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Pundyk v. State, 136 Nev. Adv. Op. 43 (July 16, 2020)

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CRIMINAL LAW: ADMISSIBILITY OF EXPERT TESTIMONY THAT EMBRACES
ULTIMATE ISSUES

Summary

Expert witnesses may proffer testimony that embraces ultimate issues (such as a defendant's mental state when he or she has entered a not-guilty-by-reason-of-insanity plea). However, such testimony must be otherwise admissible and not stray from opinions about factual matters to conclusions about the appropriate verdict.

Background

The defendant shot and killed his mother and discharged a firearm into a neighbor's home. At trial, he entered a not-guilty-by-reason-of-insanity plea. The defendant's expert witness testified about the defendant's ability to form the requisite intent but was prohibited from providing a conclusion about the defendant's mental state or his guilt or innocence. The defendant was ultimately found guilty but mentally ill on both counts.

Discussion

Expert witness "[t]estimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact."² However, expert witnesses have previously been prevented from providing legal conclusions because it usurps the role of the trier of fact. In this case, the defendant's expert witness was prevented from speaking to whether the defendant was able to appreciate the wrongfulness of his conduct as a result of his mental state. The defendant's ability to appreciate such wrongfulness is an essential part of satisfying the elements of a not-guilty-by-insanity plea. Nevada requires defendants to establish, through a preponderance of the evidence that (1) due to a disease or defect of the mind, the defendant was in a delusional state at the time of the alleged offense; and (2) due to the delusional state, the defendant either did not (a) know or understand the nature and capacity of his or her act; or (b) appreciate that his conduct was wrong, meaning not authorized by law.³

The defendant's expert sought to testify to a crucial element of the not-guilty-by-reason-of-insanity plea, but the expert did not seek to testify about the legal conclusion that the plea was valid. This would move the role of the expert witness one step forward in the legal conclusion-making process, provided that the expert's testimony would otherwise be admissible under Nevada's rules of evidence. The expert witness was permitted to testify to the defendant's capacity to form the mental state (that he was not capable of appreciating the wrongfulness of his conduct) but was not permitted to testify whether the mental state was actually formed (that he did not appreciate the wrongfulness of his conduct).

Conclusion

The Court reversed and remanded defendant's murder conviction because excluded expert testimony would likely have altered the outcome of the trial.

¹ By Joshua Nelson.

² NEV. REV. STAT. § 50.295.

³ NEV. REV. STAT. § 174.035.