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## Decision could ease way to rape conviction

Minnesota Supreme Court allows experts to explain confusing behavior by some victims.

By **ABBY SIMONS**, Star Tribune

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In a decision prosecutors say will make it easier to convict rapists, the Minnesota Supreme Court has ruled that state courts can allow experts to explain to juries why victims sometimes delay reporting the crime or otherwise act in ways that might cast doubt on their stories.

The ruling, in a case involving an accused rapist from St. Paul who argued that the sex was consensual, brings Minnesota in line with most of the rest of the country; lawyers say Pennsylvania is now the only state that prohibits such expert testimony about victim behavior. Defense attorneys say the ruling will make rape cases more expensive and time consuming because defendants' lawyers will be forced to call their own experts to rebut those called by the prosecution.

But prosecutors say it's important for juries

to hear experts' explanations for victim behaviors jurors might find confusing. For example, an expert might explain that victims sometimes become submissive during a rape as a way to get through the ordeal.

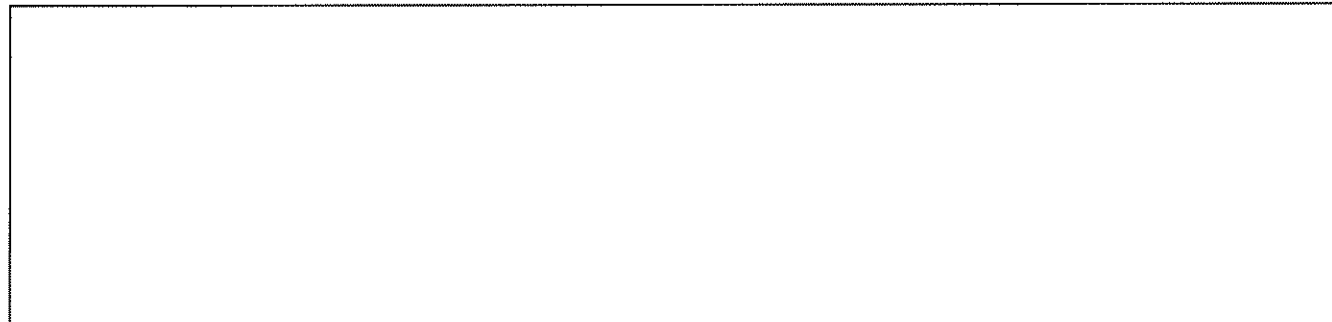
"With this decision, we can educate jurors about some of the misconceptions [people] might have about why victims act the way they do when something like this happens to them," said Ramsey County Attorney John Choi, whose office argued for the ruling in an attempt to strengthen the case against Nathan Obeta, 32.

The woman, who accused Obeta of raping her in a car, waited about three hours to report the allegation, and a sexual assault exam did not find that she had any serious injuries.

Expert witnesses testified that a lack of detectable injuries and a delay in reporting are common in rape cases, and a jury convicted Obeta of first- and third-degree criminal sexual conduct. The Minnesota Court of Appeals then awarded Obeta a new trial, citing case law that says such expert testimony shouldn't be allowed.

A judge denied Ramsey County prosecutors' request to put similar experts on the stand

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during Obeta's second trial. The prosecutors appealed the judge's ruling to the state Supreme Court, which ruled 5-2 this week in favor of allowing the expert testimony.

The court reasoned that "the mental and physical reactions of an adult sexual-assault victim may lie outside the common understanding of an average juror."

Renée Bergeron, who represented Obeta as an attorney with the State Public Defender's Office, said the ruling stands to make sexual assault cases more complicated.

"We don't want trials to become a battle of the experts," Bergeron said. "But if these witnesses are going to be allowed to testify, the defense bar will likely be able to call their own witnesses."

The prohibition on expert testimony in such cases in Minnesota stretched back 28 years to the rape case State vs. Saldana. The Supreme Court ruled Saldana had been interpreted too broadly.

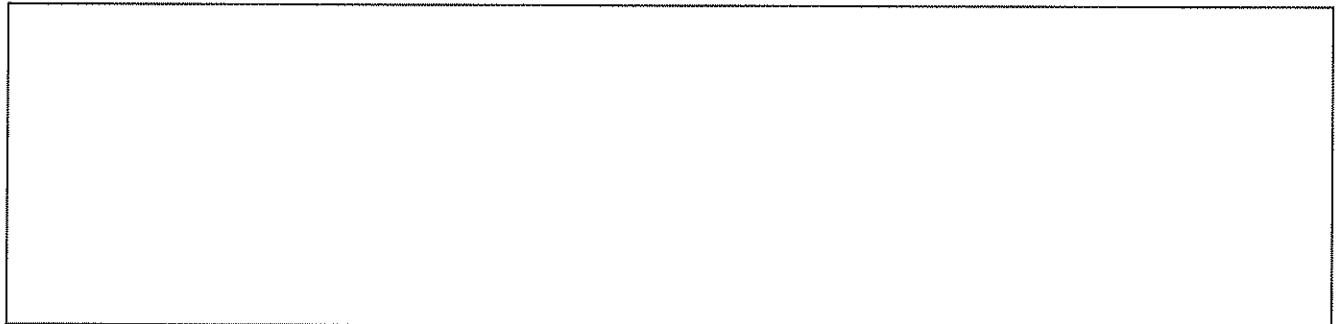
In a dissent to this week's ruling, Justice David Stras wrote that prosecutors failed to show that the lower court's exclusion of the expert testimony would have a "critical impact" on the outcome of the trial. Supreme

Court rules prevent review of pretrial exclusionary decisions by lower courts unless that critical impact standard can be met, he wrote.

"The majority undoubtedly addresses an issue of great importance for sexual assault prosecutions in Minnesota," Stras wrote. "The majority does so, however, in a case over which we have no jurisdiction."

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