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NO. COA05-190

NORTH CAROLINA COURT OF APPEALS

Filed: 18 July 2006

STATE OF NORTH CAROLINA

v.

RAYSHAWN DERNARD BANNER, and
NATHANIEL ARNOLD CAUTHEN

Forsyth County
Nos. 02 CRS 03883 - 84

Appeal by defendants from judgments entered 19 August 2004 by Judge W. Douglas Albright in Forsyth County Superior Court. Heard in the Court of Appeals 24 January 2006.

Attorney General Roy A. Cooper, III, by Assistant Attorney General Joan M. Cunningham, for the State.

Attorney General Roy A. Cooper, III, by Assistant Attorney General John G. Barnwell, for the State.

Hardison & Leone, LLP, by Richard B. Glazier, for Rayshawn Banner, defendant-appellant.

Public Defender Staples S. Hughes, by Assistant Public Defender Barbara S. Blackman, for Nathaniel Cauthen, defendant-appellant.

JACKSON, Judge.

Co-defendants, Nathaniel Cauthen ("Cauthen") and Rayshawn Banner ("Banner"), each were indicted by the Grand Jury of Forsyth County 3 November 2003 for first degree murder and robbery with a dangerous weapon. The cases were joined for trial and came on for jury trial 9 August 2004. Cauthen and Banner each were found guilty as charged 19 August 2004. Both were sentenced to life in

prison without the possibility of parole on the murder conviction and the trial court arrested judgment on the robbery with a dangerous weapon conviction for both defendants. Both defendants gave notice of appeal in open court.

At trial, the State's evidence tended to show that Nathaniel Jones ("the victim") was murdered and robbed at his residence sometime in the late afternoon or evening of 15 November 2002. During their investigation, police received information that defendants and several other individuals possibly were involved in the crime. Officers went to speak with Banner and Cauthen and asked them to come to the police station to talk. Both were advised that they did not have to go to the station, they were not under arrest, the police did not have arrest warrants for either of them, they could not be forced to go to the station, and, if they did go to the station, they would be free to leave at any time. Banner refused, within earshot of Cauthen, to accompany the officers, and did not go to the station.

Cauthen agreed to go with the officers. He was not handcuffed and rode in the front seat of an unmarked police car to the station. After arriving at the station, Cauthen was led to an interview room where he again was told that he was not under arrest. After being left alone in the interview room for about two hours, defendant was interviewed by two detectives for about twenty-five minutes. During the interview Cauthen denied involvement in the crime, resisted answering questions, and was belligerent. Cauthen was told that other people were implicating

him in the crime. Cauthen continued to deny involvement and the interview was stopped.

Cauthen's mother was allowed to speak with him for approximately fifteen to twenty minutes. After his mother left, Cauthen was shown to the restroom and provided with popcorn and a drink. Officers then resumed questioning Cauthen who initially continued to deny his involvement. Cauthen appeared upset that his mother believed that he was involved in the crime and then began to admit to his involvement. After listening to his statements, the officers told Cauthen that they were going to take a recorded statement and left the room for some time. When the officers returned, they took Cauthen's recorded statement from 10:14 until 10:30 p.m.

Later on the evening of 19 November 2002, officers went to Banner's house and again requested that he come to the station for questioning. When Banner again refused he was arrested and brought to the station. Banner was advised of his *Miranda* and juvenile rights and that he had the right to have a parent present during questioning. In an affidavit filed in support of his motion to suppress his statement at trial, Banner denied ever being advised of his rights or that he could have his parent with him during questioning. At trial, the State introduced a waiver of rights form signed by Banner.

Initially, Banner denied involvement in the crime, but after officers played a portion of Cauthen's recorded statement, he

admitted his involvement. At no time during his questioning was Banner denied permission to use the restroom or denied drink.

The trial court denied both motions to suppress the statements made by defendants to the police.

Defendants attempted to offer Dr. Soloman Fulero ("Dr. Fulero") as an expert in the area of the "psychologic dynamics of interrogation." Dr. Fulero made an offer of proof of his proposed testimony outside the presence of the jury. Dr. Fulero testified that he had not conducted an examination of either defendant individually and gave only general testimony regarding the psychology of police interrogations. After the voir dire was completed, the trial court declined to admit Dr. Fulero as an expert and made detailed findings of fact in support of that determination.

During the presentation of its case, the State called the victim's daughter, Robin Paul ("Paul"), as a witness. Paul was asked, on the witness stand before the jury, to identify her father from two photographs. The first photo showed the victim while he was alive and the second photo showed the victim during the autopsy. The autopsy photo was not submitted to the jury at the time of Paul's identification. Prior to the identification, defendants objected to the identification from the second photo in an unrecorded bench conference. After the bench conference, defendants entered their objection on the record. The basis for the objection was that Paul did not have personal knowledge of her father's physical condition at the time of the autopsy and,

therefore, the identification was not relevant. The trial court overruled the objection and stated that Paul would be allowed to make an identification from the autopsy photo.

The State also introduced photographs taken during the victim's autopsy during the direct examination of Dr. Donald Jason ("Dr. Jason"), the doctor who performed the autopsy in order to illustrate Dr. Jason's testimony. Defendants objected to the introduction of those photos on the ground that the photos were repetitious and prejudicial. The trial court overruled the objections and concluded that the photos were not so gory, inflammatory, or repetitive as to render them inadmissible. The trial court further found that the probative value of the photos as illustrative of Dr. Jason's testimony outweighed their potential prejudicial effect.

At trial, Dr. Jason testified on direct examination that, in his opinion, the victim died of cardiac arrhythmia due to stress on his heart caused by multiple blunt force injuries. On cross examination, Dr. Jason testified that, although the victim's pre-existing heart condition was the immediate cause of death, in his opinion, the proximate cause of death was the assault upon the victim. Dr. Jason subsequently stated twice more that the immediate cause of death was cardiac arrhythmia. After his second statement to that effect, the court asked Dr. Jason what, in his opinion caused the arrhythmia. Dr. Jason responded that, in his opinion, the arrhythmia was caused by the multiple blunt force injuries to the victim's head.

Defendants were convicted on all charges and sentenced to life imprisonment without the possibility of parole on the murder conviction and the trial court arrested judgment on the assault with a deadly weapons convictions. Both defendants gave timely notice of appeal.

On appeal, each defendant makes numerous assignments of error but neither presents in their brief, argument or authority in support of all assignments of error included in the record on appeal. Assignments of error for which no argument or authority are set out in appellant's brief are deemed abandoned. N.C. R. App. P., Rule 28(b)(6) (2006); *State v. Augustine*, 359 N.C. 709, 738, 616 S.E.2d 515, 535 (2005). Accordingly, defendants' assignments of error not argued in their briefs are deemed abandoned and are not considered.

Banner's assignments of error that are properly before this Court are that the trial court erred: (1) in disallowing the proffered testimony of defendants' expert witness, Dr. Fulero; (2) by permitting Paul to identify the victim from an autopsy photograph; and (3) by allowing the introduction of autopsy photographs into evidence after the injuries depicted had already been extensively described by the doctor who conducted the autopsy.

Cauthen's remaining assignments of error are that the trial court erred: (1) in disallowing the proffered testimony of defendants' expert witness, Dr. Fulero; (2) by permitting Robin Paul to identify the victim from an autopsy photograph; (3) in denying his motion to suppress statements made to law enforcement

officers on the ground that the trial court's finding of fact that he was not in custody when he was questioned was not supported by the evidence; (4) in denying his motion to suppress statements made to law enforcement officers on the ground that the trial court's finding of fact that the statements in question were made voluntarily was not supported by the evidence; and (5) by questioning the doctor who conducted the autopsy regarding the victim's cause of death.

We first address those assignments of error common to both defendants. Both defendants assign error to the trial court's exclusion of the proffered testimony of Dr. Fulero. Rule 702 of the North Carolina Rules of Evidence governs the admissibility of expert testimony. Rule 702 provides, "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." N.C. Gen. Stat. § 8C-1, Rule 702(a) (2005). Relevant evidence may be excluded if the probative value of such evidence is substantially outweighed by the danger of confusion of the issues or misleading the jury. N.C. Gen. Stat. § 8C-1, Rule 403 (2005). The trial court has broad discretion in determining whether to admit the testimony of an expert. *State v. Gainey*, 355 N.C. 73, 88, 558 S.E.2d 463, 474, *cert. denied*, 537 U.S. 896, 154 L. Ed. 2d (2002).

After extensive *voir dire*, the trial court ruled that any probative value Dr. Fulero's testimony might have was substantially

outweighed by the danger of confusion of the issues for the jury. A trial court's findings of fact, made after *voir dire*, which are supported by competent evidence are binding on appeal. *See State v. Lee*, 154 N.C. App. 410, 415, 572 S.E.2d 170, 174 (2002). Dr. Fulero's proffered testimony showed that he had not examined either defendant personally to determine his individual characteristics, such as intelligence or mental condition, nor had he reviewed the statements of the other defendants in the case. Dr. Fulero's testimony on *voir dire* also indicated that the purpose of his testimony was not to offer a specific opinion regarding either defendant except as to their ages.

Dr Fulero's testimony consisted primarily of a general explanation of police interrogation techniques and the phenomenon of false confessions. Dr. Fulero's testimony did not indicate which, if any, of the interrogation techniques that he described were utilized in the instant case or the possible effect of the employment of such techniques. In fact, his testimony specifically indicated that there was no evidence that the police lied to either defendant regarding statements of other defendants incriminating them in an effort to obtain a confession.

The trial court's findings that Dr. Fulero's testimony was not based on any examination of defendants, was not related to any psychological characteristics of the individual defendants and amounted to a "generalized exposition" on police interrogation techniques and "a phenomenon of false or coercive confessions" are supported by competent evidence. Expert testimony which is not

specific to the case itself or a party to it may properly be excluded. *See State v. Horton*, 299 N.C. 690, 696, 263 S.E.2d 745, 749-50 (1980); *Lee*, 154 N.C. App. at 417, 572 S.E.2d at 175; *State v. Knox*, 78 N.C. App. 493, 495, 337 S.E.2d 154, 156 (1985).

Based on these findings of fact, the trial court concluded that the proffered testimony lacked probative value as it would not assist the trier of fact in understanding the evidence in the case nor make the existence or non-existence of a fact at issue in the case more or less probable. As the trial court's findings of fact were supported by competent evidence, and therefore binding on appeal, and they support the trial court's conclusions of law, this assignment of error is overruled.

Both defendants rely on *Crane v. Kentucky*, 476 U.S. 683, 90 L. Ed. 2d 636 (1986), in support of their position that Dr. Fulero's testimony was excluded improperly. *Crane* clearly is distinguishable from the instant case, however. In *Crane*, the defendant was prohibited from presenting evidence to the jury pertaining to the circumstances surrounding his interrogation by, and confession to, the police. 476 U.S. at 685, 90 L. Ed. 2d at 641-42. Evidence which the trial court specifically prohibited Crane from presenting to the jury included the duration of his interrogation and the individuals who were present during the interrogation. 476 U.S. at 686, 90 L. Ed. 2d at 642.

In the case *sub judice*, defendants were permitted to present extensive evidence to the jury regarding the specific circumstances surrounding their interrogations and confessions. The only

evidence precluded by the trial court consisted of the general testimony of Dr. Fulero which did not deal with any of the specific facts concerning defendants' interrogations or confessions. Accordingly, defendants' reliance on *Crane* is misplaced.

Both defendants also assign error to the trial court's allowing Paul to make a second identification of the victim from an autopsy photograph after previously identifying her father in a photograph taken while he was alive. The autopsy photograph itself was neither admitted nor shown to the jury at the time of Paul's identification. Defendants objected to the use of the autopsy photograph in an unrecorded bench conference. After the unrecorded bench conference, defendants entered their objection on the record stating that the basis of the objection was that Paul had no personal knowledge of the victim's physical state at the time that the autopsy photograph was taken and that consequently the photograph was not relevant. At that time, the trial court stated that Paul would be allowed to identify the person appearing in the photograph.

On appeal, defendants do not challenge the relevancy of the autopsy photograph. Defendants instead assign error to Paul's identification from the autopsy photograph on the basis that its only effect was to excite prejudice or sympathy. Defendants contend that Paul's emotional outburst upon seeing the autopsy photo of her father served only to arouse the passions of the jury.

Rule 10(b)(1) of the North Carolina Rules of Appellate Procedure provides, in part:

> In order to preserve a question for appellate review, a party must have presented to the trial court a timely request, objection or motion, stating the *specific* grounds for the ruling the party desired the court to make if the specific grounds were not apparent from the context. It is also necessary for the complaining party to obtain a ruling upon the party's request, objection or motion (emphasis added).

This rule requires that the grounds upon which the alleged error on appeal is based must have been presented to, and ruled upon by, the trial court to preserve the issue for appeal.

> As has been said many times, "the law does not permit parties to swap horses between courts in order to get a better mount," . . . meaning, of course, that a contention not raised and argued in the trial court may not be raised and argued for the first time in the appellate court.

Wood v. Weldon, 160 N.C. App. 697, 699, 586 S.E.2d 801, 803 (2003) (quoting *Weil v. Herring*, 207 N.C. 6, 10, 175 S.E. 836, 838 (1934)), *disc. review denied*, 358 N.C. 550, 600 S.E.2d 469 (2004). As defendants present a different basis for this alleged error on appeal than the grounds presented for their objection at trial this assignment of error has not been properly preserved for appeal and is not considered.

Next we address those assignments of error unique to each defendant. Banner's final assignment of error is that the trial court erred in allowing photographs of the victim at the crime scene and autopsy photographs of the victim to be admitted into evidence after already having been described in detail in the trial testimony of investigating officers and the doctor who performed the autopsy. Banner argues that the admission of the photographs

was excessive and prejudicial in light of the extensive testimony regarding what was depicted in them.

Banner fails, however, to bring the challenged photographs forward with the record on appeal. Rule 9(d)(2) of the North Carolina Rules of Appellate Procedure requires that exhibits "offered in evidence and required for understanding of errors assigned" be filed with the appellate court. Accordingly, we are unable to review the challenged photographs to determine whether they were excessive in light of the testimony describing what was depicted in the photographs. Banner has "failed to bring forward a record sufficient to allow proper review of this issue and has failed to overcome the presumption of correctness at trial." *State v. Ali*, 329 N.C. 394, 412, 407 S.E.2d 183, 194 (1991). This assignment of error is overruled.

We now turn to defendant Cauthen's remaining assignments of error. Cauthen argues that the trial court erred in denying his motion to suppress the incriminating statements that he made to police as he was in custody when the statements were made and he was not given his *Miranda* warnings prior to making the statements.

Miranda warnings are required only if the person being questioned is in custody at the time of the questioning. *Oregon v. Mathiason*, 429 U.S. 492, 495, 50 L. Ed. 2d 714, 719 (1977). In determining whether a person is "in custody" at the time of questioning, an appellate court must consider all of the circumstances surrounding the questioning. *State v. Buchanan*, 353 N.C. 332, 338, 543 S.E.2d 823, 828 (2001)("*Buchanan I*") (citing

State v. Gaines, 345 N.C. 647, 662, 483 S.E.2d 396, 405, *cert. denied*, 522 U.S. 900, 139 L. Ed. 2d 177 (1997)). The ultimate determination that must be made "'is whether there was a formal arrest or a restraint on freedom of movement of the degree associated with a formal arrest.'" *Id.* (quoting *Gaines*, 345 N.C. at 662, 483 S.E.2d at 405). Making this determination requires the application of "'an objective test as to whether a reasonable person in the position of the defendant would believe himself to be in custody or that he had been deprived of his freedom of action in some significant way.'" *State v. Sanders*, 122 N.C. App. 691, 693, 471 S.E.2d 641, 642 (1996) (quoting *State v. Greene*, 332 N.C. 565, 577, 422 S.E.2d 730, 737 (1992)).

In reviewing a trial court's denial of a motion to suppress, our inquiry is limited to whether the trial court's findings of fact are supported by competent evidence, in which case those findings of fact become conclusive on appeal, and if those findings of fact support the trial court's conclusions of law. *State v. Barden*, 356 N.C. 316, 340, 572 S.E.2d 108, 125 (2002), *cert. denied*, 538 U.S. 1040, 155 L. Ed. 2d 1074 (2003).

In the case *sub judice*, the trial court made the following findings of fact pertinent to this appeal:

> 5. On November 19, 2002, approximately 4:30 or 5:00 p.m., Detective Rose located the defendant and his brother Rayshawn Banner and asked them, in each other's hearing, to accompany officers the Public Safety Center for questioning about the homocide [sic] and that they could not be compelled to go if they didn't want to go. Detective Rose also told them that he did not have an order of arrest for

either of them and they were not under arrest and that if they chose to accompany officers, they were free to leave at any time;

. . .

7. The defendant agreed to go with the officers, having heard his brother's refusal and knowing that his brother did not accompany officers;

. . .

9. On arrival at the PSC, the defendant accompanied officers to an office through doors that were not locked at the time he entered; all of the doors that the defendant would be involved with at the PSC could be opened from the inside without a key simply by pushing on them;

10. At 6:30 p.m., Detective Mike Rowe and Lt. Randy Weavil talked with the defendant and determined that the defendant was not under the influence of any impairing substance and repeated to the defendant that he was not under arrest and that Detective Rowe wanted to talk to him about the death of Mr. Jones;

. . .

19. As recapitulated in the recorded statement, the defendant agreed to go to the police department, agreed to talk and agreed to stay in order to do so, he was never handcuffed, he was never told he was under arrest and had been told at least twice that he was not under arrest;

. . .

21. Prior to these events the defendant had been arrested three or four times, twice as a juvenile for running away and once for stealing his mother's car. On several of those occasions he had been handcuffed;

> 22. Despite defendant's testimony to the contrary, the defendant did not request that he be allowed to go home nor was he told that if he would make statements about the homicide that he would be allowed to go home;
>
> 23. At all times prior to making the first recorded statement, the defendant was not under arrest; he was free to go; he was not denied food, drink or restroom privileges and was in fact provided with same; . . .

All of these findings of fact are supported by competent evidence in the record.

Cauthen argues that the trial court's failure to make findings of fact regarding the configuration of the police station, the characteristics of the rooms in which he was placed, and the details of his trip to the bathroom demonstrate that the trial court failed to assess the totality of the circumstances. The fact that the layout of the police facility was confusing, alone, does not support Cauthen's position that he was not free to leave. There is no indication that the officers would not have shown him the way out had he asked.

The cases Cauthen cites in support of this position clearly are distinguishable. In *State v. Harvey*, 78 N.C. App. 235, 336 S.E.2d 857 (1985), we held that a seventeen-year-old who voluntarily went with police officers was in custody when he was questioned. 78 N.C. App. at 238, 336 S.E.2d at 859-60. Cauthen asserts that our holding in *Harvey* was due to the facts that the contact was initiated by the police and that the police did not stop questioning the defendant after he denied involvement in the

crime. Cauthen ignores the additional facts that, unlike himself, the *Harvey* defendant presented evidence that he had an IQ of 78 and he was never informed that he was not under arrest. *Harvey*, 78 N.C. App. at 238, 336 S.E.2d at 860.

Cauthen also cites *Buchanan I*, *supra*, for the proposition that since he was escorted to the restroom by an officer his interaction at the police station became custodial. In *Buchanan I*, however, the defendant initially was allowed to go to the restroom at the police station unaccompanied. *Buchanan I*, 353 N.C. at 334, 543 S.E.2d at 824. Later, after implicating himself in the crime under investigation but prior to being placed under arrest, he was escorted to the restroom by officers. *Buchanan I*, 353 N.C. at 334-35, 543 S.E.2d at 824-25. However, the holding in *Buchanan I* was that the trial court applied the incorrect legal standard in determining that the defendant was in custody for purposes of *Miranda* warnings at the time of his questioning and the case was remanded to the trial court. *Id.* at 342, 543 S.E.2d at 829-30. On remand, the trial court made additional findings of fact and applied the proper test in determining the issue of whether the defendant was in custody. *State v. Buchanan*, 355 N.C. 264, 559 S.E.2d 785 (2002)("*Buchanan II*"). After applying the correct legal standard, the trial court determined that, by accompanying defendant to the restroom the second time, circumstances were created that would lead a reasonable person in the defendant's position to believe he was in custody as it "restrained [ ] his

movement to the degree associated with a formal arrest[.]" *Id.* (quoting *Buchanan I*, 353 N.C. at 340, 543 S.E.2d at 828).

In the instant case, Cauthen never was allowed to go to the restroom unaccompanied and accordingly being escorted by an officer to the restroom did not constitute any change in circumstances. The mere fact that he was escorted to the restroom by an officer is not sufficient to lead a reasonable person in Cauthen's position to believe he was in custody, particularly in light of his own testimony that the facility "was like a maze." Cauthen testified that he did not know his way out of the facility. A reasonable person, who acknowledges that he was unable to find his way around the building, would not believe he was in custody simply because an officer escorted him to the restroom for the first, and in this case only, time. Accordingly, this assignment of error is overruled.

Cauthen next argues that the trial court erred in determining that the statements he made to the police were voluntary and consequently denying his motion to suppress those statements. In determining whether a statement was made voluntarily, a court must consider the totality of the circumstances surrounding the making of the statement, including the personal characteristics of the defendant and the details of the questioning. *Schneckloth v. Bustamonte*, 412 U.S. 218, 225-26, 36 L. Ed. 2d 854, 862 (1973); *Gaines*, 345 N.C. at 664, 483 S.E.2d at 406.

Some of the factors to be considered include: defendant's mental capacity; whether defendant was in custody at the time of

the statements; and if psychological coercion, threats, physical abuse, or promises were used in the course of the questioning. *Greene*, 332 N.C. at 579, 422 S.E.2d at 738. Another important factor in determining whether a statement was made voluntarily is the defendant's prior experience with the criminal justice system. *State v. Fincher*, 309 N.C. 1, 20, 305 S.E.2d 685, 697 (1983).

A trial court's findings of fact made after conducting a hearing regarding whether a defendant's statements were made voluntarily are binding on appeal if supported by competent evidence even if the evidence is conflicting. *State v. Jackson*, 308 N.C. 549, 569, 304 S.E.2d 134, 145 (1983). In the instant case, Cauthen does not challenge the sufficiency of the evidence supporting the trial court's findings of fact after conducting the hearing on his motion to suppress. Instead, Cauthen merely highlights the conflicts in the evidence. A review of the record demonstrates that the trial court's findings of fact are supported by competent evidence.

We must now determine whether the trial court's findings of fact support its conclusion that Cauthen's statements were voluntary. In the instant case, the trial court found as fact that Cauthen was asked to go to the police station for questioning, told he did not have to go, told the officers did not have a warrant for his arrest and that he was not under arrest, and told that if he did go he would be free to leave at any time. The trial court further found as fact that Cauthen voluntarily went with the officers after hearing Banner refuse to go and knowing that Banner

did not go, that Cauthen was not handcuffed, that none of the doors at the police station through which he was taken required a key to open, and that he was told again that he was not under arrest. The trial court also found that defendant had been arrested three or four times previously and had been handcuffed on several of those occasions, that he never asked to go home, that no promises or threats were made by the officers during his questioning, and that none of his questioning lasted more than an hour or an hour and a half at a time. Based upon these conclusive findings of fact, we hold that Cauthen's statements were voluntarily made. This assignment of error is overruled.

Finally, Cauthen argues that the trial court committed structural error in questioning Dr. Jason about the victim's cause of death. In his assignment of error regarding the questioning of Dr. Jason by the trial court, Cauthen contends that it amounted to structural error and, accordingly, did not require objection at trial to preserve the error for appellate review. Structural error is an error which affects the very framework of the trial rather than the process of the trial. *Arizona v. Fulminante*, 499 U.S. 279, 310, 113 L. Ed. 2d 302, 311 (1991).

Cauthen argues that the trial court's questioning of Dr. Jason constituted an expression of opinion by the court regarding the evidence which was prejudicial to him. Such an expression constitutes structural error as it is highly unlikely that jurors can disregard the impression that the trial court holds such a prejudicial opinion in reaching a verdict. *State v. Canipe*, 240

N.C. 60, 66, 81 S.E.2d 173, 177-78 (1954). In the instant case, however, the trial court's questions of the witness were permissible and did not indicate an opinion regarding the evidence, but merely served to clarify Dr. Jason's testimony.

North Carolina General Statutes, section 8C-1, Rule 614(b) specifically provides that a trial court may interrogate witnesses to clarify the testimony of that witness. Such questioning does not amount to an impermissible expression of the trial court's opinion regarding the guilt or innocence of the defendant. *State v. Davis*, 294 N.C. 397, 402, 241 S.E.2d 656, 659 (1978). In the case *sub judice*, the trial court asked Dr. Jason an open-ended question regarding his opinion of what caused the victim's arrhythmia - a question which did not suggest any answer. The court's questioning of Dr. Jason did not indicate an impermissible opinion regarding defendants' guilt or innocence. Accordingly, this assignment of error is overruled.

No error.

Judges WYNN and HUNTER concur.

Report per Rule 30(e).