

IN THE SUPREME COURT OF THE STATE OF NEVADA

FRANK KEVIN BLACKBURN,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 56246

**FILED**

NOV 05 2010

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from a judgment of conviction, entered pursuant to an Alford plea, of attempted sexual assault. North Carolina v. Alford, 400 U.S. 25 (1970). Eighth Judicial District Court, Clark County; Stefany Miley, Judge.

Appellant Frank Kevin Blackburn contends that the district court erred by denying his motion to strike the psychosexual evaluation prepared by John S. Pacult because it was not "based upon a currently accepted standard of assessment" as required by NRS 176A.110(1)(a). Because the question of whether a psychosexual evaluation is based upon a currently accepted standard of assessment is a question of fact to be determined by the district court, we review for an abuse of discretion.

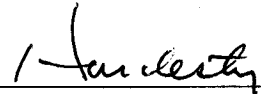
In his motion to strike, Blackburn asserted that Pacult's conclusion was not based on the results of the diagnostic tools he used to conduct the psychosexual evaluation, argued that psychological studies show that diagnostic tools are a better predictor of risk to reoffend than clinical opinions, and supported his argument with citations to relevant scientific authority. The district court refused to hear expert testimony on this issue, determined that the issue was factually analogous to the issue


presented in Austin v. State, 123 Nev. 1, 151 P.3d 60 (2007), and denied the motion. We conclude that the district court abused its discretion.


Blackburn made a threshold showing that Pacult's conclusion was not based on currently accepted standards of assessment and therefore did not conform to the statutory requirements. Because these standards of assessment are beyond the knowledge of the district court, the district court abused its discretion by refusing to hear expert testimony on the issue. Moreover, the district court's reliance on Austin was misplaced. In Austin, we addressed the issue of whether a social worker was qualified to conduct a psychosexual evaluation; we did not address the basis for the social worker's conclusion that Austin was a high risk to reoffend. 123 Nev. at 3 & n.2, 151 P.3d at 61 & n.2.

We conclude that the judgment of conviction must be reversed and the matter remanded for an evidentiary hearing on the issue of whether the evaluation was based on currently accepted standards of assessment. We express no opinion as to whether Pacult's psychosexual evaluation was valid. However, if the district court finds that it was invalid, it must order a new psychosexual evaluation and presentence investigation report and conduct a new sentencing hearing. Accordingly, we

ORDER the judgment of conviction REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Pickering

cc: Hon. Stefany Miley, District Judge  
Attorney General/Carson City  
Clark County District Attorney  
The Almase Law Group LLC  
Eighth District Court Clerk