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Recent Developments: Rape Trauma Syndrome

Cathi Van de Meulebroecke

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points in relationship to the number of instructions in the program." *Apple*, 714 F.2d at 1245. Franklin defended, however, that the operating programs were not copyrightable; first, because they are embedded on a micro-chip and are therefore a form of machinery and second, because they cannot be distinguished from the concept of operating the computer system, they are more than the mere expression of an idea. Copyright Act of 1976, 17 U.S.C. § 102 (1976).

Both of Franklin's arguments were rejected by the court which reasoned that the programs do not meet the requirements of the Copyright Act of 1976, 17 U.S.C. §§ 101 *et seq.* The programs are "literary works," and they are "fixed in [a] tangible medium of expression." *Id.* at § 102(a). The court went on to hold that "the medium is not the message" and the fact that a program is recorded on a device which is part of the machinery is a mere change in the tangible form. *Apple*, 714 F.2d at 1251. In response to Franklin's second argument that an operating system is a mere method of operation and not protected, the court relied on Congress's Commission on New Technological Uses report which stated "[t]hat the words of a program are used ultimately in the implementation of a process should in no way affect their copyrightability." *id.* The court also found that Apple was seeking only to copyright the instructions and not the computer operating method.

With the growing number of personal computers in businesses and private homes throughout the United States, this decision protects not only large computer companies such as Apple, but also the individual computer operator who creates his/her own operating program.

by Sylvia Halkousis

LACK OF JURY IMPARTIALITY REQUIRED FOR NEW TRIAL

In *McDonough Power Equipment, Inc. v. Greenwood*, ___ U.S. ___ (1984), the United States Supreme Court clarified the bases upon which a motion for new trial made as a result of a juror's failure to disclose information on voir dire will be granted. To prevail upon such a motion, a party must show that a juror's answer to a material question on voir dire was dishonest and that had the juror answered honestly, grounds establishing a challenge for cause would have been present.

In *McDonough Power*, Billy Greenwood and his parents brought suit against McDonough Power Equipment Incorporated to recover damages for injuries sustained by Billy when his feet came in contact with the blades of a riding lawn mower manufactured by McDonough, Inc. During voir dire, prospective jurors were asked if they or any of their family members had ever sustained a severe injury. One individual, who eventually became a member of the jury, failed to respond to this question. After the trial, the United States District Court entered judgment upon a jury verdict for McDonough, Inc.

After entry of the judgment, the Greenwoods requested and received permission to approach the jurors in an attempt to elicit information regarding injuries sustained by them or members of their families. Despite discovery of evidence that a juror had not disclosed information regarding such injuries, the district court denied the Greenwood's motion for a new trial, stating that the jury verdict was fair and well-supported.

The Greenwoods appealed to the Court of Appeals for the Tenth Circuit which reversed the district court judgment. In *Greenwood v. McDonough Power Equipment, Inc.*, 687 F.2d 338 (10th Cir. 1982), the court of appeals held that the Greenwood's right of per-emptory challenge had been prejudiced because of the juror's failure to respond to a question on voir dire. To cure the error of the juror's "probable bias," a new trial was granted. The Supreme Court however, reversed, holding that a new trial will not be granted unless a juror's nondisclosure results in a partial jury.

The court's opinion begins by tracing the legislative and judicial history of the harmless error rules. These rules were adopted to curb the abuses of appellate review procedures because at one time "courts of review tower[ed] above the trials... as impregnable citadels of technicality" with trials representing attempts to get reversible error on the record. *Kotteakos v. United States*, 328 U.S. 750, 759 (1946). The effect of the harmless error rules is that courts, in their judgment, can disregard errors in the proceeding which do not interfere with the fairness of the trial.

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RAPE TRAUMA SYNDROME

For the first time in Maryland, a trial court has held that expert testimony on the victim's emotional trauma is admissible in a rape case to show the victim did not consent to intercourse. *State v. Allewalt*, docket No. 83-CR-2517 (Circuit Court for Baltimore County November 4, 1983). Relying on consent as his defense, Allewalt was convicted of rape after a psychiatrist described the symptoms the complainant suffered, and testified that they were attributable to the emotional condition known as rape trauma syndrome.

Rape trauma syndrome is a specific type of stress disorder which arises from the emotional impact of being raped. The symptoms most commonly associated with rape trauma syndrome include fear of men in general, fear of being alone, fear of being raped again, disturbance in sleep habits, loss of appetite, depression, and a sense of shame.

Without the support of expert testimony on rape trauma syndrome, the defense of consent was often difficult to disprove because of lack of physical evidence. Many times the decision in such a case would be based solely on the testimony of the complainant and defendant; therefore, the credibility of each testimony was critical in the determination of the outcome. By allowing the expert to testify, the complainant's testimony that she did not consent to intercourse can be corroborated by the testimony of a psychiatrist. Rape trauma testimony, therefore, could significantly strengthen the prosecution's case.

Only a handful of states have directly decided the issue of admissibility of rape trauma syndrome. Minnesota, the only state with more than one decision on point, has held that the admission of expert testimony on rape trauma syndrome is reversible error. *State v.*

Saldana, 324 N.W.2d 227, 232, (Minn. 1982). The Minnesota courts rely on two arguments: One, the issue of consent is within the comprehension of the jury; therefore, the jury is not helped by the expert testimony. Two, the probative value of rape trauma syndrome is outweighed substantially by the undue prejudice it places on the defendant. "Permitting a person in the role of an expert to suggest that because the complainant exhibits some of the symptoms of rape trauma syndrome, the complainant was therefore raped, unfairly prejudices the appellant by creating an aura of special reliability and trustworthiness." *State v. Saldana*, 324 N.W.2d 227, 230 (Minn. 1982).

In a similar opinion, the Missouri Supreme Court ruled that expert testimony on rape trauma syndrome is inadmissible because of its highly prejudicial nature. *State v. Taylor*, 661 S.W.2d 794 (Mo. App. 1983). "The jury was competent to determine the victim's credibility, therefore testimony designed to invest scientific cachet on the critical issue (consent) was erroneously admitted. Otherwise, trials would degenerate to a battle of experts expressing opinion on the substance of witness veracity," *State v. Taylor*, 661 S.W.2d 794 (Mo. App. 1983).

The Supreme Court of Kansas, on the other hand, held that rape trauma syndrome is relevant and admissible when the issue of consent is raised. In reaching this decision, the court examined the relevant literature from the field of psychiatry and found that rape trauma syndrome is a detectable and reliable reaction to a forced sexual assault. The Kansas court has in effect given judicial approbation to rape trauma syndrome. *State v. Marks*, 231 Kan. 645, 647 P.2d 1292 (1982).

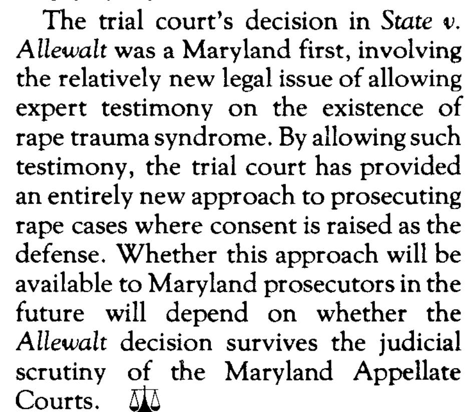
In *People v. Bledsoe*, 189 Cal. Rptr. 726 (App. 1983), the California Court of Appeals also found rape trauma syndrome admissible. The court stated that although expert testimony serves to reinforce the credibility of the complainant, the purpose behind allowing such testimony is to impeach the defendant's testimony regarding consent; therefore, the expert testimony is admissible to rebut the defense of consent.

The standard adopted by the Maryland Court of Appeals for determining the admissibility of expert testimony is set out in *Frye v. U.S.*, 54 U.S. App. D.C. 46 (1923). The court in *Frye* held that the first step in determining admissibility is to show that the expert testimony would be of appreciable help to the jury. The ordinary knowledge of the jury must be insufficient to competently analyze the relevant issue before testimony of persons with skill and expertise in the area is required.

Once the helpfulness of the expert testimony is established, the second step as set out in *Frye* is to determine whether the underlying scientific principle relied on by the expert has been sufficiently established to have gained general acceptance in the relevant scientific field. This issue must be addressed and answered by the court before the evidence can be admitted.

Although the court in *Allewalt* did not state specifically the basis for its holding, by allowing the expert testimony and denying the defense's motion for new trial based on that issue, the trial court in effect has given judicial approval of rape trauma syndrome as a means of deciding the issue of consent. To reach this conclusion, the court must have decided that rape trauma syndrome meets the standard set out in *Frye*. The defense, believing that rape trauma syndrome has not met this standard, has filed an appeal and plans to petition for certiorari to the court of appeals.

There are three major arguments against the general admissibility of rape trauma syndrome the defense can rely on for its appeal. First, the trial court erred in not ruling directly on the issue of whether rape trauma syndrome has met the standard set out in *Frye*. *See also People v. Bledsoe*, 189 Cal. Rptr. 727, 733 (App. 1983) (Weiner, A.J., dissenting). Second, the symptoms associated with rape trauma syndrome are common with those which result from any number of stressful events; therefore, it is neither a reliable nor detectable method to determine the issue of consent. (Freeman, Kaplan and Sadock, *Comprehensive Textbook of Psychiatry* 1517-25 (3d ed. 1980); American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders* 236-38 (3d ed. 1980)). *See also People v. Bledsoe*, 189 Cal. Rptr. 727, 733 (App. 1983) (Weiner, A.J., dissenting). Third, the issue of consent is not the type of complex issue for which the jury needs the assistance of expert testimony. By allowing the experts to testify when it is unnecessary, the province of the jury is invaded. *State v. Saldana*, 324 N.W.2d 227 (Minn. 1982). Generally, the opponents of rape trauma syndrome feel the highly prejudicial nature substantially outweighs any probative value that it might have; therefore, evidence of rape trauma syndrome should not be admitted into evidence.



The trial court's decision in *State v. Allewalt* was a Maryland first, involving the relatively new legal issue of allowing expert testimony on the existence of rape trauma syndrome. By allowing such testimony, the trial court has provided an entirely new approach to prosecuting rape cases where consent is raised as the defense. Whether this approach will be available to Maryland prosecutors in the future will depend on whether the *Allewalt* decision survives the judicial scrutiny of the Maryland Appellate Courts.

by Cathi Van de Meulebroecke

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