

Sexual Assault: Court Recognizes Nurse As Expert Witness In Criminal Court Proceedings.

An individual was convicted of the crime of forcible sodomy and animate object penetration based upon a match between a DNA sample taken from him when he was a criminal suspect and a sample obtained during the victim's examination in a hospital emergency room.

He appealed his conviction, objecting to the testimony of a registered nurse who was the coordinator of the hospital's Sexual Assault Nurse Examiner program.

The judge at first sustained an objection to the nurse's testimony, but after more thorough review of her qualifications allowed the jury to hear her testimony.

She had not examined the victim herself. She was not called upon to testify about the assessment data she herself had observed about the patient.

Instead, the nurse was called upon to testify as an expert witness that the injuries observed by others who examined and assessed the patient were consistent in general terms with forced, non-consensual sexual penetration.

The Court of Appeals of Virginia agreed with the trial judge that this nurse had the qualifications to render an opinion in this case as an expert witness. The defendant's conviction was upheld.

To testify as an expert a witness must have sufficient knowledge, skill or expertise to render the witness competent to testify as an expert on the subject matter before the court.

Nurses as a general rule can testify as to objective data they have observed regarding their patients but they are not allowed to render opinions about medical causation.

Nevertheless, a sexual assault nurse examiner is qualified to testify not only about the data she has observed but also can testify in general terms about the causation of injuries experienced by a victim of a sexual assault whom she has not examined or treated.

A certified sexual assault nurse examiner need not be licensed to practice medicine to form opinions, even about a victim she has not herself examined.

COURT OF APPEALS OF VIRGINIA
September 17, 2002

Nurse's Role As Expert Witness Traditional View

As a general rule, nurses are recognized as experts only when the legal standard of care for nurses is an issue.

The need for a nurse to testify as an expert witness generally comes up only in civil malpractice cases where nursing negligence has been alleged.

There is a long-standing rule that nurses are not allowed to render opinions as expert witnesses as to medical issues.

Facts versus Opinions

Nurses can testify as to factual data they have observed but cannot state medical opinions.

Hypothetically a nurse could testify that a patient's BP was 150/100 but could not state an opinion that the patient had renal as opposed to essential hypertension or that X versus Y medication should have been given or that giving the patient Y instead of X caused the elevated BP.

Nurse's Role As Expert Witness Sexual Assault Case

The court recognized that a nurse with specialized training in the area of assessment and care for victims of sexual assault has the specialized expertise to state a medical opinion as an expert witness in a sexual assault case.

The nurse in this case went into detail on the physiologic mechanisms of normal sexual arousal to distinguish it from involuntary penetration during a criminal assault. Her expert opinion was accepted that the victim's injuries in this case were consistent with a criminal assault. **Mohajer v. Commonwealth, __ S.E. 2d __, 2002 WL 31056600 (Va. App., September 17, 2002).**

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E. Kenneth Snyder, BSN, RN, JD
Editor/Publisher
12026 15th Avenue N.E., Suite 206
Seattle, WA 98125-5049
Phone (206) 440-5860
Fax (206) 440-5862