

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

STATE OF ARIZONA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	CR 2003-009183-001 DT
	)	CR 2003-020302-001 DT
ANDREW MICHAEL ELEFANTE,	)	
	)	
Defendant.	)	
_____	)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Trial Testimony of Wendy Dutton

BEFORE THE HONORABLE DOUGLAS L. RAYES, Judge

APPEARANCES: Ms. Karen B. Sciarrotta
Deputy County Attorney
Representing the State
Mr. Jason M. Goldstein
Ms. Karla L. Momberger
Deputy Public Defenders
Representing the Defendant

Phoenix, Arizona
April 11, 2005

(COPY)

Annette Jaycox, RPR
CR #50382

P R O C E E D I N G S

* * *

WENDY DUTTON,
recalled as a witness herein, having been previously duly sworn by the
Clerk, testified upon her oath as follows:

DIRECT EXAMINATION

BY MS. SCIARROTTA:

Q Have you testified in and been qualified as an expert in the
area of interviewing techniques and also in the area of characteristics
of child sexual abuse?

A Yes.

Q However, in this case do you have any personal knowledge of
the case involving Andrew Elefante?

A No.

Q Have you spoken with any of the witnesses in this case?

A No.

Q Have you interviewed anyone in this case?

A No.

Q So you're coming into this case cold today; is that correct?

A Yes, in a manner of speaking.

Q What, I mean, you don't know specifically the facts of this
case, do you?

A That's correct. I don't know the facts of this case.

Q Okay.

Now, based on your experience and the current research and
literature, can you say whether or not children are more likely to be
sexually abused by someone they do know or someone they don't know?

A I would say the research in my own experience is clear on this
that it's more common for children to be sexually abused by someone they
know.

Q So is stranger danger a myth?

A No. There are cases where children are sexually abused by
strangers, but it's more common for them to be abused by someone they
know.

Q How does being abused by somebody that a child knows affect a
child's feeling of helplessness?

A Well, I think it can certainly -- well, just in general
children are not as sophisticated or worldly or as experienced as
adults. So just by definition they are more helpless in relation to
adults, but when children are abused by somebody they're dependent upon
for food, shelter, clothing, love, those kind of things, that places
them in an even more helpless position.

Q Okay.

Now, when a child talks about being abused, typically who do
they tell?

A Well, it depends on the age of the child. For example,
younger children are more likely to tell their mothers about the abuse.

Older children, teen-agers especially, are more likely to tell a close friend or somebody they're romantically involved with.

Q Now, as far as with telling, you say usually it's to a parent. Are there situations where they don't tell a parent first?

A Certainly. Younger children may not choose to disclose to their mother for whatever reason and may choose somebody that they trust or feel confident will believe and support them, such as a teacher or a counselor or a sibling or another relative.

Q Now, is it true that kids tell immediately after being abused?

A Some do, but I would say it's more common for children to delay disclosure.

Q Delayed disclosure, what do you mean?

A Delayed disclosure means that many children will wait a significant period of time before they tell anyone about the abuse.

Q Now, when you say delayed disclosure, can it be -- do you mean definitely a period of years, or can it be shorter than that?

A Well, the research tends to define it as anything two weeks after the initial incident of abuse, and so we see a wide range of time pass between two weeks, and the longest I've heard of is 60 to 70 years before someone told anybody about the abuse.

Q What factors might determine whether a child reports sexual abuse immediately?

A Well, we know primarily that the closer the relationship between the victim and the offender the longer the delay is likely to be. So for whatever reason children have a very difficult time disclosing about somebody they feel especially close to.

Q Are there other factors that might affect whether a child tells right away?

A Well, we see immediate disclosures more often in cases where children are abused by a stranger or a distant acquaintance.

Q How might embarrassment affect whether or not a child tells right away?

A Many children report a wide variety of reasons why they don't tell right away, and embarrassment is one of them.

Often times children feel ashamed, feel they're at fault. They may be fearful no one will believe them. If the perpetrator has threatened them this way many children believe the perpetrator will carry through with those threats.

Q And you mentioned if a child tells and is not believed. How might that affect whether or not a child tells again?

A Well, we know that children whose initial disclosures of abuse are met with disbelief or ridicule or blame that children are likely not to tell anyone else or maybe even retract the allegation.

Q Have you ever come across in your personal experience or in the research have you come across children who didn't really understand that what was happening to them was wrong?

A Yes. That's quite one of the common reasons that very young children, for example, children who are preschool age don't tell because they don't have a frame of reference that this doesn't occur in every

household, so they may not know that the abuse is wrong and that it's something that needs to be reported to someone.

Q Now, if an abuser has a trusting relationship with a child how does that affect whether a child tells right away about the abuse?

A As I said, children who are in an especially close relationship with a perpetrator are more likely to delay disclosure and longer the delay is likely to be.

Q Are you familiar with the term piecemeal disclosure?

A Yes.

Q What is that?

A Piecemeal disclosure refers to how some children may disclose abuse indirectly at first. For example, they may tell someone they had a dream about being sexually abused or they may tell someone that a friend of theirs is being abused, and they will watch and see how that message is received or children may minimize the degree of abuse. For example, their initial disclosure may be about fondling and as time goes on the child may disclose more intrusive touching or more sexual activity that more traumatic or embarrassing for them to talk about.

Q Why might that happen?

A I think the child typically want to test the waters first to see how their message -- if they're believed and supported in their disclosure then they may feel more comfortable disclosing more embarrassing information over time. If their initial disclosure is met with disbelief or ridicule or blame they may choose not to disclose more information at that point.

Q Does every victim disclose in piecemeal fashion?

A No.

Q Can you explain to us does it usually happen over days, hours, years? Is there a specific time frame you can put on how somebody will disclose --

A No.

Q -- disclose piecemeal?

A No.

Q Is that because every victim is different in how they tell?

A Yes, everyone is different.

Q Can a child still love, like, and care about, even respect the person who is abusing them?

A Yes.

Q Why is that?

A Well, there are several reasons for that. Many victims report having ambivalent feelings about the abuser. For example, they may love or like the person but dislike the behavior or what is happening to them. This is especially true if the person who is abusing the child is someone the child cares about or is in a relationship with or someone who is deliberately tried to develop a close relationship with the victim.

Q Now, we touched on this earlier, but how does a victim, especially when it's a child, choose who they will tell?

A Well, if it's a young child most often they will tell their mothers typically because the mother child relationship is probably the

closest in that age group if the child chooses not to disclose to be the mother generally what it has to do child is fearful that the mother won't believe them or child's mother is unavailable for some reason. For example, doesn't live with the child or has a punitive relationship with the child, and so in that case the child may choose to disclose to someone else that they feel close to or feels could protect them.

Q When children eventually tell can they usually give an exact time and date of when the abuse --

A It depends on the age of the child. Typically young children cannot be give exact time or date of when an incident occurred.

Q Why is that?

A There are several reasons for that. Developmentally children's ability to develop place and time does not begin to develop until the age of 10. Prior to that when you ask a child when did this happen they may answer when mom was at work or when I was at home. They don't understand the concept of when means I want a time frame of what happened.

Secondly, when abuse has been chronic over a long period of time, children may blend memories of different incidents together in what we call a script memory, and they may remember more about salient details about the event rather than peripheral detail like time of day or date when an incident occurred.

Q Can you explain to us the different peripheral details and other details that the child might be able to --

A Well, central or salient details, to give you an example, if you are to witness a robbery of Circle K in which a person with a mask pulled a gun and pointed it at the clerk and demanded money, the central or salient detail would be a man pointed the gun at the clerk and demanded money.

The peripheral of that memory would be what color shirt the perpetrator had on. What kind of car did he leave in; how tall; what color eyes he had. Those kind of things are considered peripheral details as opposed to central or salient, most important detail of the incident.

Q Why might a child have difficulty giving peripheral details?

A I think memory for a peripheral details fades more quickly over time than it does for central or salient detail.

Also, if one is not paying attention to those particular details it's very difficult to encode them into memory. So, for example, if my Circle K robbery scenario most people would be focused on the gun and man and demand for money. Because we're concerned for our own personal safety we may not necessarily be paying attention to how tall the suspect is or what color clothing he had on or those kind of things.

Q Now, in your experience and research have you come across the concept of false allegations?

A Yes.

Q What are false allegations?

A False allegations are basically that, when somebody makes a false allegation of abuse.

Q How does that differ from a erroneous allegation?

A Well, false allegations generally refers to especially in the case of child sexual abuse where the allegation originates from the children him or herself or maybe from the child's parent erroneous allegation occurs when, for example, a child says or does something that leads a parent to be concerned that some abuse happened, and then the parent may ask leading and suggestive questions, and the child may make an allegation on abuse. So, for example, if a mother is bathing her 4-year old daughter and 4-year old daughter begins to masturbate and the parent may not know that is normal behavior for a 4-year old in the bathtub that mother may begin who showed you how to do that who taught you that and child may come up with a name. That's an example of how erroneous allegation gets started as opposed to false allegation which arises from the child or from one of the parents of the child.

Q Now, as to false allegations under what circumstances do those usually arise?

A False allegations in child sexual abuses generally occur -- well, they occur in two age groups or two situations. The first is typically involved very young children whose parent are involved in a high-conflict divorce or custody dispute. Most often in those situations the allegation arises from one of the parents in an effort to gain advantage in the legal dispute.

The other situation in which false allegations occur are with teen-age girls, and most often these girls are either trying to change their living situation or have some clear goal or secondary gain that they're trying to achieve, or those girls may have significant mental illness which causes them to make a false allegation or they may be trying to conceal consensual sexual activity, and they may make up an allegation in order to do so.

Q We'll stick with teen-age girls for a second. Have you seen examples of false allegations being made?

A Yes.

Q And in those type of cases then who is the first allegation made to when it's by a teen-age girl? I'm discussing false allegations.

A False allegations who did they disclose to?

Q Right.

A Well, I don't know if anybody has particularly looked at that aspect of the research, but in general teen-agers are more likely to tell a friend.

Q And with regard to preschool kids, you indicated that they're more likely to tell a parent when it's a false allegation?

A Well, as I said, most false allegations or it's quite common for false allegations in preschool kids or very young kids to originated from the parents that's more common than allegation arising from the child in that age group.

Q Now, as to behavioral indicators, can you look at kids and say this child has symptoms A, B, and C and, therefore -- in their behavior -- and, therefore, that child was abused? Are you able to do that?

A No.

Q No.

Do all children exhibit the same behavioral indicators when they've been abused?

A No. In fact, we see a wide range of behaviors in children who report sexual abuse. Some children are A-symptomatic meaning they would show no behavior or psychological symptoms that would lead them to the attention of mental health system, but about the same number of children will exhibit symptoms, and these can include things like depression, anxiety problems in school, suicidal behavior, but we also see those kind of behaviors in children who experience other kinds of trauma.

Q Now, what factors might determine a child's response to the abuse?

A Well, there are several factors that seem to be associated with how a child might react to abuse. First is the nature of the relationship or the closeness between the victim and the offender. A lot has to do with how well the child was functioning before the abuse occurred. Children who are functioning pretty well before the abuse occurred tend to do better before children who are already struggling before abuse happens children's whose disclosures are met with support and belief seem to do better than children who experience a disclosure disaster. Meaning they're not believed or even worse consequences occur as a result of their disclosure.

Q Does the reaction of a child sometimes vary with the child's age?

A Yes. Especially with symptoms, for example, preschool children are more likely to regress in their behavior. For example, in potty training or bed wetting or things like that as opposed to older children who may react to abuse by abusing drugs and alcohol or engaging in suicidal behaviors.

Q But, again, there can be other explanations for all those behaviors, correct?

A Yes.

Q Now, if you had a false allegation with a preschool child would you expect the disclosure to come from a parent or from a child?

A Well, more likely the disclosure will be made to -- the false disclosure will be made -- to a parent, but as I said most often false allegations arise from one of the parents herself.

Q Okay.

So who would you expect to be contacting the authorities?

A One of the parents.

Q Would you expect the child to be the first reporter to the police or to someone outside the family? I guess, would you expect kids to go to the police in that type of situation?

A Would I expect them to go to the police on their own?

Q Well, who would you expect them to tell first?

A Well, with younger children, again, it's their mother or somebody. With older children it's a friend and typically that causes somebody to call the police or CPS.

Q Now, you don't know the facts of this case?

A That's correct.

Q Can you explain to us why would you come in here and testify if you don't know the facts of our case?

A Well, my purpose here today is to provide information that may be helpful to you all in making decisions about the facts of the case. I typically don't want to know the facts of the case before I testify so I can either purposely or accidentally tailor my testimony to fit the facts of the case.

MS. SCIARROTTA: No other questions, Your Honor.

THE COURT: Cross-examination.

MR. GOLDSTEIN: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. GOLDSTEIN:

Q Good morning.

A Good morning.

Q You said you're employed by Saint Joseph's Hospital?

A Yes.

Q And do you receive compensation for your testimony here today?

A I'm being paid my regular salary to be here today, but the hospital will charge Maricopa County Attorney's Office \$120.00 an hour for my time here today.

Q And having no background on the facts of the case itself you're not sure whether or not your testimony is relevant at all to the facts of the case?

A That's correct.

Q And would you agree an important part of your job relates to the advocacy for children?

A Yes.

Q And that part of your job responsibilities also to educate both police officers and prosecutors on what you know?

A Yes.

Q Would you agree that a lot of the principles that you talked about today relate to a subject being called child sexual accomodation syndrome?

A Child sexual abuse accomodation syndrome?

Q Yes.

A Yes.

Q And that was a I guess described as watershed piece of work by Dr. Roland Summitt?

A Yes. Child sexual abuse accomodation syndrome Dr. Roland Summitt wrote and published in 1983, and that was at the beginning of or at the start of 20, 25 years of research specifically in the area of child sexual abuse, so watershed meaning it's one of the first articles that dealt with that issue.

Q And do you base the principles you discussed today on that work?

A On Dr. Summitt's article plus 20 to 25 years of research that has been done since then.

Q Would you agree primary part of that work related to

explanation of delaying in reporting and recantation?

A Yes.

Q Now, some mental health experts agree and some experts disagree including criticized the use of child sexual abuse accommodation syndrome as it's used in court; is that right?

A Well, I would say that Dr. Summitt himself has criticized mental health professionals using child abuse accommodation syndrome as diagnostic syndrome. Meaning, if these things are present then the child was definitely abused. That is inappropriate use of child sexual abuse accommodation syndrome what Dr. Summitt it to be a descriptive syndrome to explain why normal children would react the way they do in a situation involving abuse.

Q As you said he didn't intend to say every disclosure that is made that has some of these factors is in fact a true allegation?

A No. He never intended the child sexual abuse accommodation syndrome to be a truth test regarding the allegations.

Q And that there's no clinical method available to distinguish valid claims from false claims?

A Based solely on a child's statement, no.

Q Or ones that are created out of fantasy or deception?

A We have not developed a research tool or test that we can use to apply to a child's statement to determine truth or falsehood of the abuse whether it arose in fantasy or not.

Q Or a situation where a caregiver gives an idea to a child which is then forwarded on to someone else?

A Based solely on the child's statement, no.

Q You talked about direct testimony about how some child abuse victims are A-symptomatic in terms of emotional display. What do you mean by that?

A Be either by behavioral characteristics or psychological symptoms for example.

Not all children who are sexually abused have bed wetting or nightmares or fear of the offenders or those kind of things. Some children may show absolutely no psychological or behavioral changes.

Q And other children do what?

A And other children may have symptoms that would lead them to the attention of a mental health professional.

Q Okay. So showing symptoms could be consistent with a child being a victim of child sexual abuse?

A It could.

Q And not displaying or not showing those behavioral characteristics could also be consistent with someone being a victim?

A That's correct.

Q Okay.

You talked about delay in disclosure or piecemeal disclosure. Some children disclose immediately after abuse; is that right?

A Some children do, yes.

Q Okay.

And other children disclose what period of time after an abuse?

A Well, it's not uncommon for children to wait a significant amount of time, and many people never disclose until they're well into adulthood. It just depends.

Q In order to determine whether or not disclosure has been made soon after the abuse or immediately after the abuse as opposed delayed disclosure you agree you have to have a date of disclosure, a date -- I'm sorry, a date of disclosure and a date of incident?

A Yes.

Q Okay.

And whether or not a child discloses immediately after that could be a sign of a true allegation of abuse?

A Actually, whether or not a child delays immediately or after a delay, should have no bearing on the truthfulness or falsehood of the allegation.

Q Okay.

We talked about the fact that false allegations do exist.

A Yes.

Q And erroneous allegations do exist?

A Yes.

Q And you said what would be the most common area narrow this to two what is more common age group of false allegations?

A I'm sorry. Could you repeat the question, please.

Q You had listed -- we talked about two on direct examination Miss Sciarrotta asked you about two areas of age groups for children to make false allegations. One, you said was teen-agers. One was younger preschool age and below. Which of those is more common?

A I would say it's probably more common for erroneous allegations to occur in the younger children and false allegations to occur in the older children.

Q Erroneous allegations are, in fact, common?

A Yes.

Q And you would agree that where there are most common associated with custody dispute?

A Yes.

Q And it doesn't necessarily have to be a hotly-contested custody dispute?

A Not necessarily, but more commonly it does occur in those high custody or high conflict custody cases.

Q And but simply you would agree that you've testified in the past that it is associated, commonly associated, with a custody dispute?

A Yes.

Q Okay.

And in those situations it's done so -- because there was pressure exerted on the child?

A Yes.

Q Or suggestions made to a child?

A Or coaching, yes.

Q Can suggestions also be made without an intent to those suggestions?

A Yes.

Q Okay.

And is that what you're referring to with erroneous allegations?

A Yes.

Q Can you explain that a little further?

A Well, for example, I think I used the example of a mother bathing her 4-year old in the bathtub. She observes the child masturbating and rather than ask a question like tell me about what you're doing which would be nonleading form of getting information about what the child is doing versus a leading question like who taught you that, where did you learn that which suggests to the child that they need to come up with an answer.

Q Could it just be in response to seeing sexual behavior, or could it be in response to seeing what someone may believe a symptom of sexual abuse?

A It could, but quite often sexual behavior can be a symptom of sexual abuse. Nightmares, bed wetting in younger children could also be a symptom.

Q Could it be in response to someone believing they see a physical sign of sexual abuse and then begin a leading conversation?

A It could.

Q Could it also -- now, would you agree that there's a right way and wrong way to have a conversation with a very young child about explaining good touch and bad touch?

A Yes.

Q I think we're on the same page, but could you explain for the jury what you mean by good touch, bad touch conversations?

A Well, typically, when parents or teachers or DARE officers are talking about good touch, bad touch, they generally would tell children a good touch is something like giving a hug or handshake or kiss on the cheek. Whereas a bad touch somebody touching parts of their body bathing suit would cover or pee pee or bottom, for example.

Q What two be the wrong way to conduct such a conversation?

A I think a wrong way to conduct such a conversation would be to ask, for example, if a person explains bad touch and then asks the child, now, somebody has touched you in a bad way, haven't they. Kind of suggesting to the child someone has. That little tag, haven't they, implies the answer to the question everyone wants to hear as opposed to a more open-ended question like has somebody ever touched you in a bad way, more yes or no, less leading question.

Q Now, when that is done in an incorrect way or bad way, it's not always the intention of the person having that discussion to do it that way, is it?

A No. It may not be.

Q Just usually would have to do with lack of full education on correct way of conducting such a conversation?

A That's correct.

MR. GOLDSTEIN: Thank you. I have nothing further.

THE COURT: Redirect.

MS. SCIARROTTA: Thank you, Your Honor.

REDIRECT EXAMINATION

BY MS. SCIARROTTA:

Q Let's start with something you indicated earlier. Do you get any extra pay to be here in court and testify?

A No. I'm being paid my regular salary.

Q Now, you were asked about child sexual abuse accommodation syndrome. You indicated that the author of that article, Dr. Summitt, didn't intend for you to be able to come up with symptoms and say this child has been abused. How did he intend for it to be used?

MR. GOLDSTEIN: Objection. Speculation.

THE COURT: Sustained.

Q BY MS. SCIARROTTA: What is your understanding based on the research of how child sexual abuse accommodation syndrome should be used?

A Child sexual abuse accommodation syndrome should be used to explain why children behave the way they do in a situation like sexual abuse back when Dr. Summitt wrote his article in 1983 I think people had some misconceptions about children should or would behave in this situation. For example, misconception would be that if a child were truly sexually abused they would tell right away; they would fight back; they would give a clear, concise description of the abuse immediately after it happened. Well, what we know from at least Dr. Summitt's clinical experience is that most often children delay disclosure though learn how to cope with or live with the abuser's behavior and then not disclose until much later.

Q We touched on it briefly then on direct by Mr. Goldstein. What is child sexual abuse accommodation syndrome? I think we used the phrase but haven't given a definition.

A Child sexual abuse accommodation syndrome is a article wrote by Roland Summitt. In that article two preconceptions, secrecy and helplessness. Secrecy of child sex abuse is usually a crime that occurs in private. There are no witnesses other than victim and offender and helplessness. He related to just the very difference in power between adults and children and that children who are sexually abused by a caretaker or parent by someone they love is in an especially helpless position in relation to that adult.

Then Summitt stated when children are sexually abused they often times feel entrapped in that relationship and rather than fight back or tell, children learn how to live with or accommodate the offender's behavior, and they can do so in a variety of ways.

And then in addition to that entrapment and accommodation, Summitt started talking about that most or many children will delay disclosure, and when they do disclose they may tend to do so in a conflicted or unconventional way, and then some children will recant true allegations of abuse due to pressure that their family or pressure from the offender or if the consequences of living with their disclosure is worse for the child then living with the abuse then children may choose to retract or recant the allegation.

Q Those two elements that you discussed secrecy and helplessness the research since the article by Dr. Summitt has the research -- those two factors are still factors today?

MR. GOLDSTEIN: Objection. Beyond the scope of cross.

THE COURT: Sustained.

Q BY MS. SCIARROTTA: You said on cross-examination that sexual acting out can be a symptom of sex abuse. Can you explain to us what you mean?

A Yes. In a certain number of children we do see sexual acting out behavior in response to sexual abuse. So, for example, a child may reenact what happened to them with another child or with their Barbie dolls or with stuffed animals, for example, or they may engage in masturbation on a chronic or repetitive basis.

Q But I think one of your examples earlier did indicate that a child masturbating themselves, for instance a 4-year old, can be normal?

A Yes. Developmentally that can be normal. What would about abnormal if that 4-year old was chronically in grocery store check outline that would be.

Q Why is that?

A Typically children are more likely developmentally to masturbate when they're watching television; when they're trying to soothe themselves to sleep; or when there's a situation like changing clothes or changing a diaper or a bathing.

Q Is it now in a situation where parent has made up an allegation in order to get the upper hand in a custody battle would it be more likely for the parent to be first person to report to police or someone outside the family or for the child to tell someone outside the family?

MR. GOLDSTEIN: Objection. Asked and answered.

MS. SCIARROTTA: When that child is a preschooler.

MR. GOLDSTEIN: Objection. Asked and answered.

THE COURT: Yeah. I think that's already been --

Q BY MS. SCIARROTTA: Which would be more likely the parents going to authorities or the child telling a third person who is not part of the family?

MR. GOLDSTEIN: Objection. Asked and answered.

THE COURT: Overruled.

THE WITNESS: In my experience it's most often the parent that goes to the authority.

Q BY MS. SCIARROTTA: Why is that?

A In general they're trying to enlist CPS or law enforcement on their side in order to gain advantage in the custody dispute.

Q Now, is it fair to say your testimony isn't a test for determining the truth of a child but is useful simply explain how kids react in general to abuse?

A Yes.

MS. SCIARROTTA: Nothing else, Your Honor.

THE COURT: Does any member of the jury have any questions for this witness?

THE COURT: Will counsel approach, please?

(Bench conference as follows:)

THE COURT: Any objection?

MS. SCIARROTTA: I have no objection.

(Bench conference ends.)

THE COURT: Okay. There's a question that has been asked that this witness can't answer, so I'm not going to ask it.

You may step down.

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