

## Comments

### EVIDENCE

#### STATE V. ROBINSON: THE ADMISSIBILITY OF HEARSAY IDENTIFICATIONS IN CHILD ABUSE CASES

In *State v. Robinson*,<sup>1</sup> the Arizona Supreme Court held that a victim's statements describing the crime and identifying the abuser in a child abuse case are admissible under Arizona Rule of Evidence 803(4), the medical treatment or diagnosis exception to the hearsay rule.<sup>2</sup> Robinson was convicted by a jury of two counts of child molestation and two counts of sexual conduct with a minor.<sup>3</sup> On appeal to the Arizona Supreme Court, Robinson argued that statements made by the victim to the treating psychologist were improperly admitted by the lower court.<sup>4</sup> Robinson maintained that Rule 803(4) prohibited the admission of those hearsay statements that described the crime and attributed fault.<sup>5</sup> However, the supreme court upheld the ad-

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1. 153 Ariz. 191, 735 P.2d 801 (1987).

2. The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

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(4) *Statements for purposes of medical diagnosis or treatment.*

Statements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment.

ARIZ. R. EVID. 803(4). Arizona adopted the Federal Rules of Evidence in 1977. Therefore, any analysis of the Arizona Rules of Evidence by analogy applies to the Federal Rules.

3. *Robinson*, 153 Ariz. at 194, 735 P.2d at 804. Robinson was convicted under ARIZ. REV. STAT. ANN. § 13-1405-1410 (Supp. 1986).

4. *Robinson*, 153 Ariz. at 196, 735 P.2d at 806. The psychologist was treating one of the children for the child's psychological problems resulting from sexual abuse. This court found that treatment by a board certified psychologist satisfied the requirement of Rule 803(4) that the treatment be for medical purposes. *Id.* at 199 n.9, 735 P.2d at 809 n.9.

Robinson also argued that ARIZ. REV. STAT. ANN. § 13-1416 (Supp. 1986), a statutory hearsay exception, was unconstitutional. *Robinson*, 153 Ariz. at 196, 735 P.2d at 806. The court agreed and found that the legislature had intended § 13-1416 to replace the rules of evidence. *Id.* Therefore, it held ARIZ. REV. STAT. ANN. § 13-1416 (Supp. 1986) unconstitutional because it infringed on the procedural rulemaking powers of the Arizona Supreme Court. *Robinson*, 153 Ariz. at 197, 735 P.2d at 807.

Lastly, Robinson argued that the admission of the hearsay statements violated his sixth amendment right to confront his accusers. *Id.* at 203, 735 P.2d at 813. Despite the absence of the witness at trial, the court found that the confrontation clause requirements were met because the witness was unavailable for trial and the out-of-court statements bore an "indicia of reliability." *Id.* at 203-05, 735 P.2d at 813-15. These issues are outside the scope of this Comment and will not be discussed.

5. *Robinson*, 153 Ariz. at 199, 735 P.2d at 809. In *Robinson*, the terms fault and identity are interchangeable. While "fault" connotes a different meaning in negligence, in this decision "fault" and "identity" refer to the person to which the blame attaches. *Id.* See also BLACK'S LAW DICTIONARY 548 (5th ed. 1979).

missibility of these statements.<sup>6</sup>

The *Robinson* court reached its decision by applying the two prong test for the admissibility of such statements developed in *United States v. Iron Shell*.<sup>7</sup> The court applied the two-prong test to statements that described the crime and statements that described the criminal.<sup>8</sup> Under the first prong of the test, the court found that statements describing the crime were reasonably relied upon by the psychologist in formulating a diagnosis or treatment and were reliable because of the lack of motive other than that of a patient seeking treatment.<sup>9</sup> Second, and most significant, the court found the statements describing or identifying the criminal admissible.<sup>10</sup> The court noted that the treatment of child sexual abuse cases depends on the identity of the assailant.<sup>11</sup> Additionally, the court determined that the statements were trustworthy because the doctor and patient were motivated by the desire to give and receive proper treatment.<sup>12</sup>

This Comment reviews the traditional application of Rule 803(4) in child abuse cases. It then examines the rationale underlying Rule 803(4) and the *Iron Shell* test. Finally, it discusses the application of the *Iron Shell* test in *Robinson* and the problems that may result from the *Robinson* court's reasoning.

### THE USE OF RULE 803(4) IN CHILD ABUSE CASES

Traditionally, statements by the victim identifying the defendant were inadmissible under Rule 803(4).<sup>13</sup> In child abuse cases, physicians' statements have been held to be admissible insofar as they relate to the cause of the child's injuries, but not as to the identity of the assailant.<sup>14</sup> Several

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6. *Robinson*, 153 Ariz. at 200, 735 P.2d at 810. The psychologist was allowed to testify that during the child's treatment sessions, the child told her she was "french-kissed" by Robinson and that Robinson put "his weenie" in her mouth and in her "privates." *Id.* at 199, 735 P.2d at 809.

7. 633 F.2d 77 (8th Cir. 1980), *cert. denied*, 450 U.S. 1001 (1981). The *Iron Shell* test was first adopted in Arizona in *State v. Jeffers*, 135 Ariz. 404, 661 P.2d 1105 (1983), *cert. denied*, 464 U.S. 865 (1983). Therefore, the two-prong test utilized by the *Robinson* court will be referred to as the *Iron Shell* test as opposed to the *Jeffers* test, since the test was first articulated in *Iron Shell*. In *Iron Shell*, the defendant was convicted of assault with intent to commit rape. *Iron Shell*, 633 F.2d at 80. The court developed a two-prong test to determine the admissibility of statements claimed to be admissible under Rule 803(4). The court held that the nine-year-old victim's statements to the physician describing the assault were admissible because the child's motive in making statements was truthful and the physician was reasonable in relying on the statements in formulating a diagnosis or treatment. *Id.* at 84. For a more comprehensive discussion of the *Iron Shell* test, see *infra* notes 23-34 and accompanying text.

8. *Robinson*, 153 Ariz. at 199, 735 P.2d at 809.

9. *Id.*

10. *Id.* at 200, 735 P.2d at 810.

11. *Id.*

12. *Id.*

13. MCCORMICK ON EVIDENCE § 292, at 840 (E. Cleary 3d ed. 1984) [hereinafter MCCORMICK].

14. See, e.g., *United States v. Nick*, 604 F.2d 1199, 1201-02 (9th Cir. 1979) (physician allowed to testify that a sexual assault caused the child's injuries; however, the identity of the assailant was omitted); *United States v. Iron Shell*, 633 F.2d 77, 84 (8th Cir. 1980), *cert. denied*, 450 U.S. 1001 (1981) (physician's testimony relating statements made by the victim during the medical examination were admissible because they concerned what happened to the child and not the identity of the assailant); *State v. Garza*, 337 N.W.2d 823, 825 (S.D. 1983) (physician allowed to testify that two young sisters had been sexually assaulted but was unable to testify that their stepfather was the assailant). But see *State v. Reidhead*, 146 Ariz. 314, 316, 705 P.2d 1365, 1367 (1985) (a statement

courts rely on the rationale stated by the Eighth Circuit Court of Appeals in *Iron Shell* for excluding statements of identity.<sup>15</sup> The *Iron Shell* court held that statements concerning what happened to a victim are pertinent to diagnosis or treatment while statements concerning who committed the assault would rarely be relevant.<sup>16</sup>

Recently, however, several state courts have admitted statements under Rule 803(4) that assign fault in child abuse cases.<sup>17</sup> These courts have held that the identity of the assailant is reasonably necessary for the diagnosis and treatment of child abuse in order to: (1) eliminate other explanations of the injury;<sup>18</sup> (2) prevent recurring abuse;<sup>19</sup> and (3) treat the emotional as well as the physical injury to the child.<sup>20</sup> In addition to these state decisions, the Eighth Circuit has also admitted hearsay identifications under Rule 803(4). In *United States v. Renville*,<sup>21</sup> the court emphasized both the emotional damage a child suffers and the need to prevent recurring abuse in its decision to admit statements identifying Renville as the assailant.<sup>22</sup>

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concerning both cause and identity was held to be inadmissible). In *Reidhead* the father told the emergency room physician that his son's arm was broken when he slapped his son and the boy fell off a porch. *Id.* at 315, 705 P.2d at 1366. However, the physician found that the injuries were inconsistent with a fall and referred the child to another physician for treatment. *Id.* The second physician agreed that the injuries were not the result of falling off of a porch. *Id.* In spite of this, the court held that the statement, "Daddy twisted my arm," made to the treating physician, was inadmissible because the identity of the assailant was not necessary for the diagnosis or treatment of the injury. *Id.* at 315-16, 705 P.2d at 1366-67. *Robinson* limits the admissibility of statements identifying the accused to instances of child sexual abuse. If *Reidhead* were decided today it is unclear whether or not this statement would be admissible. See discussion *infra* notes 54-55 and accompanying text.

15. *Garza*, 337 N.W.2d at 825; *Reidhead*, 146 Ariz. at 315, 705 P.2d at 1366.

16. *Iron Shell*, 633 F.2d at 84. See *infra* notes 23-34 and accompanying text for a discussion of the *Iron Shell* test.

17. See, e.g., *Goldade v. State*, 674 P.2d 721, 727 (Wyo. 1983), *cert. denied*, 467 U.S. 1253 (1984) (statements made by the 4-year-old victim to the nurse and physician identifying her assailant were admissible under Wyo. R. EVID. 803(4) because the identity of the abuser was necessary for diagnosis and treatment); *Matter of Rinesmith*, 144 Mich. App. 475, 478-79, 376 N.W.2d 139, 140-41 (1985) (statements made by the child relating her pain to sexual abuse and referring to a family member who had abused her were "reasonably necessary" to diagnosis and treatment). It should be noted that FED. R. EVID. 803(4) contains the phrase "reasonably pertinent" and is broader than MICH. R. EVID. 803(4) which requires that the statement be "reasonably necessary" to diagnosis and treatment). See also *People v. Wilkins*, 134 Mich. App. 39, 45, 349 N.W.2d 815, 817-18 (1984) (statements made by the victim to the doctor not only were made for the purpose of medical diagnosis or treatment, but also were reasonably necessary for diagnosis and treatment); *Stallnacker v. State*, 19 Ark. App. 9, 11, 715 S.W.2d 883, 885 (1986) (statement by the child identifying her father was admissible to prevent recurring abuse and to treat the child emotionally); *State v. Aguillo*, 318 N.C. 590, 594, 350 S.E.2d 76, 80-81 (1986) (statements made by the child identifying the defendant were pertinent to treating the possible future emotional problems resulting from the sexual abuse); *United States v. Rhodes*, 11 Fed. R. Evid. Serv. (Callaghan) 1520, 1521 (1982) (statements as to fault were pertinent to diagnosis and treatment because they helped eliminate the possibility that the bruises were the result of a neurological disorder).

18. *Rhodes*, 11 Fed. R. Evid. Serv. at 1521. *Aguillo*, 318 N.C. at 594, 350 S.E.2d at 81 (the child's statements assisted the doctor in focusing her examination). See also *supra* note 17.

19. *Rinesmith*, 144 Mich. at 479, 376 N.W.2d at 141; *Stallnacker*, 19 Ark. App. at 11, 715 S.W.2d at 885. These cases emphasize that the identity of the assailant is necessary to prevent recurring abuse, especially in cases where the abuser is a family member. *Rinesmith*, 144 Mich. at 479, 376 N.W.2d at 141; *Stallnacker*, 19 Ark. App. at 11, 715 S.W.2d at 885.

20. *Goldade*, 674 P.2d at 725-26. The court held that the identity of the assailant was necessary in order to treat the emotional aspect of child abuse. *Id.* at 726. See *supra* note 17 and *Aguillo*, 318 N.C. at 594, 350 S.E.2d at 81, and *Stallnacker*, 19 Ark. App. at 10, 715 S.W.2d at 884.

21. 779 F.2d 430 (8th Cir. 1985).

22. *Id.* at 437. The court noted that injuries resulting from child abuse encompass emotional

THE RATIONALE UNDERLYING RULE 803(4) AND THE *IRON SHELL* TEST

The traditional justification for the medical diagnosis hearsay exception is that statements made to a physician are reliable, and therefore admissible, because the patient speaks truthfully out of a self-interest in obtaining proper treatment.<sup>23</sup> Thus the inquiry focuses on the patient's motive in speaking truthfully to the doctor. The *Iron Shell* court relied on this rationale to develop the first part of its two-prong test for admissibility.<sup>24</sup> Under this first prong, courts must examine whether the declarant made the statements with the expectation of promoting treatment.<sup>25</sup> The *Iron Shell* court concluded that such statements may include the cause of the patient's injuries as long as they do not attribute fault.<sup>26</sup> It reasoned that statements of fault "would seldom, if ever" be sufficiently related to diagnosis or treatment.<sup>27</sup> Based on this rationale, the *Iron Shell* court limited the admissible statements to those that dealt with how the assault occurred, and it excluded those statements concerning who committed the assault.<sup>28</sup>

The second prong of the *Iron Shell* test requires that the physician reasonably rely on the statements in formulating a diagnosis or treatment.<sup>29</sup> This is a departure from the traditional rationale underlying Rule 803(4) because it inquires into the physician's judgment and not into the patient's motivation in making statements.<sup>30</sup> This inquiry is based on Federal Rule of Evidence 703,<sup>31</sup> which states that a fact dependable enough to use in formu-

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and psychological damage as well as physical injuries. *Id.* This view is consistent with the medical literature describing the phenomenon. For example, one researcher notes that "child abuse" includes more than merely physical injuries. Smith, *Non-Accidental Injury to Children—I*, 22 BEHAV. RES. THER. 331 (1984). It also includes "failure to thrive" or passive abuse, sexual abuse, and emotional abuse or neglect. *Id.* Another researcher notes that statistical reports of "child abuse" include physical, sexual, and emotional maltreatment. Britton, *Medical and Legal Aspects of Child Abuse and Neglect in Arizona*, XLI ARIZ. MED. 317, 318 (1984). Britton also reports that surviving victims of child abuse often develop prolonged emotional and physical problems. *Id.*

23. See McCORMICK, *supra* note 13, § 292, at 839-40; J. WEINSTEIN & M. BURGER, WEINSTEIN'S EVIDENCE ¶ 803(4)[01], at 803-144 (1985) [hereinafter WEINSTEIN & BURGER]. This rationale is based on the assumption that spontaneous statements made to a physician or statements made in response to a physician's questions are reliable because the patient most likely believes that his or her treatment depends on the correctness of the information supplied to the physician. See McCORMICK, *supra* note 13, § 292, at 840; WEINSTEIN & BURGER, ¶ 803(4)[01], at 803-144.

24. United States v. *Iron Shell*, 633 F.2d 77, 83-84 (8th Cir. 1980).

25. *Id.* at 84.

26. *Id.*

27. *Id.*; see also FED. R. EVID. 803(4) advisory committee note (using the following example: "Thus a patient's statement that he was struck by an automobile would qualify but not his statement that the car was driven through a red light.")

Although the court in *Iron Shell* noted that statements of fault "would seldom" relate to treatment, *Iron Shell*, 633 F.2d at 84, and the advisory committee note explained that statements of fault were "not ordinarily admissible," FED. R. EVID. 803(4) advisory committee note, neither *Iron Shell* nor the advisory committee note expressly excludes statements of fault.

28. *Iron Shell*, 633 F.2d at 84. In *Iron Shell*, the defendant was convicted of assaulting a nine-year-old girl with intent to commit rape. *Id.* at 80. The doctor was permitted to testify that the child told him she was dragged into the bushes, her clothing was removed, and that the man had attempted to put something inside of her that hurt. *Id.* at 83. The court emphasized that the statements were admissible under Rule 803(4) because they only concerned what happened and did not reveal who assaulted the victim. *Id.* at 84.

29. *Id.* at 84.

30. See *supra* note 23 and accompanying text.

31. See *Iron Shell*, 633 F.2d at 84. FED. R. EVID. 703 [hereinafter Rule 703] states:

The facts or data in the particular case upon which an expert bases an opinion or inference

lating an expert opinion is reliable enough to withstand exclusion under the hearsay rule.<sup>32</sup> In *Iron Shell* the court admitted those statements made by the child to the doctor concerning the cause of the injury because the doctor reasonably relied on them in formulating his diagnosis.<sup>33</sup> However, as with the first prong, the court excluded statements concerning the identity of the assailant.<sup>34</sup>

#### APPLICATION OF THE *IRON SHELL* TEST IN *ROBINSON*

The *Robinson* court divided Rule 803(4) hearsay statements into two categories. First, the court applied the *Iron Shell* test to statements that described the crime.<sup>35</sup> Looking at the second prong first, the court found that it was reasonable for the doctor to rely on the child's statements in formulating her diagnosis and treatment.<sup>36</sup> The court also noted that the information sought by the doctor concerning the cause of the child's injuries was reasonably pertinent to medical treatment.<sup>37</sup>

Next, the court examined the first prong of the *Iron Shell* test to determine whether the child's statements were motivated by the desire to receive proper treatment. Since there was nothing in the record to indicate otherwise and because the statements were uttered during treatment, the court found that the first prong of the test was also satisfied.<sup>38</sup> The court concluded that statements describing the crime were admissible under Rule 803(4).<sup>39</sup>

The *Robinson* court then focused on its second category of hearsay statements: statements identifying the criminal. The court carried out its analysis without determining whether the doctor was reasonable in relying on such statements and therefore without explicitly satisfying the second prong of the *Iron Shell* test.<sup>40</sup> Instead, while recognizing that statements of identity ordinarily are not admissible under Rule 803(4) because they are usually unrelated to treatment, the court nonetheless found them admissible.<sup>41</sup> The *Robinson* court noted that the advisory committee's note to Rule 803(4) excludes statements of fault for purely somatic injuries, such as inju-

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may be those perceived by or made known to him at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence.

*Id.*

32. *Iron Shell*, 633 F.2d at 84; MCCORMICK, *supra* note 13, § 324.2, at 909-10; WEINSTEIN & BURGER, *supra* note 23, ¶ 803(4) [01], at 803-146.

33. *Iron Shell*, 633 F.2d at 85. The physician also testified that most doctors question their patients concerning the cause of the patient's injury and then rely on these statements in determining treatment. *Id.* at 84-85.

34. *Id.* at 85. It is interesting that the court did not explain why statements of identity should be inadmissible under this prong.

35. *State v. Robinson*, 153 Ariz. 191, 199, 735 P.2d 801, 809. See also *supra* notes 6 and 7.

36. *Robinson*, 153 Ariz. at 199, 735 P.2d at 809.

37. *Id.*

38. *Id.* at 199-200, 735 P.2d at 809-10.

39. *Id.*

40. *Id.* at 200, 735 P.2d at 810. See also *supra* notes 29-32 and accompanying text for a discussion of the second prong of the *Iron Shell* test.

41. *Robinson*, 153 Ariz. at 200, 735 P.2d at 810.

ries resulting from a car accident.<sup>42</sup> However, it determined that in child sexual abuse cases the assailant's identity is crucial to effective treatment and therefore hearsay statements that identify the abuser are within the scope of the rule.<sup>43</sup> For example, the court found that treating the psychological trauma that could arise from sexual molestation by a relative or family friend depends on the identity of the abuser.<sup>44</sup> The court further noted the importance of identity in enabling the victim to recover from past abuse and in aiding authorities in the prevention of future abuse by prohibiting contact between the victim and the abuser.<sup>45</sup>

Next, the court inquired briefly into the motive surrounding the child's statements. However, it did so without dealing explicitly with the first prong of the *Iron Shell* test. Nonetheless, it found that doctors have a "selfish interest" in giving proper treatment<sup>46</sup> and patients have the same "selfish interest" in receiving proper care.<sup>47</sup>

### SCOPE OF THE DECISION

Rule 803(4) traditionally permits the admission of statements made to a physician that the patient believes are important in promoting his or her treatment.<sup>48</sup> The *Iron Shell* court tread to the established edges of Rule 803(4) by determining that statements concerning the cause of an injury were important in the diagnosis and treatment of the injury and were therefore admissible.<sup>49</sup> The application of the *Iron Shell* test in *Robinson* to statements describing the crime fall within the boundaries established by the *Iron Shell* court. However, the *Robinson* court exceeded these boundaries by also admitting statements that identified the abuser.<sup>50</sup> Although this expands the scope of Rule 803(4), it is not a surprising step in the context of child abuse since the medical profession has established that the importance of the abuser's identity is crucial in treating child abuse victims.<sup>51</sup> What is surprising, however, is that after the court broadened the rule to permit the admis-

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42. *Id.* See also *supra* note 27.

43. *Robinson*, 153 Ariz. at 200, 735 P.2d at 810.

44. *Id.*

45. *Id.* The court relied on *Renville* which focused on the danger of returning the child to the same household in which the child had received the abuse. *United States v. Renville*, 779 F.2d 430, 438 (8th Cir. 1985).

46. *Robinson*, 153 Ariz. at 200, 735 P.2d at 810. The court did not explain this statement. Perhaps a doctor's "selfish interest" is the prevention of medical malpractice claims or maintaining a good reputation.

47. *Id.*

48. See *supra* text accompanying note 23 for the rationale underlying the reliability of such statements.

49. *United States v. Iron Shell*, 633 F.2d 77, 84 (8th Cir. 1980), *cert. denied*, 450 U.S. 1001 (1981). *MCCORMICK*, *supra* note 13, § 292, at 840. Some states still exclude statements relating to the cause of the injury. *Id.* § 292, at 840 n.11.

50. *Robinson*, 153 Ariz. at 200, 735 P.2d at 810.

51. See *Britton*, *supra* note 22, at 320. *Britton* notes that the first priority in the treatment of child abuse is protecting the child from further harm. Subsequent treatment involves emotional care for both the child and the entire family. *Id.* See also *Carne, Non-Accidental Injury*, 228 THE PRACTITIONER 415 (1984). *Carne* states that most physicians think that admitting the child to the hospital is the first step in protecting the child against future abuse while the home situation is defined. *Id.* It is evident from what *Britton* and *Carne* state that a prerequisite to treatment is identifying the source of the abuse. See also cases cited *supra* note 20.

sibility of statements of identity, it then turned around and limited their admissibility to instances of child *sexual* abuse.<sup>52</sup> This limitation is inconsistent with the court's emphasis on the necessity of knowing the identity of the abuser for the emotional treatment of the child.<sup>53</sup> Other decisions do not limit the admission of statements of identity to instances of child sexual abuse.<sup>54</sup> Furthermore, and more importantly, the medical field does not limit the necessity of knowing the abuser's identity to child sexual abuse cases.<sup>55</sup> Therefore, according to the rationale the court itself stated regarding the necessity of the abuser's identity in the emotional treatment of the child, it was too restrictive in limiting *Robinson* to instances of child sexual abuse.<sup>56</sup>

Although this inconsistency in *Robinson* is troubling, the real significance of the decision is that it reveals the theoretical problems inherent in the *Iron Shell* test when it is applied to statements attributing fault. Under Rule 803(4) and prong one, statements to medical personnel are reliable because of the patient's self-interest in obtaining proper treatment.<sup>57</sup> Yet in *Robinson* the court expanded the category of "reliable" statements to include statements elicited by doctors because of the doctor's motivation to give proper treatment.<sup>58</sup> Additionally, the court noted that it was especially important to ascertain whether the treating doctor sought information that was reasonably pertinent to effective treatment.<sup>59</sup> This shift from admitting into evidence what the patient believes is important to admitting into evidence what the doctor tells the patient to believe is important has the potential of completely undermining the reliability basis for Rule 803(4).<sup>60</sup>

This can be exemplified by considering two situations. In the first situation, the patient believes that information the physician requests is pertinent to treatment and the patient responds truthfully out of a self-interest in obtaining proper treatment. This example fulfills the traditional reasoning underlying Rule 803(4); statements made under such conditions are considered

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52. *Robinson*, 153 Ariz. at 200, 735 P.2d at 810.

53. *Id.* at 199-200, 735 P.2d at 809-810.

54. *Goldade v. State*, 674 P.2d 721 (Wyo. 1983), *cert. denied*, 467 U.S. 1253 (1984). In *Goldade* the child had been physically beaten. *Id.* at 726. The identity of the abuser was revealed when the nurse asked the child how she got the bruises and the child replied, "my mommy did it." *Id.* at 724. Similarly in *Rhodes*, the child was asked "how did you get these ouees" to which she replied, "My mom hit me, . . . she hit me hard with a belt." *United States v. Rhodes*, 11 Fed. R. Evid. Serv. (Callaghan) 1520, 1521 (1982). In both of these cases identity was important in order to treat the overall syndrome of child abuse which includes emotional as well as physical treatment. *See also Smith supra* note 22, and *Britton supra* note 22. Also, even though *Renville* dealt with sexual abuse, the court was not restrictive in its analysis. It noted, "[t]he exact nature and extent of the psychological problems which ensue from child abuse often depend on the identity of the abuser." *United States v. Renville*, 779 F.2d 430, 437 (8th Cir. 1985). It is interesting that when *Robinson* quoted this passage, the court inserted "sexual" to qualify the type of abuse. *Robinson*, 153 Ariz. at 200, 735 P.2d at 810.

55. *See supra* note 22.

56. *Robinson*, 153 Ariz. at 200, 735 P.2d at 810.

57. *See supra* notes 23-26 and accompanying text.

58. *Robinson*, 153 Ariz. at 200, 735 P.2d at 810.

59. *Id.* at 199, 735 P.2d at 809. The court noted that the psychologist obtained information about cause and identity because both were crucial to diagnosis and treatment. *Id.*

60. *See State v. Aguillo*, 318 N.C. 590, 596, 350 S.E.2d 76, 82 (1986) (Billings, C.J., dissenting) for a similar argument.

reliable and are admissible hearsay.<sup>61</sup>

The problem with the shift becomes apparent in the second situation. Here, the patient does not believe that the information the physician requests is pertinent to treatment or in any way relates to his or her injury. The motive to respond truthfully vanishes because the patient may not believe or understand that the information requested will affect his or her treatment. Indeed, in *Robinson* the court noted that young children were not always able to comprehend that proper medical care was contingent on their responses to questions.<sup>62</sup> Therefore, the *Iron Shell* test may fail to screen unreliable statements when the information sought is not of the type that patients generally believe will promote their own treatment.<sup>63</sup>

The second prong of the *Iron Shell* test, by focusing on whether an expert in the field is reasonable in relying on the statements, also represents a major shift in the operative basis of Rule 803(4).<sup>64</sup> While the broad purpose of the second prong is to insure that reliable statements are admissible, the underlying theory is sufficiently different from the original intent of 803(4) to indicate that fulfilling this prong should not be a prerequisite to admitting statements. In *Robinson*, the court found the abuser's identity admissible under the Rule because the psychologist relied on this in formulating her diagnosis and treatment. That experts in a field rely upon certain information has little or no bearing on what a patient believes will promote his or her own treatment. While this is no doubt a valid test for expert testimony, it perhaps best serves its purpose as remaining the basis for Rule 703 and not muddying the waters of Rule 803(4).

### CONCLUSION

In *State v. Robinson*, the court admitted hearsay statements by a child identifying her abuser. This decision expands the scope of admissible evidence under Rule 803(4) even though the court limited its holding to instances of child sexual abuse. The traditional application of Rule 803(4) permits the admission of statements motivated by the patient's self interest in obtaining treatment. The move away from this standard undermines the safeguards of Rule 803(4) by allowing the admission of statements that may be unreliable.

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61. See *supra* note 23 and accompanying text.

62. *Robinson*, 153 Ariz. at 199, 735 P.2d at 809. Although the court notes this in the section where they discuss statements describing the crime, this particular paragraph refers to the identity of the abuser as well as the cause of the injuries.

63. See MCCORMICK, *supra* note 13, § 292 at 840 (when statements of causation assign fault [identity] it is unlikely that the patient will regard them as pertinent to diagnosis or treatment.).

64. See *United States v. Iron Shell*, 633 F.2d 77, 84 (8th Cir. 1980), *cert. denied*, 450 U.S. 1001 (1981). See also WEINSTEIN & BURGER, *supra* note 23, ¶ 803(4) [01] at 803-146, 148-49.