

THE **RECORDER**

COMMENTARY

Exploring the Contours of Expert Testimony Regarding Child Sexual Abuse Accommodation Syndrome

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The term “child sexual abuse accommodation syndrome” (CSAAS) was initially coined by psychiatrist Roland Summit in 1983 in an effort to understand the various ways children react to sexual abuse. From an evidentiary perspective, not all states recognize CSAAS as admissible.

Indeed, CSAAS is not recognized by the American Psychiatric Association or the American Psychological Association. In California, expert testimony regarding CSAAS is admissible. A recent case, *People v. Mason*, sheds light on the use of CSAAS in court. Note that *Mason* is an unpublished opinion.

The practice of bringing a “pure expert” to court is common. The purpose is simple: to educate the judge or jury on an important issue in the case, often including relevant research. Federal and state rules of evidence characterize an expert as someone with specialized acumen or knowledge—having one degree or many degrees is not necessarily how an individual is recognized as an expert by a judge. The judge acts as a gatekeeper. As such, the judge must be convinced that a mental health professional proffered as an expert can validate their opinions and recommendations. Expert witnesses traditionally must present “a reliable basis in the knowledge and experience of the discipline.” What type of information helps substantiate expertise? “[S]ufficient data, reliable principles and methods, reliable application of those principles and methods to the case facts.” (“How to Examine Mental Health Experts,” Zervopoulos, 52).

The presentation of expert mental health information to the court is essential, but such evidence does not need to be characterized as a “syndrome” and it is likely to draw objections based on the fact, as mentioned above, that neither APA recognizes such a distinction. But a person’s behaviors based on observations, evaluations and appropriate records may indicate a pattern of behaviors that have been described and identified in relevant, empirically-sound and peer-reviewed research as indicative of someone having experienced certain sorts of

trauma. This may provide the expert confidence to report to the court that a person under the circumstances as are present in the case is likely to have experienced the trauma. An expert might even question the necessity of using the term “syndrome” to describe a pattern of behaviors.

In the *Mason* case, the defendant, Anthony Maurice Mason, was convicted of two counts of continuous sexual abuse of his two daughters. Mason appealed the conviction, contending that the trial court abused its discretion in allowing certain expert testimony on CSAAS, as well as due to the trial court allegedly giving improper instructions to the jury regarding that issue. What is unique is that the expert, Dr. Carmichael, acknowledged in his testimony that “... he did not know anything about the facts of the case, had not read reports or interviews related to the case, and knew nothing about the specific victim in the case or the relationship of ‘the victim’ to the defendant.”

What did Carmichael know and testify about? Carmichael opined on the five aspects of CSAAS, and the correlation of how those five items impact disclosure of sexual abuse. Precedent in California stands for the proposition that trial courts may allow CSAAS testimony in order “to explain the emotional antecedents of abused children’s seemingly self-impeaching behavior,’ such as delayed exposure of the abuse.” The five stages of CSAAS have been identified as:

1. Secrecy
2. Helplessness.
3. Entrapment (accommodation).

4. Delayed and unconvincing disclosure.

5. Retraction of the complaint due to adult disbelief and blaming the victim.

In the *Mason* appeal, the defendant argues that Carmichael's testimony exceeded appropriate boundaries by purportedly focusing on the "perpetrator's characteristics and the behavior of the 'non-offending' parent rather than on the children's general reactions to sexual abuse." The appellate court rejected those contentions as being an inaccurate summary of Carmichael's testimony. What did Carmichael's testimony include?

1. Characterizing the majority of perpetrators as male.

2. Most perpetrators are known by the child.

3. Most perpetrators have established a trusted relationship with the child.

4. The trusted relationship is maintained during the course of the abuse and thereafter.

5. Abuse often occurs while the "non-abusing" parent is not home, or simply not present due to their own issues (working, addiction, depression, sleeping).

6. Indicating that the child is coerced or threatened into maintaining a bond of secrecy with their abuser.

7. Noting the child's feelings of helplessness are exacerbated by a variety of fears (loss of relationship, loss of home, the non-offending parent siding with their partner rather than with the child).

8. Acknowledging that the perpetrator's size can impact the child's feelings of helplessness—the perpetrator's looming presence can instill not only fear, but make the child seek the perpetrator's approval.

9. Observing that while a child might smile or maintain an even keel while confiding in someone about the abuse, such a demeanor does not diminish the child's veracity, but instead indicates that the child may be attempting to distance themselves from the negative emotions that attend the experience.

10. Adding that a child is "giggling" while disclosing the abuse should not diminish the child's veracity; instead, one should realize that one is speaking with a child, not a mini-adult, and that children (like adults) sometimes giggle when nervous.

11. Recognizing that the non-offending parent may be reluctant to go to authorities due to shame, fear of loss of financial stability, and utter incredulity that a person they love could harm another person the non-offending parent loves.

The *Mason* court concluded that:

"Dr. Carmichael's testimony was appropriately directed at helping the jury understand common misconceptions about child victims of sexual abuse. His statements that 'the vast majority' of children are abused by someone they know and are in a trusted relationship with, rather than a stranger, elaborated on the context in which such abuse generally occurs

and dispelled a common misunderstanding as to the relationship between child victims and their abusers.”

Further, even if Carmichael’s testimony regarding why a non-offending parent may fail to report abuse exceeded the bounds of CSAAS testimony, the appellate court concludes that it was not prejudicial, as the testimony was brief, and failed to provide any specific tie to the defendant’s guilt. The appellate court also rejects the argument that Carmichael’s testimony was somehow grounded as inadmissible profile evidence.

In *People v Robbie*, the California Appellate Court concluded that, “A profile is a collection of conduct and characteristics commonly displayed by those who commit a certain crime.” In the *Robbie* case, the prosecutor asked an expert a series of hypothetical questions that included the defendant’s specific conduct. In *Robbie*, the expert opined that the type of behavior incorporated in the prosecution’s hypothetical questions was “typical of a particular kind of criminal.” The *Mason* court distinguishes Carmichael’s testimony from the expert in *Robbie*. While Carmichael noted that most perpetrators of child sex abuse are male, that testimony fell short of trying to profile a typical abuser. In addition, the appellate court dismissed Mason’s contention that Carmichael’s testimony was too fact specific and therefore lacked merit. Nor did the prosecution wrap specific examples of Mason’s conduct into hypothetical questions, distinguishing the underlying record in *Mason* from the record in the *Robbie* case.

Mason’s contention that he was harmed by the judge’s instruction on CSAAS testimony is also dismissed by the appellate court as unfounded.

Mason’s constitutional rights were not infringed upon by the trial court, including an instruction similar to CALCRIM 1193, which is a jury instruction that specifically advises the jury that the mere fact that testimony has been presented by an expert in child abuse does not stand as proof that the defendant committed sexual abuse of a child. Read in context, such a jury instruction is intended to help jurors grasp the concept that “CSAAS testimony seeks to explain why certain behavior does not, contrary to common opinion, suggest a victim’s allegations are false.”

What makes for a successful prosecution, or allows a party to explain the need for a change of custody based on allegations of child abuse?

- Digging down into the facts specific to the case.
- Explaining to a jury—or even to an experienced judge—that outcries by minors must be validated and not ignored.
- Laying the foundation for the five principles attendant to CSAAS, or the foundation for the generally agreed upon five principles noted in the research regarding sexual abuse accommodation strategies (coping strategies) used by children.
- Making sure that the best interests of children are served, and that children are safe.

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