concerning his recording equipment and the recording by the defense of the evaluations on February 8 and 9th, 2024.

Counsel has requested but has but has not yet received an official transcript of the hearing held December 18, 2024. Counsels' notes show that Dr Wolfe testified that she asked PI Muse if his camera would record for up to 4 hours and that he said something to the effect of "your good to go." PI Muse testified that the conversation she testified about never happened.

Further, he testified that throughout the 2 day period during which he and counsel Jayne were in the building for the evaluations, he never met either doctor; never had a conversation with her or any doctor about anything. He testified that no one advised him or counsel Jayne when the evaluation was starting or when it ended or when if any breaks were taken.

He testified that although he set up his camera for back up, it failed to record the entire evaluation on the 8th due to the battery dying about 2 hours into the session. He testified that he saw a handheld recording device on the table the afternoon of the 8th when he was escorted down to the basement room to turn on the camera. He testified that he observed Dr Wolfe pull a hand held recorder from her pocket on the 9th, when he reviewed his recording. No conversations took place between Dr Wolfe or her assistant with PI Muse on the 8th or on the 9th on the recordings or any other time.

A copy of what the defense was able to video during the evaluations on the 8th and 9th has been provided to the court and to the state.

Fortunately, the defense was able to capture at least some of the evaluations done on Feb 8 and 9, 2024, clearly showing no conversation between PI Muse and any doctor. Unfortunately, there is no way to verify that the defense was able to video the entire evaluation from start to completion on either day, due to the total lack of communication over the 2 day period as well as the absence of any time or date mentioned by Dr Wolfe when she commenced or finished her interviews with Mr. Murphy.

6. The Court has broad discretion to determine which sanction, if any, to impose on the state for failure to follow a court order and/or for presenting false testimony under NCGS 15A-910 (A) including but not limited to prohibiting the party from introducing evidence, declaring a capital case non capital and /or dismissing the charges.

7. The capital nature of this trial requires higher scrutiny by the Court of the consequences of lost or destroyed evidence and false testimony presented by the state under the 6th, 8th and 14th amendments of the United States' Constitution and by the North Carolina State's Constitution, Art I, 19,23-27.

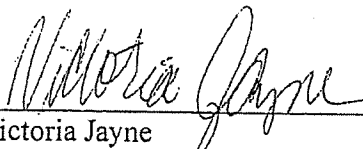
It is well established that when a defendant's life is at stake, a court must be particularly sensitive to ensure that every safeguard is observed, *Gregg v Georgia*, 428 U.S. 153,187 (1976), because the penalty of death is qualitatively and profoundly different from any other sentence. See *Ford v. Wainwright*, 477 U.S. 399, 411 (1986). For this reason, our system of justice must go "to extraordinary measures to ensure that the prisoner is afforded process that will guarantee, as much as is humanly possible, that the sentence was not imposed out of whim, passion, prejudice or mistake." *Eddings v. Oklahoma*, 455 U.S. 104,118 (O'Connor, J, concurring) (emphasis added). Extraordinary measures must be taken at both stages of any capital trial. *Beck v. Alabama*, 447 U.S. 626,638 (1980).

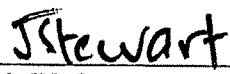
8. The obvious violation of the court order by the proposed rebuttal expert witness for the state; the destruction of the "best evidence" recordings of the evaluations by the proposed witness; and the false testimony of the witness as to conversations that never happened in an attempt to "fix" or explain the noncompliance with the court order to video record render the proposed expert's testimony so unreliable and so unfair that the court should at a minimum disallow the state to present any testimony and /or opinions of this witness at trial as sanction for violation of the defendant's rights to due process and deprivation of this right to a fair and just trial.

WHEREFORE the Defendant respectfully prays the Court as follows:

1. Order one or more of the following reliefs:
 - A. Order as a sanction that the testimony and opinions of Dr Nicole Wolfe or her assistant Dr Jessica Hill be disallowed in this case for violations of the court order, destruction of evidence and false testimony.
 - B. Strike the death penalty in this case as a sanction in this case
 - C. Dismiss the charges.

This the 5 day of February 2025.


Victoria Jayne
Office of the Capital Defender
43 College Place Suite 203
Asheville NC 28801

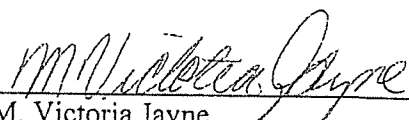

Jack W. Stewart
61 N Market St
Asheville, NC 28801

CERTIFICATE OF SERVICE

I, the undersigned, being an attorney duly licensed to practice in the state of North Carolina, hereby certify that I served a copy of the foregoing **Motion for Additional Discovery** by first class mail on::

Yancey County District Attorney
6 Town Sq.
Burnsville, NC 28714

This the 5 day of February 2025.


M. Victoria Jayne

STATE OF NORTH CAROLINA
YANCEY COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. 21 CRS 50084

STATE OF NORTH CAROLINA)
-vs-)
RICKY DALE MURPHY)
Defendant)

ORDER

FILED
2025 MAR 20 P 3:56
YANCEY COUNTY, C.S.C.
BY _____

THIS MATTER came on for hearing on December 18, 2024 and was completed on February 14, 2025 before the undersigned Superior Court Judge, Gary Gavenus, upon a Motion to Compel and for Sanctions, filed by counsel for the Defendant on August 19, 2024. Following the first hearing date, Counsel for the Defendant filed a supplement to the original motion on February 5, 2025. The matter, not concluded on December 18, 2024, was continued and was completed on February 14, 2025. The Court having heard testimony presented by the state and by the defense, including the introduction of various exhibits from both sides, makes the Following Findings, Conclusions of Law and Order:

PROCEDURAL HISTORY

1. Defendant was indicted on one count of first-degree Murder on November 1, 2021, for the murder of his wife that occurred on or about March 1, 2021. On February 21, 2022, the state declared this case to be a capital case.
2. On November 2, 2023, counsel for the defendant filed a Motion for pretrial hearing pursuant to NCGS 15A-959(c) to determine that the defendant was insane at the time of the offense.
3. In addition, Counsel filed a Notice of the potential defenses of insanity and diminished capacity. Counsel filed Notice of experts, including forensic psychiatrist George Corvin and forensic psychologist John Warren, and provided reports and CVs to the state, and underlying data.
4. On November 22, 2023, the state filed a Motion to Order Defendant be evaluated "in regard to his competency and competency at the time of offense." The state

specifically asked that the defendant be examined by Dr Nicole Wolfe at NC Central Regional Hospital.

5. In response, Counsel for the Defendant filed a Motion for Protective Order on November 27, 2023, requesting among other matters that counsel for the defendant be present if requested by the Defendant during the evaluation by Dr Wolfe and that the Defense be allowed to video tape the evaluation.
6. On December 1, 2023, the Honorable Gregory R. Horne entered an Order regarding the evaluation by Dr Nicole Wolfe including as follows:

“That any interviews of the Defendant that are conducted by personnel at Central Regional Hospital shall be video recorded by the staff at Central Regional.”

“In the event that Central Regional Hospital is unable to record any such interview, counsel for the Defense shall be permitted to record said interviews.”

“That whichever entity makes the recording of said interviews, that entity shall provide copies of all interviews to the State and to the Defense via liquid files or other available means.”

7. Testimony shows that the defendant was transported to Central Regional and was interviewed/evaluated by Dr Nicole Wolfe and Dr. Jessica Hill on February 6, 8, and 9, 2024.
8. On August 23, 2024, Counsel for the defendant filed a Motion to Compel Additional Discovery and Request for Sanctions for Noncompliance with Court Order, alleging that Dr Nicole Wolfe had failed to provide the video recordings of the evaluations on Feb 8 and 9, 2024 to the state and had acknowledged receipt of and awareness of Judge Horne’s order for her to video record all interviews with Defendant. The Defense alleged they were missing approximately 5 hours of the evaluation of the defendant due to a battery failure of their back up camera and lack of contact with their client and Dr Wolfe on February 8 and 9.

Further, Counsel for defendant requested all recordings, drafts, emails and notes between Drs Wolfe and Hill regarding the report issued and signed by Drs Wolfe and Hill. Said report from Dr Wolfe and her associate disagreed with the opinions of Drs Corvin and Warren and others that the Defendant was insane at the time of the killing of his wife.

9. Following the first day of hearing and sworn testimony on December 18, 2024, Counsel for the Defendant filed a supplement to the Motion to compel and request for sanctions praying that the testimony and opinions of Dr Nicole Wolfe be disallowed in this case for violations of the court order, destruction of evidence and false testimony.

10. Following the first day of hearing in December 2024, the state filed a motion asking for the raw testing data reviewed by Dr. Warren be made available and for the San disc cards from the Defense Private investigator's camera be made available for inspection by the state crime lab. The State and Defense entered into consent orders regarding these matters.

FINDINGS OF FACT

1. The Court Finds Dr Wolfe's failure to adhere to Judge Horne's Order to video record all interviews of the Defendant to be an intentional willful violation on her part. The court refers to the following testimony to support this finding:
 - A. Dr Wolfe testified that she received the Order to video record, read it, and decided not to record the interviews the afternoon of February 8, 2024, and all of February 9, 2024. (T. Vol 1, 59-76, 82)
 - B. Dr Wolfe testified that she used a handheld recorder during every interview with the defendant. She testified she did not preserve or turn over the audio to the state or defense. She testified that "we at Central Regional do not have them." (T Vol 1, p 45) She testified there "are no audio files", (T Vol 1, p 104). However, the court learned on February 14 that the audios were in fact recovered after the December hearing (T. Vol 2, p 94).
2. The Court Finds that the inconsistent and changing testimonies of both Dr Wolfe and Dr Hill as witnessed by the court and evidenced by the record, calls in to question the credibility of these doctors solely as to the facts and circumstances surrounding the recording of the interview of the defendant.
3. The court further finds that the defense did not provide the state with copies of what they were able to video tape until December 18, 2024, that Mr. Muse was present at the time the defense provided the State with the required discovery and yet his testimony regarding his lack of knowledge of this late compliance with the court order at the February 14, 2025 hearing was contrary to the facts as specifically observed by the court on December 18, 2024.
4. Although the court having viewed the tapes notes that the recordings do not show any interaction between either doctor and Mr. Muse, the issues the court has with regard to the testimony of Drs. Wolfe, Hill and Mr. Muse, as noted herein, make it impossible for this court to determine what conversations actually did or did not take place.

5. The only clear conclusions are that Drs. Wolfe and Hill willfully and without justification violated the Order of Judge Horne as found herein and that the defense willfully and without justification violated the Order of Judge Horne as it relates to timely providing the defense's videos of the defendant's interviews to the State.
6. The court finds that the Prosecutors did Not act improperly and should not be denied the opportunity to obtain an independent forensic evaluation if they decide to do so.
7. The court finds that the willful violation of the court order to video record, and the willful failure to turn over the audio recording is prejudicial to the Defendant. The court notes that the portion of the evaluation conducted the afternoon of February 8, 2024, when the doctors began talking about the actual offense is not video recorded. The defense camera battery apparently died and Dr Wolfe did not video record this relevant and crucial part of the evaluation and did not produce the audio recordings without the court ordering that an inquiry be made to recover the audio.

CONCLUSIONS OF LAW

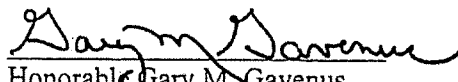
Based on the Foregoing Findings of Fact the Court Concludes as a Matter of Law that Drs Wolfe and Hill willfully violated the Order of Judge Gregory Horne and that said violations prejudiced the Defendant's constitutional rights to a fair and impartial trial. Further the Court concludes that the following order is necessary to promote justice and further ensure that the Defendant's constitutional rights to a fair trial are protected.

IT IS THEREFORE ORDERED AND ADJUDGED AS FOLLOWS:

1. Dr Nicole Wolfe and Dr Jessica Hill are disqualified to testify as forensic experts in this case based on their willful violation of a court order entered by Judge Gregory Horne, Neither their forensic report nor their opinions, consultations, interviews, nor notes will be utilized by the state or the defense at any time for any purpose in presentation of this case, including sharing, disclosing, or otherwise making references to the same in use and employment of another expert or forensic evaluation.
2. The State is permitted to obtain another evaluation if they choose to do so. The state is expressly prohibited from sharing, disclosing, referencing or in any way utilizing the specific findings, and expert opinions of Wolfe and Hill with any new independent evaluator. Specifically, neither the state or the defense shall provide copies of the report prepared by Wolfe and/or Hill, nor any abbreviated or truncated version of that report and the specific findings set therein.

3. In the event the state seeks a new evaluation the conditions of the original order entered by Judge Gregory Horne on December 1, 2023, remain in effect except as modified below or as made be modified by further orders of the court:
 - A. Any interviews of the Defendant conducted by any proposed expert of the state shall be video /audio recorded.
 - B. In the event said proposed expert is unable to record any interview that proposed expert shall notify the State and the defense.
 - C. The defense shall video/audio record any interviews conducted by any proposed expert of the State.
 - D. Both the State and the defense shall provide copies of the complete recordings to the opposing party within 20 days of the completion of the interviews.
 - E. The State shall give counsel for the Defendant at least 10 days' notice of the date, time and location of said interviews. The parties may also agree to a date, time and place when the interview will occur.
 - F. Counsel for the defendant shall have reasonable confidential access to the defendant before and during the interview in the event defendant makes a request to see counsel. Counsel for the defendant shall be allowed to occupy a separate waiting area during the interviews that provides reasonable close access to the defendant.
4. The trial date set in April 2025 is continued until a future date agreed to by the parties and the court.

Entered in Open court the 14th of February 2025
Signed the 20th day of March 2025


Honorable Gary M. Gavenus
Senior Resident Superior Court Judge

STATE OF NORTH CAROLINA COUNTY OF YANCEY	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION FILE NO. 21 CRS 50084
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STATE OF NORTH CAROLINA v. RICKY DALE MURPHY	RESPONSE TO MOTION TO COMPEL

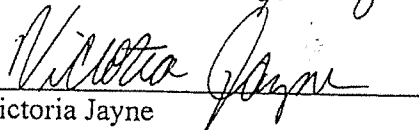
NOW COMES Counsel for the defendant responding to the state's "motion to compel" as follows:

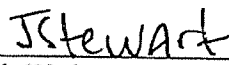
1. As stated in sections 1 through 6 of the state's motion, the defendant by and through counsel has consistently and early on provided detailed reciprocal discovery as evidence by the attached certificates (attachments 1-5). Further counsel for the defendant has complied with the requirement of NCGS 15A-905 by providing all underlying data that counsel intends to introduce in evidence at trial and/or any underlying basis for any expert's opinion, as clearly outlined in the reports of experts provided to the state.
2. As to the allegations of section 7 counsel denies that any testing was done by either expert, Dr George Corvin or Dr John Warren, in this case, and that neither forensic expert relied on any testing done by any third party to form their opinions as to Mr. Murphy's mental state.
3. Further, Dr Wolff was advised on February 15, 2024, that Dr Warren did NOT administer any tests and did not rely on any third-party testing to form his opinion, and that Dr Warren was concerned about the legalities of turning over 3rd party data. (Attachment 6) Following that disclosure to her, Dr Wolfe made no further inquiry known to counsel concerning testing. Thus, the testimony of Dr Wolfe that she "made numerous attempts" to obtain data is unfounded and inaccurate. Neither she nor the state on her behalf sought any protective order for the court to allow Dr Warren to release any 3rd party data.
4. During her recent testimony on Defendant's motion to compel court ordered video recordings, Dr Wolfe admitted on cross examination that she did not request any testing by psychologists working at Central Regional Hospital

although she could have ordered and obtained testing that could have been considered in her evaluation of Mr. Murphy.

5. Counsel has provided all underlying data relied upon by its proposed experts to the state; counsel has provided all reciprocal discovery to the state; counsel has provided copies of the partial video recording they were able to obtain during evaluation of Mr. Murphy.
6. Counsel has requested that Dr. Warren forward the raw data from testing he reviewed but did not rely on to forensic psychologist Dr Mark Hazelrigg at North Carolina Central Hospital. Dr Warren has requested an Order which is included under separate attachment so that he is in compliance with trademark rules of the publisher of the testing documents prior to sending said data to another forensic psychologist.
7. Counsel is unclear as to the request for SD cards in the prayer of the state. The defendant renews the request that the state produce all recordings of all of the evaluations conducted by Dr Wolfe and others as was required by Court order.

This the 30 day of January 2025


Victoria Jayne
Office of the Capital Defender
43 College Place Suite 203
Asheville NC 28801


Jack W. Stewart
61 N Market St
Asheville, NC 28801

STATE OF NORTH CAROLINA
YANCEY COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. 21 CRS 50084

FILED

2025 MAR 19 P 1:20
STATE OF NORTH CAROLINA) PROTECTIVE ORDER
YANCEY COUNTY)
-vs-)
RICKY DALE MURPHY)
Defendant)

THIS MATTER came on to be heard before the undersigned Superior Court Judge, Gary Gavenus, upon Defendant's oral request for a Protective Order.

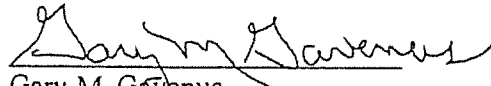
IT APPEARS TO THE COURT that Dr. John Warren reviewed raw data of psychological testing on the Defendant performed in 2022 by a 3rd party and the State has requested to receive that raw data;

IT FURTHER APPEARS TO THE COURT that Dr. Warren has advised counsel for the Defendant and this court that the testing data and results are trademarked and copyrighted and has provided a Statement of Policy from Riverside Publishing Company. Further Dr Warren understands that if ordered to do so he may release the raw data.

IT IS THEREFORE ORDERED as follows:

1. That the raw data of psychological testing in the possession of Dr John Warren shall be released to Dr. Robert Brown, Jr. and can be reviewed by Dr. Brown for the sole purpose of the evaluation of the above captioned Defendant.
2. Neither the District Attorney nor defense counsel shall disseminate the contents of any of the records to any other person for any reason without further orders of the court.
3. The release of the raw data shall be used for the sole purpose of this case and at conclusion of this case this raw data shall be sealed and placed in the Court file and shall not be opened without further Order of the Court.

This the 7th day of March 2025.


Gary M. Gavenus
Senior Resident Superior Court Judge

CERTIFICATE OF SERVICE

I certify that I served a copy of the foregoing **PROTECTIVE ORDER** by hand delivery on the Yancey County District Attorney office and by first class mail and email to Dr John Warren.

This the 10 day of March 2025


M. Victoria Jayne

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

2019 MAR 13

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

FILE NO.: ~~NCPS-2018-000000000-000~~
15A-903

STATE OF NORTH CAROLINA

MOTION FOR DISCOVERY OF EXPERT
REPORTS

v.

PURSUANT TO N.C. GEN. STAT.
15A-903

NOW COMES Defendant, by and through undersigned counsel, and hereby moves the Court to order the STATE to provide the following items to Defendant. The State is required to disclose these items under N.C. Gen. Stat. § 15A-903(a)(2). Additionally, these materials must be turned over pursuant to the Fourth, Fifth, Eighth and Fourteenth Amendments to the United States Constitution, and Article I, §§ 19,20,23,24 and 27 of the North Carolina Constitution. This request includes, but is not limited to, the following items:

1. Reports from any expert witnesses that the State reasonably expects to call as a witness at trial. Further order the State to have the expert prepare a report and provide the report to the Defendant concerning the results of any examinations or tests conducted by the expert. The State should also be ordered to provide to the defense the expert's opinion and underlying basis for that opinion.
2. The Defendant has previously received the CV's of potential state expert witnesses and therefore anticipates that these witnesses will be called by the state as expert witnesses and therefore requests the above reports in compliance with NCGS 15A-903(a)(2) be provided within a reasonable

time prior to trial. Among the witnesses noticed by the state are Michael Sutton and Tony Johnson. The state has not provided reports containing underlying data, examinations or tests conducted Tony Johnson nor have they provided a report of his opinions and basis for that opinion.

3. Although the state has provided a report prepared by FBI agent Michael Sutton, the state has not provided a copy of the "video conference" that took place between Sutton and unknown members of law enforcement and/or the District Attorney office.
4. Defendant has previously received the Autopsy report prepared by Dr. A.G McDonald and his CV and does not request further report by this Dr., unless, of course, he amends his autopsy report. Further Defendant has received State Crime laboratory reports along with raw data and does not request further reports, unless those reports and opinions expressed have been amended.
5. Further Defendant requests pursuant to NCGS 15A-903 and *State v Shannon*, No. COA06-418 (April 3, 2007),
that the defendant be provided with any and all notes of proposed experts, notes of conversations between any expert and members of the District Attorney office or law enforcement pertaining to this case; and that all oral conversations be reduced to writing and those writings and emails between the DA office and/or law enforcement and any of the proposed expert witnesses and provided to counsel for the Defendant.

6. Defendant requests the state comply with NCGS 15A-903 (a)(2) as to any other witnesses they expect to call as expert witnesses in this case.

Wherefore Counsel prays the Court:

1. Order that the State comply with NCGS 15A-903 (a)(2) and provide Reports, the underlying basis, notes, and raw data to the Defense within a reasonable time prior to trial of all experts as well as any video conferences between FBI Sutton and the state and/or law enforcement.
2. Order that all conversations between any proposed expert witness and the DA office and/or law enforcement be reduced to writing and provided to counsel for the Defendant as well as any emails and other correspondence.

This the 4 day of March 2019.

Stewart

Jack W. Stewart
61 N. Market St.
Asheville, NC 28801

M. Victoria Jayne

M. Victoria Jayne
Office of the Capital Defender
31 College Place #D203
Asheville, NC 28801

CERTIFICATE OF SERVICE

I certify that I served a copy of the foregoing **Motion for Expert Reports**
pursuant to NCGS 15A-903(a)(2) in the following manner:

_____ by personal service to the District Attorney Office, Buncombe County
Courthouse

This the 15 day of March 2019.


M. Victoria Jayne

STATE OF NORTH CAROLINA
CATAWBA COUNTY

FILED

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

2017 OCT -3 FILE NO. [REDACTED]

CATAWBA CO. C.S.C.

STATE OF NORTH CAROLINA

v.

[REDACTED]

Defendant

**MOTION TO DENY
INTRODUCTION OF EXPERT
REPORTS AND TESTIMONY**

Now comes the Defendant by and through counsel and moves this court to deny the introduction of any of the 3 proposed reports submitted by the proposed state witness, Dr. Sharon Cooper and exclude her testimony proffered by the state for failure to comply with NCGS 15A-903(a)(2), 8C-702 and **State v. McGrady**, 787SE2d 1-NC: Supreme Court 2016 governing the admission of expert witness testimony. In support of said motion counsel states the following:

Violations of NCGS 15A-903(a)(2)

1. Counsel has received three "reports" from the state, authored by Dr. Sharon Cooper, Forensic pediatrician, dated 2/10/2105, 2/28/2105 and 9/11/2017. Although Dr. Cooper mentions telephone calls, "additional information" provided to her and her "knowledge of the literature," she has provided NO underlying information to support what purports to be her opinions to "a degree of medical certainty." Although repeated motions have been filed requesting the underlying information provided to her and relied on by her to express her opinions, NO documents requested have been provided by the state as required by NCGS 15A-903, as of the filing of this motion. Further this proposed witness has ignored a subpoena issued to her by certified mail to provide her file to counsel for the defendant by October 1, 2017.

NCGS 15A-903 requires that the State provide "the underlying basis "for any expert opinion "within a reasonable time prior to trial." Counsel has requested all information repeatedly and specifically and as of the filing of this motion the state has failed to comply with the requirements of NCGS 15A-903(a)(2).

Violations of NCGS 8C-702 under Daubert v. Merrell Dow, 509 U.S 579(1993) and as applied in State v. McGrady, 787 SE 2d 1-NC: Supreme Court 2016.

1. Although the state proposes to qualify Dr Sharon Cooper as a forensic pediatrician, her report offers opinions in areas for which she is not qualified and which are therefore unreliable, unsupported opinions. Specifically, Defendant objects to any and all proffered remarks and testimony concerning the defendant's state of mind,

his statements, "death scene findings", abusive caregiver research, use of the word torture, crime scene investigation, and any statements regarding an opinion that "When the injuries that an abused child sustains are associated with a fatal outcome, the more common relationship entails a male paramour." (Letter dated 9/1/2017).

2. "In 2011 the General Assembly of North Carolina added language to North Carolina Rule 702 (a) that was virtually identical to the federal rule. Our rule now reads in relevant part:
 - (a) If scientific, technical or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience training, or education, may testify thereto in the form of an opinion, or otherwise if all of the following apply:
 - (1) The testimony is based upon sufficient facts or data
 - (2) The testimony is the product of reliable principles and methods
 - (3) The witness has applied the principles and methods to the facts of the case."

Act of June 17, 2011, ch. 283, sec 1.3, 2011 NC Sess Laws (2011 Reg Sess) 1048, 1049 (codified at NCGS 8C-1, Rule 702(a)) as reported in State v. Grady.

In Grady the Court held that any expert testimony must also meet the minimum standard for relevancy set forth in NCGS 8C-1, Rule 401(2003). That testimony must provide insight beyond the conclusions that jurors can readily draw from their ordinary experience and that witness "must be qualified as an expert by knowledge, skill, experience training or education." (Grady) The court emphasized in Grady that "testimony must do more than invite the jury to substitute the expert's judgment of meaning of the facts of the case for its own."

The proffered reports do not satisfy the requirements of Rule 702 and should not be admitted. No underlying data has been provided; no disclosure of what conversations, information, and discovery have been provided to support even the proposed opinions in the area of forensic pediatrics. This proposed expert has no training and qualifications that should allow her to give opinions as a crime scene investigator, psychologist, burn specialist, or pathologist.

Further many comments contained in the proposed reports including her opinions related to "torture" invade the province of the jury.

Said reports, if admitted, will violate the defendant's 6th amendment constitutional right to a fair trial and his 4th and 14th constitutional rights to due process as well as his statutory rights as defined in Rule 702 of the North Carolina General Statutes.

CONCLUSION

The reports submitted by Dr. Sharon Cooper do not meet the statutory requirements as required by NCGS 8C-702, and 15A-903 or the constitutional requirements under the 4th, 6th and 14th amendments to the US constitution and Article I sec 19, 23, 27 of the North Carolina Constitution.

WHEREFORE Counsel for defendant [REDACTED] prays the Court:

1. Exclude said reports prepared by Dr. Sharon Cooper from admission in this case.

2. Deny the proffered testimony of Dr. Sharon Cooper in this case.
3. Allow this motion.

Respectfully submitted this 1 day of October 2017.



M. Victoria Jayne

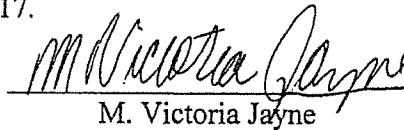
Capital Defender office

17 N. Market St #101
Asheville, NC 28801

CERTIFICATE OF SERVICE

The undersigned certifies that this Motion was served by hand delivery on
Catawba County District Attorney Office
PO BOX 566
Newton, NC 28658

This is the _____ day of October 2017.



M. Victoria Jayne

Cases Involving Alleged Child Sexual Abuse: What an Expert Can (and Can't) Say

Daniel Spiegel

Introduction

The chart below gives concrete examples (presented in quote bubbles) of proper and improper testimony with authority from North Carolina appellate courts. The sample testimony has been paraphrased to emphasize the essence of what is admissible and not admissible. The reader should bear in mind that the admissibility of expert testimony inherently depends on context. For further discussion, see Timothy Heinle & Daniel Spiegel, *Evidence Issues in Criminal Cases Involving Child Victims and Child Witnesses*, in NC SUPERIOR COURT JUDGES' BENCHBOOK (Shea Denning ed., UNC Sch. of Gov't 2026) (forthcoming).

Admissibility of Expert Testimony on Alleged Child Sexual Abuse

Physical Injuries/Symptoms and Lack Thereof

One of the most common sources of error in cases involving alleged child sexual abuse occurs when an expert witness testifies that abuse occurred without sufficient evidence of physical injury. See *State v. Stancil*, 355 N.C. 266 (2002) (testimony that sexual abuse occurred based on exams and an interview but without physical evidence was ruled improper).

Where physical injuries or symptoms are present, an expert witness may testify that the injuries are consistent with sexual abuse. *State v. Streater*, 197 N.C. App. 632, 639–43 (2009). Pain, on its own, is insufficient evidence of physical injury. *State v. Delsanto*, 172 N.C. App. 42 (pain is subjective and unverifiable). An expert witness may opine on the cause of a victim's physical injuries. *State v. Goforth*, 170 N.C. App. 584 (2005) (doctor testified that damaged hymenal tissue was the result of penetration).

An expert may not testify that a **lack** of physical injuries is **consistent** with sexual assault. See *State v. Davis*, 265 N.C. App. 512, 515–18 (2019). However, an expert may testify that a lack of physical evidence does not necessarily mean that abuse did not occur (note the "triple negative" in this formulation: the "**lack**" of physical symptoms is "**not**" "**inconsistent**" with sexual abuse). See *id.* (the court explained that the first formulation affirmatively posits a connection between a lack of physical injuries and sexual assault, an assertion which is deemed not helpful to the factfinder given that a lack of physical injuries is just as consistent with no sexual assault having occurred, *id.* at 518; however, the second formulation, involving the "triple negative," is helpful to the factfinder in that it may help a juror of common understanding appreciate that a lack of physical findings does not *rule out* sexual abuse, see *id.*; the distinction here may also pertain to subtle differences in the medical, legal, and logical connotations of the phrase "consistent with"); see also *State v. Jennings*, 209 N.C. App. 329 (2011) (proper for an expert to testify that if there had been a tear in the victim's hymen as a result of sexual abuse, the tear would probably have healed before examination).

The author thanks Timothy Heinle, John Rubin, and Jessica Smith for their work on the longer-form chapters on which this chart is based: *Evidence, in ABUSE, NEGLECT, DEPENDENCY, AND TERMINATION OF PARENTAL RIGHTS MANUAL*, and *Evidence Issues in Criminal Cases Involving Child Victims and Child Witnesses*, in NC SUPERIOR COURT JUDGES' BENCHBOOK (Shea Denning ed., UNC Sch. of Gov't 2026) (forthcoming). The author also thanks Jason St. Aubin for sharing his case chart and research.



Proper Expert Testimony

These **physical injuries** are **consistent with** sexual abuse.

[**physical injuries** observed related to penetration]

See *Streater*, 197 N.C. App. at 639–43 (physical injuries related to *vaginal penetration* were observed, so an expert's testimony that the injuries were consistent with history received from the victim of repeated vaginal penetration was permissible).

These **physical symptoms** were **suspicious** for vaginal penetration.

[**physical symptoms** observed related to penetration]

State v. Dye, 254 N.C. App. 161, 165–67 (2017).

Note: Where the sole physical observation is that the victim's hymen is not intact, this may indicate sexual activity but is not adequate to support a conclusion that alleged sexual abuse occurred where a significant amount of time has passed between allegations and the examination of the victim. See *State v. Trent*, 320 N.C. 610, 613–15 (1987); see also *State v. Parker*, 111 N.C. App. 359, 364–66 (1993).

These **physical symptoms** are **consistent with touching, improper hygiene, or other causes**.

State v. Orellana, 260 N.C. App. 110, 116–18 (2018) (expert noted that physical symptoms could be caused by "a multitude of things").

The **lack of physical injuries** is **not inconsistent** with sexual abuse.

Davis, 265 N.C. App. at 515–18; *Jennings*, 209 N.C. App. 329.

The **lack of physical injuries** does **not rule out** sexual abuse.

95 percent of children examined for sexual abuse have **normal exams**.

State v. Chavez, 241 N.C. App. 562, 566–69 (2015).

Improper Expert Testimony

The **examination** was **consistent with** sexual abuse.

[**no physical injuries** observed]

See *Streater*, 197 N.C. App. at 639–43 (no physical injuries with regard to *anal penetration* were observed, so an expert's testimony that the examination was consistent with history received from the victim of repeated anal penetration was impermissible).

The child's **lack of physical injuries** is **consistent with** sexual abuse.

Davis, 265 N.C. App. at 515–18.

Improper Expert Testimony (continued)

The child is a victim of sexual abuse.

The child was sexually assaulted.

[no physical injuries or physical evidence of sexual abuse observed]

See *Stancil*, 355 N.C. at 266–67 (language held to be an impermissible opinion on victim's credibility); *State v. Webb*, 197 N.C. App. 619, 620–22 (2009).

The child's **disclosure** was **consistent with** sexual abuse.

[no physical evidence of sexual abuse observed]

State v. Frady, 228 N.C. App. 682, 685–86 (2013) (note that the word "disclosure" is not inherently improper, see *State v. Betts*, 267 N.C. App. 272, 281 (2019); the problem in *Frady* was that the expert's testimony was impermissible vouching).

Vouching/Credibility

It is impermissible for an expert witness to testify that a child "is telling the truth." *State v. Brigman*, 178 N.C. App. 78 (2006).

Proper Expert Testimony

Children do not tend to **make up** stories of sexual abuse.

State v. Worley, 268 N.C. App. 300, 305–06 (2019).

But note that if testimony **relies on general characteristics** of sexually abused children to make statements on the likelihood that the **specific child** is telling the truth, this is **impermissible**. See *State v. Jenkins*, 83 N.C. App. 616, 623–25 (1986) ("Based upon . . . experience with children . . . in general . . . it is my opinion that he is very very unlikely to be making those things up.").

Improper Expert Testimony

I **believe** [Jane].

Worley, 268 N.C. App. at 308.

Her description was **believable**.

State v. Aguallo, 318 N.C. 590, 599 (1986) (improper to testify that a child was "believable"); *State v. Register*, 206 N.C. App. 629, 642–44 (2010) (same).

The child's disclosure was **credible**.

State v. O'Connor, 150 N.C. App. 710, 711 (2002) (improper to admit an expert's written report concluding that the victim's "disclosure was credible").

Improper Expert Testimony (continued)

In my training and experience, when children provide such details, it **enhances their credibility**.

State v. Horton, 200 N.C. App. 74, 77–79 (2009).

The child had **no record of lying**.

State v. Heath, 316 N.C. 337, 340–41 (1986) (improper for an expert to testify as to the child's propensity for truth-telling to show the likelihood of telling the truth about the incident in question, citing to Rules 405(a) and 608 of the N.C. Rules of Evidence (G.S. 8C-1)).

Nothing about the evaluation **led me to believe** that **the story was fictitious**.

State v. Ryan, 223 N.C. App. 325, 333–35 (2012).

The department of social services **substantiated** the sexual abuse.

State v. Giddens, 199 N.C. App. 115, 119–23 (2009) (the witness was a child protective services investigator, not a medical or psychological expert, but the court noted that the jury likely gave her opinion more weight than a lay opinion).

The child was **overly dramatic** and displayed **acting-out, attention-seeking, and manipulative behaviors**.

Not admissible (the description improperly commented on the child's credibility).

State v. Carter, 216 N.C. App. 453, 459–61 (2011) (noting that the testimony was also found to be inadmissible because the witness was not qualified to give an opinion on profiles of sexually abused children and on whether the symptoms of the child in this case were consistent with such profiles).

Expert Testimony—Status Unclear

Likely admissible, but status unclear.

The child **did not appear** to have been **coached**.

Compare State v. Baymon, 336 N.C. 748, 752–55 (1994) (the defendant opened the door during cross-examination of a doctor by suggesting that the child had been coached by others, and thus the doctor could testify that she did not perceive that the child had been coached), with State v. Collins, 288 N.C. App. 253, 255 (2023) (acknowledging a lack of published authority “which holds . . . whether an opinion regarding coaching is admissible” but “predict[ing]” based upon prior dicta that the North Carolina Supreme Court would rule it is not error for an expert to testify a child was not coached); see also Ryan, 223 N.C. App. at 333–35 (2012) (reading Baymon as holding that expert testimony that a child had not been coached is admissible and not an impermissible comment on credibility).

The child's disclosures have been consistent and **compelling**.

State v. Spinks, 256 N.C. App. 596, 605–07 (2017) (potentially inadmissible).

Characteristics, Behaviors, Syndromes of Abused Children

Expert testimony as to general characteristics of abused children is admissible when offered by a qualified expert. *State v. Davis*, 368 N.C. 794 (2016). A limiting instruction may be necessary.¹ Testimony on general characteristics of abused children may not be used to opine on the credibility of the child in the present case. *Frady*, 228 N.C. App. at 685–87 (error to allow testimony that the child's disclosure was consistent with sexual abuse when the testimony did not address the characteristics of sexually abused children nor whether the child exhibited symptoms consistent with such characteristics).

A qualified expert may testify as to a specific syndrome the expert has diagnosed the victim with, but such testimony is only admissible for corroborative purposes (i.e., a limiting instruction must be given when requested). See *Brigman*, 178 N.C. App. at 92–93.

Practice Note: Defense counsel should request a limiting instruction where evidence is allowed for corroborative, but not substantive, purposes.

Proper Expert Testimony

The child's **behavioral symptoms** are **consistent with** being a victim of sexual abuse.

State v. Ray, 197 N.C. App. 662, 672–73 (2009) (child's bad dreams, intrusive thoughts, and behavioral changes were properly characterized by an expert as "consistent with" having been sexually abused) (may require a limiting instruction, see above).

State v. Wallace, 179 N.C. App. 710, 714 (2006).

Common characteristics of/common profile of/characteristics typically observed in victims of sexual abuse are ...

Kennedy, 320 N.C. at 31–32 (1987).

The **child exhibited** the following **classic signs** of sexually abused children ...

State v. Khouri, 214 N.C. App. 389, 400–02 (2011).

1. There is a lack of clarity in the caselaw as to the necessity of a limiting instruction. Some cases have indicated that such testimony is admissible to explain or corroborate but not as substantive evidence. See *State v. Kennedy*, 320 N.C. 20, 31–32 (1987) (such testimony "could help the jury understand the behavior patterns of sexually abused children and assist it in assessing the credibility of the victim"); *State v. Kelly*, 118 N.C. App. 589, 595 (1995) ("Explanations of the symptoms and characteristics of sexually abused children are admissible only through expert testimony for the limited purpose of assisting the jury in understanding the behavior patterns of abused children."); N.C.P.I.—CRIM. 104.96 (June 2021) (pattern jury instruction limits such evidence to corroboration or impeachment).

However, at least one case has indicated that a limiting instruction may not be necessary. See *State v. Isenberg*, 148 N.C. App. 29 (2001) (the court rejected the defendant's argument that the trial court erred in failing to give an instruction limiting the jury's consideration of an expert's testimony to corroborative, not substantive, purposes because the defendant did not ask for a limiting instruction at trial; the court also stated that the defendant was not entitled to a limiting instruction when testimony is about the general characteristics of abused children, not about a specific profile or syndrome, relying on *State v. Richardson*, 112 N.C. App. 58 (1993) [note, however, that the court in *Richardson* found the testimony permissible because it was not offered for the substantive purpose of showing that a sexual assault occurred]).

Proper Expert Testimony (continued)

My clinical diagnosis of the child was **Post-Traumatic Stress Disorder**.

Admissible for corroborative purposes or to explain a delay in reporting, not for substantive purposes. *See Brigman*, 178 N.C. App. at 92–93; *State v. Hall*, 330 N.C. 808, 821 (1992).

It is not uncommon for children to **delay disclosure**.

State v. Shore, 255 N.C. App. 420, 425–36 (2017) (admissible for corroborative purposes but note that the expert may not opine on the reason why the child in the present case delayed disclosure).

Expert Testimony—Status Unclear

The way the witness's story became more and more elaborate over time is consistent with a **memory** that has been **suggested** or invoked by outside influences.

Likely admissible with proper expertise, but status somewhat unclear. *See State v. Walston*, 244 N.C. App. 299, 303–25 (2015), *rev'd on other grounds*, 369 N.C. 547 (2017) (admissible if testimony regarding suggestibility meets the criteria for admissibility under N.C. Rule of Evidence 702, but the N.C. Supreme Court ultimately held that it was not error for the trial court to exclude it as part of its gatekeeping role in determining the admissibility of expert testimony and pursuant to Evidence Rule 403).

Identifying the Defendant as a Perpetrator

An expert witness cannot testify that a certain person is the perpetrator of a charged offense or is guilty of that offense. *State v. Figured*, 116 N.C. App. 1, 8–9 (1994).

However, the expert can, if a hearsay exception applies, testify as to the perpetrator's identity as reported to the expert. *See, e.g., Isenberg*, 148 N.C. App. at 38–39 (victim's statement to an expert regarding the identity of the perpetrator was admissible under *State v. Hinnant*, 351 N.C. 277 (2000), as a statement for purposes of medical diagnosis or treatment).

Proper Expert Testimony

The child reported that **Mr. Smith, [the defendant]**, assaulted her.

Admissible where the hearsay statement is pertinent to medical diagnosis or treatment. *See Isenberg*, 148 N.C. App. at 38–39.

Improper Expert Testimony

The child was sexually abused **by Mr. Smith, [the defendant]**.

Not admissible where the expert is in no better position than the jury to identify the perpetrator. *See Figured*, 116 N.C. App. at 8–9.

Ultimate Issues and Legal Conclusions

An expert witness may testify as to an ultimate issue but not as to a legal conclusion. *State v. Smith*, 315 N.C. 76 (1985) (not improper for an expert witness to testify as to the size/shape of a penetrating object without opining that a rape occurred).

For more on the distinction between an ultimate issue and a legal conclusion, and to compare this chart with a chart addressing the admissibility of expert testimony in another context, see Daniel Spiegel, *Mental Health Defenses— Diminished Capacity and Voluntary Intoxication: What Can the Expert Say?*, NC CRIM. L. BLOG (UNC Sch. of Gov't, Dec. 10, 2025), <https://nccriminallaw.sog.unc.edu/2025/12/10/mental-health-defenses-diminished-capacity-and-voluntary-intoxication-what-can-the-expert-say/>.

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Mental Health Defenses—Diminished Capacity and Voluntary Intoxication: What Can the Expert Say?

In mounting a diminished capacity or voluntary intoxication defense in a first-degree murder case, the defense attempts to “negate” the element of specific intent, premeditation, or deliberation. To negate in this context means to raise a reasonable doubt about a mental element required for conviction. The diminished capacity defense involves negation through evidence of a mental disorder or emotional disturbance, whereas the voluntary intoxication defense involves negation through evidence of intoxication arising from the ingestion of alcohol or drugs. Though various types of evidence may be relevant to these defenses, expert testimony pertaining to the defendant’s mental state at the time of the alleged offense is often central. See *State v. Shank*, 322 N.C. 243, 248–49 (1988).

Questions arise as to what an expert witness may say in court. Prior to 1983, it was generally not permissible under North Carolina law for an expert to testify on an ultimate issue to be determined by the jury. Official Commentary to Chapter 8C, Section 1, Rule 704 of the North Carolina General Statutes (hereinafter G.S.). However, Rule 704 now provides that “[t]estimony in the form of an opinion or inference is not objectionable because it embraces an ultimate issue to be decided by the trier of fact.” Experts are thus allowed to go further in offering testimony pertaining to a crucial fact that has a significant bearing on guilt or innocence. However, where the expert applies a particular legal standard to the facts at issue, such testimony likely goes too far and strays into impermissible “legal conclusion” territory. See *State v. Parker*, 354 N.C. 268, 289 (2001).¹

With thanks to John Rubin for his work on these bulletins: *The Diminished Capacity Defense*, ADMIN OF JUST. BULL. No. 1992/01 (UNC School of Government, Sept. 1992); *The Voluntary Intoxication Defense*, ADMIN OF JUST. BULL. No. 1993/01 (UNC School of Government, Apr. 1993). Though the cases discussed in the bulletins are now decades-old, the law has stayed relatively consistent. Additional cases of note are included below.

¹ For further discussion on the distinction between ultimate issue and legal conclusion, see NC PROSECUTORS’ RESOURCE ONLINE (NC PRO) § 706.4, *Ultimate Issue Rule 704i* (last updated 12/01/23).

² Also compare the distinctions on proper vs. improper expert testimony noted in this chart with the admissibility rules applied in the context of capacity to proceed. There, the statute (C.S. 15A-1002(b)(1a), (2)) allows for admission of the expert’s capacity report, which ostensibly includes a legal conclusion that the defendant is or is not capable of proceeding, not merely opinions on “ultimate issues” such as the defendant’s ability to understand the proceedings and assist with the defense. However, capacity is determined by the judge, not the jury, and though the rules of evidence likely apply to capacity hearings, they may be relaxed somewhat. See John Rubin, *Capacity to Proceed in Criminal Cases in North Carolina*, ADMIN OF JUST. BULL. No. 2025/06, at 31 (UNC School of Government, Oct. 2025).

As a rule of thumb, where a phrase is complex and can be broken down into simpler terms, this may indicate that the phrase is an impermissible legal conclusion. Legal conclusions (based on the application of legal standards) are for the jury, not the expert, to make. Legal standards also may include terms of art. The expert, who likely has a background in medicine or psychology, may be in no better position than the jurors to apply these terms as they should be understood in the context of a given statute or as interpreted in the caselaw. See G.S. 8C-1, Rule 702(a) (expert testimony must “assist” the trier of fact); *State v. Boyd*, 343 N.C. 699, 708–10 (1996) (medical expert acknowledged lack of “precision” in his comprehension of the applicable legal standard). In contrast, where a phrase is relatively simple, this may indicate that the phrase is permissible testimony addressing an ultimate issue of fact. This rule of thumb may be somewhat counterintuitive given that the generally more sophisticated expert is prevented from using the more sophisticated language and the jury is left to wrestle with such language without the expert’s assistance. The jury will, however, have the benefit of the judge’s instructions in applying the legal standard at hand.

The distinction between permissible testimony on an *ultimate issue* and impermissible testimony involving a *legal conclusion* can be subtle and challenging to draw. The rule of thumb above is just that: it does not explain all the distinctions the courts have made in this context. Courts also consider other criteria such as whether the expert is qualified to use the terms properly, and whether the testimony uses the precise legal terms of art the jury must apply or whether it speaks to a dispositive question without explicitly establishing that an element has or has not been met.²



Daniel Spiegel, Assistant Professor
UNC School of Government
spiegel@soq.unc.edu

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The chart below gives concrete examples from North Carolina appellate courts, dividing common phrases into the categories of proper and improper testimony.

Admissibility of Expert Testimony on the Defendant's Mental State

PROPER EXPERT TESTIMONY

The defendant could not form the specific intent to kill

The defendant was incapable of making plans

The defendant was incapable of carrying out plans

The defendant was under the influence of a mental or emotional disturbance

The statement is admissible.
See G.S. 8C-1, Rule 704 (expert may testify to ultimate issue); *State v. Rose I*, 323 N.C. 455, 458 (1988) (the term "specific intent" encompasses the ultimate issue, but it is not a legal conclusion beyond the qualifications of a medical expert); *State v. Daniel*, 333 N.C. 756, 760–64 (1993).

Both statements are admissible.
See *State v. Shank*, 322 N.C. 243, 248 (1988) (specifically approving of this phraseology as helpful to the jury in determining whether the defendant premeditated or deliberated at the time of offense).

The statement is admissible.
See *Shank*, 322 N.C. at 248.

OTHER PROPER EXPERT TESTIMONY

Testimony pertaining to the expert's basis of opinion about the defendant's mental state (assuming the opinion is admissible), including conversations between the expert and the defendant

Generally admissible.

See Rule 705; *State v. Wade*, 296 N.C. 454, 462 (1979) (concluding that expert's basis of opinion was admissible in an insanity case); see also *State v. Allison*, 307 N.C. 411 (1983).

However, "self-serving, exculpatory statements" made by the defendant to the expert may potentially be inadmissible under Rule 403 as unfairly prejudicial to the State. See *State v. Baldwin*, 330 N.C. 446, 455–56 (1992).

IMPROPER EXPERT TESTIMONY

The defendant was incapable of premeditation at the time

The defendant was incapable of deliberation at the time

The defendant did not act in a cool state of mind

The defendant acted in suddenly aroused violent passion

Neither statement is admissible.^a
See *State v. Weeks*, 322 N.C. 152, 164 (1988) (though an expert may give an opinion on an ultimate issue, the expert may not testify to a "legal conclusion" that the expert is "not qualified to make"); *Rose I*, 323 N.C. at 458–60.^b

Neither statement is admissible.
See *Weeks*, 322 N.C. at 166; *Rose I*, 323 N.C. at 459–60; *State v. Boyd*, 343 N.C. 699, 708–10 (1996) (expert "admitted that the legal import of 'cool state of mind' was not the same as the medical meaning, to which he was referring").

^a Less direct formulations such as "the defendant's mental disorder would have negatively affected his ability to premeditate" may be admissible in that they do not draw a legal conclusion as to whether the defendant did or did not premeditate on the date in question, though they speak to the legal standards the jury must apply. One might compare such testimony to expert testimony in the child sexual abuse context, where experts are generally permitted to give their opinion that certain behavioral symptoms are consistent with being the victim of sexual abuse (subject to certain limitations, such as a limiting instruction), see *State v. Ray*, 197 N.C. App. 662, 672–73 (2009), though experts are not permitted to opine that sexual abuse occurred in the absence of physical symptoms, see *State v. Stancil*, 355 N.C. 266 (2002).

^b Note that based on this reasoning, a medical expert who also has legal expertise may perhaps be allowed to give such an opinion, though courts generally exclude expert testimony on the law. See Joseph L. Hyde, *Questions of Law: Untangling Admissibility in State v. Gibbs*, N.C. CRIM. L.: A UNC SCH. OF GOVT BLOG (Nov. 14, 2023), (citing to MCCORMICK ON EVIDENCE and other sources in discussing the general principle that expert testimony on the law should not be allowed; such testimony invades "the province of the court" rather than "the province of the jury," as it is for the judge to instruct the jury on a legal standard, see *HAJJM Co. v. House of Raeford Farms, Inc.*, 328 N.C. 578, 587, (1991)).

THURSDAY, MAY 7

	Track #1 – Main Room 111/112/113	Track #2 – Room 107
8:00-9:00 am	<i>Breakfast (provided) – Main Foyer</i>	
9:00-10:00 am [60 mins.]	Federal Court for State Defenders Kathleen Gleason, First Assistant Federal Defender Federal Public Defender, Middle District Greensboro, NC	Admitting Evidence in District Court Daniel Spiegel, Assistant Professor UNC School of Government, Chapel Hill, NC
10:00-10:45 am [45 mins.]	Forensic Interviews Dr. John Helminski, Forensic Psychologist Department of Psychology and Neuroscience UNC Chapel Hill, Chapel Hill, NC	Breath and Blood Tests Belal Elrahal, Assistant Professor UNC School of Government, Chapel Hill, NC
10:45-11:00 am	<i>Break</i>	
11:00 am-12:00 pm [60 mins.]	Second Amendment Update E. Gregory Wallace, Professor of Law Campbell University School of Law, Raleigh, NC	Harm Reduction Law and Resources Phil Dixon, Teaching Associate Professor Kirsten Leloudis, Assistant Professor UNC School of Government, Chapel Hill, NC
12:00-1:30 pm	<i>Recess for Lunch</i>	
1:30-2:30 pm [60 mins.]	Excluding and Limiting Expert Witnesses Vicki Jayne, Assistant Capital Defender Office of the Capital Defender, Asheville, NC	Immigration Detainers Kate Evans, Clinical Professor of Law Duke University School of Law, Durham, NC
2:30-3:30pm [60 mins.]	For-Cause Challenges Emily Coward, Director, Inclusive Juries Project Duke University School of Law, Durham, NC	Pretrial Release & Iryna's Law Elana Fogel, Associate Clinical Professor Director, Criminal Defense Clinic Duke University School of Law, Durham, NC
3:30-3:45 pm	<i>Break – Main Foyer</i>	
3:45-4:45 pm [60 mins.]	The New Good Faith Exception Sterling Rozear, Assistant Appellate Defender Candace Washington, Assistant Appellate Defender Office of the Appellate Defender, Durham, NC	Litigating Fees and Fines Whitley Carpenter, Senior Criminal Justice Counsel & Policy Manager, Forward Justice, Morrisville, NC Laura Holland, Director, Fair Chance Criminal Project, N.C. Justice Center, Raleigh, NC
4:45-5:30 pm [45 mins.]	Litigating and Preserving Suppression for Appeal Daniel Blau, Attorney Blau and Hynson, PLLC, Raleigh, NC	Law Enforcement Recordings in District Court <i>to be announced</i>
5:30 pm	<i>Adjourn</i>	

Lunch is on your own, except:

- Chief Public Defenders and IDS Administration meet for lunch (*on-site* – Room 109)
- NC Forensic Consultant Network Attorneys meet for lunch (*on-site* – Soco Smokehouse)
- Parent Defenders (*on-site* - Soco Smokehouse)

FRIDAY, MAY 8 - Main Room 111/112/113

8:00-9:30 am	<i>Breakfast (provided) – Main Room (111/112/113)</i>
9:15-10:15 am	Artificial Intelligence and Evidence Issues [60 mins.] [Technology] Timothy Heinle, Teaching Assistant Professor Kristi Nickodem, Assistant Professor UNC School of Government, Chapel Hill, NC
10:15-10:30 am	<i>Break</i>
10:30-11:30 am	Ethical Responsibilities During Disasters [60 mins.] [Ethics] Ariel Freedman, Assistant Ethics Counsel North Carolina State Bar, Raleigh, NC
11:30 am-12:30 pm	Criminal Case and Legislative Update [60 mins.] Phil Dixon, Teaching Associate Professor Danny Spiegel, Assistant Professor UNC School of Government, Chapel Hill, NC
12:30 pm	<i>Adjourn</i>

CLE HOURS

General: Up to 8.5
Ethics: Up to 2.0
Technology: 1.0
Professional Well-being: 1.0
Total CLE Hours: 12.5

*Final CLE hours are subject to change in
accordance with NC State Bar Approval*