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Parasomnia Activity

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STUDENT CASE COMMENTARY

PARASOMNIA ACTIVITY

Tennessee v. Scott, 275 S.W. 3d 395 (Tenn. 2009).

*Rashida Davis*¹

I. Summary

Due to the lack of uniformity among trial courts, the Supreme Court of Tennessee granted an interlocutory appeal in *Tennessee v. Scott* to resolve a dispute regarding the admission of expert witness testimony.² Traditionally, trial courts used a broad theme of “relevance and reliability” when considering expert testimony.³ The Court replaced that general theme with a four-prong test that included a “qualifications assessment, analytical cohesion, methodological reliability, and fundamental reliability.”⁴ The Court ruled that the trial court erred in excluding the expert witness testimony without this analysis.⁵

II. Background

The defendant, Leroy Scott, was charged with three counts of sexual battery and two counts of rape of his stepdaughter, who was a minor.⁶ He appealed from the

¹ J.D., pending 2012, Univ. of Tennessee; B.A., Political Science, Georgia State Univ. Prior to attending law school, Ms. Davis worked as a flight attendant.

² State v. Scott, 275 S.W.3d 395, 401 (Tenn. 2009).

³ *Id.*

⁴ *Id.*

⁵ *Id.* at 402.

⁶ *Id.*

decision of the trial court to exclude his expert witness testimony, which would have explained his behavior. The trial court held that the expert's "methodology and principles underlying the scientific evidence [were] not sufficiently trustworthy and reliable to be presented to the trier of fact."⁷ Mr. Scott contended that he was unaware of what he was doing because he was asleep, and his expert witness was a crucial part of explaining this theory.⁸

Mr. Scott's expert witness, Dr. J. Brevard Haynes, diagnosed Mr. Scott with "sleep parasomnia with sexual behavior."⁹ Sleep parasomnia is a clinical disorder involving arousal during sleep.¹⁰ When Mr. Scott notified the State of this defense, the State moved to exclude the expert testimony.¹¹ The trial court granted the State's motion, and the resulting appeal ensued.¹²

III. Court's Conclusions and Rationale

The Tennessee Supreme Court identified the important role that trial courts play as "gatekeepers when it comes to admissibility of expert witness testimony."¹³ Tennessee Rule of Evidence 702 states:

"[i]f scientific, technical, or other specialized knowledge will substantially assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by

⁷ *Scott*, 275 S.W.3d at 400.

⁸ *Id.* at 399.

⁹ *Id.* at 406.

¹⁰ THE INTERNATIONAL CLASSIFICATION OF SLEEP DISORDERS: DIAGNOSTIC & CODING MANUAL (2d ed. 2005).

¹¹ *Scott*, 275 S.W.3d at 399.

¹² *Id.*

¹³ *State v. Copeland*, 226 S.W.3d 287, 300-301 (Tenn. 2007); *Johnson v. John Hancock Funds*, 217 S.W.3d 414, 425 (Tenn. Ct. App. 2006).

knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise.”

Trial courts must ensure that the “opinions are based on relevant scientific methods, processes, and data, and not upon an expert’s mere speculation.”¹⁴ When the trial court excluded Dr. Haynes’s expert testimony without any explanation, the Court criticized the trial court for its lack of “appropriate inquiry” and conclusory ruling.¹⁵ The Court created a template for trial courts to follow when deciding whether to admit expert testimony: “a qualifications assessment, analytical cohesion, methodological reliability, and fundamental reliability.”¹⁶

With regard to the qualifications assessment, an expert witness must have specialized knowledge, skill, and experience that provide the jury with an informed decision.¹⁷ In this instance, Dr. Haynes was a graduate of Vanderbilt University School of Medicine.¹⁸ He was board certified in internal, pulmonary, and sleep medicine.¹⁹ Doctor Haynes testified that he spent twenty years studying sleep medicine. He was an Assistant Clinical Professor at Vanderbilt University School of Medicine and the Director of the Saint Thomas Health Services Center for Sleep.²⁰

If the expert is qualified, then the court must evaluate the analytical cohesion of the expert testimony. To admit the evidence, the court must find that the expert’s research supports his or her conclusion.²¹ If there is an

¹⁴ *McDaniel v. CSX Transp. Inc.*, 955 S.W.2d 257, 265 (Tenn. 1997).

¹⁵ *Scott*, 275 S.W.3d at 399.

¹⁶ *Id.* at 402.

¹⁷ *Id.*

¹⁸ *Id.* at 405.

¹⁹ *Scott*, 275 S.W.3d at 405.

²⁰ *Id.*

²¹ *Id.*

“analytical gap” between the research and the opinion, the court may exclude the expert.²² In this case, Dr. Haynes diagnosed Mr. Scott with sleep parasomnia with sexual activity. Doctor Haynes concluded that Mr. Scott’s disorder caused him to “inappropriate[ly] touch [his] step daughter.”²³

Doctor Haynes’s opinion was based on the physical examination, multiple sleep latency test, medical literature, and interview with Mr. Scott, who had a history of “night terrors and sleep walking.”²⁴ Mr. Scott’s wife claimed that he touched her sexually while he was asleep.²⁵ Also, his behavior was similar to others diagnosed with sleep parasomnia with sexual activity.²⁶

Trial courts next must evaluate the methodological reliability of the expert, which explores the expert’s method for obtaining information.²⁷ For example, Dr. Haynes primarily relied on Mr. Scott’s statements as a basis for his opinion. Doctor Haynes testified that this method of “self-reporting” was “consistent with accepted practices utilized by physicians and psychologists.”²⁸

Trial courts also must consider foundational reliability, which “assess[es] the expert’s field or discipline . . . the reliability of the field . . . and the underlying facts upon which the expert’s opinion is predicated.”²⁹ Foundational and methodological reliability share some overlapping concepts; however, the key difference is that

²² *Scott*, 275 S.W.3d at 402; *State v. Stevens*, 78 S.W.3d 817, 834-835 (Tenn. 2002).

²³ *Scott*, 275 S.W.3d at 405.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.* at 406.

²⁷ *Id.* at 407.

²⁸ *Scott*, 275 S.W.3d at 406.

²⁹ *Id.* at 407.

foundational reliability deals with the expert's area of expertise as a whole.³⁰

Doctor Haynes “provided the trial court with a 2007 article that provide[d] analysis of the literature related to sexual behavior as a sleep parasomnia.”³¹ He “relied upon...peer-reviewed” literature “having been assessed by experts in the field.”³² Literature that was not “sufficiently supported . . . [was] rejected for publication.”³³ Based on the Court's prescribed rules of the qualifications assessment, analytical cohesion, methodological reliability, and foundational reliability, the Court held that Dr. Haynes's testimony should have been admitted.³⁴ Doctor Haynes was a qualified medical expert who used valid methods and sound medical theory to form his conclusion.³⁵ He used valid methods to obtain the data for his conclusion.³⁶ Lastly, sleep parasomnia is a recognized and valid area of psychology.³⁷

IV. Analysis

Although the traditional rule of “relevance and reliability”³⁸ is too broad, the Court's four-prong test of “a qualifications assessment, analytical cohesion, methodological reliability, and fundamental reliability” is too narrow. To understand the implications of this change,

³⁰ *Id.*

³¹ *Id.*

³² *Scott*, 275 S.W.3d at 407; *see generally* Carlos H. Schenck, Isabelle Arnulf, Mark W. Mahowald, *Sleep and Sex: What Can Go Wrong? A Review of the Literature on Sleep Related Disorders and Abnormal Sexual Behaviors and Experiences*, 683 SLEEP (June 1, 2007).

³³ *Scott*, 275 S.W.3d at 407.

³⁴ *Id.* at 411.

³⁵ *Id.* at 405.

³⁶ *Id.* at 407.

³⁷ *Id.*

³⁸ *Scott*, 275 S.W.3d at 401.

one must consider what types of experts would not fit this regimen. The four-prong test is likely best for experts in academia, as in the case of *Tennessee v. Scott*, but problems may arise when the individual's expertise cannot be quantified or measured, for example, experts in "drug jargon"³⁹ or drug culture.⁴⁰

The rigid application of rules might prevent the very goal the Court seeks to attain, which is the inclusion of testimony for qualified experts. Perhaps "[n]o framework exists that provides for simple and practical application in every case; the complexity and diversity of potential scientific evidence is simply too vast for the application of a simple test."⁴¹ Ideally, the evidentiary analysis should retain a structured system for considering expert testimony while still allowing room for flexibility.

The rules regarding the inclusion of expert testimony should encompass uniformity, the requirement of a credible witness and field, and only limited restriction on the trial court's discretion. The Tennessee Supreme Court makes an interesting point that "expert testimony need not establish that the expert testimony is correct, only that it rests upon good grounds."⁴² This theme of "good grounds"

³⁹ *Tennessee v. Elliot*, No. M2008-02686-CCA-R3-CD, 2010 WL1425452, at *6 (Tenn. Crim. App. Apr. 9, 2010) (affirming the trial court's admission of a police officer as an expert witness on drug jargon).

⁴⁰ *Tennessee v. Rodriguez*, No. M2005-00951-CCA-R3-CD, 2006 WL2310666, at *16 (Tenn. Crim. App. Apr. 7, 2006) (affirming the trial court's decision not to admit a police officer as expert witness on drug culture).

⁴¹ *McDaniel*, 955 S.W.2d at 265 (Birch, J., concurring); see *Developments in the Law – Confronting the New Challenges of Scientific Evidence*, 108 HARV. L. REV. 1481, 1513-1516 (1995).

⁴² *Scott*, 275 S.W.3d at 404; *Ruiz-Troche v. Pepsi Cola of P.R. Bottling Co.*, 161 F.3d 77, 85 (1st Cir. 1998) (quoting *Daubert v. Merrell Dow Pharm. Inc.*, 509 U.S. 579, 590 (1993); see also *In re Paoli R. R. Yard PCB Litig.*, 35 F.3d 717, 744 (3rd Cir. 1994); *Burley*

should be the overarching context to which expert witness testimony should be included.⁴³ The method for ensuring that indeed an expert does possess this quality is through the adversarial system.⁴⁴ Even the Court acknowledges that expert testimony “should be tested by the adversary process—competing expert testimony and active cross-examination—rather than excluded from juror’s scrutiny.”⁴⁵

V. Conclusion

By creating a formulaic guideline for expert testimony, the Court stepped away from the traditional approach and created a new uniform system. The traditional rules regarding expert testimony relied upon the vague principles of relevance and reliability. These principles allowed trial courts to exclude testimony arbitrarily. The Court responded by restricting trial courts’ discretion. Now, trial courts must follow the prescribed analysis for determining the admission of expert witness testimony. The prescribed rules will ultimately lead to a more uniform approach to the decisional process of trial courts; however, the rules leave little room for discretion.

A more flexible approach to the admission of expert testimony would allow the adversarial system to do the work. The adversarial system allows opposing parties to proffer reasons why the expert witness should or should not be admitted and even cross-examine the expert witness. Allowing opposing counsel to make a case for or against an expert will preserve judicial discretion and will provide flexibility for the admission of expert testimony. The

v. Kytect Innovative Sports Equip. Inc., 737 N.W.2d 397, 406 (S.D. 2007).

⁴³ *Scott*, 275 S.W.3d at 404.

⁴⁴ *Id.*

⁴⁵ *Ruiz-Troche*, 161 F.3d at 85.

zealous representation by counsel is the most appropriate mechanism that the court system has to offer for the admission of a qualified expert witness.



