

# Smith Freed Eberhard

# OREGON LAW UPDATE

## Expert Testimony Must Be Helpful to be Admitted

**From the desk of Josh Hayward:** Under the Oregon Evidence Code, expert testimony is admissible so long as it will assist the jury in understanding the evidence. If the testimony does not assist the jury, it is considered unhelpful and will be excluded. Read on to see how the courts apply this rule.

**Claims Pointer:** In this sexual abuse case, a licensed psychologist's expert testimony regarding the defendant's diagnosed adjustment disorder was offered in support of the defendant's theory that he falsely confessed due to distress. The Oregon Supreme Court determined that the trial court properly excluded the testimony because at best the testimony only demonstrated that it was within the realm of possibility that people with adjustment disorders could falsely confess due to stress. The case provides valuable insight into how the courts evaluate the usefulness of expert testimony.

case in point...

State v. Jesse, 360 Or 584 (November 17, 2016).

In April 2011, Lane Jesse ("Jesse") was indicted on one count of first-degree sexual abuse based on an allegation that he knowingly subjected his daughter to sexual contact. At trial, Jesse sought to introduce expert testimony from a licensed psychologist, Dr. Callum, with whom he attended 15 counseling sessions in 2009 and 2010. Dr. Callum was to testify about her clinical impressions of Jesse in support of his theory that certain statements he made were not actual confessions of guilt. Specifically, Jesse offered Dr. Callum's testimony to support an inference that his adjustment disorder contributed to an overreaction to accidentally touching his daughter that, in turn, contributed to his making admissions that were not actual confessions of guilt.

The prosecution moved in limine to exclude Dr. Callum's testimony on the grounds it was not helpful to the jury, and, following a hearing, the trial court agreed and excluded Dr. Callum's testimony. At trial, Jesse subsequently testified that he lacked a sexual motive when he accidentally touched his daughter, that he had not made any incriminating statements to his wife, that a written confession was a forgery, that he had not admitted touching his daughter inappropriately to sheriff's deputies shortly after his arrest, and that he falsely told Dr. Callum that he had inappropriate thoughts about children. The jury found Jesse guilty of first-degree sexual abuse, and he appealed.

The Court of Appeals concluded that the trial court erred in excluding Dr. Callum's testimony, explaining that the record supplied a nexus between Dr. Callum's testimony about Jesse's adjustment disorder and its effect on Jesse. The court explained that Jesse's theory of the case was that he had obsessed over an accidental touching of his daughter and then was overwhelmed by distress, causing him to confess falsely. According to the court, Dr. Callum's testimony was sufficient to support a factfinder's determination that Jesse's written and oral statements were not true admissions of guilt. The state appealed this determination, arguing that Dr. Callum did not testify that Jesse's disorder was of a sort that experts had observed as being likely to cause false confessions. Thus, she left the jury to speculate as to whether Jesse's adjustment disorder would have caused him to confess falsely, rendering her testimony unhelpful to the jury.

The Supreme Court reviewed its prior decisions regarding Oregon Evidence Code (OEC) 702, which provides: "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." To be helpful, expert testimony must assist a trier of fact to understand the evidence or determine an issue of fact that it may not be able to understand or determine as well on its own. In prior cases, the Court concluded that if the expert testimony modified inferences that the jury might



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otherwise be expected to draw from the evidence, the testimony satisfied the helpfulness standard.

The Court noted that Dr. Callum did not testify that Jesse's adjustment disorder could produce confessions that are not genuine. Nor did Dr. Callum testify that Jesse's disorder actually influenced his statements. Rather, she testified only that because of his adjustment disorder, it was within the realm of possibility that defendant confessed out of stress. Moreover, Jesse did not seek to prove that his adjustment disorder influenced his admission by other means—for example, by testifying that he confessed because he was unable to cope.

According to the Court, without testimony connecting Jesse's adjustment disorder to his later admissions, the jury was left to speculate about the existence of a connection between Dr. Callum's testimony and the issue of fact whether Jesse touched his daughter with a culpable mental state. The trial court therefore did not err in excluding that testimony on the ground that it would not be helpful to the trier of fact.

View full opinion at: <http://www.publications.ojd.state.or.us/docs/S063856.pdf>

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