

# The California Psychologist



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## MINDFULNESS AND MEDITATION

resonance  
abundance  
respect believe  
now  
divine  
bliss  
purpose  
growth  
holistic family  
praying  
hope  
appreciation  
flow seek  
soul joy search  
gratitude  
sensing  
presence  
healing  
community  
ask  
truth  
consciousness  
receive  
mindfulness  
forgive  
wisdom  
share change  
learn giving  
empathy  
spirit  
health  
connect  
accepting  
spiritual  
grateful  
channel harmony  
love  
present  
blessings  
peace  
mind infinite heal

# Limitations on the Scope of Psychological Expert Testimony in Child Abuse Cases

Jack P. Lipton, PhD, Esq.

A jury in San Luis Obispo County Superior Court found Cody Adam Julian (“Julian”) guilty of four felony counts of lewd acts upon a child under age 14 in violation of *Penal Code* Section 288(a), and one count of sexual penetration with a child under age 10 in violation of *Penal Code* Section 288.7(b).

Julian appealed, and in the published decision in the case of *People vs. Julian* (2019), the California Court of Appeal overturned Julian’s conviction because the scope of the expert testimony of the psychologist who testified on behalf of the prosecution was impermissible, thus depriving Julian of a fair trial.

The alleged victim, a girl who was 10-years old at the time of the trial, testified at Julian’s criminal trial. Julian himself also testified at the trial. During his testimony, Julian denied the allegations of sexual molestation, and he explained how he cooperated with the police investigation because he did not “have anything to hide.”

During the trial, the prosecution called as an expert witness Dr. Anthony Joseph Urquiza, a licensed psychologist with the Department of Pediatrics at the University of California, Davis Medical Center. Dr. Urquiza testified in detail about Child Sexual Abuse Accommodation Syndrome (“CSAAS”), particularly to dispel the “myths” that children are sexually abused by strangers, that they are able to escape the abuse environment, that they disclose abuse “right away,” and that they are “significantly distressed.”

Additionally, within the context of his CSAAS testimony, Dr. Urquiza also presented testimony on the statistical likelihood of false allegations by alleged child sexual abuse victims. Specifically, Dr. Urquiza testified that such false allegations “don’t happen very often,” that “the range of false allegations ... is about as low as one percent ... to a high of maybe 6, 7, 8 percent,” and that psychological research indicates that false allegations are “very infrequent, or rare.” On cross-examination, Dr. Urquiza was asked about specific research studies dealing with false allegations, and Dr. Urquiza maintained his position about the statistical infrequency of false allegations by alleged victims of child sexual abuse.




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Under long-standing California case law stemming from the case of *People vs. Bruce McAlpin* (1991), expert testimony on common reactions of child sexual molestation victims, including regarding CSAAS, is admissible to rehabilitate the credibility of a child witness when the defendant suggests that the child’s conduct after the incident, like a delay in reporting, is inconsistent with the child’s allegations. But the courts generally have been clear that such evidence from an expert witness is not admissible to prove that the child has in fact been sexually abused, and, moreover, as the Court of Appeal ruled in *People vs. Michael Long* (2005), “the expert is not allowed to give an opinion on whether a witness is telling the truth.”

In Julian’s court case, the jury essentially had to decide between the credibility of the child in asserting that molestation

occurred, on the one hand, and the credibility of Julian in denying the allegations, on the other hand. As such, the Court of Appeal in the *Julian* case noted that Dr. Urquiza's expert testimony about the statistical probability that victims of child sexual abuse are making false allegations "invited jurors to presume that Julian was guilty based on statistical probabilities" rather than basing their decision on their own weighing of the evidence.

In reversing Julian's conviction, the Court of Appeal ruled that allowing Dr. Urquiza's expert testimony regarding statistical probabilities deprived Julian of his right to a fair trial, and noted that its decision is supported by prior rulings in state and federal courts nationally.

For example, in the case of *Harold Snowden vs. Harry Singletary of the Florida Department of Corrections* (1998), after the Florida Court of Appeal and the Florida Supreme Court failed to overturn the criminal conviction, the federal Eleventh Circuit Court of Appeals overturned the child sexual abuse conviction of Harold Snowden on the basis of improper psychological expert testimony. In the *Snowden* case, the expert had testified that child witnesses in sexual abuse cases "tell the truth 99.5% of the time," and that in this expert's own experience with children, that he "had not personally encountered an instance where a child had invented a lie about abuse." On appeal, the federal court, as cited by the Court of Appeal in the *Julian* case, ruled that this expert testimony was improper because "witness credibility is the sole province of the jury."

Similarly, in the case of *Wyatt Powell vs. State of Delaware* (1987), the expert witness testified that 99% of the alleged victims of sexual abuse in which she was involved "have told the truth." But the conviction of Mr. Powell was overturned on appeal by the Supreme Court of Delaware based on this improper expert testimony.

Also, in the case of *State of Iowa vs. Duane Myers* (1986), the expert witness testified that "it is very rare for a child to lie" about sexual abuse. The Supreme Court of Iowa overturned

the conviction of Mr. Myers, ruling that the expert testimony crossed the line between an "opinion which would be truly helpful to the jury and that which merely conveys a conclusion concerning defendant's legal guilt." Likewise, in *State of New Jersey vs. W.B.* (2011), the Supreme Court of New Jersey ruled that the testimony of the expert psychologist that "only 5-10% of children exhibiting CSAAS symptoms lie about sexual abuse" was inadmissible.

Additionally, in *Dickie Wilson vs. State of Texas* (2002), the Court of Appeals of Texas ruled that it was improper for the trial court to have allowed expert testimony that false allegations occur only "2 to 8%" of the time in child sexual assault cases. The Texas Court ruled that this statistical evidence "did not aid, but supplanted, the jury in its decision on whether the child complainant's testimony was credible."

In Julian's case, the California Court of Appeal followed these precedents established in other states by ruling that Dr. Urquiza's statistical testimony was inadmissible. The Court also ruled that the failure of Julian's trial attorney to object to Dr. Urquiza's testimony amounted to "ineffective assistance of counsel" and was an independent basis to overturn Julian's conviction.

The *People vs. Julian* (2019) case underscores the legal limitations of psychological expert testimony in child abuse cases. Although psychologists may testify fully about CSAAS, they may not opine, directly or indirectly, on the statistical likelihood that an alleged victim is telling the truth. Indeed, the Missouri Court of Appeals in the case of *State of Missouri vs. Stacey Williams* (1993) put it well: "Expert testimony that comments directly on a particular witness' credibility, as well as expert testimony that expresses an opinion with respect to the credibility or truthfulness of witnesses of the same type under consideration ... should not be admitted, [h]owever, it may be appropriate for an expert to testify that a child demonstrates age-inappropriate sexual knowledge or awareness, and that a child's behaviors are consistent with a stressful sexual experience." And in the case of *State of Arizona vs. Paul Lindsey* (1986), the Supreme Court of Arizona stated this basic principle succinctly: "The law does not permit expert testimony on how the jury should decide the case."

In this regard, the Court of Appeal in the *Julian* case noted that while "sports fans often use 'statistical odds' to predict the outcome of a sporting event, statistical odds ... are not a substitute for admissible evidence to decide the guilt or innocence of a defendant." In child sexual abuse cases, psychological experts certainly may testify about the parameters of Child Sexual Abuse Accommodation Syndrome, but they should avoid opining on the statistical probability that child witnesses generally are truthful, or that a particular child witness has testified truthfully. In fact, psychologists testifying as an expert witness in any criminal case should keep in mind the general principle that an expert may not testify on the likelihood that any witness is telling the truth. ■

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