

# Evidence Issues at Adjudication

For Juvenile Defenders

Timothy Heinle  
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# The Plan

Remote  
testimony

Identification,  
lineups, and  
show-ups

Hearsay and  
hearsay  
exceptions

Expert  
witness  
resource



# Remote Child Testimony

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- < 16 years old at time of testimony
- Outside respondent's presence
- Party motion or sua sponte for good cause shown triggers evidentiary hearing
- Court may require witness' presence

G.S. 15A-1225.1 (crim. + juvenile)



# Remote Child Testimony

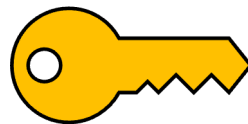
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- Authorized where child witness
  - Competent (r. 601)
  - Serious emotional distress (not open forum; in R's presence specifically)
  - Impaired ability to communicate
- Order must include
  - FOF + COL to support decision
  - Method + who is in/out of room
  - Special conditions to facilitate testimony



# Remote Child Testimony

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**Ensure due process!**

- Similar opportunity for observation
- Defense counsel physically present w/ witness “with full and fair opportunity” to cross
- Attorney-client private communication



IDs, Lineups, + Show-ups

# IDs, Lineups, + Show-ups



- G.S. 15A, Art. 14A (Eyewitness ID Reform Act)
  - Live/photo lineups (fillers, suspects, admin)
  - Show-ups – (single live suspect, photographed for record – but see 15A-284.52, cmt (c1) re juveniles)
- Statutory violation?
  - Not automatically inadmissible
  - Court must consider for MOT suppress
  - Admissible to show misidentification

# IDs, Lineups, + Show-ups



- Due Process (NC Const., Art. 1, Sec. 19)
- ID procedures cannot be impermissibly suggestive (strong probability of misidentification)
- Constitutional (due process) violation?  
Motion to suppress must be granted.

# IDs, Lineups, + Show-ups



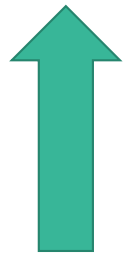
- Dig deeper than officer's perspective
- Consider raising with DA
- Renew motion at trial if denied
- Standards for young eyewitness?
- Resources: Juvenile Defender Manual, 11.6;  
NC Defender Manual, 14.4

HEARSAY

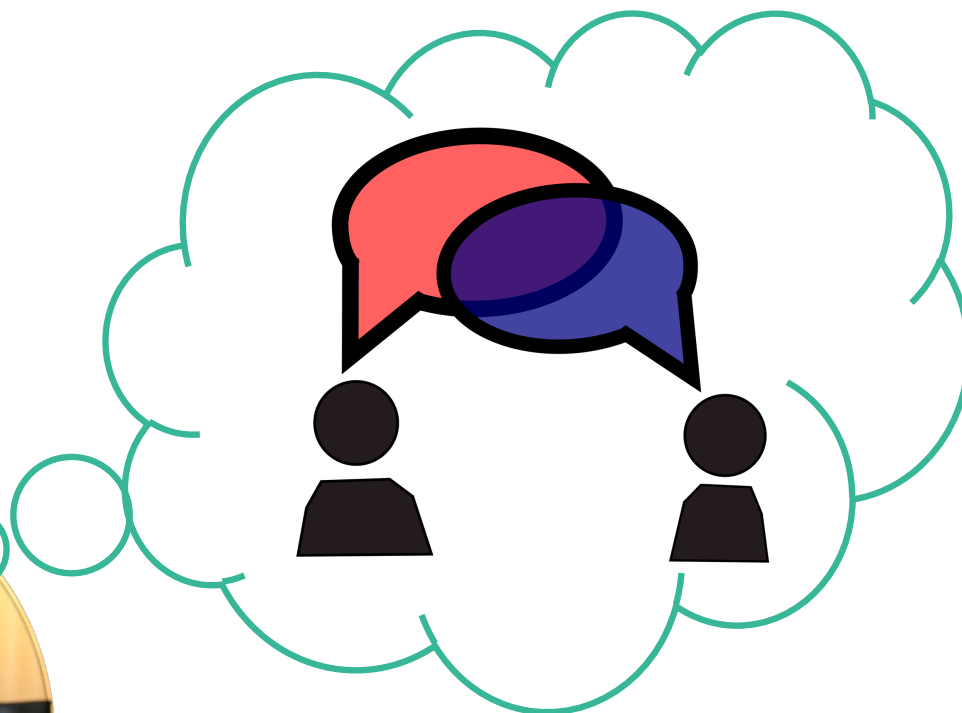


NOW I GET IT!

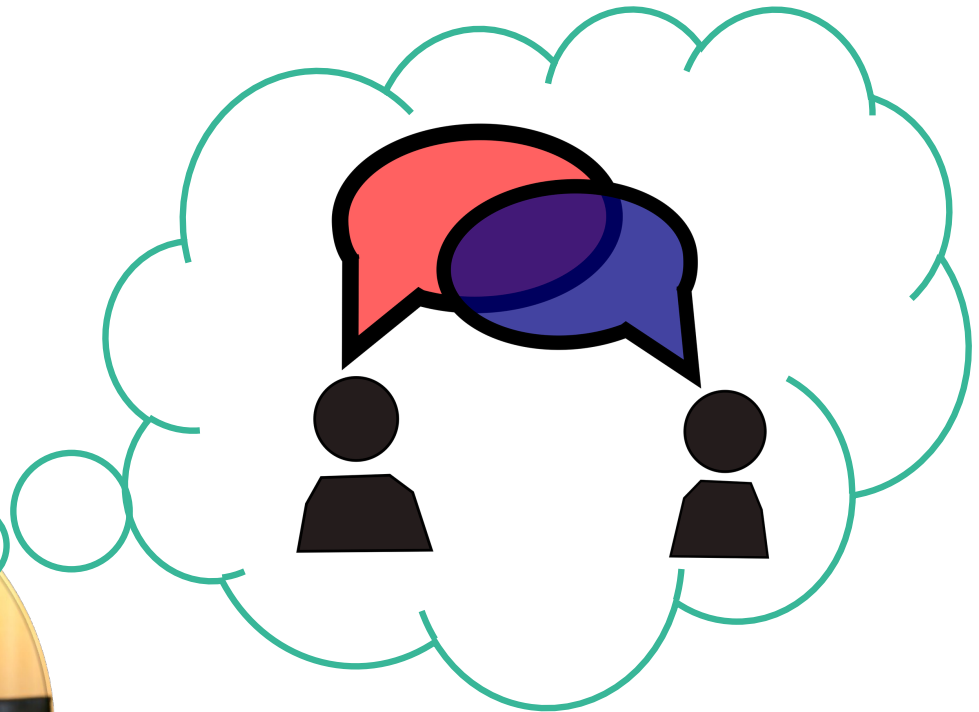
Hearsay is an out-of-court statement offered to  
prove the truth of the matter asserted.



As I approached Jonny's home, his neighbor yelled, "Careful! Jonny has a gun!"



Jonny first came to my attention when his neighbor told me, "Jonny's been selling drugs."



- Purpose: show misconduct occurred or explain investigative steps?
- Statements should be limited in detail due to potential for prejudice.

## The “Explains Conduct” Non-Hearsay Purpose



October 13, 2009 [Jeff Welty](#)

Print

Most readers of this blog know that hearsay evidence, meaning an out-of-court statement “offered in evidence to prove the truth of the matter asserted,” N.C. R. Evid. 801(c), is presumptively inadmissible. Sometimes the proponent of hearsay evidence can introduce the evidence under one of the exceptions in Rules 803 and 804. But equally often, the proponent of what appears to be hearsay evidence will attempt to introduce it for a non-hearsay purpose, i.e., for a purpose other than to establish the truth of the matter asserted.

Here’s an example. Dan Defendant is charged with PWISD cocaine. Ollie Officer is on the stand, and Pat Prosecutor asks, “how did Dan first come to your attention?” Ollie begins to say that Winnie Witness, who lived near Dan, contacted Ollie and told him that Dan was selling drugs. Dan’s lawyer objects on hearsay grounds, and



## COMMON HEARSAY EXCEPTIONS IN JUVENILE MATTERS

Category 1: Fairness

## *IN RE JONNY (2026)*

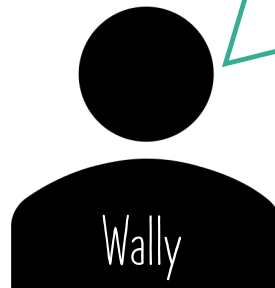
Last month, Jonny overslept and almost missed a big exam. When he got to school, Jonny wanted caffeine but had no money. He ran up to the drink cooler where he allegedly broke the machine open, grabbed a can of soda, and went to take his exam.

Wally is Jonny's classmate who ran into Jonny that morning in the hallway. The State calls Wally to testify at adjudication.

# ADMISSION OF PARTY OPPONENT

- Assertion (oral or written statement)
- Declared
- By a party-opponent, or rep/agent
- Offered against that party-opponent

Rule 801

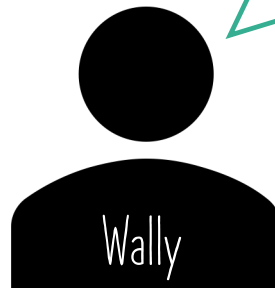


"I asked Jonny what he was doing. He responded 'If they want me at school early, I need help waking up. And I ain't paying.'"

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Rule 801

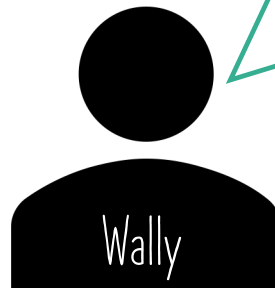


"I asked Jonny if he was taking the soda without paying. He responded, 'Yeah.'"

# ADMISSION OF PARTY OPPONENT

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- Offered against that party-opponent

Rule 801

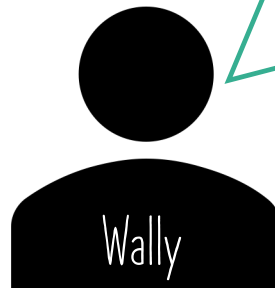


"I asked Jonny if he was going to pay for the soda. He gave me a thumbs down, and shook his head no."

# ADMISSION OF PARTY OPPONENT

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Rule 801

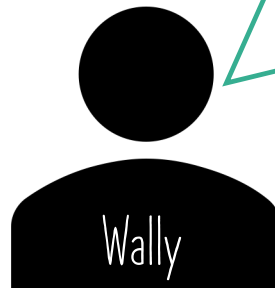


"When I saw Jonny, I said, 'You're stealing! I can't believe you would take something that is not yours.' He walked away without responding."

# ADMISSION OF PARTY OPPONENT

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- Declared or endorsed (affirmatively or impliedly, e.g., by omission)
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Rule 801

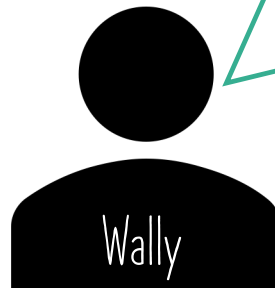


"I did not see Jonny. But our teacher told me, 'Jonny stole soda from the cooler.'"

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Rule 801



"Jonny has told me before that he would 'never, ever steal, he promises.'"

What if the respondent calls the witness?

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- Offered against that party-opponent

Rule 801

## Hearsay Exceptions: Admissions by Party- Opponents



November 12, 2013 [Jessica Smith](#)

Print


Evidence Rule 801(d) sets out a hearsay exception for “Admissions by a Party-Opponent.” If you’re not clear on that rule, read on.

The rule says that a statement is admissible under this exception if it is “offered against a party” and is

(A) his or her own statement, in an individual or representative capacity;

(B) a statement that the party has manifested an adoption of or a belief in its truth;

Sodas at my school are free if you just take 'em!



## Social media and other digital communications

Break glass in case of emergency (thirst) lol



# Authenticating digital communications

- Proponent must show evidence is what proponent says it is.
- Testimony of knowledgeable witness, or...
- Circumstantial factors (e.g., distinctive characteristics) that show purported author wrote the statement.
- Is it the best evidence? Is context missing that makes the writing misleading?

## **Authentication of Digital Communications** (social media content and text messages)

To authenticate digital evidence, the proponent must show that “the [evidence] in question is what its proponent claims.” N.C. R. Evid. 901. A party may offer testimony of a “[w]itness with [k]nowledge” that evidence is what it is claimed to be. See Rule 901(b)(1). Alternatively, a party may rely on circumstantial factors such as the “distinctive characteristics” of the evidence. See Rule 901(b)(4). “The burden to authenticate... is not high—only a prima facie showing is required.” *State v. Ford*, 245 N.C. App. 510 (2016).

Authentication of digital communications involves two questions:

1. Does the exhibit (screen capture, photo, video) accurately reflect the communication?
2. Is there reason to believe that the purported author wrote the communication?

See *State v. Clemons*, 274 N.C. App. 401 (2020) (“To authenticate [social media] evidence ...there must be circumstantial or direct evidence sufficient to conclude a **screenshot accurately represents the content** on the website it is claimed to come from and to conclude the **written statement was made by who is claimed to have written it**”) (emphasis added).

The following memory tool may be helpful in thinking about the various types of circumstantial evidence frequently used to authenticate digital communications.

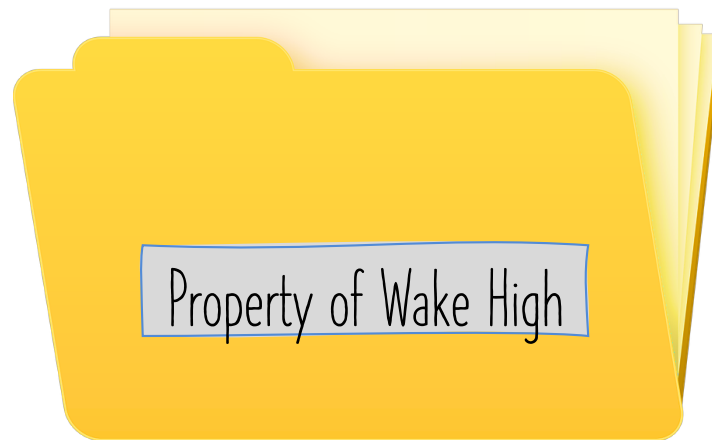
R. 901 (authentication); R. 1002 (best evidence); R. 106 (completeness)



## COMMON HEARSAY EXCEPTIONS IN JUVENILE MATTERS

Category 2: Inference of reliability/sincerity

Your Honor, the State offers  
DSS investigation records  
and school discipline records  
related to the Petition.





## Business Records Exception

- Is it a (i) business (ii) record?
- Prepared in ordinary course of business?
- At/near the time of the event?
- Made by (or using info from) someone w/ knowledge?
- With a duty to the business to report accurately?
- Sworn to by records custodian/another qualified person by
  - testimony, or
  - affidavit with notice to parties?

Rule 803(6)



"The simple fact that something qualifies as a business record does not necessarily make everything contained in the record sufficiently reliable to justify its use as evidence at trial. Trustworthiness is the foundation of the business record exception."

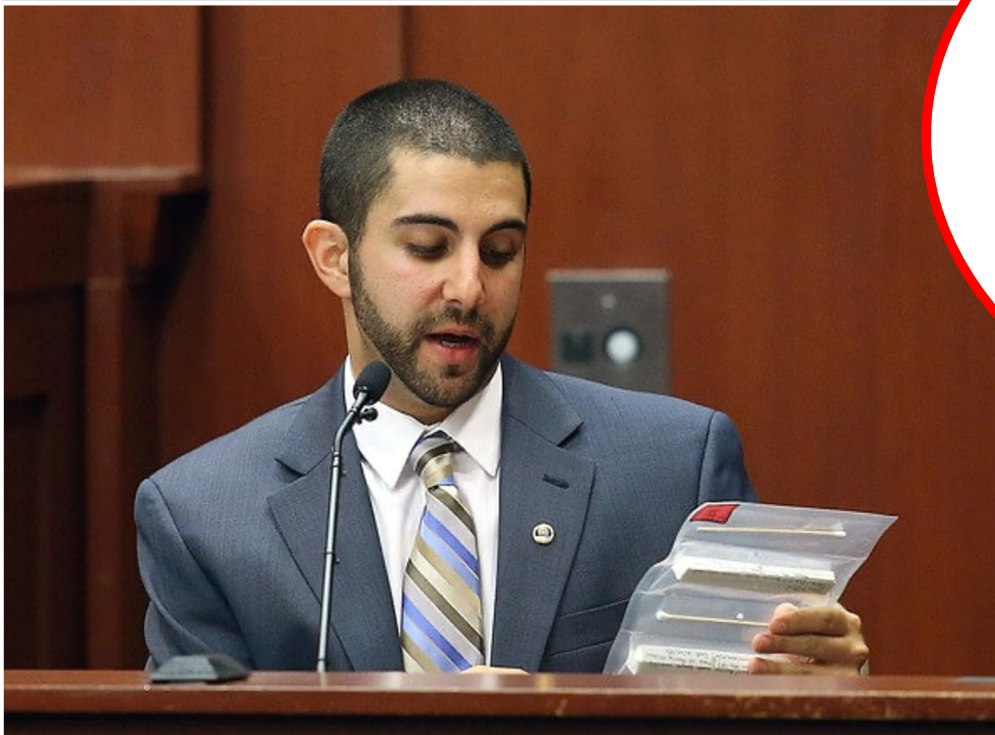
*State v. Galloway*, 145 N.C. App. 555 (2001) (citations omitted)



## SRO & POLICE REPORTS

- Public Records/Reports exception R. 803(8)
- Writings of public offices or agencies documenting required activities or observations
- Excludes police reports in criminal trials
- Prohibited by 803(8)? No go under 803(6)



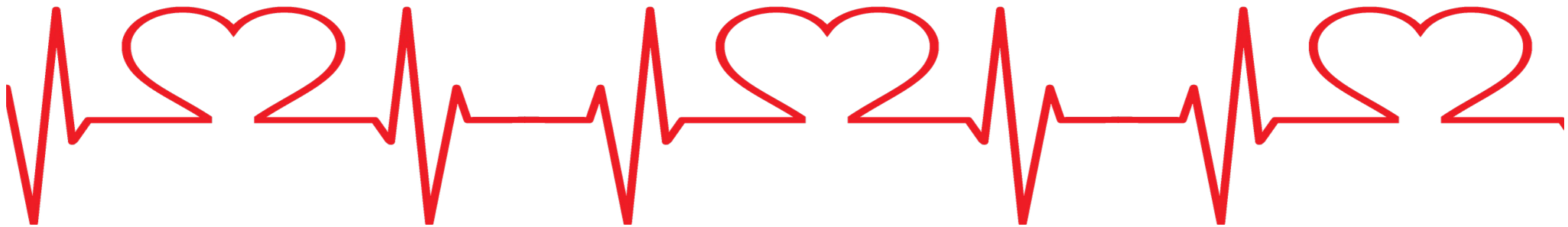


Dr. Williams, what did Jessica  
say that night at the  
emergency room?

# MEDICAL DIAGNOSIS OR TREATMENT EXCEPTION

Rule 803(4)

- Did the declarant understand the statement would lead to medical d/t?
- Was the statement reasonably pertinent to medical d/t?



# Medical D/T in Juvenile Matters

## Examples

- Sex offenses or other offenses causing serious physical injury
- Scrutinizing alleged victim's
  - Mental health history
  - Statements to providers

## How to obtain

- Discovery (where applicable)
- Subpoena? Sufficient for HIPAA
- Court order? Mental Health, IDD, and Substance Use Disorder and Treatment

## Need a court order? Summary of standards.

### HIPAA, GS 122C, GS 130A

- Information is relevant to a question before the court
- Information is necessary to adjudicate an issue in the case

### GS 8-53 thru -53.13 (Privileges)

- Information is necessary to the proper administration of justice

### 42 CFR 2 (Substance Use Disorder)

- Other ways of obtaining information are not available or effective
- The public interest and need for the disclosure outweigh the potential injury to the patient's privacy interests, the physician-patient privilege, and the treatment services.

Credit to Mark Botts (UNC School of Gov't)

## Admissible?

What if the...

1. Examination was in preparation for litigation?
2. Declarant was not the injured or sick person (e.g., a child's parent? *In re J.M.*, 255 N.C. App. 483 (2017))
3. Listener was not a medical professional?
4. Declarant is a young child? *Voire dire*?

Dr. Williams, what did Jessica say that night at the emergency room?

She said, "My arm hurts."

And later, "Jonny has a bad temper."



# CIRCUMSTANCES INDICATE A YOUNG DECLARANT'S MOTIVE.



## Purpose of Examination

- Explained to child
- In age-appropriate manner



## The Truth

- Importance of being truthful
- Ability to differentiate truth & lies



## The Interview

- Medical or non-medical interviewer
- Leading nature of questions

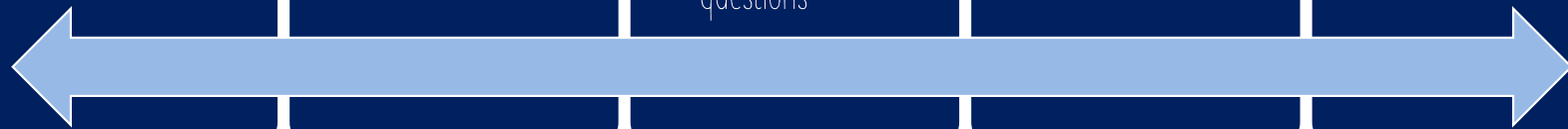


## The Interview Setting

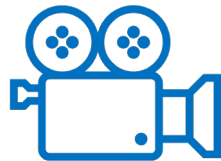
- Medical?
- Child friendly?
- Private?



## Time Between Incident and Exam



# VIDEO- RECORDED EXAMS



To be admissible, must:

- ✓ Satisfy medical d/t exceptions (understanding and pertinence), and
- ✓ Be authenticated by
  - a witness who was present, or, if unavailable,
  - proof of recording circumstances.

# SURVEILLANCE VIDEOS



Admissibility requires testimony that

- ✓ Recording equipment was in good working order and generally reliable, or
- ✓ Video footage introduced in court is the same as what the witness viewed on the recording equipment shortly after the incident

# RESOURCES ON VIDEOS

## North Carolina Criminal Law Blog

March 25, 2024

### Surveillance Video- When It Comes In and When It Doesn't

Daniel Spiegel

Video evidence authentication has received a **fair amount of treatment** on this blog. The topic remains an area of practical significance given the prevalence of video evidence in criminal trials and how common it is for the prosecution's case to hinge on the admission of video. We are increasingly a **video-focused** society. Between home security cam, doorbell cam, body-worn cam, in-car cam, pole cam, and even **parking lot cam**, juries increasingly expect to see video, whether the incident in question occurred outside a home, near a business, or on the roadside.

In this post, I will focus on surveillance video. As discussed by my colleague Jeff Welty, a party generally authenticates surveillance video in one of **two ways**. The first method involves calling a witness who was present for the events captured on video and eliciting testimony that the video "fairly and accurately depicts" what happened. The video is then admitted for illustrative purposes. The second

### ADEQUATE

Foundation for Surveillance Video\*

**State v. Jones, 288 N.C. App. 175 (2023)**

Officer testified that:

1. Video was same as footage she saw on night of incident;
2. Homeowner's description of events matched the video;
3. Surveillance system was working correctly "to [her] knowledge."

**State v. Snead, 368 N.C. 811 (2016)**

Loss prevention manager testified that:

1. He was familiar with recording equipment and it was in working order;
2. He viewed the footage on the recording equipment and video was same as the footage he viewed.

**State v. Fleming, 247 N.C. App. 812 (2016)**

Corporate investigator testified that:

1. He was familiar with the recording system, it was functioning properly, and he made a copy of footage;
2. Video was the same as footage he copied, unedited, and same as that created by system.

**State v. Ross, 249 N.C. App. 672 (2016)**

Store manager testified that:

1. Cameras were working properly because time and date stamps were accurate;

### INADEQUATE

Foundation for Surveillance Video\*

**State v. Moore, 254 N.C. App. 544 (2017)**

Officer testified that:

1. The day after the incident, since store manager was unable to make a copy of the footage, officer recorded footage on the store's equipment with his cell phone;
2. The video, which was a copy of the cell phone recording, accurately showed footage he had reviewed at the store.

Store clerk testified that the defendant was seen on video, but did not testify as to whether the video accurately depicted events he observed on day in question.

No testimony pertaining to type of recording equipment and whether it was in good working order/reliable.

**State v. Mason, 144 N.C. App. 20 (2001)**

Two store employees testified that surveillance system was in working order but were unfamiliar with maintenance, testing, or operation.

## North Carolina Criminal Law Blog

July 24, 2025

### A New Way to Authenticate Video? State v. Windseth and the Business Records Exception

Daniel Spiegel

*Special thanks to Sloan Godbey, Summer Law Fellow at UNC SOG, for their significant contributions to this post.*

In March of last year, I did a thorough review of North Carolina cases addressing the authentication of surveillance video. I created a chart to understand what ingredients are adequate (and inadequate) to lay a foundation. That chart can be found [here](#), and the related blog [here](#).

However, a case came down in March of this year that raises significant questions about how video is authenticated, or at least introduces a new potential avenue for authenticating video. I'm afraid my cherished chart may soon be of limited utility. But such is the way the law develops!

## Expert Witnesses in Proceedings Involving Children

(Based on N.C. Rules of Evidence, G.S. 8C-1, Rule 702, except where otherwise noted.)

Timothy Heinle

### What Are the Requirements to Be an Expert Witness?

#### Procedures

- There are no set procedures for becoming an expert witness (but see discovery provisions under Rule 26 of the N.C. Rules of Civil Procedure, G.S. 1A-1, Rule 26).
- The N.C. Rules of Evidence do not apply to the qualification of expert witnesses, except on the matter of privilege. N.C. R. Evid. 104(a).
- Showings on a witness's qualification as an expert must be made by the greater weight of the evidence (preponderance of proof). *State v. McGrady*, 368 N.C. 880 (2016).
- In deciding whether to accept a witness as an expert, the court must balance N.C. Rule of Evidence 403's probative value requirement against any unfair prejudice to the expert. *State v. King*, 366 N.C. 68 (2012).

#### Reliable +

- A potential expert witness must (1) present sufficient facts/data, (2) utilize reliable principles/methods, and (3) apply those principles/methods to those facts/data. *McGrady*, 368 N.C. at 892.
- A potential expert witness should (1) be familiar with established techniques and known/potential error rates, (2) account for alternative explanations, and (3) avoid unjustifiable extrapolations from data.

#### Relevant +

- A potential expert witness possesses scientific, technical, or specialized knowledge that will assist the judge.
- A potential expert witness demonstrates insight beyond conclusions drawn by someone with ordinary experience. *McGrady*, 368 N.C. at 889, 894–95.

#### Qualified

- A potential expert witness should possess the appropriate knowledge, skill, experience, training, or education to offer expert testimony.
- A potential expert witness should be better positioned to state an opinion than the court before which he or she is testifying. *McGrady*, 368 N.C. at 889, 895–96.

#### Disqualification of Expert Witnesses

- Expert witnesses can be disqualified on grounds other than those enumerated in the N.C. Rules of Evidence. N.C. R. Evid. 702(g).

### How Confident Does the Expert Have to Be in Their Opinion?

- An expert may testify as to the degree of his or her belief (e.g., "It is likely . . ."). Absolute certainty is not required. *In re C.M.*, 198 N.C. App. 53 (2009).
- Overly speculative or equivocal testimony from an expert witness does not assist the trier of fact. *State v. Clark*, 324 N.C. 146 (1989).
- The weight/credibility of the expert's testimony is challengeable by cross examination or by testimony from a competing expert. *State v. Babich*, 252 N.C. App. 165 (2017).

## QUICK-REFERENCE GUIDE

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## What Testimony Can an Expert Witness Give?

### Identity of Perpetrator

An expert witness cannot testify that a certain person is the perpetrator of a charged offense or is guilty of that offense. However, the expert can, if a hearsay exception applies, testify as to the perpetrator's identity as reported to the expert. *State v. Figured*, 116 N.C. App. 1 (1994).

### Causes of Physical Injuries

An expert witness may opine on the cause of a victim's injuries. *State v. Goforth*, 170 N.C. App. 584 (2005) (doctor testified that damaged hymenal tissue was the result of penetration).

### Delayed Disclosure

While an expert witness may testify that, generally, children often delay in disclosing abuse, the expert may not opine about why the child in the current case delayed in disclosing alleged abuse. *State v. Shore*, 258 N.C. App. 660 (2018).

### 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 expert witness to testify as to size/shape of penetrating object without opining that rape occurred).

### Credibility of Child

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); *State v. Carter*, 216 N.C. App. 453 (2011) (court found that expert's testimony that child was "dramatic" and "manipulative" was comment on credibility). However, in the face of such testimony, the opposing party can open the door. *State v. Baymon*, 336 N.C. 748 (1994) (defendant's cross examination of expert suggested child was coached). It is permissible for an expert to testify that children generally do not lie about sexual abuse. *State v. Worley*, 268 N.C. App. 300 (2019).

### Suggestibility of Children

Expert testimony on the suggestibility of children is permissible, provided that other requirements of N.C. Rule of Evidence 702 are satisfied. *State v. Walston*, 244 N.C. App. 299 (2015) (expert testified as to the general possibility of the alteration or creation of memories through questioning, gestures, or suggestive acts).

### Abuse and Evidence of Physical Injury

An expert witness is prohibited from testifying as to abuse without sufficient evidence of physical injury. *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).

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 may testify that a lack of physical evidence does not necessarily mean that abuse did not occur. *State v. Jennings*, 209 N.C. App. 329 (2011) (proper for expert to testify that possible tears in hymen would have healed before examination).

A lack of physical injuries cannot, alone, be the basis of an expert's opinion that abuse occurred. *State v. Davis*, 265 N.C. App. 512 (2019) (expert testimony that the lack of physical indicators is itself evidence of sexual assault ruled improper).

### Characteristics and Examinations of Abused Children

Expert testimony as to characteristics and/or examinations of abused children is generally OK, provided it is offered by a qualified expert. *State v. Davis*, 368 N.C. 794 (2016).

The expert offering such testimony need not have examined the child. *State v. Ragland*, 226 N.C. App. 547 (2013). The expert's opinion may be based on third-party information. *State v. McCall*, 162 N.C. App. 64 (2004). A lack of personal interaction may, however, limit the usefulness of the expert's opinion. *In re K.G.W.*, 250 N.C. App. 62 (2016).

An expert witness's testimony may explain patterns of abused children but cannot be stand-alone evidence of abuse in a given case. *State v. Kelly*, 118 N.C. App. 589 (1995).

An expert's testimony of this kind must concern characteristics of sexually abused children and may not be used to opine on the credibility of the child in the current case. *State v. Frady*, 228 N.C. App. 682 (2013) (error to allow testimony that child's disclosure was consistent with sexual abuse when testimony did not address characteristics of sexual abuse).

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Questions?



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