exactly is a "serious" enough offense to warrant infringing on individual interests.

Mark N. Rudolph, MD, CM
Lecturer in Psychiatry
Law and Psychiatry Program
Department of Psychiatry
University of Massachusetts Medical School
Worcester, MA

Battered-Child Syndrome

Admissibility of Expert Testimony on "Syndrome Evidence" Properly Determined Through Application of Minnesota Rule of Evidence 702, Not the Frye-Mack Standard

State v. MacLennan (702 N.W.2d 219 (Minn. 2005)) is a Minnesota Supreme Court case that was decided on August 18, 2005. The defendant was convicted in the Stearns County District Court of the first-degree murder of his father and was sentenced to life in prison. Mr. MacLennan claimed that he killed his father in self-defense and asked the district court to admit expert testimony regarding battered-child syndrome to demonstrate his state of mind at the time of the shooting. The court excluded the testimony. The defendant appealed, arguing: (1) the court denied him the right to present a complete defense by excluding expert testimony on battered-child syndrome in support of his claim of self-defense; and (2) the state committed prosecutorial misconduct during its closing argument. This review will focus on the question of admissibility of the expert testimony, as this is the more relevant mental health issue.

Facts of the Case

In the late evening of January 13, 2005, Jason MacLennan shot his father, Kenneth MacLennan, six times with a .22-caliber rifle. Mr. MacLennan testified that he was fearful of his father and shot him in self-defense. His best friend, Matt Moeller, testified that he and Mr. MacLennan had devised a plan to kill Kenneth MacLennan.

Before trial, Mr. MacLennan made an offer of proof to demonstrate the basis of his claim that his father severely emotionally abused him. This included potential testimony from his family, friends, and neighbors. These individuals were willing to testify that Kenneth MacLennan physically and sexually abused Mr. MacLennan's mother before she died of cancer in 1999. They were also willing to testify that Mr. MacLennan was neglected by his father who left him alone to serve as his mother's primary caretaker when she was ill. The proffered testimony on the relationship between Mr. MacLennan and his father focused primarily on Mr. MacLennan's fear of his father and his father's bad temper.

Mr. MacLennan also sought to offer expert testimony on battered-child syndrome, which the district court determined would need to be presented at a *Frye-Mack* hearing (described below) before trial, because it presented a novel scientific theory in Minnesota. At the *Frye-Mack* hearing, Dr. Michael Arambula testified that the term battered-child syndrome has evolved to encompass the psychological symptoms suffered by children who have been battered. He testified that few children who suffer from this syndrome actually attack their abusers, but that when they do, the attack usually involves excessive force because the child is unable to control his or her emotions. Two psychiatrists rebutted this testimony. Dr. Carl Malmquist said that in the psychiatric community, battered-child syndrome "is not, at this point, well tested and confirmed enough to gain credibility that there is such an accepted syndrome" (*State v. MacLennan*, p 227). The other psychiatrist's testimony was consistent with Dr. Malmquist's testimony.

The district court concluded that Mr. MacLennan did not meet the burden under the *Frye-Mack* standard. Under the *Frye-Mack* standard, a novel scientific theory may be admitted if it has: (1) general acceptance in the relevant scientific community; and (2) foundational reliability. This decision was based on the failure of Dr. Arambula's testimony to demonstrate general acceptance of battered-child syndrome, and the insufficiency of evidence offered to demonstrate that Mr. MacLennan suffered from severe emotional abuse. The court allowed testimony on the relationship between Jason and his father. At trial, Mr. MacLennan testified that his father was verbally abusive and distant. He said that his father burned his arm with a cigarette once when he caught him smoking and also testified that his father once threatened him with a knife during an argument. Family and friends testified that Mr. MacLennan was afraid of his father, but never expressed intent to kill

him. The state offered testimony from some of Jason MacLennan's friends, who said Mr. MacLennan frequently discussed a desire to have his father killed and remarked about the amount of money he would inherit. During the closing argument, the state frequently referred to the shooting as a "premeditated ambush execution."

Mr. MacLennan was convicted of first-degree premeditated murder and sentenced to life in prison. On appeal, Mr. MacLennan raised two issues: (1) whether the trial court erred in excluding expert testimony on battered-child syndrome; and (2) whether the state's comments on closing argument constituted prosecutorial misconduct.

Ruling and Reasoning

The Minnesota Supreme Court concluded that the trial court erred when it applied the *Frye-Mack* standard to determine whether expert testimony on battered-child syndrome was admissible at trial. The court ruled that although the *Frye-Mack* standard is applicable in other areas of scientific expertise, it is not the appropriate standard for "syndrome" evidence. The court relied on several previous cases, including *State v. Hennum* (441 N.W.2d 793 (Minn. 1989)), in which the court declined to use the *Frye-Mack* standard in determining the admissibility of expert testimony on battered-woman syndrome and instead analyzed whether the evidence met the standards of Minnesota Rules of Evidence 402 and 702 (that is, must be relevant, helpful to the trier-of-fact, and given by a witness qualified as an expert). The testimony on battered-woman syndrome was deemed admissible because it would be helpful to the jury by explaining a "phenomenon not within the understanding of the ordinary lay person" and the court in *MacLennan* determined that the same reasoning should apply to battered-child syndrome. The court noted that in the area of "syndromes," experts do not administer specific tests to determine whether the defendant suffers from the syndrome and, furthermore, "such experts may not testify about whether a particular defendant actually suffers from a syndrome" (*State v. MacLennan*, p 233). The court therefore concluded that "expert testimony on syndromes, unlike DNA evidence or other physical science, is not the type of evidence that the analytic framework established by *Frye-Mack* was designed to address" (*State v. MacLennan*, p 233). The court determined that this approach (of allowing experts to present evidence of the syndrome but not testify whether the particular defendant suffers from it) preserves the interest in "allowing the jury to serve as fact finders, with the role of determining whether a particular defendant suffers from battered-child syndrome, and does not allow that role to be usurped by experts" (*State v. MacLennan*, p 234).

The Minnesota Supreme Court ruled that although the trial court erred in applying the wrong standard, the error was harmless because the defendant did not establish the relevance of the expert testimony on battered-child syndrome to his claim of self-defense. The court found that the defendant demonstrated a tense relationship with his father, but that there was little evidence to suggest the relationship rose to the level of battered-child syndrome as it was described by the defendant's own expert. Thus, they concluded that the trial court did not err when it excluded the expert testimony.

Discussion

In this case, the Minnesota Supreme Court found that the standard for admission of expert witness testimony on "syndrome" evidence should be broader than the *Frye* standard of general acceptance in the field, and should focus on whether such testimony would be helpful to the trier-of-fact. In particular, the court ruled that expert testimony about battered-child syndrome does meet the "helpfulness" criteria under Minnesota Rule 702 (which is similar to the Federal Rule of Evidence), which states that:

> If scientific, technical, or other specialized knowledge will assist the trier-of-fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise [Minnesota Rule of Evidence 702 (Cited in *State v. MacLennan*, p 233)].

However, the admission of such evidence is limited to a general description of the syndrome, and the expert cannot testify about whether the defendant suffers from the syndrome. Furthermore, such evidence will only be admitted as relevant if there is a factual basis established to suggest that the defendant indeed presented with characteristics of the syndrome.

Julie M. Amato, PhD
Postdoctoral Fellow in Forensic Psychology

Ira K. Packer, PhD
Clinical Professor of Psychiatry

Law and Psychiatry Program
Department of Psychiatry
University of Massachusetts Medical School
Worcester , MA

Guardianship

Interstate Transfer of Guardianships

The case of *In the Matter of the Guardianship of Jane E. P.*: *Grant County Dep't of Soc. Servs. v. Unified Bd. of Grant and Iowa Counties*, 700 N.W.2d 863 (Wis. 2005) addresses the transfer of guardianship of an incompetent Illinois woman to Wisconsin. The Wisconsin circuit court dismissed the petition because the Wisconsin statute, Wis. Stat. § 55.06(3)(c), required residency in Wisconsin to grant guardianship. The Wisconsin Court of Appeals determined that the Wisconsin statute as applied to the Illinois woman violated her constitutional right to interstate travel, and the court reversed and remanded the case. The Supreme Court of Wisconsin vacated the decision, instead setting forth standards for Wisconsin courts to apply when dealing with transfer of guardianships across states, with the intent of protecting the original determinations of the best interests of a ward.

Facts of the Case

At the time the court's opinion was rendered, Jane E. P. was a 47-year-old woman who had Wernicke's encephalopathy and related inability to attend to her finances, property, or care for herself. Jane had resided at the Galena Stauss Nursing Home in Galena, Illinois for five years before the case was heard. Her sister, Deborah V., was appointed guardian pursuant to an order of the Jo Daviess County Court in Illinois. Jane had relatives in Wisconsin, just across the Illinois line. The relatives in Grant County wanted to move Jane to Southwest Health Center Nursing Home in Cuba City, Wisconsin. It was the Grant County Department of Social Services (Grant County), through counsel, that petitioned for guardianship in a Wisconsin circuit court and petitioned for Jane's placement at Southwest Health Center Nursing Home in Grant County. Deborah V. was nominated to remain Jane's guardian. As part of the proceedings, the circuit court ordered the Unified Board of Grant and Iowa Counties (Unified) in Wisconsin to make a comprehensive evaluation of Jane. Unified moved to dismiss the guardianship petition because Jane was not a resident of Wisconsin and the Wisconsin statute regarding guardianship, Wis. Stat. § 55.06(3)(c), required Jane to be a resident at the time of filing.

The circuit court agreed with Unified and dismissed the petition because Jane was not a Wisconsin resident. The Wisconsin Court of Appeals reversed the order of the circuit court. The court of appeals determined that the Wisconsin guardianship statute violated Jane's constitutional right to interstate travel. The court of appeals relied on *Bethesda Lutheran Homes and Servs., Inc. v. Leean*, 122 F.3d 443 (7th Cir. 1997), a decision that, though not binding on state courts, said the Wisconsin statute requiring residency compromised the constitutional right to travel. The court of appeals noted that, because Jane was incompetent and not capable of first moving to Wisconsin where she could have a petition for her placement filed, her right to travel was unconstitutionally burdened. Unified appealed to the Supreme Court of Wisconsin.

Ruling and Reasoning

The Supreme Court of Wisconsin vacated the decision of the court of appeals and remanded the case to the circuit court. The case was to be reheard in light of standards the Supreme Court provided as guidance when faced with the transfer of interstate guardianship delineated from a report of the National College of Probate Judges Advisory Committee on Interstate Guardianships (cited as http://www.nccusl.org/update/). The court also applied the principles of comity stating the "hallmarks of these standards are communication and notice" (*In re Jane E. P.,* p 871).

The Wisconsin Supreme Court took the opportunity to examine problems associated with the transfer of interstate guardianships. The court presented an overview of emergence of interstate guardianship noting that American society is more mobile and living longer. Aging parents often move to live with adult children, and the court noted that, as a result, interstate guardianships are likely to increase. The interstate transfer of guardianship can be simple when the conclusion is clear, but when complex legal questions arise, such as when relatives in different states vie for guardianship or when family members disagree regarding health care and shop for districts