



MINNESOTA JUDICIAL TRAINING UPDATE



RAPE VICTIM MYTHS – EXPERT TESTIMONY SUPREME COURT CLARIFICATION

EVIDENTIARY ISSUE: During A Criminal Sexual Conduct Jury Trial In Which Defendant Claims Consent, The Prosecution Attempts To Introduce Expert Testimony To Describe And Explain The Following ‘Counterintuitive Rape Victim Behaviors’ (Common Rape Myths) Exhibited By Adult Victims Of Sexual Assaults:

1. **Typicality of Delayed Reporting;**
2. **Lack of Physical Injuries;**
3. **Submissive Conduct by Sexual-Assault Victims.**

GENERAL RULE – STATE v. OBETA, 796 N.W.2d 282 (Minn. 2011):

Pursuant to Minn. R. Evid. 7.02, in criminal sexual conduct cases in which defendant argues the sexual conduct was consensual, the court has discretion to admit expert-opinion evidence to describe and explain Typical Rape-Victim Behaviors (Common Rape Myths) such as Delayed Reporting, Lack Of Physical Injuries, And Submissive Conduct By Sexual Assault Victims.

THERE ARE 5 REQUIRED FINDINGS UNDER RULE 7.02 THAT THE COURT MUST MAKE IN ORDER TO RULE ON ADMISSIBILITY:

- 1) **THAT THE PROFFERED EXPERT TESTIMONY IS RELEVANT;**
- 2) **WITNESS MUST BE QUALIFIED AS AN EXPERT;**
- 3) **THE EXPERT’S OPINION MUST EXHIBIT FOUNDATIONAL RELIABILITY;**
- 4) **EXPERT TESTIMONY MUST BE HELPFUL TO THE JURY;**
- 5) If testimony involves novel scientific theory: Must satisfy Frye-Mack standard.
 - a) NOTE: In *State v. Obeta*, the Supreme Ct expressed no opinion on whether a *Frye-Mack* hearing is necessary in order to admit expert testimony on typical rape-victim behaviors. Issue was not raised.

SUPREME COURT RATIONALE: Studies that look at rape myths show that they are common and that people who endorse rape myths are less likely to believe a victim, more likely to hold the victim responsible, less likely to hold the perpetrator responsible, and less likely to convict a defendant. Expert testimony of typical behaviors by adult sexual assault victims may be outside the common understanding of an average juror and therefore helpful to the jury in evaluating the evidence. *State v. Obeta*, 796 N.W.2d 282 (Minn. 2011),

NOTE: *Obeta* clarified the decision in *State v. Saldana*, 324 N.W.2d 227, (Minn. 1982), which historically was interpreted by the lower courts as a blanket prohibition against the admission of all expert testimony on typical rape-victim behaviors in adult criminal sexual conduct cases.

MINN. R. EVIDENCE 403 ANALYSIS: Even if the court makes all 5 required findings under Minn R. Evid 7.02, the court still has discretion to exclude or limit the evidence if its probative value is substantially outweighed by the danger of unfair prejudice, confusion, or misleading the jury.

EXPERT TESTIMONY IS STILL NOT ADMISSIBLE CONCERNING:

1. Rape Trauma Syndrome (RTS);

- a. RTS describes a rape victim's recovery or healing process. Evidence of RTS is not helpful to the jury and has not reached a level of reliability that surpasses a jury's common sense evaluation.

2. The Credibility Of The Complainant, or;

3. The Ultimate Question Of Whether Complainant Was Sexually Assaulted.

WHAT ABOUT SIMILAR EXPERT TESTIMONY IN OTHER TYPES OF CASES?

The Rationale Applied In Allowing Expert Testimony To Describe And Explain Typical Adult Rape Victim Behaviors (Common Rape Myths) Applies With Equal Force To Cases Involving:

- 1) **Battered Woman Syndrome**, See Minnesota Judicial Training Update 10-13; *State v. Vance*, 685 N.W.2d 713 (Minn. 2004);
- 2) **Battered Child Syndrome**, *State v. MacLennan*, 702 N.W.2d 219, 234 (Minn.2005);
- 3) **Sexual Assaults Against Children**, *State v. Hall*, 406 N.W.2d 503, 505 (Minn.1987).