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RENDERED: OCTOBER 19, 2006
NOT TO BE PUBLISHED

Supreme Court of Kentucky

FINAL

2005-SC-000301-MR DATE 11-9-06 E.A.Graun P.C.

RENE GARCIA ROBLERO — APPELLANT

V.

APPEAL FROM BARREN CIRCUIT COURT
HON. PHILLIP R. PATTON, JUDGE
NO. 04-CR-00034

COMMONWEALTH OF KENTUCKY — APPELLEE

MEMORANDUM OPINION OF THE COURT

AFFIRMING

I. INTRODUCTION

Appellant, Rene Garcia Roblero, was convicted of wanton murder and tampering with physical evidence in the December 23, 2003, shooting death of Jose Juan Carillo Blanco. The jury recommended sentences of twenty years and one year, set to run concurrently. Appellant's subsequent motions for a new trial and for a judgment notwithstanding the verdict were denied, and the trial judge sentenced Appellant according to the jury's recommendations on March 23, 2005. Appellant now appeals his conviction and sentence as a matter of right pursuant to Ky. Const. § 110(2)(b), alleging the trial court committed several errors, *viz.*: (1) that the trial court committed reversible error by allegedly failing to adhere to the requirements regarding court-appointed interpreters; and, (2) that the Commonwealth's alleged failure to provide timely discovery constitutes

reversible error. For the reasons set forth herein, we affirm Appellant's conviction and sentence.

II. FACTS

On December 23, 2003, Jose Juan Carillo Blanco, also known as "Brian," was shot and killed in the trailer he shared with his brother Fermin Rivera Blanco and his cousin Ruben Torres Blanco on the seven-hundred acre farm of their employer, Steve McClard. The men all worked on McClard's tobacco farm, and as of December 21, 2003, all of the season's tobacco work had been completed, and the next day McClard paid the men. On that same day, Jose returned from Bowling Green in a truck, which he claimed was his.

Somewhere between six and six-thirty on the morning of the murder, Fermin answered a knock at the trailer door, and recognizing the visitor as Appellant, opened the door and allowed Appellant to enter. Fermin testified that he saw no one else with Appellant during this time. Appellant asked to speak to Jose, who was still asleep. Appellant insisted that Fermin wake Jose, and Fermin, who was aware that Jose had owed a debt to Appellant, complied and woke Jose. Fermin then returned to his bedroom, but remained awake. It was during this time that Fermin and Ruben, who had awaked sometime after Fermin let Appellant into the trailer, overheard Appellant ask Jose who the truck parked outside belonged to.

Shortly thereafter, Fermin and Ruben heard gunshots come from inside the trailer. After waiting several minutes, Ruben entered the living room and found Jose alone, shaking and barely able to speak because of a gunshot wound to his neck. Ruben testified that before dying, Jose muttered "my compadre."

Fermin then joined Ruben in the living room, and the two then sought help from McClard and Karen Elmore, a girlfriend of one of their friends who was also bilingual. McClard and Elmore then directed police and emergency services to the trailer, and Elmore assisted in translating Kentucky State Police Detective Kevin Pickett's interview of Fermin and Ruben.

Elmore testified that on her way to the trailer that morning, she passed a white car that had been wrecked approximately a half mile from the trailer, its headlights still on and the driver's door open. Upon police inspection, it was discovered the car, a white Honda Accord, had the Tennessee license plate for Appellant's black Dodge van. Later that day, Trooper Todd Combs, a canine handler, brought his dog to the accident scene and allowed him to acquire the scent in the car. Thereafter, the dog followed a single scent trail that led from the back of the car, up a hillside, followed by a turn at a fence-line, through standing water in a marshy area by a pond and into another open field; however, the dog soon lost the scent. The trooper then took the dog back to the car in hopes of finding another scent trail, but the dog followed the same trail as before, suggesting to the trooper that only one person exited the wrecked vehicle. After obtaining a warrant to search the car, police uncovered an eight-millimeter pistol under the driver's seat and a loaded magazine for a Lorcin .380 pistol on the passenger-side floorboard.

Back at the trailer, Detective Damon Childers recovered an unfired .380 cartridge from the living room floor and five spent .380 shell casings from the floor and counter of the adjacent kitchen. Another bullet was recovered from the kitchen wall.

Around dusk of the following day, Appellant appeared at the home of Edward and Karen Wilson, who lived two to three miles from the murder scene. The Wilsons were aware that a murder suspect was still at-large, and thus were suspicious when Appellant approached and asked for water. Appellant also carried an empty milk jug and asked Edward if he could take him to a nearby store for gas. Fearing a confrontation may provoke Appellant, Edward agreed and the two proceeded to a nearby gas station. In the meantime, Karen called 911 and told the operator what was happening and where the men were going.

Once at the gas station, Appellant asked Edward if he would buy him some food. Edward, suspecting Appellant would try to take off in his truck, asked the store clerk to call 911. Within minutes, Trooper Chris Spradlin arrived and placed Appellant under arrest. Upon searching Appellant, a knife was recovered from his pants pocket.

Once at the Barren County jail, Detective Pickett read the arrest warrant to Appellant, who responded to Det. Pickett in English that he did not commit the murder, but that his friend "Pepe" did it. According to statements taken during the interview, Appellant and Pepe went to the victim's trailer early that morning. Appellant stated that Pepe hid behind the door and waited until Jose entered the room before shooting him. Appellant stated that he then fled the scene and that Pepe took the white car and drove away. Appellant did not tell the officers Pepe's last name or where to find him.

Days later, Karen Elmore was asked to bring Fermin and Ruben to the police station, where they positively identified Appellant as the murderer. During this time, Elmore translated for the officers a conversation she initiated with

Appellant. Elmore later testified that Appellant told her somebody named "Pedro" killed Jose. However, Detective Pickett also testified that Appellant said he was forced to drive to Jose's trailer by a person he believed Appellant to call Pepe.

On January 5, 2004, Jim and Don McClard, brothers and farming partners of Steve McClard, found a Lorcin .380 handgun and detached magazine in a ditch adjacent to the road on which the victim's trailer was located. However, due to rusting and subsequent rust-removal by Kentucky State Police firearms examiners, it was impossible to compare the bullets found in the victim's body and at the scene to bullets fired from the weapon in the lab. Despite the condition of the Lorcin. 380, however, KSP firearms examiner Jeffery Doyle testified that the bullets found in the trailer were fired from a six-right rifled barrel, such as that found in a Lorcin .380. Moreover, all of the cartridges found at the scene had passed through the chamber of the same weapon, and Doyle testified that at least one of the cartridges recovered had been fired from the Lorcin .380 recovered from the ditch. The other weapon recovered from the car, an eight-millimeter pistol, was only capable of firing blank cartridges, according to Doyle's testimony.

During Appellant's trial, several witnesses testified as to Appellant's peacefulness and truthfulness. Appellant's brother and sister-in-law testified that they had never seen Appellant possess a handgun, and they had never seen weapons or ammunition when they visited his apartment. Appellant was subsequently convicted and sentenced for the murder of Jose Juan Carillo Blanco, and he now appeals.

III. ANALYSIS

A. Court-appointed Interpreter provided for defendant.

In his first assignment of error, Appellant argues that the trial court committed reversible error in failing to adhere to the requirements for interpreters as provided by Amended Order 2004-3 of this Court regarding Amendments to the Rules of Administrative Procedure, Part IX (Procedures for Appointment of Interpreters). See also KRS 30A.405(2). It is Appellant's contention that the interpreter appointed on his behalf was so lacking in providing interpreting services that Appellant was not effectively present for his trial as provided by RCr 8.28(1). The Commonwealth, however, argues that the issues presented on appeal are not preserved.

The raising of an issue for the first time in a motion for a new trial or a motion for judgment notwithstanding the verdict does not preserve the issue for appeal. Byrd v. Commonwealth, 825 S.W.2d 272, 274 (Ky. 1992), overruled on other grounds by Shadowen v. Comonwealth, 82 S.W.3d 896 (Ky. 2002). Similarly, "[a] defendant cannot await the verdict of the jury before presenting an objection to improprieties that occurred during the trial[.]" Patrick v. Commonwealth, 436 S.W.2d 69, 74 (Ky. 1968). We have held that a contemporaneous objection is required in order for a party to preserve trial errors. RCr 9.22; Salisbury v. Commonwealth, 556 S.W.2d 922, 926 (Ky. App. 1977) (holding that RCr 9.22 requires contemporaneous objection because it gives the trial court an opportunity to correct any errors in the proceedings); Commonwealth v. Pace, 82 S.W.3d 894, 895 (Ky. 2002) ("The general rule is that a party must make a proper objection to the trial court and request a ruling on that objection, or the issue is waived.").

After reviewing the record, we find that Appellant failed to properly preserve this issue for appellate review. Appellant urges this Court, however, to consider the alleged errors to be structural errors,[1] rather than procedural or trial errors, thus obviating the requirement for a contemporaneous objection. We note that Appellant provides no case law, and we have found none, to support the notion that alleged defects in interpretation services provided to a Spanish-speaking defendant rise to the level of a structural error. Moreover, we decline to find that the facts of this particular case necessitate such a ruling, as any of the alleged errors or defects could have been remedied by the trial court had a contemporaneous objection been made. Nonetheless, Appellant requests this Court to review the allegations for substantial error pursuant to RCr 10.26.

"RCr 10.26 provides that an alleged error improperly preserved for appellate review may be revisited upon a demonstration that it resulted in manifest injustice." Butcher v. Commonwealth, 96 S.W.2d 3, 11 (Ky. 2002). Manifest injustice may be found where there is "a palpable error . . . which affects the substantial rights of a party and relief may be granted for palpable errors only upon a determination that a manifest injustice has resulted from the error." Partin v. Commonwealth, 918 S.W.2d 219, 224 (Ky. 1996). Furthermore, a palpable error "must involve prejudice more egregious than that occurring in reversible error." Ernst v. Commonwealth, 160 S.W.3d 744, 758 (Ky. 2005).

[1] "A 'structural' error . . . is a 'defect affecting the framework within which the trial proceeds, rather than simply an error in the trial process itself.'" Johnson v. United States, 520 U.S. 461, 468, 117 S.Ct. 1544, 1549, 137 L.Ed.2d 718 (1997) (quoting Arizona v. Fulminante, 499 U.S. 279, 310, 111 S.Ct. 1246, 1265, 113 L.Ed.2d 302 (1991)).

Palpable error review requires a fact-intensive inquiry of the entire record and involves a case by case analysis. Id. (citing United States v. Young, 470 U.S. 1, 16, 105 S.Ct. 1038, 1046-47, 84 L.Ed.2d 1 (1985)). "This means, upon consideration of the whole case, the reviewing court must conclude that a substantial possibility exists that the result would have been different in order to grant relief." Id. (citing Jackson v. Commonwealth, 717 S.W.2d 511 (Ky. 1986)).

We find that Appellant suffered no manifest injustice in this case as there is no substantial possibility that the result would have been different. Over the course of the proceedings at which Appellant's presence is mandated by RCr 8.28(1), three court-appointed interpreters were provided for Appellant. Appellant alleges that during the pre-trial conference, conferences in the judge's chambers, and even during his trial, the interpreters provided for him were unqualified and violated several of the canons set forth in the Code of Professional Responsibility for Interpreters, and that the trial court otherwise failed to adhere to the requirements for interpreters as set forth in Section 6[2] of Amended Order 2004-3, Amendments to the Rules of Administrative Procedure AP Part IX (Procedures for Appointment of Interpreters).

Initially, we note that the interpreters provided by the Court were Qualified Level I interpreters pursuant to Rule of Administrative Procedure, Part IX, Section 8. The trial court was well within its discretion in selecting these interpreters to assist Appellant during the course of the trial, including arraignment and all other

[2] Section 6 of Amended Order 2004-3 provides, in pertinent part, that "[w]hen interpretation for two or more hours is required without breaks, a team of two interpreters should be appointed."

critical stages of the trial where Appellant's presence is mandated by RCr 8.28(1).

Appellant also claims that on several occasions the interpreter paraphrases the statements of witnesses and asks clarifying questions of witnesses in violation of Canon 1of the Code of Professional Responsibility for Interpreters, that on other occasions the interpreter is not providing simultaneous interpretation, and that at times the interpreter is not interpreting at all. These alleged irregularities, however, do not rise to the level of palpable error.

Viewing the record in its entirety we find, again, there is no substantial possibility the result would have been different. Furthermore, these alleged errors could have been remedied by the trial court had contemporaneous objection been made as Section 11 of the Amendments to the Rules of Administrative Procedure AP Part IX provides for the removal of an interpreter "upon request of the person for whom the interpreter is appointed or on the court's own motion."

Finally, we note that an interpreter was available to Appellant during the critical stages of his trial. RCr 8.28(1) requires that "[t]he defendant shall be present at the arraignment, at every critical stage of the trial including the empaneling of the jury and the return of the verdict, and at the imposition of the sentence." Although the record reveals a lull in translation during arraignment and the suppression hearing, we have no reason to believe that Appellant was not apprised of the circumstances. Furthermore, we have no way of reviewing whether or not the interpreter provided translation during the trial as the trial judge ordered that the microphone at the defense table be muted following the

prosecutor's opening statement, most likely in an effort to prevent the interpretation from being amplified. Thus, Appellant was the only one in a position to complain of the translation services being provided to him, and as we have noted, he failed to bring these contentions to the attention of the trial court. Likewise, the alleged errors do not rise to the level of substantial error as provided in RCr 10.26.

B. Alleged failure to provide timely discovery.

On February 23, 2004, the trial court entered an order of discovery pursuant to RCr 5.16, 7.24, and 7.26. In response, the Commonwealth furnished to Appellant two volumes of discovery materials, as well as individual items as they were later received. In his second and final assignment of error, Appellant alleges the Commonwealth failed to provide timely discovery and failed to disclose exculpatory evidence pursuant to the order, and that reversal is thus required. The Commonwealth argues that some of the alleged discovery violations are not preserved for appellate review as no contemporaneous objection was offered by Appellant during trial and upon introduction of evidence and testimony subject to discovery. The Commonwealth likewise insists that some of the evidence to which Appellant now objects was unknown to it at the time of discovery.

"A discovery violation justifies setting aside a conviction 'only where there exists a "reasonable probability" that had the evidence been disclosed the result at trial would have been different.'" Weaver v. Commonwealth, 955 S.W.2d 722, 725 (Ky. 1997) (citations omitted). Furthermore, "the suppression by the prosecution of evidence favorable to an accused upon request violates due

process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." Brady v. Maryland, 373 U.S. 83, 87, 83 S.Ct. 1194, 1196-97, 10 L.Ed.2d 215 (1963); see also Commonwealth v. Key, 633 S.W.2d 55, 56 (Ky. 1982) (holding that the failure to disclose may violate the defendant's due process rights and right to a fair trial). Similarly, the Commonwealth has a duty to disclose to the defendant any exculpatory witnesses. See Lowe v. Commonwealth, 712 S.W.2d 944, 946 (Ky. 1986). However, to be entitled to a new trial, Appellant bears the burden of showing that the evidence withheld is favorable to him and material to either guilt or punishment. Sanders v. Commonwealth, 89 S.W.3d 380, 385 (Ky. 2002). Thus, Appellant "has the burden of establishing that there is a reasonable probability that the result of the trial would have been different if the allegedly withheld exculpatory [evidence] were disclosed to the defense." Id. at 386 (citing Strickler v. Greene, 527 U.S. 263, 279, 119 S.Ct. 1936, 1948, 144 L.Ed.2d 286 (1999)). However, "[d]ue process does not require the prosecutor to disclose information already known by the defendant or counsel and available from a third party." Id. at 385.

1. Timely Discovery

Because Appellant's claims of error involve several different issues, it is best to evaluate each claim independently. In this instance, Appellant claims that certain evidentiary items were not provided until a couple of weeks or days before trial. Specifically, Appellant claims that audiotapes of the 911 calls and transcribed statements of Ed and Karen Wilson were not furnished until January 14, 2005, eleven days before the trial was originally set to begin. Appellant also

claims that a copy of the transcribed 911 calls was not received until January 18, 2005, seven days before the trial. Further, Appellant argues that the firearms trace summary and a copy of a new audiotaped statement of the Appellant were not provided until January 25, 2005, the day the trial had originally been scheduled to begin.

The Commonwealth, however, rebuts Appellant's claims and notes that the trial had been continued from January 25, 2005, to May 24, 2005. The parties had agreed to the continuance because of Appellant's late statement to Det. Pickett, wherein he purported to provide specific information about "Pedro."[3] Further investigation, however, revealed nothing more concerning Pedro. However, shortly after the continuance was granted, both sides agreed to return the case to the docket for trial on January 27, 2005. Moreover, Appellant announced he was ready for trial on January 27, 2005. Thus, he cannot now claim noncompliance with the discovery order as he has waived his right to complain by announcing he was ready to begin. Barclay v. Commonwealth, 499 S.W.2d 283, 285 (Ky. 1973).

2. Statements and testimony of Fermin Blanco and Ruben Blanco.

During the trial, the Commonwealth claimed the motive for Jose's murder was an argument over a debt of $2500 that the victim allegedly owed Appellant. Appellant argues that when Fermin Blanco, the victim's brother, testified at trial,

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[3] There is some dispute concerning when Appellant mentioned the name "Pedro" and to whom he mentioned the name. Detective Pickett testified that he heard the name "Pepe" upon first interviewing Appellant. However, Karen Elmore, who later initiated a conversation with Appellant at the police station days after his arrest, testified that she heard Appellant on that day say "Pedro" as the alleged shooter. This issue is discussed, infra.

he stated that he heard Appellant ask Jose who the truck outside belonged to and whether or not the phone in the trailer was working.[4] Appellant objected during this testimony, arguing that the statement was not provided in discovery, which was overruled by the trial court. Appellant then argued in support of his motion for a new trial that this information is exculpatory and argues the same on appeal.

Likewise, when Ruben Blanco, the victim's cousin, testified, he testified similarly that he heard Appellant ask the victim about the truck and phone, to which Appellant did not object. Ruben also testified that when he entered the living room and found Jose barely alive that Jose said to him, "my compadre." Appellant did not object to this statement, but now claims on appeal that this statement was also not provided in discovery.

The record, however, reveals that Appellant's trial counsel argued that Fermin and Ruben's statement concerning the truck and phone were exculpatory in support of his motion for a new trial, but later claimed that the statements were incriminating because someone planning a murder would want to know who an unfamiliar truck parked outside belonged to as well as whether the residents of the trailer were capable of calling the police. Furthermore, the Commonwealth claims that Appellant was provided with Fermin and Ruben's written signed statements pursuant to RCr 7.26, but that the prosecutors were not aware of particular statements about the pickup truck or telephone as this information was not part of their original statements. The trial court was evidently aware of this

[4] Fermin Blanco's written statement included a statement that he heard the Appellant and victim argue over the alleged debt prior to hearing gunshots, but he did not testify as to this statement.

fact as the trial judge indicated such when he denied Appellant's motion for a new trial.

The fact that additional information not contained in a witness's written statement may come out in trial "is not an infrequent occurrence." Yates v. Commonwealth, 958 S.W.2d 306, 308 (Ky. 1997). Moreover, "[t]here is no authority that would require a trial judge to confine a witness's testimony to the four corners of his or her written statement. Trial lawyers scrutinize the motive or basis for such omission or additions through the art of cross-examination." Id.

Thus, we find that Appellant was not prejudiced by the fact that the Commonwealth's witnesses testified to information not contained in their original written statements. There was no error in the admission of such testimony.

As for Appellant's contention that Fermin's testimony concerning the victim's exclamation of "my compadre" was not disclosed, we likewise find no prejudice. It is difficult to understand how this statement may have further bolstered Appellant's claim that someone bolted from behind the door and shot the victim, as was his defense. The victim's exclamation could have meant any number of things, and this fact, again, could have been addressed on cross-examination. Furthermore, the Commonwealth's similar lack of knowledge as to this statement supports such a ruling.

3. Appellant's Post-Arrest Statements.

Several days after Appellant's arrest, Karen Elmore, a friend of the Blancos, brought Fermin and Ruben to the jail to identify Appellant. While there, Elmore initiated a conversation with Appellant, wherein Appellant gave a second statement in which he mentioned that "Pedro" had hidden behind the door and

that he was the actual murderer. Appellant claims that he was surprised by Elmore's testimony concerning this statement and argues that Elmore was acting as an agent of the police when Appellant made this statement. Appellant argues that the statement was exculpatory and that had he known about this statement prior to trial, further investigation could have been done, and it may have made a difference in whether or not Appellant testified in his defense.

This argument lacks merit. If indeed there had been a person named "Pedro," no one other than Appellant was in a better position to disclose to defense counsel that this statement had been made. As we have stated before, "due process does not require the prosecutor to disclose information already known by the defendant or counsel and available from a third party." Sanders, 89 S.W.3d at 385. Thus we find that Appellant was not prejudiced.

Furthermore, there is no evidence in the record to support Appellant's claim that Elmore was acting as an agent of the police when she initiated a conversation with Appellant. In order to be considered an agent of the police in this situation, we would have to find that Elmore was a "state actor" or that her questioning was the "functional equivalent" of an interrogation. See Roberson v. Commonwealth, 185 S.W.3d 634, 640 (Ky. 2006) (discussing, in the context of whether the waiver of *Miranda* rights was valid, the application of the state actor and functional equivalent doctrines). We find neither circumstance applicable in this situation and likewise find Appellant suffered no undue prejudice for the reasons previously mentioned.

4. Knife found in Appellant's pocket.

During a search of Appellant's person following his arrest, Kentucky State Trooper Chris Spradlin discovered a knife in one of his pants pockets. This fact was first disclosed during Edward Wilson's testimony at trial when he testified as to the events that occurred when he gave Appellant a ride to the gas station. Appellant failed to object to this testimony; however, defense counsel complained prior to Trooper Spradlin's testimony that the recovery of the knife was not in Trooper Spradlin's report, but she did not request to admonish the jury concerning Wilson's previous testimony. The knife itself was never offered into evidence, and Trooper Spradlin was not asked about the knife and did not mention it when he testified.

Although no contemporaneous objection was made by Appellant during Wilson's testimony, the issue is nonetheless preserved for review as the substance of Appellant's complaint concerning this issue was brought to the trial court's attention. Nonetheless, Appellant's failure to request an admonition, which could have cured any alleged prejudice, renders the issue waived for appeal. Brock v. Commonwealth, 391 S.W.2d 690, 692 (Ky. 1965). Moreover, the fact that there is nothing in the record concerning the knife and the fact that the knife itself was never produced, much less offered into evidence, supports a finding that Appellant suffered no prejudice. Appellant had before it the same police report that was in possession of the Commonwealth. It is thus troubling that Appellant would complain that the Commonwealth bore the burden of providing this information. Furthermore, we note that RCr 7.24 does not require the disclosure of the fact that knife was confiscated from Appellant upon his arrest.

5. Scent trail picked up by K-9 unit.

Appellant's final argument concerning the alleged discovery violations involves the fact that the K-9 unit in this case picked up a scent that led in a northerly direction from the wrecked Honda Accord, a detail Appellant alleges was not disclosed. Appellant argues the significance of this due to the fact that he was later discovered due south from the car's location.

A review of the record reveals that Appellant did not make a contemporaneous objection when the testimony concerning this fact was elicited at trial. Nonetheless, Appellant contends that the evidence of this fact is exculpatory given his location in relation to the tracked scent.

We find the argument inapposite. Although the failure to disclose potentially exculpatory evidence, regardless of good or bad faith on the part of the prosecution, ordinarily violates due process, in order for Appellant to be afforded a new trial on this basis he bears the burden of showing the reasonable probability that the outcome of the trial would have been different had this information been disclosed to the defense. Sanders, 89 S.W.3d at 385.

In this case, Appellant exited a wooded area on the Wilson's property south of the car's location and opposite of where the K-9 unit tracked the scent a day earlier. However, the record reveals that Appellant did not travel in a single direction and that the scent trail followed by the K-9 unit ended abruptly, suggesting the scent trail had "dried up." Furthermore, Appellant was discovered about thirty-five hours after the murder occurred, which offered sufficient time to travel the mile or so from the scene to the Wilson property. Moreover,

Appellant's defense counsel even used the fact of the K-9 units tracking in a northerly direction in her closing argument.

Finally, Appellant argues that had this information been disclosed, defense counsel could have investigated several Hispanic males who lived in a trailer close to where the scent trail ended. However, Kentucky State Trooper Michael May searched the trailer with the permission of the Hispanic male that resided there and indicated in his report that the trailer was within the search area. Furthermore, this notion does not support Appellant's theory in his defense that another person forced him to drive from Tennessee to the Blancos' trailer to commit the murder. Given the totality of the circumstances and the evidence against Appellant, we find that there was no reasonable probability that the outcome of the trial would have been any different.

IV. CONCLUSION

For the reasons set forth herein, we affirm Appellant's conviction and sentence.

All concur.

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