

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, NEGLIGENCE, 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.

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

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

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

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

Likely admissible, but status unclear.

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?](https://nccriminallaw.sog.unc.edu/2025/12/10/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/>.

© 2026. School of Government. The University of North Carolina at Chapel Hill.

Use of this publication for commercial purposes or without acknowledgment of its source is prohibited. Reproducing or distributing the entire publication, or a substantial portion of it, without express permission, is prohibited. For permissions questions or requests, email the School of Government at publications@sog.unc.edu.

