NO. COA09-848

NORTH CAROLINA COURT OF APPEALS

Filed: 6 July 2010

STATE OF NORTH CAROLINA

v. Alexander County
No. 06 CRS 051263

BRENDA FAYE STIKELEATHER

Appeal by defendant from judgment entered 9 April 2008 by Judge Kimberly S. Taylor in Alexander County Superior Court. Heard in the Court of Appeals 27 January 2010.

Attorney General Roy Cooper, by Special Deputy Attorney General Jill Ledford Cheek, for the State.

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

ELMORE, Judge.

On 22 May 2006, Fielding "Buster" Stikeleather was killed in the basement of his home. At 10:35 p.m., Brenda "Faye" Stikeleather (defendant), Buster's wife, called 911. She informed the 911 operator that Buster had gone to the basement with an unidentified black man and had taken her gun with him to defend himself. She told the operator that she had heard a struggle, followed by three gunshots. She contends that she called 911 immediately after hearing the alleged struggle and gunshots. It is uncontested that defendant remained on the line with the 911

dispatcher until the first responders arrived thirteen to twenty minutes after the call was made.

Sergeant Randall Pearson was one of the first responding officers. During a voir dire hearing, he testified that he had decades of experience with similar crime scenes and he had seen dozens of deceased victims who had been shot or stabbed. After hearing this information, the trial court did not permit Pearson to testify as an expert but did allow him to give his lay opinion on how long the victim had been dead. The court limited his opinion to a statement that Buster had been dead longer than twenty minutes when Pearson found him at the scene. At trial, Pearson testified that when he checked for a pulse on the victim's wrist and the neck, the victim's skin was "surprisingly" cool to the touch. He testified that it took ten to fifteen seconds for him to feel the victim's body heat at both points. He also testified that he had observed that the blood pool on the floor had started to thicken and had turned dark burgundy in color. All of these factors led him to the opinion that Buster had been dead for a period longer than twenty minutes. Jonathan Paul Goodnight, a paramedic among the first responders, also testified with the opinion that Buster had been dead longer than twenty minutes, based on similar observations. Defendant's appeal arises from the Pearson and Goodnight testimony.

Evidence at trial showed a deteriorating marriage between Buster and Faye. Buster complained that Faye would never stay home with him, but when she went out, she would not go out with him.

Evidence also showed he disapproved of her friends, especially Dreama Armstrong, who had been living in one of Buster's properties. He also disapproved of Faye's behavior and spending habits. Buster told a friend privately that he believed Faye had a boyfriend and was not being faithful. He also told several people that he was going to divorce Faye. Testimony also showed that Buster appeared to be afraid of what Faye might do to him. Less than a week before the murder, Faye was at a party giving lap dances to young men. Witnesses in attendance testified that Faye stated that she wished Buster dead and wanted a younger man. Earlier that same day, Buster revoked her power of attorney over him. Two days later, Buster closed their joint bank accounts, though Faye had learned of his intention and tried to rush to the bank before him. Buster, after closing the accounts, told a friend that he had more changes planned, including removing Dreama from his rental property so that he could begin living in it. That night, Buster was found shot three times and had multiple stab wounds in his chest. Expert testimony revealed that the three bullets could have been discharged from Faye's gun, which police never recovered.

On 22 April 2008, a jury convicted defendant of first degree murder and sentenced her to life imprisonment without parole. Defendant now appeals. Defendant argues that the trial court erred by allowing Pearson and Goodnight to offer lay opinions that the victim was dead longer than twenty minutes when they found him.

The court heard about Pearson's experience and observations at the scene during a voir dire hearing. The court did not allow Pearson to testify as an expert, but it did allow Pearson to testify under Rule 701. *See* N.C. Gen. Stat. § 8C-1, Rule 701 (2009) (limiting lay opinions "to those opinions or inferences which 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"). Pearson testified about his observations and perceptions at the scene: the victim's body was cool to the touch and the blood pool had begun to thicken and turn darker. Based on these observations, Pearson offered the opinion that the victim had been dead longer than twenty minutes. We review the trial court's admission of lay testimony for an abuse of discretion. *State v. Washington*, 141 N.C. App. 354, 362, 540 S.E.2d 388, 395 (2000).

Defendant argues that Pearson's testimony was based upon an unreliable method of proof, which was not sufficiently reliable enough for expert testimony, and therefore was not admissible as lay opinion. She points to our Supreme Court's decisions in *State v. Llamas-Hernandez* and *State v. Davis*, which specified instances in which lay testimony is not appropriate. In *Llamas-Hernandez*, the Supreme Court held that a police officer could not testify that a white powder was cocaine based only on his visual examination. *State v. Llamas-Hernandez*, 363 N.C. 8, 8, 673 S.E.2d 658, 658 (2009) (adopting the dissent of Judge Steelman in 189 N.C. App. 640, 659 S.E.2d 79 (2008)). In *Davis*, a jail nurse could not offer

a lay opinion that the defendant was "psychotic" based upon his personal observations. *State v. Davis*, 349 N.C. 1, 30, 506 S.E.2d 455, 471 (1998). Neither case is on point here. Both cases involve scientific questions that require an opinion supported by scientific methodology, such as chemical analysis of a controlled substance and a medical diagnosis. Generally, time of death may be established by expert testimony. *See, e.g.*, *State v. Israel*, 353 N.C. 211, 214, 539 S.E.2d 633, 635 (2000) (admitting expert testimony by a forensic experts as to the victim's time of death). The Supreme Court has even allowed police officers to testify as to time of death, explaining that our evidence rules do not limit such testimony to be "licensed or a specialist in the field in which he testifies." *State v. Steelmon*, 177 N.C. App. 127, 131, 627 S.E.2d 492, 495 (2006). However, Pearson did not testify about time of death; he only testified that he believed that the victim had been dead for longer than twenty minutes. This testimony was based on Pearson's rational perceptions, which were informed by his prior experience with shooting and stabbing victims. *See State v. Kandies,* 342 N.C. 419, 444-45, 467 S.E.2d 67, 81 (permitting a police officer who "testified that he held a part-time job doing car repair and body shop work" to offer a lay opinion that spots in the defendant's vehicle were red oxide primer and not blood); *Insurance Co. v. Chantos*, 298 N.C. 246, 250, 258 S.E.2d 334, 336 (1979) ("[A] person of ordinary intelligence and experience is competent to state his opinion as to the speed of a vehicle when he has had a reasonable opportunity to observe the vehicle and judge

its speed."). Just as "[t]he opportunity of a witness to judge the speed of a vehicle under the circumstances of the case generally goes to the weight of his or her testimony rather than to its admissibility," *State v. Grice*, 131 N.C. App. 48, 56, 505 S.E.2d 166, 171 (1998) (citation omitted), Pearson's ability to judge whether the victim had been dead for longer than twenty minutes goes to the weight of his testimony rather than his admissibility.

In addition, this opinion was "helpful to . . . the determination of a fact in issue." N.C. Gen. Stat. § 8C-1, Rule 701 (2009). Whether defendant made the 911 call immediately after the victim's death was a critical fact for the jury to determine; the State's theory was that defendant had killed the victim, then hidden the gun and changed her clothes, and then called 911. The factual scenario argued by the State would have been impossible if the victim had died immediately before defendant initiated the 911 call. Accordingly, we hold that the trial court did not abuse its discretion by allowing Pearson's lay opinion.

The defendant also argues that the trial court erred by allowing paramedic Goodnight's lay opinion that the victim had been dead longer than twenty minutes before his arrival. Goodnight testified the day after Pearson testified, with one witness testifying between them. During direct examination by the State, Goodnight testified about receiving the notification of a possible shooting from the dispatcher, driving to the scene, being informed by Sergeant Pearson upon his arrival that the victim appeared to be dead, conducting medical tests to confirm the victim's death, and

his observations of the victim's physical condition. Goodnight testified that he had made the following written observations about the victim's skin: "Cool, pale, and dry." He also testified that he had observed a "large pool of blood" around the victim. During direct examination, the State did not ask Goodnight about time of death, nor did Goodnight make any reference to it.

During cross-examination, defense counsel asked multiple questions about time of death:

> Q. [Y]ou can't determine a time of death by the time — by the fact that there's a flat line on the tool that you use to measure his heart either, can you?
>
> A. No.
>
> Q. That happens at different rates in different people?
>
> A. Absolutely.
>
> Q. And again, I could fall over from a heart attack mid-sentence and could run over here and put that thing on me, and I could have a flat line, could have exactly the same reading as you found on Mr. Stikeleather that night?
>
> A. Yes.
>
> Q. And the fact that the skin is cool, that's not an indication of the time of death, is it?
>
> A. It can be, but there's very few precise ways to estimate time of death.
>
> Q. It wasn't unusual to you that his skin was cool.
>
> A. No, nothing that stood out in my mind that his skin was cool.
>
> Q. And so nothing stood out in your mind with the congealing of his blood in relation to the time of the call?

A. No.

Q. Blood can congeal at different rates for many different reasons?

A. Yes.

Q. How many —

[Prosecutor]: Well, objection. If no observations were noted, then no reason to explore it.

THE COURT: Overruled.

Q. How many dead or dying or injured people would you say you have seen in your career as an EMS technician or paramedic?

A. Hundreds.

Q. Have you had occasions where you've seen blood congealing?

A. Yes.

Q. Have you had occasion where people are standing there with their arm cut holding onto their arm and the blood is congealing on the ground at their feet while you are talking to them?

A. Yes.

Q. The color of the blood, anything unusual about that to you in relation to the time of the call?

A. No.

Q. Is there anything you could — can blood be different colors for a lot of different reasons?

A. Yes.

On redirect, the following colloquy ensued:

Q. Mr. Goodnight, it was approximately 19 minutes from the time that this incident was reported to Alexander County EMS until you were at Mr. Stikeleather and having an

> opportunity to observe him and evaluate him; is that correct?
>
> A. Yes, that's correct.
>
> Q. And as you were there observing Mr. Stikeleather, based on the hundreds of experiences that [defense counsel] just talked to you about, did you form any opinion as to whether or not Mr. Stikeleather had been dead longer than the 19 minutes it had taken you to get there? At this point just a yes or no question. Whether or not you formed any opinion?
>
> A. At that time?
>
> Q. At that time or since.
>
> A. At that time, no. Since, yes.
>
> Q. And what is that opinion?
>
> [Defense counsel]: I would object to that.
>
> THE COURT: Overruled.
>
> Q. Go ahead.
>
> A. The current opinion is most likely it was longer than 20 minutes, but we hadn't talked about the factor that led to that decision.
>
> Q. And you haven't broken that down with any precision?
>
> A. No.
>
> Q. You are not trying to give an exact opinion or anything like that?
>
> A. No.

Defendant argues that Goodnight's testimony was inadmissible under Rule 701 because his opinion was "not based on his 'rational perception' of what he saw at the scene. His opinion was formed much later[.]"

> [T]he law wisely permits evidence not otherwise admissible to be offered to explain or rebut evidence elicited by the defendant himself. Where one party introduces evidence as to a particular fact or transaction, the other party is entitled to introduce evidence in explanation or rebuttal thereof, even though such latter evidence would be incompetent or irrelevant had it been offered initially.

State v. Albert, 303 N.C. 173, 177, 277 S.E.2d 439, 441 (1981) (citations omitted). Here, defense counsel "opened the door" to Goodnight's opinion about time of death by pursuing a line of questioning about whether any of Goodnight's observations were determinative of time of death. Goodnight was asked no questions about time of death on direct examination, and he offered no comments about time of death until cross-examination. By asking Goodnight on redirect whether he had formed any opinion about how long the victim had been dead when Goodnight examined him, the State was continuing the line of questioning initiated by the defense during cross-examined. Accordingly, we hold that defendant invited Goodnight's testimony as to the length of time that the victim had been dead, and the trial court did not abuse its discretion by admitting the testimony.

For the foregoing reasons, we hold that defendant received a trial free from error.

No error.

Judges BRYANT and STROUD concur.

Report per Rule 30(e).