NO. COA07-811

NORTH CAROLINA COURT OF APPEALS

Filed: 6 May 2008

STATE OF NORTH CAROLINA

v. Rutherford County
No. 06 CRS 50421

STEVIE RAY PALMER

Appeal by defendant from judgment entered 25 January 2007 by Judge Laura J. Bridges in Rutherford County Superior Court. Heard in the Court of Appeals 17 March 2008.

Attorney General Roy Cooper, by Assistant Attorney General Derrick C. Mertz, for the State.

Glover & Petersen, P.A., by James R. Glover, for defendant-appellant.

MARTIN, Chief Judge.

Stevie Ray Palmer ("defendant") appeals from a judgment entered upon a jury verdict finding him guilty of the first degree murder of his wife, Christina Palmer ("Christina"), and sentencing him to life in prison without parole. For the following reasons, we find no error.

The State's evidence tended to show the following facts. Defendant and Christina married in 2003 and had two children. On 27 January 2006 the couple separated, and defendant went to stay at the home of his mother, Rosemary Palmer ("Ms. Palmer"). Christina

agreed to meet defendant on 29 January at a wicker shop so that defendant and his two children could spend time together at his mother's house. On Sunday evening, Ms. Palmer drove defendant to the wicker shop, where they picked up the children and returned to Ms. Palmer's house.

The next morning, Ms. Palmer drove defendant and his two children to the Cane Creek Community Building in Morganton to return the children to Christina. Christina was sitting in her van when they arrived. Defendant buckled the children in their safety seats in the back seat of the van, and then sat in the passenger seat. Defendant spoke with Christina until she exited the van and called to Ms. Palmer. Defendant also exited the van. Ms. Palmer testified that she stated, "Stevie, leave that poor girl alone. Come on. Let's go." Defendant grabbed Christina and hugged her. Ms. Palmer then saw defendant with a butcher knife which she recognized as a knife she kept by her back door. Ms. Palmer called 911 and told the dispatcher "to send some police officers because my son [is] stabbing his wife."

Corporal Chad Murray of the Rutherford County Sheriff's Department arrived at the scene, and saw defendant standing approximately three to five feet from Christina, who was lying face down on the ground. Corporal Murray ordered defendant to turn around and get on his knees. Defendant eventually complied and was handcuffed. Corporal Murray asked defendant where the knife was located. Defendant replied, "I broke the knife off in her and the handle is laying on the ground." Christina died at the scene. An

autopsy revealed that she received multiple stab wounds including two to the right side of her abdomen which penetrated the liver, and another stab wound which went through the side of her chest.

Defendant was transported to the Sheriff's Department. After being advised of his *Miranda* rights, defendant stated to police that he thought Christina was having an affair; that before leaving his mother's house to meet Christina in Morganton, he took a black-handled butcher knife and put it under his shirt; that he just wanted to talk with Christina in the van; and that when Christina got out of the van and asked his mother to call the police, he "got frustrated and pulled the knife out. I guess that's when I stabbed her. We were facing each other and I made her fall. She was on the ground when I stabbed her."

At trial, defendant testified that he took the butcher knife from his mother's kitchen to scare Christina and that he did not plan to kill her. Defendant testified that he remembered pulling out the knife, but did not remember stabbing Christina.

In defendant's sole argument on appeal, he contends the trial court erred by admitting certain testimony of Investigator Kelly Aldridge, the crime scene investigator who collected evidence and took photographs of the crime scene. Defendant first objects to the following testimony elicited from Investigator Aldridge after he identified two black flip-flop sandals in a crime scene photograph:

> Q. So both are shoes - - both are Christina Palmer's shoes that had been at some point either kicked off or dragged off her body?
>
> A. That's correct.
>
> MR. SPARROW: Objection to the form of the question.
>
> THE COURT: Overruled.

Defendant also objects to the following testimony by Investigator Aldridge regarding photographs of the victim's body and her clothing:

> Q. And could you tell or did you notice during your examination of whether the cuts in the clothing corresponded with where the wounds were in the body?
>
> A. They did not correspond with the wounds in the body. The markings on the clothing were on the shoulder area. The wounds on Ms. Palmer were in the middle arm area around her biceps and triceps.
>
> Q. And would that be consistent with someone tugging at her and pulling on the clothing with an attempt to hold someone back?
>
> A. It would be consistent.
>
> MR. SPARROW: Objection.
>
> THE COURT: Overruled.

Defendant argues that such "opinions and inferences" require expert testimony and that he is entitled to a new trial. We disagree.

The North Carolina Rules of Evidence provide that lay opinion testimony is admissible if the opinion or inferences are "(a) rationally based on the perception of the witness and (b) helpful to a clear understanding of his testimony or the determination of a fact in issue." N.C. Gen. Stat. § 8C-1, Rule 701 (2007). The

conclusion drawn by a lay witness based upon a mere visual comparison may be an appropriate subject of lay opinion testimony. *State v. Mewborn*, 131 N.C. App. 495, 499, 507 S.E.2d 906, 909-10 (1998); *see also State v. Shaw*, 322 N.C. 797, 809, 370 S.E.2d 546, 552-53 (1988) (holding that "no specialized expertise or training is required for one to determine that two shoes share wear patterns. Such a determination may be made by merely observing each pair"); 2 Kenneth S. Broun, *Brandis and Broun on North Carolina Evidence* § 181, at 23-24 (6th ed. 2004) ("A lay witness may give his opinion as to the identity of a person or object he has seen, and his lack of positiveness affects only the weight, not the admissibility of his testimony. Footprints, tire tracks, or a voice heard on the telephone or otherwise, may be similarly identified.").

Here, Investigator Aldridge's testimony consisted of his observations of the crime scene that were based on his personal perception of the physical state of Christina's body, her shoes, and her clothing. His testimony regarding Christina's wounds involved a conclusion based on a visual comparison between the wounds and the cuts in her clothing, not an analysis or inference that would typically be made by an expert. The testimony was helpful to the jury in understanding the facts surrounding the crime, and afforded the jury an opportunity to weigh his observations of the crime scene against other evidence of the victim's wounds. Thus, the trial court properly allowed Investigator Aldridge's testimony.

Assuming *arguendo* that the admission of such testimony was erroneous, defendant would not have been prejudiced by the error and is thus not entitled to a new trial. "The erroneous admission of evidence requires a new trial only when the error is prejudicial." *State v. Chavis*, 141 N.C. App. 553, 566, 540 S.E.2d 404, 414 (2000). "An error is not prejudicial unless a different result would have been reached at the trial if the error in question had not been committed." *State v. Smith*, 87 N.C. App. 217, 222, 360 S.E.2d 495, 498 (1987). Defendant has not shown that there is any reasonable possibility that the outcome of the trial would have been different had the testimony not been allowed. On the contrary, the evidence of defendant's guilt was overwhelming. Any error concerning the admission of Investigator Aldridge's testimony would have been harmless.

No error.

Judges CALABRIA and GEER concur.

Report per Rule 30(e).