

Sex Abuse Accommodation Syndrome Declared Unscientific And Inadmissible

October 31, 2018 | by Einhorn Barbarito

The child sexual abuse accommodations syndrome testimony has been debunked and deemed inadmissible by the Supreme Court of New Jersey.

For many years, in sex offense cases, the State was able to introduce testimony of the child sexual abuse accommodations syndrome which presented a behavioral science explanation of how certain child sexual abuse victims react. As previously explained by our Supreme Court in *State v. J.Q.*, 130 N.J. 554 (1993), the CSAAS testimony had a non-substantive purpose. It was utilized by the State to rehabilitate a victim's testimony when it was anticipated that the defense would assert that a child delay of reporting the abuse or recanting indicated that the child was unworthy of belief. *J.Q.*, *supra* at 564. The syndrome had been originally developed by Roland C. Summit, M.D. and explained in a 1983 article. Summit himself criticized the forensic use of CSAAS testimony in a subsequent article. However, the courts continued to permit the State to introduce testimony under the child sexual abuse accommodation syndrome which was based upon the following "symptoms":

1. Secrecy;
2. Helplessness;
3. Entrapment;
4. Delayed, conflicted and unconvincing disclosure;
5. Retraction or reversal of accusation.

Thankfully, in a recent case, our Supreme Court found that there was no scientific basis for CSAAS evidence in a trial.

The CSAAS was an attempt to explain why some children deny, recant or fail to act in a way that is understandable to adults. It is also used to explain why some child abuse victims presented conflicting accounts of their abuse or seemed unconvincing in their disclosures. Our Supreme Court had permitted

the introduction of CSAAS testimony without making a determination that it was scientifically reliable. It finally re-analyzed CSAAS evidence and rejected its underlying relevance in criminal cases. That decision was quite simple since the syndrome use at trial was illogical. For example, if a child were to say that he or she had not been abused, CSAAS would posit that the child was not telling the truth and that the denial was actually evidence that he was abused. Therefore, not only did disclosure of abuse, but denial, recantation or changing stories also became evidence of abuse. That presented defense attorneys with an almost insurmountable task. In essence, the courts were permitting testimony from experts leading jurors to conclude that when a child reported that they were not abused, that such a denial was actually a symptom of abuse. Obviously, defendant would then be confronted with only inculpatory interpretations of non-disclosure, recantation or conflicting stories.

The abuse of the syndrome continued for many years until a recent challenge. In *State v. G.L.G.*, 234 N.J. 265, the Supreme Court rejected the admissibility of a child's sexual abuse accommodation syndrome, finding that it did not satisfy all parts of the evidence rule governing admission of expert testimony. The Supreme Court applied the espoused in *Frye v. United States*, 293 F. 1013 (District of Columbia 1923) which required that expert be dismissed and be sufficiently established in the field to have gained general acceptance. The *G.L.G.* court found that the syndrome evidence did not meet the *Frye* test. Similarly, the Court rejected an analysis under *Daubert v. Merrill Dowe Pharmaceuticals*, 131 S.Ct. 2786 (1993) which required that any proposed expert testimony be supported by appropriate validation. That requiring a standard of evidentiary reliability assuring that the evidence or testimony be useful to assist the jury in understanding the evidence.

The Supreme Court made a *Frye /Daubert* analysis and found that the first four categories of the syndrome did not satisfy the relevant evidentiary standard. It then ruled that experts could not present evidence on those aspects of the CSAAS at trial. However, the court reached a different conclusion of about the delayed disclosure component. Therefore, the Court held that the State may present expert evidence on delayed disclosure but that no reference to the syndrome was to be made. Any expert evidence regarding delayed disclosure, would also be subject to appropriate limited instructions to the jury given prior to the expert testimony and as a significant part of the Court's final charge. Interestingly, in *J.L.G.*, the Court did not reverse the conviction before since it deemed the evidence before the jury to be overwhelming evidence of the defendant's guilt. The error in admitting the CSAAS testimony was deemed harmless that case. The Supreme Court's decision was based

upon evidence produced at a remand hearing. After that hearing, the Supreme Court entered its order determining that CSAAS did not meet the reliability test.