

SUPERIOR COURT
OF THE
STATE OF DELAWARE

T. HENLEY GRAVES
RESIDENT JUDGE

SUSSEX COUNTY COURTHOUSE
ONE THE CIRCLE, SUITE 2
GEORGETOWN, DE 19947

April 6, 2005

Via Facsimile and Superior Court Attorney Mailboxes

Adam Gelof, Esquire
Department of Justice
114 East Market Street, Suite 201
Georgetown, DE 19947

Edward C. Gill, Esquire
P.O. Box 824
Georgetown, DE 19497

RE: State v. John Harper
Case No. 0401018735

Dear Counsel:

Today is final case review in the above-captioned matter, and you've asked for a prompt decision. Following this morning's evidentiary hearing as to the Motion to Determine the Admissibility of the SANE Nurse's Opinion, I studied Judge Stokes' decision in State v. Franklin, which was a bench ruling on February 19, 2004 as to the same issue and the same SANE nurse's qualifications. State v. Franklin, Del. Super., Cr. A. No. 03-04-1083-1089, Stokes, R. (Feb. 19, 2004)(Bench Op.), Transcript No. 0304010407, at D-129.

The testimony offered in Franklin as to her opinion was similar to that offered today, as one would expect. Her testimony covered her nursing qualifications, her education and training as a SANE nurse, her certifications, her supervision and training of the SANE nurse program at Nanticoke Memorial Hospital, her familiarity with current events in her field and finally her own professional experience.

State v. John Harper
Def. ID No. 0401018735
April 6, 2005
Page Two

Because my factual conclusions as to her qualifications track the conclusions of Judge Stokes, and because I agree with his analysis of the law, I adopt his reasoning as set forth in Franklin. You both have copies of the transcript.

As to this case, she has made objective findings as to multiple injuries. She considered the history of events as reported by the complaining witness. Based upon this information, along with her experience and training, she opined her findings were consistent with non-consensual sex.

Mr. Gill's forceful cross-examination has not convinced me that this is "junk" testimony by a victim's advocate. The issues he raises goes to attacking the weight of the testimony and not the admissibility.

I note that I'm following Judge Stokes' decision because, as Mr. Gill notes, the Supreme Court's affirmation of Franklin applied a plain error standard. Franklin v. State, 2005 Del. LEXIS 100, at *3-4.

It would appear from the decision that there was an application to bar the opinion and a decision as to the merits, but nevertheless, because of the way the issue was framed, the plain error standard was applied. I therefore am not relying on the Supreme Court's affirmation in Franklin, but on Judge Stokes' analysis. State v. Franklin, Del. Super., Cr. A. No. 03-04-1083-1089, Stokes, R. (Feb. 19, 2004)(Bench Op.), Transcript No. 0304010407, at D-129.

The SANE nurse will be permitted to testify as to the opinions offered in this morning's hearing.

State v. John Harper
Def. ID No. 0401018735
April 6, 2005
Page Three

IT IS SO ORDERED.

Very truly yours,

T. Henley Graves

THG/jfg
oc: Prothonotary
cc: Thomas A. Pedersen, Esquire