

IN THE COURT OF APPEALS OF IOWA

No. 2-541 / 11-1370
Filed August 8, 2012

STATE OF IOWA,
Plaintiff-Appellee,

vs.

TONCH LYNN WELDON,
Defendant-Appellant.

Appeal from the Iowa District Court for Iowa County, Douglas S. Russell,
Judge.

Tonch Weldon appeals his conviction of murder in the first degree.

AFFIRMED.

Mark C. Smith, State Appellate Defender, and Dennis D. Hendrickson,
Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney
General, Tim D. McMeen, County Attorney, and Denise Timmins, Assistant
County Attorney, for appellee.

Considered by Eisenhauer, C.J., and Potterfield and Mullins, JJ.

MULLINS, J.

Tonch Weldon (Weldon) appeals his conviction of murder in the first degree, in violation of Iowa Code section 701.2 (2009). He argues that the district court erred by (1) improperly allowing lay opinion testimony and (2) improperly disallowing a forensic toxicologist from testifying that Weldon was too intoxicated to form the specific intent required for murder in the first degree. Because we find that the district court did not abuse its discretion in these evidentiary issues, we affirm.

I. Background Facts and Proceedings

Weldon and Amanda were married in October of 1996, and had two children, ages ten and twelve at the time of these events. They had an open marriage, allowing them to have other sexual partners and sometimes shared a partner together in a threesome. In February of 2009, they approached Amy Gephart in a bar and initiated a sexual encounter, and soon Amy moved in with the couple and began sleeping in the marital bed. Amy and Amanda grew closer in the following months and began excluding Weldon from the relationship sexually and emotionally.

On June 7, 2009, Weldon was in an outbuilding on his property drinking and confiding in two friends about his marital problems. Amy and Amanda took the children to church and returned around three in the afternoon. Upon returning, Amy went to the house while Amanda came to the outbuilding to confront Weldon. The friends left while Amanda informed Weldon that she, Amy, and the children would move out of the house and into Amy's camper. Weldon

became upset and begged her not to leave; then he left Amanda and the children in the outbuilding and went into the house.

When Amanda approached the house a few moments later, she found the doors locked. She went to the living room window and saw Weldon and Amy arguing inside. When Weldon saw Amanda at the window, he left the room. Amy then let Amanda in through the window. Weldon re-entered the living room with a shotgun and, after a brief struggle, shot Amy through the chest, killing her instantly. As Amanda attempted to help Amy, she heard another shot and turned to find Weldon had shot himself, removing a portion of his own jaw. Weldon attempted to shoot himself twice more before Amanda successfully wrested the gun away from him and called for help.

The State charged Weldon by trial information with murder in the first degree in June of 2009. Weldon filed a notice of the defense of intoxication in March of 2011. The State filed a motion to exclude expert testimony requesting that Michael Rehberg, a forensic toxicologist testifying for the defense, should be barred from providing an opinion as to whether Weldon was able to form the requisite specific intent at the time of the offense. The court granted the motion on the grounds that Weldon's capability of forming specific intent was outside of Rehberg's expertise.

Trial commenced on July 12, 2011. At trial, the defense introduced several witnesses, including Brooke DeRuyter, to testify to Weldon's non-violent and loving nature as well as how highly he valued his marriage. On cross-examination, the State inquired of DeRuyter, "If [Weldon] had to choose between

Amanda and Amy, who would he choose?” The court overruled the defense’s objection that the question called for improper opinion testimony, and DeRuyter answered, “I believe he would choose his wife and his children.”

Later, Michael Rehberg testified to the level of intoxication Weldon had at the time of the offense based on his blood test in the hospital. When the defense began asking questions about Weldon’s ability to deliberate at the time of the offense, the State objected, and the parties agreed to a recess to discuss Rehberg’s testimony outside the presence of the jury. An offer of proof was made for the record detailing Rehberg’s qualifications and his opinion that someone with Weldon’s level of intoxication would “be incapable” of premeditating, deliberating, or forming a plan. When the jury returned, Rehberg was allowed to testify to the less strong opinion that someone with Weldon’s level of intoxication would “be impaired” in their ability to deliberate, premeditate, and form a plan. Rehberg was not allowed to offer any testimony using the words “specific intent.”

II. Standard of Review

A district court’s evidentiary rulings are reviewed for an abuse of discretion. *Kurth v. Iowa Dep’t of Transp.*, 628 N.W.2d 1, 5 (Iowa 2001). “An abuse of discretion occurs when the trial court exercises its discretion on grounds clearly untenable or to an extent clearly unreasonable.” *Id.* Rulings on admissibility of testimony rest in the trial court’s sound discretion, and we will only reverse if there is a clear showing of abuse prejudicing a party—a difficult standard to meet. *State v. Halstead*, 362 N.W.2d 504, 506 (Iowa 1985).

III. Non-Expert Opinion Testimony

A non-expert's opinion testimony is limited "to those opinions or inferences which are (a) rationally based on the perception of the witness and (b) helpful to a clear understanding of the witness's testimony or the determination of a fact in issue." Iowa R. Evid. 5.701. This court will only reverse a ruling on the admission of testimony if "the rights of the objecting party have been injuriously affected by the error or [if] the party has suffered a miscarriage of justice." *State v. Parker*, 747 N.W.2d 196, 209 (Iowa 2008). Where substantially similar evidence has been admitted without objection, there is no prejudice to the losing party. *State v. Rice*, 543 N.W.2d 884, 887 (Iowa 1996).

Before DeRuyter took the stand, the jury heard several statements about how Amanda and the children were the most important things in Weldon's life. Under cross-examination, Amanda answered affirmatively the question, "In fact, nothing is more important to him than you, your marriage, and your children?" Ken Vrchaticky, a co-worker and friend of Weldon's who was drinking with him the afternoon of the shooting, testified that the most important things in Weldon's life were his marriage to Amanda and his children. Anna Evans, who previously shared a three-way sexual relationship with Weldon and Amanda, testified to the strength of the bond Weldon and Amanda shared and called the children their foremost concern. When DeRuyter took the stand, she described Weldon as "like a brother to me," and testified about his honesty, caring, and non-violence. On direct examination, she testified that Amanda was Weldon's "whole world," and that his children were "his other whole world. They—both [Amanda] and the

children were all [Weldon] ever wanted.” She also testified on direct examination that Weldon loved Amy.

In the context of these statements already admitted into the record, there is no clear abuse of discretion in allowing DeRuyter to answer the question, “So if he had to choose between Amanda and Amy, who would he choose?” There was an adequate foundation laid to show DeRuyter had personal knowledge of what was important to Weldon, and she had already testified on direct examination as to the importance of Amanda, Amy, and the children in Weldon’s life. The defense had opened the door to the question by asking about Weldon’s relationship with Amy and Amanda separately. Taking into account everything that had already been said, the court acted neither untenably nor unreasonably, but within its sound judgment, in allowing this evidence into the record.

The facts of the killing show Weldon would choose Amanda and the children over Amy. Weldon chose to shoot Amy and not Amanda while all three of them were present. The jury could have reached the same conclusion without relying on the opinion of DeRuyter by relying solely on the facts of the shooting. Even if the court had abused its discretion, Weldon has not shown any prejudice resulted from DeRuyter’s answer.

IV. Expert Opinion Testimony

Iowa is committed to a liberal view on the admissibility of expert testimony, and this court is deferential to the discretion of the district court in this area. *Leaf v. Goodyear Tire & Rubber Co.*, 590 N.W.2d 525, 531 (Iowa 1999). “If scientific, technical, or other specialized knowledge will assist the trier of fact to understand

the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise.” Iowa R. Evid. 5.702. An expert witness need not be a specialist, but the testimony must be within their general area of expertise. *Ranes v. Adams Labs., Inc.*, 778 N.W.2d 677, 687 (Iowa 2010). The proponent of the expert has the burden of demonstrating their qualifications and reliability to the court. *Id.* at 686. “[T]rial courts have a well-recognized role as guardians of the integrity of expert evidence offered at trials.” *Id.*

Weldon introduced Michael Rehberg as an expert in forensic toxicology. He testified at trial about the probable blood alcohol level Weldon was experiencing at the time of the shooting, which was extrapolated from the blood test taken at the hospital an hour and a half later. Rehberg also testified as to the effects that level of blood alcohol would have on a person, including impairing a person’s ability to plan, deliberate, and premeditate. The State did not object to Rehberg’s qualifications to testify to Weldon’s blood alcohol level and its general effect on a human being. The State did object to allowing Rehberg to testify that Weldon would have been completely unable to plan, deliberate, or premeditate in his intoxicated state, or testify that Weldon would have been incapable of forming the requisite specific intent. The defense made an offer of proof regarding Rehberg’s qualifications to testify to specific intent on the record outside of the presence of the jury. The defense argued that Rehberg’s long experience dealing with intoxication and its effect on human beings, including large group studies on intoxication, qualified Rehberg to offer an opinion. The State

continued to point out that Rehberg was not a doctor and had no psychological qualifications enabling him to have an expert opinion on Weldon's state of mind.

Iowa courts have long allowed psychiatrists and psychologists to testify about an individual's capability to form specific intent. See *State v. Watts*, 441 N.W.2d 395, 399 (Iowa Ct. App. 1989). However, the parties have not cited, nor has this court found, a reported case in any jurisdiction where a forensic toxicologist was permitted to testify regarding the ability of a particular intoxicated person to form specific intent. A toxicologist is not qualified to diagnose patients in areas outside of their expertise. See *Ranes*, 778 N.W.2d at 695–97 (finding that a toxicologist was not qualified to make neurological diagnoses, even though he also held a medical degree, because his methodology for diagnosing was out of the ordinary).

The record shows that Rehberg is an extremely qualified expert in forensic toxicology. However, the record did not show that he has any particular expertise in determining an individual's state of mind. Given the lack of any precedent allowing a toxicologist to testify regarding specific intent and the traditional gatekeeping role trial judges play in deciding the reliability of expert witnesses, we find that the district court did not abuse its discretion in granting the State's objection to Rehberg's testimony on the issue of Weldon's ability to form the requisite specific intent.

AFFIRMED.