NO. COA06-874

NORTH CAROLINA COURT OF APPEALS

Filed: 3 April 2007

STATE OF NORTH CAROLINA

v. Washington County
No. 04 CRS 50240

SHERRI JONES ANTHONY

Appeal by defendant from judgment entered 25 January 2006 by Judge Milton F. Fitch, Jr. in Washington County Superior Court. Heard in the Court of Appeals 7 March 2007.

Attorney General Roy Cooper, by Special Deputy Attorney General, Fred Lamar, for the State.

Cheshire, Parker, Schneider, Bryan & Vitale, by John Keating Wiles, for defendant.

LEVINSON, Judge.

Sherri Jones Anthony (defendant) was indicted 23 August 2004 for second degree murder arising from the death of Antonia Wrighton (Wrighton). She appeals judgment entered upon her conviction for voluntary manslaughter. We find no error.

The pertinent facts may be summarized as follows: Brandi Barnes, defendant's upstairs neighbor, testified that she was awoken by the sound of an argument emanating from defendant's apartment during the evening of 6 April 2004. Barnes went outside and observed through the open door of defendant's apartment that

defendant was "fussing at [Wrighton] and hitting him on the head." Barnes further testified that Wrighton, defendant's boyfriend, was "bent down, covering up his face and walking away." Additionally, she overheard defendant tell Wrighton, "one of us is going to die today" and "I'm going to kill you." Barnes went to look for defendant's cousin, Shameka Williams, across the street, in hopes that she would calm defendant. However, before Barnes contacted Williams, she observed defendant in the parking lot, and noticed that she "looked normal with no markings on her face or body." Barnes inquired as to the whereabouts of Wrighton, and defendant replied, "I stabbed the b[----]." Barnes went to Wrighton, who was across the driveway in the parking lot lying down on his stomach and "going in and out." After lifting up his shirt, Barnes noticed a one to two inch wound on Wrighton's chest. Barnes testified that Wrighton stated, "I can't believe she did this s[---]." Ebony Lacy lived directly above defendant's apartment. Lacy observed defendant and Wrighton enter the apartment complex earlier in the day. She later overheard doors being slammed and objects being thrown against the wall.

Defendant testified. She argued with Wrighton in her apartment during the evening of 6 April 2004 approximately ten minutes after they arrived in her apartment. Wrighton began "fussing a lot" at her and accused her of "cheatin[g] on [him]." "[Wrighton] hit me, and I rocked back [and] he hit me again" and my glasses broke. In a later statement to police, defendant stated that Wrighton was "beating her like a man." After Wrighton pushed

her over a piece of furniture, he went into the kitchen, retrieved a knife and attempted to stab her. She fell to the ground and saw Wrighton "coming straight at [her] like he was going to stab [her]." She attempted to "[hold] him, trying to keep him off of [her]." The knife fell to the ground and it was at this juncture that defendant grabbed the knife and "stabbed [Wrighton] once."

Officers Lewis Hellickson, Brandon Wynne, and Corporal John Sawyer of the Plymouth Police Department responded to a domestic disturbance call at the apartment complex at approximately 6:20 p.m. Hellickson observed people gathering around Wrighton. Hellickson later located defendant across the parking lot and asked her what happened, defendant stated that Wrighton "was beating her like a man and she stabbed him to get him off of her." When asked where the knife was, defendant responded that it was "in the house, [she] guess[ed]." Wynne and Sawyer retrieved an "average" kitchen knife in defendant's apartment near sliding glass doors. Hellickson did not see any noticeable marks, abrasions or bruises on defendant's face.

Captain Willie Williams of the Plymouth Police Department testified as a rebuttal witness for the State. Williams testified that he had known Wrighton for several years and was "familiar with [his] reputation in the community specifically for peacefulness." Williams testified that Wrighton "had a good reputation [in the community]." In addition, Williams testified that, in his opinion, Wrighton "was a peaceful person."

A jury convicted defendant of voluntary manslaughter. Defendant appeals.

Defendant first contends that the trial court erred by declining to give his requested special instructions to the jury. We disagree.

Defendant requested the following instructions:

> It is a defense theory that the prosecution's investigation of this case was negligent, purposefully distorted and/or not done in good faith. For example, there has been testimony about the collection, preservation, and analysis of certain items of evidence.
>
> You are to assess the credibility of the evidence in light of this evidence, together with all of the other evidence.
>
> Investigation which is thorough and conducted in good faith may be more credible, while an investigation which is incomplete, negligent, or in bad faith, may be found to have lesser value, or no value at all.
>
> In deciding the credibility of the witnesses and the weight of [sic] to give the prosecution evidence, you may consider whether the investigation was negligent and/or conducted in bad faith.
>
> Inadequate or incomplete investigation by the prosecution may support an inference adverse to the prosecution which may be sufficient to leave you with a reasonable doubt as to the defendant's guilt.

Defendant asserts that because the instructions provided a correct statement of the law and were supported by the evidence, the trial court was required to charge the jury in accordance with these instructions.

"A defendant must object to the jury charge before the jury retires to consider its verdict in order to preserve for appeal an issue regarding jury instructions." *State v. Withers*, __ N.C. App. __, __, 633 S.E.2d 863, 868 (2006) (applying N.C.R. App. P. 10(b)(2)). Because defendant failed to properly preserve this issue for appeal by not objecting to the trial court's denial of the requested instructions, we review for plain error. *See State v. Wolfe*, 157 N.C. App. 22, 33, 577 S.E.2d 655, 663 (2003) (plain error review available for errors in the admission of evidence and jury instructions).

To establish plain error, a defendant must demonstrate "(i) that a different result probably would have been reached but for the error or (ii) that the error was so fundamental as to result in a miscarriage of justice or denial of a fair trial." *State v. Bishop*, 346 N.C. 365, 385, 488 S.E.2d 769, 779 (1997) (citations omitted). We "'must examine the entire record and determine if the . . . error had a probable impact on the jury's finding of guilt.'" *State v. Pullen*, 163 N.C. App. 696, 701, 594 S.E.2d 248, 252 (2004) (quoting *State v. Odom*, 307 N.C. 655, 661, 300 S.E.2d 375, 379 (1983)).

> A request for special instructions to a jury must be: "(1) In writing, (2) Entitled in the cause, and (3) Signed by counsel submitting them." N.C. Gen. Stat. § 1-181(a) (2005). "Where a requested instruction is not submitted in writing and signed pursuant to [N.C.] G.S. [§] 1-181, it is within the discretion of the [trial] court to give or refuse such instruction." *State v. Harris*, 67 N.C. App. 97, 102, 312 S.E.2d 541, 544 (1984). . . . It is well settled that "'if a request be made for a special instruction, which is

> correct in itself and supported by evidence, the court must give the instruction at least in substance.'" *State v. Lamb*, 321 N.C. 633, 644, 365 S.E.2d 600, 605-06 (1988)(quoting *State v. Hooker*, 243 N.C. 429, 431, 90 S.E.2d 690, 691 (1956)).

State v. Mewborn, __ N.C. App. __, __, 631 S.E.2d 224, 231, *disc. review denied*, __ N.C. __, 637 S.E.2d 187 (2006).

In the present case, even assuming *arguendo* that the trial court erred by not instructing the jury based upon the defendant's two requested instructions, its ruling cannot be said to have amounted to an error that was so fundamental as to result in a miscarriage of justice, or that it had a probable impact on the jury's finding of guilt. Here, there is substantial record evidence tending to establish defendant's guilt. Barnes testified that she overheard defendant say to Wrighton that "one of us is going to die today" and "I'm going to kill you." Barnes also testified that when she asked defendant about Wrighton, defendant replied, "I stabbed the b[----]." Defendant testified that while she was on the ground with Wrighton, she grabbed the knife and "stabbed [Wrighton] once." Moreover, we observe that the jury was essentially instructed to consider the gravamen of what the requested instructions addressed, the thoroughness of the law enforcement investigation. The trial court provided Patten Jury Instructions for Burden of Proof and Reasonable Doubt, 101.10; Credibility of Witness, 101.15; Weight of the Evidence, 101.20; and Testimony of Interested Witness, 104.20. Furthermore, defense counsel's examination of police officers questioned the completeness of the law enforcement investigation. And there is no

assertion on appeal that counsel was prohibited from making closing arguments that the investigation was incomplete or not thorough, and that this should be considered in their deliberations in deciding what occurred. We conclude that the trial court's decision to deny defendant's requested jury instructions would not have impacted the outcome of the trial and did not constitute plain error. This assignment of error is overruled.

Defendant next argues that the trial court erred by permitting Captain Williams to testify as a character witness for Wrighton. With respect to this argument, however, defendant has failed to comply with N.C.R. App. P. 10(c)(1):

> [e]ach assignment of error shall, so far as practicable, be confined to a single issue of law; and shall state plainly, concisely and without argumentation the legal basis upon which error is assigned. An assignment of error is sufficient if it directs the attention of the appellate court to the particular error about which the question is made[.] . . .

"'Rule 10 allows our appellate courts to fairly and expeditiously review the assignments of error without making a voyage of discovery through the record in order to determine the legal questions involved.'" *Walker v. Walker*, 174 N.C. App. 778, 780, 624 S.E.2d 639, 640-41 (2005) (quoting *Rogers v. Colpitts*, 129 N.C. App. 421, 422, 499 S.E.2d 789, 790 (1998)), *disc. review denied*, 360 N.C. 491, 632 S.E.2d 774 (2006) (internal quotation marks omitted). "Our courts have been clear to articulate that absent a specific legal basis, an assignment of error is deemed abandoned. The legal basis need not be particularly polished; it

need only put the appellee and this Court on notice of the legal issues that will be contested on appeal." *Collins v. St. George Physical Therapy*, 141 N.C. App. 82, 89, 539 S.E.2d 356, 361-62 (2000) (citations omitted). "[A]ssignments of error [that are]. . . broad, vague, and unspecific . . . do not comply with the North Carolina Rules of Appellate Procedure[.]" *In re Appeal of Lane Co.*, 153 N.C. App. 119, 123, 571 S.E.2d 224, 226-27 (2002).

In the instant case, defendant assigned as error the following:

> The court erred when it overruled the Defendant's objection to the State's question to Captain Williams about whether he was familiar with Tony Wrighton's reputation in the community.

This assignment of error fails to articulate a particular rationale for why the trial court's actions were in error. Although we deem this assignment of error abandoned, we nonetheless observe that defendant's argument must fail. Defendant's central argument is not that Williams' testimony violated certain rules of evidence, but that Williams should not have been permitted to give testimony about Wrighton's reputation for peacefulness because it presented a "conflict of interest" for him. Defendant reasons that, because Williams was a law enforcement officer who is responsible for the impartial execution of investigative duties, he should not have been permitted to provide his "subjective" opinion about an individual's reputation. The trial court, according to defendant, should have required the State to find a lay witness other than a law enforcement officer to testify about Wrighton's

reputation for peacefulness. Defendant cites only *Coley v. Garris*, 87 N.C. App. 493, 361 S.E.2d 427 (1987), and *Tyndall v. Harvey C. Hines Co.*, 226 N.C. 620, 39 S.E.2d 828 (1946), civil cases concerning law enforcement officers' testimony about the speed of vehicles when they did not observe the vehicles moving, for this argument. *See* N.C. Gen. Stat. § 8C-1, Rule 701 (2005)("Opinion testimony by lay witness"). No fair reading of these authorities supports defendant's essential argument that Williams' opinion testimony was not proper, and these authorities do not support defendant's novel argument that a "conflict of interest" makes otherwise admissible testimony inadmissible.

No error.

Judges McCULLOUGH and BRYANT concur.

Report per Rule 30(e).