

Evidence needed in abuse cases, court rules

Judges: The jury may defer to experts in cases without physical proof

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PORTLAND — The Oregon Court of Appeals has ruled that physical evidence of sexual abuse must accompany a medical diagnosis when presented to a jury.

The pair of rulings Wednesday sent two cases back to trial, including that of a man serving a sentence of nearly 19 years.

Following the reasoning of a

separate Oregon Supreme Court ruling, the appeals court said juries may rely too much on the opinions of experts such as doctors and nurses when no physical evidence is available.

Both cases involved fathers convicted of abusing their daughters. In a Benton County case, a 12-year-old girl accused her father of sexually abusing her. But a doctor could not find any conclusive physical evidence during an examination.

The girl later recanted her testimony and denied she was abused. But a jury convicted her father of 16 counts of sexual abuse

and a judge sentenced him to nearly 19 years in prison.

In a Multnomah County case, a 14-year-old girl accused her father of abuse but she declined a physical examination by a nurse practitioner.

In the first case, the doctor told a jury she believed the girl had been sexually abused, and in the other case, the nurse practitioner testified her diagnosis was “highly concerning” abuse, the most definitive conclusion she could reach without an exam.

In both cases, the jury was left with deciding the credibility of the victims in order to convict.

But the appeals court, in opinions by Presiding Judge Rick Haselton, said absent physical evidence there was “a substantial risk” the jury would defer to the expert testimony by the doctor or nurse practitioner and “will not make its own credibility determination.”

In the case of the 12-year-old, the court also noted the girl not only recanted, she said she lied because “she had gotten into a fight with her father the night before and that she was angry with him for not working and not pulling his weight around the house.”