The Supreme Court of Ohio

CASE ANNOUNCEMENTS

July 31, 2023

[Cite as *07/31/2023 Case Announcements #2,* 2023-Ohio-2627.]

APPEALS NOT ACCEPTED FOR REVIEW

2023-0522. State v. Beasley.
Lake App. No. 2022-L-040, 2023-Ohio-670.
Donnelly, J., dissents, with an opinion joined by Stewart and Brunner, JJ.

DONNELLY, J., dissenting.

{¶ 1} The core of every criminal trial is the same: the state presents to a neutral jury its theory of guilt, which it believes proves a defendant committed the offenses with which he is charged. This process is consistent, no matter the alleged offenses or the circumstances of the particular case. Similarly, every plea of "not guilty" is a criminal defendant's denial of the state's theory on factual grounds, legal grounds, or both. When presenting its theory, the state's burden is to prove a defendant's guilt beyond a reasonable doubt, using evidence "that an ordinary person would be willing to rely and act upon * * * in the most important of the person's own affairs." R.C. 2901.05(E). The evidence sometimes includes the testimony of expert witnesses. *See generally* Evid.R. 702. In his request that this court exercise its jurisdiction and accept his appeal, appellant, William Beasley, asks us to consider how far an expert may go when providing opinion testimony about the ultimate issue before a finder of fact. Because I believe that this question warrants this court's attention, I dissent from the court's decision not to exercise jurisdiction.

{¶ 2} The state charged Beasley with murder under R.C. 2903.02(B), with the predicate offense of endangering children under R.C. 2919.22(B)(1), for the death of his one-month-old son. At the time of the infant's death, he had sustained multiple injuries, including "head bleeds"

and multiple broken bones. 2023-Ohio-670, ¶ 15. During the investigation into the infant's death, Beasley acknowledged that he might have been a " 'a little rough' " when he handled or picked up the infant. *Id.* at ¶ 31-32. But Beasley insisted that any injuries were accidental—that he never intended to harm the child—and that he did not realize he might have hurt the child. *Id.*

{¶ 3} Beasley's trial was a true battle of the experts. The state presented several medical practitioners who testified to the nature and extent of the infant's injuries. These experts further testified to the cause of those injuries, stating repeatedly that the injuries resulted from " 'nonaccidental trauma,' " *id.* at ¶ 16, 21, " 'child abuse,' " *id.* at ¶ 20, 28-29, or " 'abusive trauma,' " *id.* at ¶ 20. Beasley presented alternative explanations for the injuries, offering the testimony of three medical experts, each of whom provided opinions that did not attribute the injuries to another person's actions. In short, the jury was asked to decide which explanation for the infant's fatal injuries it believed. And that is the source of the legal question here.

{¶ 4} An individual endangers a child, thereby violating R.C. 2919.22(B)(1), when he "[a]buses [a] child" under 18 years old. In testifying that the infant's injuries resulted from child abuse, the state's expert witnesses touched on an element of the offense of which the jury was to decide Beasley's guilt.

{¶ 5} Under the Ohio Rules of Evidence, "[e]xpert testimony is admissible if it will assist the trier of fact in understanding the evidence or determining a fact in issue." *State v. Bidinost*, 71 Ohio St.3d 449, 454, 644 N.E.2d 318 (1994), citing *State v. Boston*, 46 Ohio St.3d 108, 118, 545 N.E.2d 1220 (1985); *see* Evid.R. 702. The rules also allow experts to provide opinion testimony that embraces the ultimate issue facing the trier of fact. Evid.R. 704. But even when Rule 704 permits an expert's opinions to touch on the ultimate issue, it does not exempt that testimony from the other evidence rules. *Id.* (requiring that opinion evidence on the ultimate fact be "otherwise admissible" under the rules); *Schaffter v. Ward*, 17 Ohio St.3d 79, 81, 477 N.E.2d 1116 (1985). Thus, expert testimony on an ultimate issue should still be ruled inadmissible if its probative value is substantially outweighed by the danger that it will confuse the issues, create unfair prejudice, or mislead the jury. *See* Evid.R. 403(A).

{¶ 6} When a criminal defendant invokes his right to a jury trial, it becomes the jury's task to determine whether the defendant is "guilty of all the elements of the crime[s] with which he is charged." *United States v. Gaudin*, 515 U.S. 506, 511, 115 S.Ct. 2310, 132 L.Ed.2d 444 (1995). Expert testimony opining on the ultimate issue can help the jury carry out its

constitutional role. In doing so, expert testimony aligns with its purpose under the Rules of Evidence—helping a layperson understand matters beyond her knowledge or experience. *See* Evid.R. 702(A); *see also* Staff Note to Evid.R. 704 ("the effect of the rule is not to admit all opinion on the ultimate issue, but to assure that helpful opinion on the ultimate issue is not automatically excluded").

{¶ 7} But opinion evidence, garbed in the trappings of expertise and specialized knowledge, can just as easily risk telling the trier of fact what result he should reach. This is especially true when, as here, the expert testimony closely tracks and even mimics the statutory language defining the charged offense. In such cases, the expert testimony risks giving the jury a legal conclusion about whether a defendant's alleged conduct satisfies one of the charged offense's elements rather than simply helping the jury carry out its constitutional task of determining guilt. *See State v. Reeds*, 197 N.J. 280, 295-296, 962 A.2d 1087 (2009).

{¶ 8} Expert testimony can also have an outsized influence in cases like Beasley's, which deal with difficult subject matters. At the center of this case is a dead child and a father who—while maintaining his innocence—has been charged with causing that child's death. These cases ask juries to sift through the natural emotion arising from such sad facts to determine—objectively—a defendant's guilt or innocence. When a jury is faced with deciding the ultimate issue., "an expert will often represent the only seemingly objective source, offering [the jury] a much sought-after hook on which to hang its hat." *People v. Beckley*, 434 Mich. 691, 722, 456 N.W.2d 391 (1990) (lead opinion).

{¶ 9} Given these considerations, it follows that expert testimony might not influence a jury in a manner permitted under the Rules of Evidence. A group of laypeople hears a witness—who has no vested interest in the case and who is cloaked in the mantle of science or other expertise—opine about the facts of a case and how those facts relate to the question of guilt the jurors are to answer. Despite the objectivity that the expert offers a jury, the reality is that the expert was not present when the crime of which the defendant is accused was allegedly committed. Nor is it the expert's job, under the Rules of Evidence or the Constitution, to decide whether the defendant is guilty—that task is entrusted to the jury. But when the expert's testimony describes a defendant's alleged acts or a victim's injuries in ways mimicking or using the statutory language setting forth an element of a charged offense, the expert risks invading the jury's constitutionally established domain.

{¶ 10} Considering the prevalence of expert testimony, I believe we have a responsibility to clarify the extent expert testimony may opine on the ultimate issue before a trier of fact, especially when that testimony uses the statutory language setting out the elements of a charged crime. Beasley's request that this court accept his appeal places this issue before us. This question touches on the constitutional protections for criminal defendants, and the answer could have wide-reaching effects on criminal trials in our state. Because a majority of the court believes otherwise, I respectfully dissent from the decision not to accept Beasley's appeal.

STEWART and BRUNNER, JJ., concur in the foregoing opinion.
