

CASES ON EXPERT TESTIMONY (1998-May, 2004)

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QUALIFICATION CASES

State v. Kelly, 159 N.C. App. 229, 582 S.E.2d 726 (2003). Murder case. State presented **pathologist** Thomas Clark to testify that the death was not accidental. Court of Appeals held that Dr. Clark's experience alone made him qualified to give such an opinion, even in the absence of a scientific foundation for the opinion.

State v. Holland, 150 N.C. App. 457, 566 S.E.2d 90 (2002). State trooper's training put him in a better position than the jurors to have an opinion about an accident; therefore he was properly admitted as an **accident reconstruction** expert.

State v. Cole, 147 N.C. App. 637, 556 S.E.2d 666 (2001). Murder case. Defense proffered **psychologist** Dr. Reed Hunt to testify to the problems with the eyewitness identifications generally, and in this case specifically. The trial court found that Dr. Hunt was not qualified, and that his testimony would not be helpful to the jury, but would confuse the issues. The Court of Appeals agreed. The only defect in the qualification noted by the court was that Dr. Hunt is not a clinical psychologist.

State v. Taylor, 354 N.C. 28, 550 S.E.2d 141 (2001). Capital murder case. Defendant at sentencing proffered a **sociologist** to testify that the defendant had diminished capacity and/or was emotionally disturbed at the time of the killing. The Court held that this was properly excluded because the witness was not qualified to so testify. The defendant also proffered a **forensic** expert a witness to testify to the position of the victim's body when

he was shot. The trial court excluded it. The Supreme Court affirmed, saying that the trial court did not abuse its discretion in finding that the witness (who had a degree in police science, EMT training, and taught courses in crime scene investigations) was not properly qualified.

State v. Braxton, 352 N.C. 158, 531 S.E.2d 428 (2000). Capital murder case (?). Defense proffered **forensic psychiatrist**, Dr. Nate Strahl, to testify to the effects of long-term imprisonment on the defendant's mental state at the time of the killing. The Court held that the trial court did not abuse its discretion in finding that Dr. Strahl was not in a better position than the jury to understand the psychological effects of imprisonment.

State v. Blakeney, 352 N.C. 287, 531 S.E.2d 799 (2000). Arson case. The state's expert (a two-year veteran **police officer**) was properly qualified to testify that the fire was incendiary.

State v. Lawrence, 352 N.C. 1, 530 S.E.2d 807 (2000). Capital murder case. The defendant proffered a **forensic psychiatrist** to testify that the defendant reacted to an unreasonable fear that he was about to be harmed. The Court said this was properly excluded because the witness was in no better position than the jury to determine the defendant's motivations, the testimony was whether a legal standard had been met, and would tend to confuse the jury.

State v. Call, 349 S.E.2d 382, 508 S.E.2d 496 (1998). Capital murder case. **Police officer** not qualified to be examined by defense on whether forensic testing of alleged victim's blood was available to law enforcement.

State v. Davis, 349 N.C. 1, 506 S.E.2d 455 (1998). Capital murder case. Defense witness, a **jail nurse** was not qualified to testify as to whether defendant appeared psychotic when she did a mental status examine upon his incarceration.

State v. T.D.R., 347 N.C. 489, 495 S.E.2d 700 (1998). The trial court is not required to make findings concerning qualifications of expert witness in absence of request by opponent; the court's finding the witness to be an expert is implicit in the decision to allow the witness to testify to opinions.

State v. Tyler, 346 N.C. 187, 485 S.E.2d 599 (1997). A **nurse** with experience in a burn clinic could give an opinion as to the psychological effect of certain pain medications and to the patient's cause of death. The fact that she was a nurse rather than a physician went only to the weight of her opinion not its admissibility.

State v. Myers, 123 N.C. App. 189, 472 S.E.2d 598 (1996). Defense **social worker** not qualified to testify to whether defendant was suffering from a mental defect or disease (as in *M'Naughten* insanity).

FOUNDATION OF EXPERT'S OPINION CASES

State v. Kelly, 159 N.C. App. 229, 582 S.E.2d 726 (2003). Murder case. State presented **pathologist** Thomas Clark to testify that the death was not accidental. Court of Appeals held that Dr. Clark's experience alone made him qualified to give such an opinion, even in the absence of a scientific foundation for the opinion.

Taylor v. Abernathy, 149 N.C. App., 560 S.E.2d 233 (2002). Civil case where the issue was the author of a holographic will. One party offered a **handwriting expert**. The trial court excluded the witness, saying that the proponent made no showing, under *Daubert*, that there was any scientific basis for the opinion testimony. In a lengthy discussion, the Court of Appeals appears to say that *Daubert* actually lowered the threshold for expert opinion testimony, and that the trial court does not need to determine that there is any scientific basis for the opinion as long as the opinion has some reliable foundation. Trial court reversed.

State v. Stokes, 150 N.C. App. 211, 565 S.E.2d 196 (2002), *rev'd on other grounds*, 357 N.C. 220, 581 S.E.2d 51 (2003). Battered child case. State's **physician** could testify that the child-victim was a Battered Child based on the witness' qualifications and clinical experience. No discussion of any scientific basis for the opinion.

State v. Gainey, 355 N.C. 73, 558 S.E.2d 463 (2002). Capital murder case. State's expert in **bullet comparisons** was properly allowed to testify to the results of his comparisons because of his training and the number of previous comparisons he had made. No discussion of the witness's accuracy in making comparisons.

State v. Grover, 142 N.C. App. 411, 543 S.E.2d 179, *aff'd*, 354 N.C. 354, 553 S.E.2d 679 (2001). Child sex case. State's experts a **clinical social worker** and a **clinical nurse practitioner** testified that, based on the "history" she got on the child, she believed that the child had been sexually abused. The Supreme Court held that there was an insufficient foundation for the testimony. *See also* State v. Stancil, 355 N.C. 266, 559 S.E.2d 788 (2002) (expert testimony from a **pediatrician** that a child has been abused based solely on "history" without proper foundation); State v. Bates, 140 N.C. App. 743, 538 S.E.2d 597 (2000) (expert testimony from a that a child has been abused based on "history" without proper foundation); *cf.* State v. Dick, 126 N.C. App. 312, 585 S.E.2d 88 (1997) and State v. Crumbley, 135 N.C. App. 59, 519 S.E.2d 94 (1999) where various panels of the Court of Appeals approved testimony from state's experts that a child had been abused because the witnesses were qualified and had an adequate opportunity to form reliable conclusions.

State v. Isenberg, 148 N.C. App. 29, 557 S.E.2d 568 (2001). Child sex case. Testimony from a **counselor** regarding general characteristics of abused children, and that the complainant exhibited symptoms "consistent with" those characteristics admissible.

State v. Galloway, 145 N.C. App. 555, 551 S.E.2d 525 (2001). Rape case. Defendant's **surgeon** could not testify that, according to the defendant's discharge summary, he had an extensive psychiatric history.

State v. Carpenter, 147 N.C. App. 386, 556 S.E.2d 316 (2001). Child sex case. **Social worker** was allowed to testify to characteristics of sexually abused children, and that complainant had characteristics consistent with those of sexually abused children. Basis for her opinion was that she had examined many children over the years, and had adequate opportunity to collect information on this child.

State v. Moss, 139 N.C. App. 106, 532 S.E.2d 588 (2000). Criteria for admission of **expert medical testimony**: 1) witness has expertise that puts her in better position than trier of fact to have an opinion, 2) opinion confined to whether event could or might have caused the injury, rather than did in fact cause injury, unless expertise leads her to an "unmistakable conclusion," 3) the witness does not express ands opinion as to the defendant's guilt or innocence.

State v. Golphin, 352 N.C. 364, 533 S.E.2d 168 (2000). Capital murder case. Defendant presented **psychologist** to testify to the defendant's social history and relationship to his brother/co-defendant. The witness relied in part on the report of another psychologist. On cross-examination, the prosecutor elicited damaging statements contained in the report relied upon by the witness. The Court held that there was no Confrontation or hearsay problem because the statements were introduced not as substantive evidence but to enable the jury to evaluate the psychologist's testimony.

State v. Wallace, 351 N.C. 481, 528 S.E.2d. 326 (2000). Capital murder case. Defense witnesses, a **criminologist** and a **psychologist**, offered opinions that the defendant, as a serial killer, suffered from a mental illness. The State cross-examined the witness about the details of other murders the defendant was charged with. The Court held that this was properly allowed because the defense witness had based their opinions in part on the defendant's other criminal activity.

State v. Bowers, 135 N.C. App. 682, 522 S.E.2d 332 (1999). State proffered **SBI agents** to testify to DNA analysis, serology and hair comparisons. Court suggests that, because these fields have already been "approved" by our courts, no further "gatekeeping" is required by the trial judge than to determine that the witness is properly qualified; that *Daubert* only applies to "novel" fields of expert testimony; *see also* State v. Underwood, 134 N.C. App. 533, 518 S.E.2d 231 (1999)(applying *Daubert* analysis to mitochondria DNA analysis because it was a novel technique); State v. Dennis, 129 N.C. App. 686, 500 S.E.2d 765 (1998)(analyzing "Phadebas methodology" for detecting saliva under *Daubert* as a novel method)

State v. Holston, 134 N.C. app. 599, 518 s.E.2d 216 (1999). The defendant proffered a **psychiatrist** (Dr. Billy Royal) to testify to the defendant's mental condition. This was to include statements made by the defendant to the witness. The trial court sustained the state's objection to the admission of the defendant's statements. The defense argued that

the statements were admissible as forming the foundation for Dr. Royal's testimony. The state argued that this was an attempt to get the non-testifying defendant's self-serving statements before the jury. The Court did not decide the issue, but found that any error was harmless.

State v. Pretty, 134 N.C. App. 379, 517 S.E.2d 677 (1999). Child sexual abuse case. The defendant made a motion in limine for a voir dire on the foundation of the state's expert testimony (from a **doctor** and **social worker**). The trial court denied the motion, and allowed only a voir dire on the witness's qualifications. The Court of Appeals held that a defendant is not entitled to a voir dire on the foundation of the testimony, as long as he is given an adequate opportunity to cross-examine the witness about the foundation.

State v. Warren, 347 N.C. 309, 492 S.E.2d 609 (1997). Capital murder case. Defense psychologist testified in sentencing hearing that the defendant suffered from a mental disorder, *inter alia*, because he had "broken all kinds of rules . . . vandalized things . . . stolen things." The Court held that this opened the door for the prosecutor to cross-examine the witness about the details of prior bad acts by the defendant.

EXPERT OPINION CASES

State v. Holland, 150 N.C. App. 457, 566 S.E.2d 90 (2002). When a field (such as **accident reconstruction**) has been accepted by the courts before as a proper subject for expert testimony, the trial court does not need to re-examine the principles upon which it is based.

State v. Santiago, 148 N.C. App. 62, 557 S.E.2d 601 (2001). Sexual offense case. A **doctor** testified that, because she was told that the defendant had inflicted previous minor (and non-sexual) injuries on the child-victim, the injury to the child's vagina was the result of sexual abuse rather than some non-criminal cause. The court said that the doctor's training was an adequate foundation for such an opinion.

State v. Jones, 147 N.C. App. 527, 556 S.E.2d 644 (2001). First-degree murder/rape of child by teenagers. The defendant claimed that his brother killed the child, and that he had been forced by his brother to help dispose of the body. The defendant's explanation for his public hair being found on the victims' body was that she had consented to have sex with him on some other occasion. The state's **doctor** was allowed to testify that, based on her interviews with the decedent's family, the decedent would not have consented to have sex with the defendant. The court opined that the doctors' training and experience was a sufficient foundation for this opinion.

State v. Berry, 143 N.C. App. 187, 546 S.E.2d 145 (2001). The trial court admitted testimony from state's expert regarding "**barefoot impressions**" found at the scene, incriminating the defendant. The Court of Appeals held that such comparisons are not reliable, but found the error in the admission of the testimony to be harmless.

State v. Teague, 134 N.C. App. 702, 518 S.E.2d 573 (1999). State's "**forensic expert**" was properly allowed to testify that the gunshot wounds were "consistent with" an "intent to cause death."

State v. Washington, 131 N.C. App. 156, 506 S.E.2d 283 (1998). Rape of mentally defective victim. State's **psychologist** properly allowed to testify to how complainant would have responded to the defendant's advances. He had sufficient training and contact with complainant to form admissible opinion.

State v. Atkins, 349 N.C. 62, 505 S.E.2d 97 (1998). Capital murder case. State's **doctor** could testify that the child-victim's injuries were worse than those usually found in murdered children. The doctor was qualified by experience to offer this opinion, and it was relevant to support the aggravating factor that the killing was "especially heinous, atrocious or cruel."

State v. Tyler, 346 N.C. 187, 485 S.E.2d 599 (1997). A **nurse** with experience in a burn clinic could give an opinion as to the psychological effect of certain pain medications and to the patient's cause of death. The fact that she was a nurse rather than a physician went only to the weight of her opinion not its admissibility. Also an **SBI Agent** could testify to the position of the decedent's body. The Court noted that the witness had a Bachelor's Degree in criminology. The Court noted that the test is simply whether the witness is in a better position than the jury to have an opinion. Cf. State v. Taylor, 354 N.C. 28, 550 S.E.2d 141 (2001), *supra*.

State v. Baldwin, 125 N.C. App. 530, 482 S.E.2d 1 (1997). First-degree murder case. Testimony by a defense **psychiatrist** about the psychological characteristics of the defendant that would make him more prone to make a false confession should have been admitted.

State v. Flippen, 344 N.C. 689, 477 S.E.2d 158 (1996). Capital murder case. Testimony by a forensic pathologist that the decedent was the victim of a "homicidal assault" was not inadmissible as an opinion encompassing a legal term of art.

State v. Harden, 344 N.C. 542, 476 S.E.2d 658 (1996). Cop-killing case. Defendant proffered an **ex-police officer** to testify that the cop-victims did not follow correct arrest procedures. The Court held that this was properly excluded as irrelevant because the defendant did not respond reasonably to the arrest procedures employed.

OTHER IMPORTANT CASES

State v. Ray, 149 N.C. App. 137, 560 S.E.2d 211 (2002). A **detective** testified that the lacerations on the victim were not consistent with a traffic accident. The Court of Appeals said that this was not expert opinion testimony, but lay testimony, based on the "personal observations and investigative training" of the witness.

State v. Washington, 141 N.C. App. 354, 540 S.E.2d 388 (2000). First-degree murder case. Police **detective** testified to investigation of the crime scene. During cross-examination, defense counsel wanted to ask the investigator his opinion on the trajectory of the fatal bullet. The trial court sustained the state's objections and the Court of Appeals affirmed. The Court opined that the witness, an 18-year veteran, was not tendered by the state or the defense as an expert and therefore ore could not offer an opinion about the bullet's trajectory.

State v. Mackey, 352 N.C. 650, 535 S.E.2d 555 (2000). Drug case. The defendant proffered an **ex-police officer** to testify to proper police undercover procedures. The Court held that this testimony was irrelevant because it did not go to an element of the offense charged.

State v. Gartlan, 132 N.C. App. 272, 512 S.E.2d 74 (1999). Attempted murder case. The defendant made an incriminating statement while under the influence of carbon monoxide poisoning. He presented expert testimony from a **toxicologist** and a **forensic psychiatrist** to support his claim that his statement was not voluntary. A police **detective** testified that the defendant's statement was "voluntary." The Court of Appeals agreed with the trial court that this was proper lay opinion testimony, based on the officer's "perceptions." *See also*, State v. Lloyd, 354 N.C. 76, 552 S.E.2d 596 (2001)(**detective** properly allowed to testify that the defendant was "too calm" as lay opinion testimony)