

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : NO. CR – 233 - 2005
:
vs. : CRIMINAL DIVISION
:
MARK SMITH, :
Defendant : Motion in Limine

OPINION AND ORDER

Before the Court is Defendant’s oral Motion in Limine, made at the Call of the List held on June 6, 2007. Argument on the motion was held later that same date.

Defendant has been charged with Statutory Sexual Assault and related offenses alleged to have been perpetrated against his daughter, D.S. In the instant motion in limine, Defendant seeks a ruling on the admissibility of the testimony of a psychologist that the alleged victim suffers from Munchausen Syndrome,¹ and that one of the symptoms of such a syndrome is the fabrication of stories in order to draw attention to oneself. Inasmuch as this proposed testimony is merely offered to attack the credibility of the witness, the Court finds it to be inadmissible.

In several cases the Supreme Court of Pennsylvania has faced the issue of expert testimony offered to “explain” certain behaviors of a certain group of people, for example, that young children usually do not fabricate stories of sexual abuse because they do not have sexual knowledge sufficient to supply details regarding sexual encounters,² that a rape victim suffering from rape trauma syndrome might very well be unable to identify her attacker within weeks of the attack,³ and that a claim of the return of a repressed memory should not be considered because the large majority of repressed memories occurring more than ten years from a single,

¹ Although this Court denied Defendant’s request to have the alleged victim examined by this psychologist in order to have the psychologist make such a diagnosis, defense counsel indicates he wishes to present at trial certain testimony regarding the alleged victim’s experiences and behaviors and have the psychologist hypothetically reach that diagnosis. The Court is not commenting on the admissibility of any of the underlying information which might be offered at trial, and does not rule on the admissibility of a hypothetical diagnosis. The instant opinion and order is strictly limited to the issue of the admissibility of the particular expert opinion offered in this case, respecting those who suffer from Munchausen Syndrome, as resolution of that issue renders unnecessary any further discussion of the predecessor issues.

² Commonwealth v. Seese, 517 A.2d 920 (Pa. 1986).

³ Commonwealth v. Gallagher, 547 A.2d 355 (Pa. 1988).

acute event are usually wrong.⁴ The Court found in all cases that the purpose of the testimony was to either enhance or attack the credibility of the witness, and concluded that such testimony, admitted as evidence, would encourage jurors to shift their focus from determining the credibility of the *particular* witness who testified at trial, allowing them instead to defer to the so-called "expert" assessment of the truthfulness of the class of people of which the particular witness is a member. Commonwealth v. Seese, 517 A.2d 920 (Pa. 1986).⁵ The Court held such to be improper, noting that the veracity of a particular witness is a question which must be answered in reliance on the ordinary experiences of life, common knowledge of the natural tendencies of human nature, and observations of the character and demeanor of the witness. Id. Observing that the phenomenon of lying is within the ordinary capacity of jurors to assess, the Court held the question of a witness's credibility to be reserved exclusively for the jury. Id.

In the instant case, the proposed expert testimony, that the alleged victim suffers from Munchausen Syndrome and that one of the symptoms of such a syndrome is the fabrication of stories in order to draw attention to oneself, is clearly an effort to attack the credibility of the alleged victim. As such, it is inadmissible.

ORDER

AND NOW, this 7th day of June 2007, for the foregoing reasons, the proposed testimony is hereby ruled inadmissible.

BY THE COURT,

Dudley N. Anderson, Judge

cc: DA
Peter Campana, Esq.
Gary Weber, Esq.
Hon. Dudley Anderson

⁴ Commonwealth v. Crawford, 718 A.2d 768 (Pa. 1998).

⁵ See also, Commonwealth v. Gallagher, *supra*, at 358 ("Such testimony would invest the opinions of experts with an unwarranted appearance of authority on the subject of credibility, which is within the facility of the ordinary juror to assess.").