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STATE OF NORTH CAROLINA	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION
COUNTY OF DURHAM	21CR054671-310
STATE OF NORTH CAROLINA v. MIGUEL ENRIQUE SALGUERO OLIVARES	DEFENDANT'S MOTION TO STRIKE OPINION AND VOUCHING TESTIMONY OF SBI SPECIAL AGENT IN CHARGE JUSTIN HEINRICH AND REQUEST FOR CURATIVE INSTRUCTION

NOW COMES Defendant Miguel Enrique Salguero Olivares, through undersigned counsel, and moves the Court to strike portions of the direct testimony of State Bureau of Investigation Special Agent in Charge Justin Heinrich ("Agent Heinrich") and to instruct the jury to disregard that testimony. This motion is made pursuant to N.C. Gen. Stat. § 8C-1, Rules 103, 105, 403, 405, 608, 701, 702, and 704; N.C. Gen. Stat. § 15A-1446; the Sixth and Fourteenth Amendments to the United States Constitution; and Article I, Sections 19, 23, and 24 of the North Carolina Constitution. In support of this motion, Defendant shows the Court the following:

1. Agent Heinrich testified on direct examination by the State on Friday, October 16, 2026. His direct examination is not complete and is scheduled to resume when court reconvenes on Monday, October 19, 2026.

2. Defendant objected at the time to most of the testimony addressed in this motion. Defendant files this motion before the witness completes his testimony so that the Court may rule on the specific grounds stated here while any error can still be cured, and so that the record clearly presents those grounds. N.C. Gen. Stat. § 8C-1, Rule 103(a)(1); N.C. R. App. P. 10(a)(1).

I. The Inadmissible Testimony

a. *Testimony vouching for Karena Rosario.*

3. The State asked Agent Heinrich how he would characterize Ms. Rosario's interviews, both those he reviewed and his own. He began to answer, "They were remarkably consistent from . . ." and Defendant objected. The Court overruled the objection.

4. After overruling the objection, Agent Heinrich testified:

> "They were remarkably consistent between, um, earlier, uh, videos of interviews that I had, um, reviewed. Um, the, the main points and the main, uh, story of what happened on the evening of the homicide, uh, remained,

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> uh, pretty consistent all the way through. . . . So overall, the big picture was very consistent . . . ."[1]

5. Very shortly after, the State asked, "Was her testimony consistent with what she said from 2012 to today?" Defendant objected for lack of foundation. The Court overruled the objection, and the witness answered, "Yes, it was."

6. The State next elicited that the witness had conducted "hundreds, if not over a thousand" interviews, and asked whether "it's typical for someone's big picture to remain the same and small little details to change." Agent Heinrich answered:

> "Yes. As, as I said, when people are interviewed, um, you know, w- we're not machines. So we tell, uh, tell what happened. But a lot of times what I've noticed is that if I, if I interview somebody about an event, uh, multiple times, uh, if they're telling the truth, uh, the big picture doesn't change, but little details might, uh, differ because the second time they retell a story, um, they tell it a slightly different way, or they remember a small detail differently."

7. The State then asked the witness to characterize Ms. Rosario's "level of cooperation with law enforcement," and he testified that "she's always been very cooperative" and has "always made herself available to investigators."

b. *Opinion that a sexual assault occurred.*

8. Agent Heinrich testified he was not involved in the 2012 investigation and did not process the scene. He testified he became involved about a year after the events, and his knowledge of the scene comes from reviewing crime scene photographs, evidence, autopsy materials, reports, and recordings. When asked what he observed on that review that helped focus his investigation, he testified that "it was apparent that this was not only a, um, homicide but also a rape." The Court sustained Defendant's objection and allowed the motion to strike.

9. The State rephrased the question, asking "What things of note in the crime scene did you see that helped you to focus your investigation?" Agent Heinrich gave the same conclusion in different words:

> "Also, the way in which her body was found and the positioning of both her body and, as well as other items immediately around the body, to me, based on my training and experience, indicated, uh, signs of sexual assault. . . . All of those things together, um, you know, led me to establish, uh, in my mind that, uh, this was a, um, violent assault that included sexual violence."

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[1] None of the quotations cited in this Motion are from the official transcript of the proceedings, as defense counsel does not have said transcript. All quotations were drawn from the recording of Agent Heinrich's testimony filmed by the media on October 16, 2026, and available publicly online.

10. The Court overruled Defendant's objection and motion to strike.

c. *Opinion that the DNA contributor is the person responsible.*

11. Asked about the DNA samples collected during the investigation, the witness testified:

> "So we, uh, knew that if we found the person that, uh, left their DNA on all these items at the crime scene, that that would be a significantly, that would be our person that, um, um, and that's what we were looking for. So collecting DNA in this case became one of our priorities, um, as we went through and we were talking to more and more people, um, because somebody could say what they wanted to say, but if the DNA, um, you know, matched, we found our person."

12. The Court overruled Defendant's objection and motion to strike.

13. Later, in response to the question "Where did the investigation go at that point?" Agent Heinrich repeated and expanded the opinion:

> "[We] knew that if we found the, the person that left their DNA on the Bacardi bottle, on the, uh, Riesling bottle, on the bag that was left on the bed, um, in Faith, um, in her anus and in her, uh, vagina, we were going to find, uh, and on the boxer shorts at the, at her feet, um, if we could find the, the person that left their DNA in all those locations, we would have the person responsible for what happened."

14. Defendant objected and moved to strike on the ground that the testimony invaded the province of the jury. The Court overruled the objection, stating that the "ladies and gentlemen of the jury can make that determination."

II. Agent Heinrich's Testimony About Ms. Rosario Is Inadmissible Vouching

15. "[T]he truthfulness of a particular witness should be determined by the jury rather than by a witness for one party or the other . . . ." *State v. Caballero*, 383 N.C. 464, 475 (2022).

16. In *Caballero*, a deputy testified that a witness's "story stayed entirely 100 percent consistent, resolute and solid," and explained that a witness who changes her account presents "a red flag right there for the credibility of that person." *Id.* at 472. The Supreme Court held that the testimony "was inadmissible" because it "constituted a direct assertion that [the witness] had passed the credibility test that he had administered to her rather than 'evidence of truthful character.'" *Id.* at 479.

17. The Court also explained that the corroboration doctrine admits "what the witness actually said on a prior occasion," not "extensive editorial commentary about the relationship between the witness's trial testimony and the extrajudicial statement," because whether a prior statement in fact corroborates trial testimony "is, of course, a jury question." *Id.* at 477 (internal brackets and citation omitted).

18. Agent Heinrich's testimony has the same structure as the testimony held inadmissible in *Caballero*, and it states the credibility test more explicitly. He told the jury that Ms. Rosario's many interviews were "remarkably consistent" and that "the big picture was very consistent"; that her trial testimony was consistent with what she had said since 2012; and that, based on his experience conducting hundreds or more than a thousand interviews, "if they're telling the truth . . . the big picture doesn't change." Taken together, these answers told the jury that an experienced SBI agent had applied his credibility test to Ms. Rosario and that she passed it. That is precisely the "direct assertion" that *Caballero* holds inadmissible.

19. The danger that a jury will defer to a witness's opinion on these questions is greatest when the witness is a law enforcement officer. "[T]he opinions of law enforcement officers can carry great weight with the members of a jury . . . ." *Id.* at 481 (internal citation omitted).

20. The Court of Appeals applied these principles in *State v. Aguilar*, 292 N.C. App. 596 (2024). There, the State asked the lead detective whether she questioned the validity of the complaining witness's account, and the detective answered that "[t]he story stayed the same, consistent with the statement that she gave the first officer." *Id.* at 599. The court held that the testimony "was a direct assertion [the witness] was credible . . . ." *Id.* at 604.

21. The questions here did not ask Agent Heinrich to explain any investigative decision. They asked him to "characterize" Ms. Rosario's interviews, to confirm that her trial testimony was consistent with her prior accounts, and to explain how truthful people tell their stories.

III. Agent Heinrich's Opinion That a Sexual Assault Occurred Is Inadmissible

22. A lay witness's opinion is admissible only if it is "(a) rationally based on the perception of the witness and (b) helpful to a clear understanding of his testimony or the determination of a fact in issue." N.C. Gen. Stat. § 8C-1, Rule 701.

23. Agent Heinrich perceived nothing at the scene. He reviewed photographs and case materials beginning a year later. "The jury is just as well qualified as the witnesses to determine what inferences the facts will permit or require." *State v. Denton*, 265 N.C. App. 632, 638 (2019) (internal quotation and citation omitted).

24. Agent Heinrich expressly based his conclusion on his "training and experience." An opinion that reconstructs what happened from the positions of a body and objects at a scene is expert opinion governed by Rule 702, not lay opinion. *See Denton*, 265 N.C. App. at 636 (in the context of a vehicle collision, finding that reconstruction "by its very nature requires expert analysis of the information collected from the scene"). The State never tendered Agent Heinrich as an expert on that subject, and no showing has been made under Rule 702(a) that his method is reliable or reliably applied. He was qualified only in cellular phone record analysis.

25. The Court has already sustained Defendant's objection to the witness's opinion that this was "a rape." The rephrased answers, that the scene "indicated signs of sexual assault" and established "a violent assault that included sexual violence," convey the same impermissible conclusion – that sexual contact occurred by force and without consent.

IV. Agent Heinrich's Opinion That the DNA Contributor Is "the Person Responsible" Is Inadmissible

26. A law enforcement witness may not give an opinion that the defendant is guilty. "We hold that the trial court erred in allowing the officers to offer their opinions of whether defendant was guilty." *State v. Carrillo*, 164 N.C. App. 204, 210 (2004).

27. While Agent Heinrich did not use the word "guilty," his testimony accomplishes the exact same thing. The State has offered DNA evidence that it contends associates Defendant with items and samples Agent Heinrich listed. The witness then told the jury that whoever left that DNA, including the DNA "in her anus and in her vagina," is "the person responsible for what happened." Put together, the jury has heard the SBI's conclusion that Defendant is guilty of every offense charged.

28. The admission of this testimony is error.

V. The Testimony Should Also Be Excluded Under Rule 403

29. Even if any portion of this testimony had some marginal relevance, its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, and misleading the jury. N.C. Gen. Stat. § 8C-1, Rule 403. The testimony adds no fact the jury does not already have. Its only additional effect is to tell the jury what the lead SBI agent concluded about Ms. Rosario's truthfulness, about whether a rape and/or sexual assault occurred, and about who is responsible. Those are the conclusions the jury must reach for itself, and they carry "great weight" when they come from law enforcement.

VI. This Motion Is Timely, and the Court Has Authority to Grant It

30. Except for the testimony described in paragraph 6, Defendant objected contemporaneously to the all the testimony described above, moved to strike much of it, and obtained rulings. This motion states the specific grounds for those objections while the witness remains on the stand and the Court can still cure any error. *See* N.C. Gen. Stat. § 8C-1, Rule 103(a)(1) (no particular form is required "if the motion or objection clearly presented the alleged error to the trial court").

31. The testimony described in paragraphs 6 was elicited in the line of questioning immediately after the Court overruled Defendant's objections to the State's questions about the consistency of Ms. Rosario's accounts. The General Assembly has provided that a defendant may challenge the "[s]ubsequent admission of evidence involving a specified line of questioning when there has been an improperly overruled objection to the admission of evidence involving that line of questioning." N.C. Gen. Stat. § 15A-1446(d)(10); *see Aguilar*, 292 N.C. App. 596 (applying § 15A-1446(d)(10) to a line of vouching questions).

32. In any event, the Court has discretion to strike testimony even where "no objection was aptly made." *State v. McCain*, 212 N.C. App. 228, 230 (2011) (internal quotation and citation omitted). The Court should exercise that discretion here, where the witness has not completed his testimony and the jury has not yet been asked to rely on it.

33. The admission of this testimony also deprives Defendant of his right to have the jury, rather than the State's investigators, determine the credibility of the witnesses against him and every element of the offenses charged, and of his right to a fair trial, in violation of the Sixth and Fourteenth Amendments to the United States Constitution and Article I, Sections 19, 23, and 24 of the North Carolina Constitution. Defendant asserts these grounds in addition to the evidentiary grounds stated above.

VII. A Specific Curative Instruction Is Required

34. Where the court "properly withdraws incompetent evidence from the consideration of the jury and instructs the jury not to consider it, error in its admission is cured in all but exceptional circumstances." *State v. White*, 298 N.C. 430, 433 (1979) (internal quotation and citation omitted). That presumption depends on an instruction actually being given.

35. The jury has not been instructed to disregard the stricken "rape" testimony, and it has not been instructed that the other testimony addressed here may not be considered.

36. Defendant requests that the Court give the following instruction to the jury prior to Agent Heinrich's testimony recommencing:

> Members of the jury, during his testimony on Friday, Special Agent Heinrich gave testimony regarding three things. One, Agent Heinrich testified to his opinion that Karena Rosario's interviews and trial testimony were consistent, and to his opinion on how he contends people who are telling the truth recount events. Two, Agent Heinrich testified to his opinion that the crime scene indicated that a rape, a sexual assault, or sexual violence had in fact occurred. And three, Agent Heinrich testified to his opinion that the person whose DNA the State contends was found the scene and on Ms. Hedgepeth would be the person responsible for what happened. I have now stricken that testimony as to all three things. You must not consider that testimony for any purpose.

WHEREFORE, Defendant respectfully requests that the Court:

1. Strike Agent Heinrich's testimony characterizing Ms. Rosario's interviews as "remarkably consistent" and the "big picture" of her account as "very consistent";

2. Strike Agent Heinrich's testimony that Ms. Rosario's trial testimony was consistent with what she had said from 2012 to the present;

3. Strike Agent Heinrich's testimony that, in his experience, "if they're telling the truth . . . the big picture doesn't change," and his testimony regarding Ms. Rosario's cooperation with law enforcement;

4. Strike Agent Heinrich's testimony that the scene "indicated signs of sexual assault" and established "a violent assault that included sexual violence";

5. Strike Agent Heinrich's testimony that a DNA match meant "we found our person" and that the person who left DNA at the scene and on Ms. Hedgepeth is "the person responsible for what happened";

6. Before Agent Heinrich's testimony resumes, instruct the jury to disregard the stricken testimony, together with Agent Heinrich's previously stricken testimony that this was "a rape," in the form set out in this motion or in such form as the Court deems appropriate;

7. Direct the State to instruct Agent Heinrich and its remaining law enforcement witnesses not to offer opinions on the credibility of other witnesses, on whether a rape or sexual assault occurred, or on whether the person who left DNA at the scene or on Ms. Hedgepeth is the person responsible for the offenses charged; and

8. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted, this the 18th day of October, 2026.

COLEMAN, MERRITT, MURPHY & RAINSFORD, P.C.

By: _____

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CERTIFICATE OF SERVICE

I, James Rainsford, certify that a copy of the foregoing was duly served upon the Durham County District Attorney's office by electronic mail addressed to the following:

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This the 18th day of October, 2026.

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