

And Then There Was One **A Recent Minnesota Supreme Court Decision Has Left Pennsylvania as the** **Only State That Disallows Expert Testimony to Explain Victim Behavior**

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On March 24, 2011, the Minnesota Supreme Court clarified that in sexual assault cases, the prosecution can admit expert opinion testimony to explain the typicality of delayed reporting, lack of physical injuries and the reasons therefore, and passive resistance by victims during the attack. The prosecutors in *State v. Obeta*¹, did a skillful job of creating a strong trial court record that inevitably led the Minnesota Supreme Court to logically conclude that expert testimony is admissible and necessary to explain common victim behavior in sexual assault cases. This case note will explain the holding in *Obeta* and outline the prosecution's successful strategy to bring Minnesota in line with almost every other American jurisdiction to permit the admissibility of expert testimony to explain common victim behaviors in sexual assault cases.

FACTS

On April 25, 2001 the victim was traveling in a vehicle with Obeta. Instead of driving her to her house as she requested, he took her to a parking lot in another city and raped her in his car. After the rape, Obeta abandoned the victim with no way to get home. She went to a gas station to clean herself and then tried to call for a ride. Unable to find a way to get home, she waited at a fast food restaurant for approximately two or three hours, until she finally stopped a police car and reported the rape. Police took her to a hospital where she was examined by a sexual assault nurse examiner (SANE).

At trial, Obeta claimed that he had consensual sex with the victim. The SANE testified that the victim did not suffer vaginal trauma, and explained that passive resistance by victims and lack of vaginal injury were not uncommon. The police investigator testified that in her experience, most sexual assault victims delay reporting the crime. The jury convicted Obeta and the Minnesota Court of Appeals reversed his conviction, holding that the trial court violated Minnesota precedent² when it admitted testimony from the SANE and police officer regarding typical sexual assault victim behaviors.

On remand to the trial court, the prosecution moved to admit expert testimony regarding rape myths and typical rape victim behaviors and thereby laid a foundation for the trial court to understand why this testimony was necessary. At a pretrial hearing before the trial court, the State introduced testimony from the director of a victim services program and a psychology professor who testified about typical behaviors of victims during and after sexual assault, explaining that it is uncommon for victims to fight back aggressively during the rape, that most victims receive no injuries, and that the most common injuries are bruising on the extremities from being held down. They further explained that vaginal injuries are uncommon and that victims often delay reporting sexual assaults.

The psychology professor also explained that rape myths are mistaken beliefs about what rape is and who rape victims are and incorrect beliefs about how rape victims should act. She testified that research shows that rape myths are common and that people who believe these 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 in a sexual assault case. She further testified that mistaken beliefs about victim behaviors impact jury deliberations and that the general public lacks information about common victim behavior after sexual assault.

The prosecutor also introduced two recent journal articles by British researchers about mock-juror studies in which the researchers manipulated evidence during mock trials to study jurors' reactions to sexual assault victims' delayed reporting, flat affect on the witness stand and lack of physical injury.³ The researchers also provided jurors with accurate information about typical rape victim behaviors through jury instructions and expert testimony. By studying mock juror deliberations, they found that many jurors were unshakably committed to the belief that a "normal"⁴ response to sexual assault would be

to fight back. They also found that jurors held “strong, but unfounded convictions”⁵ that vaginal tissues are easily torn, that pelvic muscles can be “rigidified”⁶ at will, and that intercourse without trauma only occurs when a woman is aroused and that lack of trauma is “wholly inconsistent with rape.”⁷ The research also showed that mock jurors believed that delayed reporting indicated that the report was fabricated, although they were receptive to the possibility that there were other reasons why a victim of rape might not report immediately.

The trial court denied the motion to admit expert testimony and the State filed an interlocutory pre-trial appeal. While the case was on appeal to the intermediate appellate court, the Supreme Court of Minnesota granted that State’s petition for accelerated review and took jurisdiction over the case.

HOLDING

The Minnesota Supreme Court agreed with prosecutors that expert testimony regarding common victim behaviors is admissible in sexual assault cases. The prosecution made three arguments why the Court should allow the introduction of this evidence.⁸ First, it argued that *State v. Saldana*, which was decided in 1982, was incorrectly decided because it predated most of the social science literature on sexual assault victim behavior. Second, prosecutors claimed that the lower courts were misinterpreting *Saldana* in ways that were inconsistent with subsequent decisions regarding the admissibility of expert testimony on typical posttraumatic behaviors. Finally, the State argued that Minnesota law should be in line with most other states, which have rejected a *per se* rule prohibiting the admission of expert testimony to explain these common victim behaviors.

The Court agreed with the State’s second and third arguments and held that the lower courts had gone too far when they repeatedly excluded expert testimony to explain common victim behavior pursuant to *Saldana*. In its analysis, the Supreme Court undertook a thoughtful and thorough analysis of this type of evidence and the need to introduce it at trial, stating:

Since our decision in *Saldana*, we have recognized that the experiences and reactions of victims in certain crimes are outside the common knowledge of the jury. In these cases, expert testimony on typical victim behavior may be helpful to assist the jury in evaluating the facts in the case. The rationale we applied in allowing expert testimony on the typical behaviors of battered women, battered children, and child- and adolescent-victims of criminal sexual conduct applies with equal force to expert-opinion testimony on typical rape-victim behaviors that are outside the common understanding of most jurors.

...

We conclude that the mental and physical reactions of an adult sexual-assault victim may lie outside the common understanding of an average juror. In a case such as this one, where consent is disputed, expert testimony on the typicality of delayed reporting, lack of physical injuries, and submissive behavior by rape victims may be helpful to the jury because it could assist the jury in evaluating evidence in the case that is relevant to the issue of consent.⁹

The court then quoted language from an opinion of the Colorado Supreme Court, which explained:

The lay notion of what behavior logically follows the experience of being raped may not be consistent with the actual behavior which social scientists have observed from studying rape victims. . . . Expert testimony that challenges or explains these assumptions [could be seen as] valuable information which the jury should hear and consider in its search for the truth.¹⁰

At the end of the opinion, the Court considered the State’s third argument and undertook an analysis of the law of other states, recognizing that Minnesota’s lower courts’ misinterpretation of precedent had placed the state in a miniscule minority of only two states that did not allow this type of evidence to be admitted in sexual assault trials. By issuing this opinion, the Court left Pennsylvania as the only state that still maintains a categorical prohibition on the admissibility of this type of evidence.

CONCLUSION

The prosecutors in *Obeta* were masterful in building a strong record before the trial court that gave the Supreme Court everything it needed to issue a definitive opinion allowing expert testimony in sexual assault cases to explain common victim behaviors. At the pretrial hearing, the proffered evidence was powerful and the expert witnesses — a victim services center director and a professor of psychology — were highly qualified. Moreover, the State demonstrated the need for this evidence with social science research regarding juror attitudes, rape myth acceptance and the potential harmful impact of these mistaken beliefs on jurors and verdicts. This successful strategy can serve as a template for prosecutors who seek to introduce this evidence in trials before courts that are hesitant or even hostile to the idea of admitting it.¹¹

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ENDNOTES

¹ 796 N.W.2d 282 (Minn. 2011).

² The Court of Appeals held that this testimony was inadmissible relying on the Minnesota Supreme Court's decision in *State v. Saldana*, 324 N.W.2d 227 (Minn. 1982).

³ The two journal articles introduced by the State were written by British researchers Drs. Louise Ellison and Vanessa Munro. See Louise Ellison & Vanessa E. Munro, *Turning Mirrors into Windows?: Assessing the Impact of (Mock) Juror Education in Rape Trials*, 49 *Brit. J. Criminology* 363 (2009); and Louise Ellison & Vanessa E. Munro, *Reacting to Rape: Exploring Mock Jurors' Assessments of Complainant Credibility*, 49 *Brit. J. Criminology* 202 (2009).

⁴ *Obeta* at 285.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ The Minnesota Supreme Court invoked its inherent judicial authority to regulate and supervise the rules that govern the admission of evidence in lower courts because the lower courts were misinterpreting and misapplying its precedent to be a blanket prohibition on the admissibility of expert testimony to explain victim behavior in sexual assault cases. The Court held that because prosecutors have very narrow opportunities to appeal in criminal cases, there was a significant likelihood that the issue in this case would continue to evade review.

⁹ *Obeta* at 292 – 293.

¹⁰ *Id.* at 293, citing, *People v. Hampton*, 746 P.2d 947, 952 (Colo. 1987), abrogated on other grounds by *People v. Shreck*, 22 P.3d 68, 82 (Colo. 2001).

¹¹ Prosecutors seeking assistance in admitting this type of evidence should contact AEquitas: The Prosecutors' Resource on Violence Against Women at www.AEquitasresource.org.

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