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Mathews v. State, 134 Nev. Adv. Op. 63 (Aug. 23, 2018)

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CRIMINAL APPEAL: EXPERT WITNESS REQUIREMENTS

Summary

The Court clarified the requirements for the introduction of an expert witness under NRS 50.275. Moreover, the Court concluded that the district court abused its discretion when it improperly applied the *Hallmark* factors and disqualified Dr. Johnson from testifying. Accordingly, the Court granted the defendant a new trial.

Background

On January 5, 2016, Donovine Mathews babysat his girlfriend's two children. One of the children, C.J., acquired burns atop his hands while under Mathews' care that day. Mathews claimed that he left C.J. unattended in a room along with a mug of boiling water that was placed atop a table. When Mathews returned to the room, he claims to have found C.J. both burned and screaming. He claims C.J. accidentally burned himself by knocking the mug off the table. The State disagreed and contends that the burn was intentional.

To corroborate their contention, the State provided three medical experts to testify that the burn injuries were intentional. Mathews attempted to have Dr. Lindsay "Dutch" Johnson, a biomechanics expert, testify to rebut the State's claims by naming the mechanism of the injury. However, the district court granted the State's motion to exclude or limit Dr. Johnson's testimony. The district court found that Dr. Johnson was not qualified to testify about burns on a child's skin and therefore, could not testify about how the injuries C.J. incurred. This appeal followed.

Discussion

The district court abused its discretion in excluding Dr. Johnson.

During an evidentiary hearing, the district court asked Dr. Johnson exclusively about his experience with burn injuries. The court cut his testimony short and excluded him from testifying within the trial. The court held that Dr. Johnson's testimony did not have an adequate factual foundation because no one else could identify how C.J. was burned. The court also held that Dr. Johnson's testimony lacked foundation because he was not qualified to testify about burns on a child's skin. Mathews appeals the decision on the basis that Dr. Johnson is a biomechanics expert who could assist the jury in understanding the mechanism of C.J.'s injuries.

Per *Hallmark v. Eldridge*, an expert witness must satisfy three requirements before being permitted to testify as an expert under NRS 50.275: "(1) he or she must be qualified in an area of scientific, technical or other specialized knowledge (the qualification requirement); (2) his or her specialized knowledge must assist the trier of fact to understand the evidence or to determine a fact in issue (the assistance requirement); and (3) his or her testimony must be limited to matters within the scope of [his or her specialized] knowledge."[2]

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[1] By Christi Dupont.

[2] Hallmark v. Eldridge, 124 Nev. 492, 498, 189 P.3d 646, 650 (2008) (alteration in original) (internal quotation marks omitted).

The district court did not allow Dr. Johnson to testify because he did not meet the "qualification requirement" in that his experiences did not make him an expert on burn patterns. This Court found that improper because the Dr. Johnson's full list of licensure, academic degrees and other experiences weren't considered. Further, the district court wrongfully assessed the "assistance requirement." The district court wrongfully put the burden of proof on the defendant to prove that he did not cause the burns. However, Mathews only needed to rebut the State's witness testimony and should have been allowed to do so through Dr. Johnson's testimony. Thus, the district court wrongfully presumed the State's expert witness was correct and thereby, placed the burden of proof on the defendant.[3]

Finally, the State has presently misinterpreted the *Hallmark* holding. It stated that expert testimony, biomechanical or otherwise, must have a sufficient foundation before it may be admitted into evidence.[4] The State mistakenly thought the *Hallmark* holding indicated that biomechanical experts are not permitted to testify. The Court held that the district court abused its discretion because it improperly applied the *Hallmark* factors and subsequently disqualified Dr. Johnson from testifying. Moreover, that error was not harmless and reversal is necessary.

The district court abused its discretion in rejecting Mathew's proffered jury instruction.

The Court addressed the admissibility of Mathew's jury instruction to avoid a similar issue in the new trial. Mathews requested the following jury instruction:

> A person who committed an act or made the omission charged, through misfortune or accident, when it appears that there was no evil design, intention or culpable negligence, must be found not guilty of the charge.

The Court held that the district court abused their discretion when it did not permit the admission of the jury instruction because the instruction did not misstate the law. Defendants have the right to instruct the jury on their case-related theory as disclosed by the evidence presented no matter how weak that evidence may be.[5] Further, Dr. Johnson may have presented evidence proving the only 'act' Mathews engaged in was accidentally leaving a mug of hot water within C.J.'s reach. Thus, excluding the jury instruction was not harmless.

Conclusion

The Court held that the district court wrongfully utilized their discretion when disqualifying Dr. Johnson as an expert witness under NRS 50.275. Thus, the Court reversed the ruling of the district court and remanded the case for a new trial.

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[3] *See* Jorgensen v. State, 100 Nev. 541, 544, 688 P.2d 308, 310 (1984) (explaining that "when a defense negates an element of the offense, the state must disprove the defense because of the prosecution's burden to prove all elements of the charged offense beyond a reasonable doubt.").

[4] Rish v. Simao, 132 Nev. 189, 196, 368 P.3d 1203, 1208 (2016).

[5] Crawford v. State, 121 Nev. 744, 751, 121 P.3d 582, 586 (2005) (internal quotation marks omitted).