

In re Det. of Pouncy (Curtis N.)

No. 81769-3

MADSEN, C.J. (concurring/dissenting)—I agree with the majority that the trial court erred when it admitted as evidence another judge’s findings as to whether Curtis Pouncy’s expert’s methodologies were generally accepted in the scientific community under the *Frye* standard. *Frye v. United States*, 54 App. D.C. 46, 293 F. 1013 (1923). As a result, I agree that this case must be reversed and remanded for a new trial.

There is no need for this court to additionally decide whether the trial court erred when it declined to define the term “personality disorder” in a jury instruction. I would not reach this issue. Moreover, I disagree with the majority’s analysis. I would hold that the trial court committed no error by declining to define this term in a jury instruction.

Discussion

Because the trial court’s error in admitting another judge’s ruling provides an adequate basis for reversal, there is no need to reach the jury instruction issue. There is also no need to reach the issue in this case because the legislature has amended RCW 71.09.020 to include a definition of “personality disorder.” *Compare* RCW 71.09.020(9)

with former RCW 71.09.020 (2006). On remand, the trial court will have to provide new jury instructions to a new jury and will necessarily provide the new statutory definition of this term in a jury instruction.

Even if reaching the jury instruction issue were necessary to resolve this case, the technical term rule does not provide an additional basis for reversal. Prior to the statutory amendment, there was no need to include a definition of “personality disorder” in the jury instructions. First, Pouncy’s trial was a mental commitment proceeding, not a criminal trial. The jury in this case was not evaluating the elements of a crime, and so did not require instruction on definitions from the criminal code to satisfy constitutional requirements. *Cf. State v. Allen*, 101 Wn.2d 355, 358, 678 P.2d 798 (1984) (“trial court must instruct the jury on every element of the crime”). Second, at the time of Pouncy’s trial, the legislature had not yet selected a legal meaning for the term “personality disorder.” Former RCW 71.09.020 (2006). Given this context, it would not have been appropriate to require the trial court to provide a legal definition for “personality disorder” in a jury instruction.

Third, under our precedent, the technical term rule does not apply in this case. Only where there is a technical legal meaning, such as one provided by a statute, case law, or a pattern jury instruction must the trial court provide the legal meaning in a jury instruction, per the technical term rule. *State v. Brown*, 132 Wn.2d 529, 611, 940 P.2d 546 (1997). This understanding of the technical term rule has been reiterated by this court in multiple cases. For example, in *Allen*, 101 Wn.2d at 361, we held the technical term rule required the trial court to

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provide an instructional definition where a statutory definition provides a “specific legal definition” distinct from common usage. *Id.* (“intent” and “knowledge,” “because they have been statutorily defined, have specific legal definitions aside from any common understanding or dictionary definitions which might be ascribed to them”). In *State v. Scott*, 110 Wn.2d 682, 757 P.2d 492 (1988), we restated the technical term rule in reverse; where there is no conflict between the statutory definition and the plain meaning of a term, an instructional definition is not required. *Id.* at 691-92.

In *Brown*, we reaffirmed the principle that the technical term rule requires a trial court to provide a definitional instruction only where a term has a legal meaning distinct from common usage.

A term is “technical” when it has a meaning that differs from common usage. The phrases here are not defined by statute. No appellate court has defined them and no pattern jury instructions address them. We conclude the phrases are expressions of common understanding to be given meaning from their common usage.

Brown, 132 Wn.2d at 611 (footnote omitted) (citing *Scott*, 110 Wn.2d at 694 (Utter, J., concurring)).¹

Thus, the technical term rule requires a trial court to provide a definitional instruction where an authoritative legal source provides a technical definition, i.e., one that conflicts with common usage. However, where there is an accepted definition within the scientific community, but no authoritative legal definition, the trial court is not

¹ *Brown* incorrectly cites Justice Utter’s opinion as a dissent when, in fact, it is a concurrence.

required to define the term in a jury instruction.

Nonetheless, the majority understandably and correctly expresses concern that the term “personality disorder” is outside the experience of the average juror. Knowledge of this term was integral to the jury’s determination. At some point in the proceedings, then, the jury needed to be advised of the definition of “personality disorder” to avoid deliberating in ignorance.

But this concern does not mean that the trial court needed to inform the jury of the *legal* meaning, because there was no legal meaning. There was no authoritative legal source for the trial court to draw a definition from: no statute, no pattern jury instruction, and no appellate court case. There was, however, a well-accepted definition of long-standing from the American Psychiatric Association, as we mentioned in *In re Pers. Restraint of Young*, 122 Wn.2d 1, 49-50, 857 P.2d 989 (1993) (citing Am. Psychiatric Ass’n, Diagnostic and Statistical Manual of Mental Disorders 335-58 (3d ed. rev. 1987)).² This being the case, the trial court appropriately allowed expert testimony from this professional medical community regarding the medical definition. Particularly where there is no legal definition to be had, it is a matter for the jury to select what evidence it will accept, and what it will not, from the testimony presented.

The trial court was correct to follow the approach of *In re Detention of Twining*, 77 Wn. App. 882, 895-96, 894 P.2d 1331 (1995), where the court allowed expert testimony on the definition of “personality disorder” and declined to define this term in

² The definition was not established or adopted by this court and therefore is not a technical term defined by case law.

the jury instructions. The trial court did not err by allowing expert testimony and refusing to give Pouncy's requested jury instruction.

Conclusion

I would reverse because the trial court erred when it admitted another judge's ruling related to the reliability of Mr. Pouncy's only expert, and I would decline to reach the jury instruction issue. In any event, the technical term rule does not provide an independent basis for reversal where the term at issue had no specific legal definition and the trial court properly allowed expert testimony regarding the term's well-accepted definition within the professional medical community.

AUTHOR:

Chief Justice Barbara A. Madsen

WE CONCUR:

Justice James M. Johnson
