**STATE’S SECOND OBJECTION TO DEFENDANT’S MOTION TO RECONSIDER PSYCHOLOGICAL EVALUATIONOF CHILD VICTIMS**

##### State of Oklahoma

COMES NOW the Plaintiff, State of Oklahoma, Tulsa County District Attorney’s Office, through T.H.H., Assistant District Attorney, and enters his strong objection to the Defendant’s Motion for Psychological Evaluation of the alleged child abuse victims in the above-styled case. The State of Oklahoma would state their objection due to the following reasons:

1. The Defendant states in paragraph (5) of their Motion for Reconsideration that the psychological evaluation is necessary to help discern (a) whether the children involved can tell the truth from a lie, and (b) whether the children can comprehend the duty to tell the truth. The Defendant confuses the issue of competency with the issue of credibility. Competency is an issue to be determined by the Court prior to testimony and every person is presumed to be competent pursuant to the Evidence Code…. The competency and the children’s ability to comprehend the duty to tell the truth is unquestioned as evidenced by the questions and answers stated previously at the preliminary hearing. The State of Oklahoma satisfied the reviewing magistrate as evidenced by the sworn testimony, that each and every witness was cognizant of what the duty to tell the truth meant and that they were able to distinguish between what the truth is and what a lie is.
2. There is no Oklahoma authority that allows for psychological evaluations of child sexual abuse victims. In fact, the only Oklahoma case that discusses psychological evaluations stated that it was not even relevant in the adjudication stage of a juvenile deprived hearing. The Court of Appeals held in that case that the child’s mental health was irrelevant at the adjudication stage of a deprived case. *In re A.S.*, 790 P.2d 539, 542 (Okla. App. 1989).
3. This type of motion has never been sustained by any judge in any criminal court in Tulsa County, Oklahoma. In fact, the parallel motion in juvenile court in the deprived case regarding the defendant’s minor daughter has likewise been overruled.
4. In consideration of the Defendant’s request, the State of Oklahoma would ask that the Court consider that the Defendant admitted to inappropriately sexually touching A.B., and his daughter, B.C., as reflected in preliminary hearing testimony….. This evidence refutes any unsubstantiated allegation that there was any prompting or rehearsal of the sworn testimony of these child victims. Nothing in the record supports the presumption that there was any questioning done in a suggestive manner with these minor children. In fact, the admission by the Defendant refutes any presumption that anything but the truth was spoken by these minor victims.
5. The Defendant’s request for psychological evaluation is nothing more than a pretrial attempt to obtain impeachment evidence prior to trial, by submitting these children to a post-preliminary hearing but pretrial interview with a witness designated by the Defendant. This is highly improper and intrusive upon these children.
6. If this were an adult who had suffered a sexual battery or rape, the request for psychological evaluation would not even be considered. It is only because the victims are children that this request is even being made by the Defendant. Somehow the Defendant is asserting that these children are not competent witnesses and should be treated with suspicion. Under Oklahoma law, this is not the case.
7. There are other cases equally emphatic that the psychological examination sought by the Defendant would be improper under the circumstances as presented in this case:

*State v. Forsyth*, 533 P.2d 176, 181 (Or. App. 1975):

“We are also concerned with the invasion of the jury’s province to evaluate the credibility of the witness by subjecting the witness’ testimony to attack by expert opinion based on an interview conducted outside the presence of the jury; the prospect of a parade of experts with conflicting opinions confusing, rather than enlightening, the jury; the delay of and detraction from the trial of the guilt or innocence of the accused by an excursion into the mental state of the witness; and the reluctance to report such crimes which the proposed rule would instill in the mind of those unwilling to bare their souls to the world.” (Quoting *Ballard v. Superior Court*, 44 Cal. Rptr. 291 (Cal. App. 1965).

*People v. Piro*, 671 P.2d 1341 (Colo. App. 1983):

“In determining whether a compelling reason exists for a psychological examination of the witness, the trial court must balance the possible emotional trauma and embarrassment to, or intimidation of the witness against the likelihood of the examination producing relevant evidence as distinguished from speculative evidence.”

While the Oklahoma courts have not addressed the issue presented here, the Ohio Court of Appeals did in *State v. Davis*, 64 Ohio App. 3d, 334, 581 N.E.2d 604 (1989). That court specifically held that it was improper for the trial court to admit expert testimony on the issue of whether the child sexual abuse victim was a credible witness:

“This testimony, directed toward the veracity and credibility of the victim, invades the fact finding function of the jury and, therefore, is not a proper subject for expert opinion.” *Id*. at 612.

It is difficult enough for a child who has been subjected to sexual acts to have the courage to come forward and reveal those acts. To subject them to an intrusive interview, which questions their credibility, where no factual basis has been presented showing that they are being anything but absolutely truthful would violate their rights even further. Sustaining such a defense request would have a chilling effect on any child victim from coming forward and disclosing the crime committed upon them due to the continued intrusion and innuendo that they are not telling the truth.