

SUPERIOR COURT OF CALIFORNIA, COUNTY OF

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

vs.

Defendant.

) Case No.

)
) MOTION IN LIMINE:
) EXCLUDING OPINIONS OF
) POLICE, COUNSELORS,
) PSYCHIATRISTS,
) PSYCHOLOGISTS OR PARENTS
) ABOUT VICTIM'S VERACITY
) CONCERNING THE ALLEGED
) MOLESTATION

) Date:

) Time:

) Dept:

Defendant moves for a protective order that:

1. Parents of the alleged victim(s), police officer(s), psychiatrist(s), psychologist(s), Child Protective Services worker(s), counselor(s), or any other witness (hereinafter referred to as "witnesses") shall not be asked by the District Attorney their opinion on the truthfulness of the alleged victim(s)' allegations.

2. Said individuals not be permitted to testify that the alleged victim appeared to be truthful.

3. The District Attorney shall be instructed to caution all witnesses prior to their testimony that the witnesses shall not volunteer their opinion on the truthfulness or the appearance of the alleged victim(s)' allegations.

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LAW

I

POLICE OFFICERS MAY NOT TESTIFY AS TO THEIR OPINION WHETHER A VICTIM REPORTED A CRIME TRUTHFULLY OR APPEARED TO BE TRUTHFUL.

A police officer's testimony regarding the truth or veracity of a complainant is not admissible. This is because the officer's statements do not qualify as either character evidence or as lay or expert opinion. (**People vs. Sergill** (1982) 138 Cal.App.3d 34, 187 Cal.Rptr. 497 [case involving a prosecution for oral copulation with a minor].)

In **Sergill**, the trial court permitted two police officers to testify to the effect that the eight year old victim was telling the truth when she reported that defendant, her uncle, had sexually molested her. Defendant's conviction was reversed because the testimony of the two officers has been improperly admitted. (**Id.**, at p. 41.)

The **Sergill** found that the officers were not qualified to testify to the victim's reputation for honesty since they did not know her and were unaware of any such reputation. There was no basis to admit their testimony as to her truthfulness as expert opinion because nothing in the record established the officers as experts in judging truthfulness. Their testimony was not admissible as lay opinion because they had described their interview with her in detail and their opinions as to her truthfulness did not meet the statutory requirement of being helpful to a clear understanding of her testimony. Further, the court found such testimony irrelevant as it did not fall within any of the categories set forth in Evidence Code section 780,

enumerating factors bearing on credibility. (*Id.*, at pp. 38040.) For the same reasons, any police officer's opinion of the victim's testimony herein is inadmissible. The holding of **Sergill** has been endorsed by other courts. (See e.g., **People vs. Melton** (1988) 44 Cal.3d 713, 744; **People vs. Smith** (1989) 214 Cal.App.3d 904, 915.)

A lay witness may "describe [his] interviews with [the witness] in detail, leaving the factfinder free to decide. . . credibility for itself, based on such factors as his demeanor or motives, his background, his consistent or inconsistent statements on other occasions, and whether his statements. . . had the essential ring of truth." (People v. Melton, supra, 44 Cal.3d at pp. 744-745.) Thus, a lay witness may state that a witness appeared fearful or sincere. However, for a lay witness to testify that the alleged victim "appeared to be" telling the truth is the ultimate conclusion to be drawn from all the circumstances, including his conduct and demeanor and is thus inadmissible lay opinion pursuant to Melton and Sergill.

II

A PSYCHIATRIST'S TESTIMONY ON THE CREDIBILITY OF A WITNESS IS ALSO INADMISSIBLE FOR THE REASONS ABOVE, BUT MORE IMPORTANTLY BECAUSE THE JURY MAY PLACE TOO MUCH RELIANCE ON IT

People vs. Manson (1976) 61 Cal.App.3d 102, 132 Cal.Rptr. 265, discussed the question whether a psychiatrist should be allowed to give his opinion concerning the veracity of a witness. Manson and his co-defendants relied on **Ballard vs. Superior Court** (1966) 64 Cal.2d 159, 49 Cal.Rptr. 302, 410 P.d 838, to demand that Kasabian, a prosecution witness, be examined by a court-appointed psychiatrist to determine her competency and credibility. The

court in finding no necessity for such examination discussed the **Ballard** provision for appointment of a psychiatrist to examine a prosecution witness in a sex offense case concerning the veracity of the witness. The court noted:

"While we do not suggest that **Ballard** is necessarily limited to cases involving sex offenses, we here accept the admonition that a psychiatrist's testimony on the credibility of a witness may involve many dangers; the psychiatrist's testimony may not be relevant; the techniques used and theories advanced may not be generally accepted; the psychiatrist may not be in any better position to evaluate credibility than the juror; difficulties may arise in communication between a psychiatrist and a jury; too much reliance may be placed upon the testimony of the psychiatrist; partisan psychiatrists may cloud rather than clarify issues; the testimony may be distracting, time consuming, and costly. (**People vs. Russell** (1968) 69 Cal.2d 187, 195, 70 Cal.Rptr. 210, 443 P.2d 794, Cert.Denied 393 U.S. 864, 89 Sup.Ct. 145, 21 L.Ed.2d 132." (**People vs. Manson**, supra, 61 Cal.App. 3d at pp. 137-138.)

Since **Ballard** and its progeny have since been disabled by Penal Code Section 1112 and the sound logical reasons for not accepting a psychiatrist's testimony on the credibility of a witness still stand, psychiatrists and other like experts must not be allowed to give an opinion as to whether an alleged victim is telling the truth. Applicable case law is in accord.

For example, in **People vs. Willoughby** (1985) 164 Cal.App.3d 1054 at p. 1070, 210 Cal.Rptr. 880 at 890, in which the defendant's conviction was reversed, the court held that on retrial, evidence of a sexual trauma expert on the subject of the victim's truthfulness about the alleged act would be inadmissible. In **People vs. Ainsworth** (1988) 45 Cal.3d 984, a psychiatrist who testified in a co-defendant's case as to that individual's capacity

to form the requisite mental state for the crime charged was permitted to testify that he found no evidence of premeditation and deliberation and that he felt that the co-defendant had been forthright in relating the events to him and was feigning or trying to cover up anything. (*Id.*, at p. 1011.) The reviewing court found such testimony relevant to the reliability of the doctor's conclusions and **distinguished** it from the situation where a psychiatrist is asked to assess a witness's ability to testify truthfully, "We agree that, in such cases, where the sole purpose of the psychiatric examination and testimony relates to the credibility of a witness, the psychiatrist may not testify to the ultimate question of whether the witness is telling the truth on a particular occasion." (*Id.*, at p. 1012.) **Ainsworth** was cited with approval in **People vs. Castro** (1994) 30 Cal.App.4th 390, 396, in which the appellate court upheld the trial court's refusal to allow the defense to elicit testimony from the victim's psychologist that the victim had stated her claim that the defendant had molested her was false. As the court stated, "Because defendant's offer of proof was narrowly directed at the truth of Sarah's molestation allegation, the trial court had no discretion to admit the proffered evidence." (*Id.*, at p. 396.)

There has been no case allowing expert testimony or lay opinion that the victim is truthful about the alleged act. **People vs. Stoll** (1990) 49 Cal.3d 1136, 265 Cal.Rptr. 111 dealt with the personality profiles of defendants, under Evidence Code § 1102. In that case, a psychologist's opinion testimony, based upon interviews and standardized tests, was competent but disputable "expert opinion," rather than new "scientific" evidence that had to

be proven reliable before it was admitted, was permitted. As indicated however, Stoll pertained to defendants, **not** victims, and thus it does not disturb the settled area of law on which this motion is based.

Dated:

Respectfully submitted,

Attorney for Defendant