

OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

STATE OF MISSOURI, Respondent,)	No. ED93494
)	
vs.)	Appeal from the Circuit Court
)	of the City of St. Louis
JUDY PICKENS, Appellant.)	Filed: January 25, 2011

A jury convicted the defendant of killing her young son and poisoning her young daughter. At trial, the State called a forensic psychologist, who testified about “factitious disorder by proxy,” a mental disorder otherwise known as “Munchausen syndrome by proxy.” The trial court allowed the testimony to explain the defendant’s motive. The doctor generally described factitious disorder by proxy, and then answered two hypothetical questions, opining that the actions of the hypothesized actor – presumably the defendant – were consistent with a diagnosis of factitious disorder by proxy and were rational and deliberate actions

The defendant raises three objections to the testimony. First, she contends the hypothetical questions and answers violated Section 552.030(5) RSMo 2000,¹ which limits the use of information from pretrial mental-health examinations. Second, she asserts the testimony invaded the province of the jury. And third, she maintains the general testimony about the disorder should have been excluded because the diagnosis has not achieved general acceptance by the psychiatric community and thus does not meet the *Frye*² standard for the admission of expert testimony. The defendant additionally alleges the trial court plainly erred in ordering an examination of her competency to stand trial and of her mental state at the time of the crime under Sections 552.020 and 552.030.

¹ All statutory references are to RSMo 2000.

² *Frye v. United States*, 293 F. 1013 (D.C. Circ. 1923).

JUDGMENT AFFIRMED

DIVISION THREE HOLDS: The trial court did not abuse its discretion in allowing the testimony about factitious disorder by proxy.

First, the testimony did not violate Section 552.030 because it did not include statements by the defendant or information from the defendant's mental-health examination.

Second, the testimony about the apparent rationality of the hypothesized actor did not invade the province of the jury. And his opinion characterizing the conduct of the hypothetical actor as "deliberate" did no harm to the defense.

Third, the diagnosis of factitious disorder by proxy has achieved general acceptance and meets the *Frye* standard for the admission of expert testimony.

Even if the trial court erroneously admitted the testimony, the defendant has not shown prejudice. The evidence of the defendant's guilt was very strong and renders any error harmless.

Lastly, as to the court-ordered mental-health examination, we find no plain error. The defendant affirmatively invited the trial court to order the examination of which the defendant now complains.

Opinion by: Lawrence E. Mooney, J. Sherri B. Sullivan, P.J., and Clifford H. Ahrens, J.,
concur.

Attorney for Appellant: Gwenda R. Robinson

Attorneys for Respondent: Chris Koster, Shaun J. Mackelprang, and Richard A. Starnes

THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT. IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND SHOULD NOT BE QUOTED OR CITED.