Credibility Is Not Reliability: Why “Consistent With Abuse” Should Never Replace Corroborating Evidence

By: Michael P Andrews August 2026

There is a difference between **credibility** and **reliability**, and in a criminal courtroom that difference can determine whether somebody walks out the front door or disappears into a prison for twenty or thirty years. We use those words almost interchangeably, but they do not mean the same thing. Credibility is generally about the witness. Do I believe this person? Does the witness appear sincere? Is the witness lying? Reliability is about the evidence itself. Can this information actually be depended upon? Was the memory accurately formed? Was it influenced afterward? Is the statement consistent with facts that can be independently verified? Was the witness questioned repeatedly? Were details introduced by somebody else? Does anything outside of the accusation confirm that what is being alleged actually happened?

A person can be credible and still be wrong. That is the part I believe our criminal justice system sometimes loses sight of. A child can sincerely believe what he or she is saying and still have an unreliable memory of some part of an event. An adult can do the same thing. A person does not have to be deliberately lying for evidence to be inaccurate. Human memory is not a video recording. That is precisely why reliability should matter just as much as credibility, especially when a prosecution is based almost entirely upon one person's statement.

The problem becomes particularly serious in North Carolina because our law does not generally require independent corroboration of a complaining witness's testimony in a sexual-offense prosecution. The North Carolina Supreme Court stated decades ago that a rape conviction may rest upon the unsupported testimony of the prosecuting witness. *State v. Newman*, **308 N.C. 231, 237, 302 S.E.2d 174, 179 (1983)**. The Court of Appeals has likewise stated the broader rule that the testimony of a single witness can legally be sufficient evidence upon which a jury may return a verdict. *State v. Vehaun*, **34 N.C. App. 700, 704, 239 S.E.2d 705, 709 (1977)**. That remains an important part of North Carolina law. (Justia Law)

I understand the legal theory. Testimony is evidence. A jury is supposed to evaluate that testimony and determine whether the State has proven guilt beyond a reasonable doubt. But saying that testimony is legally sufficient does not answer the question that concerns me: **How reliable is that testimony?** If there is no physical evidence, no electronic evidence, no eyewitness, no admission, no contemporaneous documentation, and no independent evidence connecting the defendant to the alleged act, then the reliability of that one statement becomes incredibly important. If there are also legitimate questions about how that statement developed, changed, or was obtained, I believe we should demand more before taking decades of another person's life.

North Carolina's own Rules of Evidence show that reliability matters. Rule 602 requires personal knowledge. A witness generally cannot testify about something unless there is evidence supporting a finding that the witness actually has personal knowledge of it. N.C. Gen. Stat. § 8C-1, Rule 602. But personal knowledge is only the beginning. If I watch a car accident, I have personal knowledge of the accident. That does not mean I correctly estimated the vehicles' speeds or accurately remember every detail six months later. Rule 602 establishes a basis for testimony. It does not certify the testimony as accurate. (North Carolina General Assembly)

Rule 701 makes another important distinction. A lay witness's opinions and inferences must be rationally based upon that witness's perception and helpful to understanding the testimony or deciding a fact in issue. N.C. Gen. Stat. § 8C-1, Rule 701. “She stopped playing softball” is an observation. “She stopped playing softball because she had been sexually abused” is a conclusion about causation. “He seemed nervous” is an observation. “He was nervous because he was guilty” is a conclusion. Those are not the same things, and Rule 701 exists in part because jurors need to understand the difference between what someone actually perceived and what that person later concluded from it. (North Carolina General Assembly)

Then there is Rule 403. Evidence can be relevant and still be excluded when its probative value is substantially outweighed by dangers including unfair prejudice, confusion of the issues or misleading the jury. N.C. Gen. Stat. § 8C-1, Rule 403. That rule becomes extremely important when dealing with emotionally powerful allegations. Something can sound devastating without actually proving very much. The phrase “consistent with sexual abuse” is a perfect example. To an expert, “consistent with” may mean nothing more than that an observation is compatible with one possible explanation. To a juror hearing an expert with impressive credentials, it can sound dangerously close to: “This is evidence that the abuse happened.” (North Carolina General Assembly)

That brings me to expert testimony, and this is where I believe North Carolina law creates one of its greatest logical problems.

North Carolina Rule of Evidence 702 expressly requires reliability. Expert testimony must be based upon sufficient facts or data, must result from reliable principles and methods, and those principles and methods must have been reliably applied to the facts of the particular case. N.C. Gen. Stat. § 8C-1, Rule 702(a). Our Supreme Court described this as a reliability inquiry in *State v. McGrady*, **368 N.C. 880, 787 S.E.2d 1 (2016)**. The focus is supposed to be on the reliability of the expert's principles and methodology—not simply the fact that somebody has impressive credentials and is called an expert. (North Carolina General Assembly)

Yet in child sexual-abuse prosecutions, North Carolina permits experts, upon a proper foundation, to testify about characteristics associated with sexually abused children and whether a complaining witness displays characteristics consistent with those profiles. The North Carolina Supreme Court expressly recognized that rule in *State v. Stancil*, **355 N.C. 266, 266–67, 559 S.E.2d 788, 789 (2002)**. At the same time, *Stancil* held that, absent physical evidence supporting the diagnosis, an expert generally may not go the additional step and tell the jury that sexual abuse actually occurred, because doing so improperly comments upon the complaining witness's credibility. (CourtListener)

The Court of Appeals applied the permissible side of that distinction in *State v. Isenberg*, **148 N.C. App. 29, 557 S.E.2d 568 (2001)**. There, the court approved expert testimony that the child's behavior was consistent with the behavior of sexually abused children. The expert was not permitted to decide the ultimate factual question for the jury, but he could tell the jury that the behaviors he observed fit characteristics he had seen among sexually abused children. (Justia Law)

That sounds reasonable until you start examining what “consistent with” can mean in practice.

Take delayed disclosure. A child does not disclose an allegation for several months or several years. To a juror unfamiliar with these cases, that delay might raise questions. The State can offer specialized testimony explaining that delayed reporting occurs among people reporting childhood sexual abuse. The North Carolina Supreme Court addressed testimony about the general characteristics of child sexual-assault complainants and possible reasons for delayed reporting in *State v. Davis*, **368 N.C. 794, 785 S.E.2d 312 (2016)**. Importantly, the Court held that this was expert opinion testimony—not merely ordinary factual testimony—and therefore it had to be disclosed to the defense under North Carolina's criminal discovery statute. (FindLaw)

But look at what happens logically. If a child waits three years before reporting, an expert can explain why delayed disclosure can occur in children who have been abused. Fine. But if another child reports an allegation immediately, nobody is going to tell the jury that immediate reporting is inconsistent with abuse. Obviously it is not. So delayed disclosure is compatible with abuse, and immediate disclosure is compatible with abuse.

What, then, does the timing actually prove about whether this particular allegation is true?

That is the question I believe courts should be asking more often.

The same thing happens with behavioral evidence. Suppose a child suddenly begins wetting the bed, having nightmares, withdrawing socially, doing poorly in school or exhibiting dramatic emotional changes. The prosecution may present those behaviors as circumstantial evidence supporting the allegation, and an expert may be able to explain that those behaviors are seen among some abused children. But suppose another child shows none of those changes. The child continues getting good grades, plays sports, laughs, socializes, participates in school activities, and otherwise appears outwardly normal. Does the absence of behavioral changes now become evidence that abuse probably did not occur?

Usually not.

So significant behavioral changes can be called consistent with abuse, while the absence of significant behavioral changes does not necessarily count against abuse.

That is not something I invented. The North Carolina Supreme Court itself recognized the limitations of behavioral evidence in *State v. Clark*, **380 N.C. 204, 868 S.E.2d 56 (2022)**. There, the child reportedly experienced bed-wetting, nightmares and social withdrawal. The Court specifically recognized that behavioral changes of that kind can have many causes besides sexual abuse. The Court held that those behavioral changes were relevant circumstantial evidence but could not, by themselves, serve as substantial evidence of sexual abuse independent of the complainant's testimony or other direct evidence. That point matters enormously. (Justia Law)

In *State v. Clark*, **380 N.C. 204, 868 S.E.2d 56 (2022)**, the State's expert had also testified that the child "had been sexually abused," even though the physical examination was normal and the diagnosis was based predominantly on the child's disclosures and behavioral changes. The Supreme Court held that testimony improper and ordered a new trial under its plain-error analysis. The Court expressly relied upon its earlier decisions limiting expert testimony that effectively tells the jury the complaining witness's allegation is true. (Justia Law)

The same danger appeared ten years earlier in *State v. Towe*, **366 N.C. 56, 732 S.E.2d 564 (2012)**. The prosecution's expert went beyond discussing characteristics and effectively testified that the child had been sexually abused even in the absence of supporting physical symptoms. The Supreme Court concluded the testimony was improper and, because the case turned substantially upon the complaining witness's credibility, found plain error. That is not a small technical evidentiary ruling. The highest court in North Carolina recognized how enormously influential expert testimony can become when the fundamental dispute is whether the accusation itself is true. (North Carolina Courts)

State v. Hammett, **361 N.C. 92, 637 S.E.2d 518 (2006)** makes the line even clearer. There, physical findings combined with the child's history provided a sufficient basis for an expert opinion that abuse had occurred. But when the expert went further and said essentially that she would have reached the same conclusion from the child's history even without the physical evidence, the Supreme Court held that portion improper because it amounted to vouching for the child's credibility. (Justia Law)

Those cases are important because they demonstrate that North Carolina courts themselves recognize the danger. An expert cannot simply place a scientific stamp of approval on an accusation.

But I believe we need to go further.

If delayed disclosure is consistent with abuse and immediate disclosure is also compatible with abuse; if dramatic behavioral changes can be consistent with abuse and no dramatic behavioral changes do not exclude abuse; if physical findings may support abuse but a normal examination does not necessarily rule abuse out, then we need to be extremely careful about telling jurors that these things **corroborate** the allegation.

They may explain it.

That is different.

An explanation for why something does not contradict an accusation is not automatically affirmative evidence that the accusation is true.

That distinction is everything.

Suppose I accuse someone of stealing money from me. You ask why there is no surveillance video. I give you a perfectly reasonable explanation: the camera was broken.

My explanation may eliminate the absence of video as evidence against my accusation.

It does not magically become evidence that the defendant stole my money.

Yet that is the logical mistake I believe can happen with “consistent with abuse” testimony. Delayed reporting that might otherwise raise a question gets explained. A normal medical examination gets explained. The absence of a particular behavioral response gets explained. At the end of the case, the jury can be left with the impression that all of those explanations somehow became independent evidence proving the original allegation.

They did not.

They may have neutralized arguments against the accusation.

That is not the same as corroborating it.

And that is precisely why I believe independent corroboration becomes more important when the State's case depends upon one person's statement.

Some jurisdictions have at least recognized the issue legislatively, although the requirements are generally narrow rather than universal. New York Penal Law § 130.16, for example, provides that in certain sexual-offense prosecutions where lack of consent results solely from mental defect or mental incapacity, the defendant cannot be convicted solely upon the complaining witness's testimony without additional evidence tending both to establish the sexual conduct and connect the defendant to the offense. That is not a general New York corroboration requirement for all sexual offenses, and it would be inaccurate to present it that way. But it demonstrates that lawmakers can decide that certain accusations need something more before a conviction can stand. (NewYork.Public.Law)

Texas has made a different legislative choice. Texas Code of Criminal Procedure Article 38.07 currently permits certain sexual-offense convictions to rest upon uncorroborated testimony if an adult complaining witness informed another person of the alleged offense within one year. The statute contains significant exceptions, including for complainants seventeen or younger and certain elderly or disabled complainants. The United States Supreme Court examined an earlier version of this Texas corroboration law in *Carmell v. Texas*, **529 U.S. 513 (2000)**. Again, Texas does not now impose a universal corroboration requirement, but its statutory history demonstrates that corroboration has long been treated as a legitimate evidentiary policy question rather than some impossible concept foreign to

American criminal law. (Justia Law)

For comparison, Nebraska has expressly taken the opposite approach. Nebraska Revised Statute § 29-2028 says that testimony from a sexual-assault complaining witness does not require corroboration. I include Nebraska because intellectual honesty matters. If I am arguing that lawmakers should require more corroboration, I should not pretend that every state agrees with me. They don't. Different legislatures have made different choices. That proves my point that corroboration is ultimately something lawmakers can address. (Nebraska Legislature)

There is also the 1899 United States Supreme Court case I mentioned earlier, and I want to correct something rather than repeat an inaccurate citation simply because it helps my argument. The case is *Kirby v. United States*, **174 U.S. 47 (1899)**. It does **not** hold that the testimony of an accuser must be corroborated, and it does not concern sexual-assault prosecutions at all. Kirby was prosecuted for receiving stolen government property. The government attempted to establish that the property had been stolen by introducing records showing that other men had already been convicted of stealing it. The Supreme Court held that those separate convictions could not be used as a substitute for evidence establishing that essential fact against Kirby because Kirby had not been present at those proceedings and had no opportunity to confront or cross-examine the evidence used there. (Legal Information Institute)

But the constitutional principle expressed in *Kirby v. United States*, **174 U.S. 47 (1899)** is still worth remembering. The Supreme Court emphasized that the presumption of innocence follows the accused throughout the trial and applies to every fact the government must prove beyond a reasonable doubt. The government had to prove the essential facts against Kirby with evidence presented in his own case, where he had the constitutional opportunity to confront and challenge it. That is not a corroboration requirement, and I would never tell a reader that it is. It is something more fundamental: the State does not get to substitute somebody else's conclusion for proof that can actually be tested by the accused. (Legal Information Institute)

That principle belongs in this discussion because the danger with expert testimony is that jurors may begin treating the expert's explanation as proof. “Delayed disclosure is seen in abused children” becomes “the delay supports the conclusion that this child was abused.” “Behavioral changes are found in abused children” becomes “these behavioral changes prove abuse occurred.” “A normal examination does not exclude abuse” quietly becomes “the normal examination therefore supports the allegation.”

No.

Those are completely different propositions.

Rule 702 should require us to ask what an expert's testimony actually establishes. Rule 403 should require judges to ask whether the scientific-sounding terminology will mislead jurors into giving the testimony more weight than it deserves. Rule 602 should keep the focus on what witnesses actually know. Rule 701 should separate observations from unsupported conclusions. These are not technical obstacles thrown in front of prosecutors. These rules exist because evidence should mean something before we use it to take away someone's freedom. (North Carolina General Assembly)

I am not arguing that behavioral evidence is worthless. The North Carolina Supreme Court certainly has not said that. In *State v. Clark*, **380 N.C. 204, 868 S.E.2d 56 (2022)**, the Court expressly recognized that behavioral changes can be relevant circumstantial evidence. But it also recognized that behaviors such as bed-wetting, nightmares and social withdrawal can have many other causes. That is exactly the kind of balanced reasoning we need. Evidence may be relevant without being uniquely diagnostic of abuse. (Justia Law)

That distinction becomes even more important when there is no meaningful change in behavior at all. If changes can be used as corroboration while the absence of changes never counts against the allegation, then behavior has become a one-way evidentiary street. If delay supports an expert explanation while an immediate allegation is equally compatible with abuse, disclosure timing becomes another one-way street. When virtually every factual outcome can be reconciled with the prosecution's theory, we need to stop pretending those outcomes independently prove the theory.

Science should help us distinguish between competing explanations.

It should not simply provide an explanation for every possible result.

That is why I believe North Carolina lawmakers should seriously reconsider allowing a person's liberty to depend entirely upon one uncorroborated accusation when substantial questions have been raised about the reliability of that accusation. I am not saying DNA should be required in every case. That would be impossible. Corroboration can be electronic records, location data, contemporaneous communications, independent witnesses, forensic evidence, admissions, surveillance footage, medical findings, documented opportunity, or some other objective evidence that exists independently of the statement itself.

What I am saying is that there should be **something**.

When there is no physical evidence, no electronic evidence, no independent witness, no admission, no substantive behavioral corroboration and no objective evidence supporting the accusation—and especially when there are genuine questions about prior questioning, inconsistencies, timelines or memory reliability—I do not believe one person's word should be enough to send another human being to prison for decades.

North Carolina law currently says that it can be.

That answers the question of what our law **allows**.

It does not answer whether our law is **good enough**.

That is the conversation I believe we should be having with our legislators. We should demand that expert testimony actually help jurors discriminate between competing explanations. We should demand that courts rigorously enforce Rules 403 and 702 instead of allowing the phrase "consistent with" to become a substitute for substantive evidence. And we should have a serious public discussion about whether independent corroboration should be required in at least those cases where one uncorroborated statement is the entire prosecution and the reliability of that statement has itself been materially called into question.

Credibility asks whether you believe the witness.

Reliability asks whether the evidence deserves your confidence.

Corroboration asks something even more important:

What evidence exists outside the accusation itself showing that this actually happened?

When the answer is "nothing," and another human being may lose decades of his life, I believe North Carolina should demand more.