

## Expert Testimony: Explaining the Minnesota Supreme Court's Decision in *State V. Obeta*

The purpose of this fact sheet is to explain implications of the Minnesota Supreme Court's decision in *State v. Obeta* regarding the use of expert testimony to explain the range of adult victim behavior in response to sexual assault. For information cited within this fact sheet, see *State v. Obeta*, 796 N.W.2d 282 (Minn. 2011).

### **What is the basic background of *Obeta*?**

*Obeta* was on trial for first- and third-degree criminal sexual conduct. The State requested that it be allowed to present expert-opinion evidence to rebut *Obeta*'s defense that the sexual conduct with the victim was consensual. The district court denied the State's request based on existing Minnesota case law, stating that the State was prohibited from admitting expert testimony about typical victim behaviors to rebut a defendant's claim that the sexual conduct was consensual. See *State v. Saldana*, 324 N.W.2d 227 (Minn. 1982). The Minnesota Supreme Court, however, reversed the district court decision.

### **Prior to *Obeta*, what was the Minnesota legal precedent regarding expert testimony in sexual assault cases?**

Lower courts had historically interpreted the Minnesota Supreme Court decision in *State v. Saldana* as a blanket prohibition against the admission of all expert testimony on typical victim behaviors in adult criminal sexual conduct cases. In *Obeta*, however, the court concluded that *Saldana* had been misapplied and interpreted too broadly. The court, therefore, chose to address and correct that evidentiary issue.

**What was the legal issue in *Obeta*?**

The issue the Minnesota Supreme Court addressed in *Obeta* was whether, during a criminal sexual conduct trial in which a defendant claims consent, the prosecution is prohibited from introducing expert testimony to describe and explain “counterintuitive rape victim behaviors” exhibited by adult victims of sexual assaults. Specifically, whether an expert can testify on:

- the typicality of delayed reporting by the victim;
- the lack of physical injuries; and
- submissive conduct during the sexual assault.

**What expert-opinion testimony was sought in *Obeta*?**

The State sought expert-opinion testimony to address rape myths and typical victim behaviors both during and after a sexual assault. The testimony would have explained that it is uncommon for victims to fight aggressively against their perpetrator, and that most people who are sexually assaulted receive no physical injuries; that when they are injured the most common injury is bruising on the thighs or arms from where the victim was held down and that vaginal injuries are unusual. In addition, the testimony would have explained that people who are sexually assaulted often delay reporting their attack.

**What was the decision in *Obeta*?**

Pursuant to Minn. R. Evid. 7.02, in criminal sexual conduct cases in which a defendant argues the sexual conduct was consensual, the district court has discretion to admit expert-opinion evidence to describe and explain typical victim behaviors such as delayed reporting, lack of physical injuries, and submissive conduct by sexual assault victims.

**What are the requirements a court must use to determine if expert testimony is admissible according to Minn. R. Evid. 7.02?**

The admissibility of expert testimony is governed by Minn. R. Evid. 7.02, which states that expert testimony is admissible if:

- (1) the witness is qualified as an expert;
- (2) the expert’s opinion has foundational reliability;
- (3) the expert testimony is helpful to the jury;
- (4) the evidence proffered by the expert testimony is relevant\*; and
- (5) if the testimony involves a novel scientific theory, must satisfy the *Frye-Mack* standard\*\*.

\*Note that whether the expert testimony is relevant is not explicitly stated in Minn. R. Evid. 7.02, but is rather mentioned in *Obeta* as an element of making such a determination.

\*\* Note that the *Obeta* court did not specifically address the issue as to whether a *Frye-Mack* hearing is necessary in order to admit expert testimony on typical victim behaviors, but for the most part, expert testimony in sexual assault cases would not require this analysis.

**Are there any other limits to using expert testimony?**

Yes. In addition to the required criteria according to Minn. R. Evid. 7.02, Minn. R. Evid. 403 states that the district court still has the discretion to exclude the evidence if its probative value is substantially outweighed by the danger of unfair prejudice, confusion, or misleading the jury.

**What was the Minnesota Supreme Court's rationale in *Obeta*?**

Studies show that myths regarding cases of sexual assault are still common and that people, or jurors, who endorse such 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 addition, many wrongly believe that most sexual assault victims will forcefully resist their assailant, suffer severe physical injuries, and immediately report the attack. Because of this, the behavior one might expect to follow an experience of sexual assault may not be consistent with the actual behavior observed in such victims. The court acknowledges that expert testimony of typical victim 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.

**Are there other, similar situations where expert testimony is also allowed?**

Yes. The *Obeta* court recognized that the rationale already applied in other, similar cases applies with equal force to expert-opinion testimony on typical victim behaviors. Case law recognizes that expert testimony on the typical behavior of similar victims is helpful to the jury. Expert testimony, therefore, is also allowed to describe and explain general behavior of adult victims of battery, child victims of battery, and child or adolescent victims of sexual assault.

**Are there situations where expert testimony is still NOT allowed, according to *Obeta*?**

The *Obeta* court upheld the *Saldana* determination that “if the jury is in as good a position to reach a decision as the expert, expert testimony would be of little assistance to the jury and should not be admitted.” The court determined that expert testimony cannot be used to explain:

- Rape Trauma Syndrome (RTS);
- the ultimate question of whether the victim was raped; and
- the credibility of the victim.

**Could a sexual assault advocate serve as an expert witness?**

Possibly. The advocate must not be in a professional relationship with the victim in the case (see fact sheet on “Advocate Duty of Confidentiality”). In most situations, the advocate who serves as an expert witness should not work in the jurisdiction where the case is being heard. An advocate must have substantial experience and training in the field of sexual violence in order to qualify as an expert witness.

**Additional Resource**

Long, Palmer, Thome (Gonsalves): *A Distinction Without a Difference: Why the Minnesota Supreme Court Should Overrule its Precedent Precluding the Admission of Helpful Expert Testimony in Adult-Victim Sexual Assault Cases*, 31 Hamline J. Pub. L & Pol'y 569 (August 2010).

Sexual Violence Justice Institute  
Minnesota Coalition Against Sexual Assault  
161 St Anthony Ave Suite 1001  
St Paul, MN 55103  
651.209.9993  
[www.mncasa.org](http://www.mncasa.org)

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