

## United States v. Morris, United States District Court, E.D. Tennessee

**2009 WL 290601**

**Topic:**

Discovery/Production, Expert Testimony, Privacy, Victim's Rights

**Nature of the case:**

Defendant is charged with depriving persons of their civil rights under color of the law and making a false statement. Defendant allegedly forced one woman to engage in sexual activity with him, and caused another woman to engage in an indecent act to prevent him from pursuing a criminal charge against her. All of this occurred while he was a deputy sheriff.

**Facts and Issues on Appeal:**

This case involves two issues. First, whether or not a psychologist may testify as to her clinical interview with an alleged sexual assault victim, and testify to her opinion regarding whether or not the victim's symptoms are similar to those of sexual abuse victims. Second, if this testimony is allowed, whether the defendant may compel the alleged victim to be examined by his own psychologist. The government intended to offer the expert testimony of a psychologist to testify that the victim suffered from Post Traumatic Stress Disorder (PTSD), and that PTSD is commonly the result of traumatic events such as sexual assault. The Defendant asserted that this evidence was inadmissible, and that if it were to be admitted, he would have a due process right to conduct his own psychological evaluation of the victim. The trial court allowed the expert testimony and denied the defendant's request to compel a psychological evaluation of the victim. The appellate court agreed with the trial court, reasoning as follows:

**Ruling & Rationale:**

The expert's testimony is admissible because it is relevant, and its probative value is not outweighed by possible unfair prejudice, confusion of the issues, or misleading the jury. Most jurisdictions allow such expert testimony, as long as the expert's opinion is limited such that the issue of credibility is left to the jury to decide.

The court also held that the defendant is not entitled to an order compelling the victim to be examined by the defendant's own psychologist. The court found the defendant's need for such an evaluation to be "uncompelling." There was no due process issue because the defendant was able to call experts to advise his counsel on how to cross-examine the government's expert, and he could call his own experts to rebut the government's witness on issues of methodology, diagnosis, and conclusions. These experts were also allowed to remain in the courtroom while the victim and the psychologist testified. The court has discretion regarding psychological evaluations and should consider the impact on the individual's well-being and privacy. If an examination could be used to harass the

victim, and might deter other victims from coming forward, there is no abuse of discretion in denying a defendant's request.

**EDITORIAL COMMENT:** This court discusses two important issues that appear frequently in sexual assault cases but not other types of criminal matters. Expert witnesses are sometimes necessary in sexual assault cases to help educate jurors about why a victim's seemingly odd behavior is nonetheless consistent with the behavior of a typical sexual assault victim. Such expert testimony is needed to rebut strongly held myths about rape victims that cause jurors unfairly to judge victims harshly during trial. At the same time, forcing a victim to submit to a psychological evaluation at the behest of her assailant does little to assist the fact-finder and is an extreme invasion of privacy. Forcing a victim to submit to an unwanted intrusion into her intimate psychological self is an intrusion similar to the type of harm experienced during the sexual assault. A court should be loathe to subject an innocent citizen to an unwanted violation of privacy as a cost of participating in the criminal justice system. This court does a good job explaining why protecting victims from such harm has no impact on the defendant's due process rights. The victim is not a party to the criminal proceeding and is not the defendant's opponent. Thus, unlike in a civil case where a victim is a party to the case and where she effectively waives her rights by demanding money damages to compensate her for psychological injuries, a victim's mental state is not an element of the offense in a criminal case.

**Submitted By:** Kathryn Schwartz -- Law Student