

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-1164

Filed: 15 October 2019

Pasquotank County, No. 16CRS050016

STATE OF NORTH CAROLINA

v.

HAROLD CLYDE GRIFFIN, JR.

Appeal by Defendant from judgment entered 29 March 2018 by Judge Wayland J. Sermons, Jr., in Pasquotank County Superior Court. Heard in the Court of Appeals 9 May 2019.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Adren L. Harris, for the State-Appellee.

Leslie Rawls for Defendant-Appellant.

COLLINS, Judge.

Defendant appeals from judgment entered upon a jury's verdict finding him guilty of first-degree murder. Defendant contends the trial court plainly erred by admitting the expert opinion testimony of a forensic firearms examiner because the opinion testimony did not satisfy the standards for expert opinion under the North Carolina Rule of Evidence 702, *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), and *State v. McGrady*, 368 N.C. 880, 787 S.E.2d 1 (2016). We discern no error.

I. Procedural History

On 11 January 2016, Defendant Harold Clyde Griffin, Jr., was indicted on the charge of first-degree murder for the killing of Timothy Leon Stokley, III. On 26 March 2018, Defendant's case came on for trial upon his not guilty plea. That same day, the jury returned a verdict finding Defendant guilty of first-degree murder. The trial court entered judgment upon the jury's verdict, sentencing Defendant to life in prison without the possibility of parole. From entry of judgment, Defendant gave oral notice of appeal.

II. Factual Background

The evidence presented at trial tended to show the following: On the night of 30 December 2015, several individuals, including Defendant, Jessica Skinner, and Lela Reid, decided to go out partying. The party began at Defendant's home, where they hung out and drank alcohol in Defendant's front yard. Skinner and Reid noticed a "dark-skinned man with dreads" speaking with Defendant; they soon learned that the man was Stokley.

Approximately 20 minutes after introducing Skinner and Reid to Stokley, Defendant asked Skinner to give Stokley a ride home. Skinner sat in the driver's seat of her Trailblazer SUV; Reid sat in the front, passenger-side seat; Defendant sat in the back, passenger-side seat; and Stokley sat in the back, driver-side seat behind Skinner.

At some point, Skinner pulled the Trailblazer off of the road and stopped next to a field. Skinner and Reid had consumed quite a few beers and needed to use the bathroom. Skinner noticed that Defendant and Stokley had both stepped out of the Trailblazer. Skinner had not fully exited the Trailblazer to use the bathroom when she heard three gun shots ring out. Reid heard gun shots, “a thump,” and Stokley’s scream.

Defendant stepped back into the Trailblazer, and sat behind Skinner in the back, driver-side seat. Defendant pressed a gun into Skinner’s side and demanded that she follow his directions. Stokley did not return to the Trailblazer. Defendant instructed Skinner to drive around for a while, and then said to Skinner and Reid, “Instead of one body it will be three.”

Defendant instructed Skinner to drive past the area where Stokley’s body lay, and then demanded that Skinner drive Defendant back to his home. Skinner complied, drove Defendant back to his property, and watched Defendant remove his Army fatigue jacket and walk off into the darkness. Skinner and Reid left Defendant’s property and returned to Skinner’s apartment; neither woman contacted law enforcement.

Just before midnight, Andrea Smith Jones spotted something in the middle of the road, and noticed a pair of shoes sticking out from underneath it. Jones then realized that it was a body lying in the middle of the road. When she arrived home,

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Jones grabbed her husband and the two of them drove back to the scene. When her husband realized that the body was that of a dead human, he called 911.

First responders from the Newland Fire Department and Pasquotank County Sheriff's Office arrived at the scene and found Stokley's body. Upon inspection, the first responders determined that Stokley was unresponsive and had no pulse. Crime scene investigators recovered five cartridge casings from the area around Stokley's body and collected two bullets from Stokley's hair and body.

While the responding officers were still on the scene, dispatch informed them that a suspicious vehicle had been seen leaving the area. Sergeant Steven Judd left the scene and drove around for a short period of time, but did not see a vehicle. As he returned to the scene, Judd watched a vehicle stop at a stop sign on Campground Road and then pull out in front of him; Judd ran the vehicle's tag, which came back as registered to Skinner. Judd did not initiate a traffic stop of Skinner's vehicle, but instead returned to the crime scene.

Around 4 January 2017, Skinner and Reid were contacted by the sheriff's office. Detectives separately interviewed Skinner and Reid, both of whom provided details of the incident during the interview and testified to those details at trial. Based on what detectives learned from Skinner and Reid, the sheriff's office obtained a search warrant for Defendant's home and property on Campground Road. On 5 January 2017, officers executed the search warrant and found a camouflage jacket in

a field on the adjacent property; the jacket was wrapped around a firearm and covered with field brush. At trial, Skinner and Reid both identified the camouflage jacket as belonging to Defendant, and Skinner stated that Defendant “had it on the night of the shooting.” Investigators sent the firearm, bullets, and cartridge casings to the North Carolina State Crime Lab (the “Crime Lab”) to be analyzed.

Elizabeth Fields, an agent in the Firearms Unit at the Crime Lab, was accepted at trial without objection as an expert in forensic firearms examinations and analysis. She testified that based upon her examination of the firearm recovered from the field adjacent to Defendant’s property and the cartridge casings recovered from the crime scene, it was her opinion that the cartridge casings came from the recovered firearm.

III. Discussion

Defendant’s sole argument on appeal is that the trial court erred by admitting Fields’ expert opinion testimony that the cartridge casings found at the crime scene came from the firearm recovered from the field adjacent to Defendant’s property. Defendant specifically argues that Fields’ testimony did not satisfy the reliability standards for expert opinion under Rule of Evidence 702, *Daubert*, and *McGrady*.¹

Defendant acknowledges his failure to object at trial to the admission of Fields’ testimony and, pursuant to N.C. R. App. P. 10(a)(4), specifically argues on appeal that

¹ This State has adopted the *Daubert* standard applicable to expert opinion testimony as recognized in *McGrady*.

the trial court's admission of this testimony constitutes plain error. "Under the plain error rule, defendant must convince this Court not only that there was error, but that absent the error, the jury probably would have reached a different result." *State v. Jordan*, 333 N.C. 431, 440, 426 S.E.2d 692, 697 (1993) (citation omitted).

It is the trial court's role to decide preliminary questions concerning the qualifications of experts to testify or the admissibility of expert testimony. N.C. Gen. Stat. § 8C-1, Rule 104(a) (2018). Rule 702 of the North Carolina Rules of Evidence governs testimony by experts. Pertinent to Defendant's argument, Rule 702 provides as follows:

(a) 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, or otherwise, if all of the following apply:

- (1) The testimony is based upon sufficient facts or data.
- (2) The testimony is the product of reliable principles and methods.
- (3) The witness has applied the principles and methods reliably to the facts of the case.

N.C. Gen. Stat. § 8C-1, Rule 702(a) (2018). Prongs (a)(1), (2), and (3) together constitute the reliability inquiry discussed in *Daubert, General Electric Co. v. Joiner*, 522 U.S. 136 (1997), and *Kumho Tire Co., Ltd. v. Carmichael*, 526 U.S. 137 (1999). *McGrady*, 368 N.C. at 890, 787 S.E.2d at 9. "The primary focus of the inquiry is on

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the reliability of the witness's principles and methodology, not on the conclusions that they generate[.]” *Id.* (internal quotation marks and citations omitted).

In the context of scientific testimony, *Daubert* articulated five factors from a nonexhaustive list that can have a bearing on reliability: (1) “whether a theory or technique . . . can be (and has been) tested”; (2) “whether the theory or technique has been subjected to peer review and publication”; (3) the theory or technique’s “known or potential rate of error”; (4) “the existence and maintenance of standards controlling the technique’s operation”; and (5) whether the theory or technique has achieved “general acceptance” in its field. *Daubert*, 509 U.S. at 593-94. When a trial court considers testimony based on “technical or other specialized knowledge,” N.C. R. Evid. 702(a), it should likewise focus on the reliability of that testimony, *Kumho*, 526 U.S. at 147-49. The trial court should consider the factors articulated in *Daubert* when “they are reasonable measures of the reliability of expert testimony.” *Id.* at 152. Those factors are part of a “flexible” inquiry, *Daubert*, 509 U.S. at 594, so they do not form “a definitive checklist or test,” *id.* at 593. And the trial court is free to consider other factors that may help assess reliability given “the nature of the issue, the expert’s particular expertise, and the subject of his testimony.” *Kumho*, 526 U.S. at 150.

McGrady, 368 N.C. at 890-91, 787 S.E.2d at 9-10.

Trial courts are “afforded wide latitude of discretion when making a determination about the admissibility of expert testimony” under Rule 702. *State v. Bullard*, 312 N.C. 129, 140, 322 S.E.2d 370, 376 (1984). Accordingly, “a trial court’s ruling on the admissibility of expert testimony ‘will not be reversed on appeal absent a showing of abuse of discretion.’” *State v. Godwin*, 369 N.C. 604, 610-11, 800 S.E.2d

47, 51 (2017) (quoting *McGrady*, 368 N.C. at 893, 787 S.E.2d at 11) (other citations omitted).

The entirety of Defendant's substantive argument on appeal is as follows:

In the present case, Fields testified to her opinion that the items recovered from the crime scene were fired from the gun recovered from the property adjacent to [Defendant's] home. The State's evidence, however, does not establish that "(1) the testimony is based upon sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case." [*McGrady*, 368 N.C. at 885, 787 S.E.2d at 6]. She did testify to her training in firearms identification. Nevertheless, her testimony did not establish that she satisfied the requisite prongs for such expert testimony.

When asked about the processes she applied, Fields said when she is assigned a case, she checks the firearm to be sure it's safe and functional. This evidence does not establish that she uses expert knowledge. More importantly, it does not establish that she applied reliable principles and methods to the testing in this case. She then testified that she fired from the gun into a water tank and compared those projectiles with the ones recovered from the scene. Her testimony did not establish that she'd satisfied *Daubert's* three prongs.

. . . . The testimony was insufficient to show that Fields used reliable principles and methods and applied them to the materials here as required by *McGrady* and *Daubert*. She testified in a summary fashion without establishing the scientific community's recognition of the standards applied. Although she testified to her education and training, being well-trained or educated does not alone satisfy the requirements for expert testimony. Therefore, the testimony here was inadmissible, and the trial court erred by admitting it.

Defendant severely misrepresents Fields' opinion testimony by briefly summarizing a few lines of testimony while omitting the bulk of the testimony, and bases his argument on the unsupported and conclusory allegation that the testimony was insufficient to satisfy *Daubert*. Our review of the transcript reveals that Fields' opinion testimony was sufficient to demonstrate the reliability of the principles and methodology she used, *Joiner*, 522 U.S. at 146, and to satisfy the three prongs of the reliability inquiry. *McGrady*, 368 N.C. at 890, 787 S.E.2d at 9.

Fields was accepted by the court, without objection, as an expert in the field of forensic firearms examination based on the following testimony:

[Fields]: I received my Bachelor of Science Degree in biochemistry, cellular and molecular biology from the University of Tennessee. I received my Master of Science Degree in forensic science from the University of New Haven. While completing my Master's I completed a course in firearm evidence analysis, which covered topics including firearm function, ammunition function, and the relation between firearms and ammunition. I then completed in-house training program with the North Carolina State Crime Laboratory. And I completed this in two phases. The first phase covered history of firearms, safety, ammunition, class characteristics, serial number restoration and microscopy. Those allow me to testify in cases involving firearm function, caliber determination, and serial number restoration. I then completed a second phase of training which covered manufacturing and individual characteristics, as well as presentation of evidence. I then completed that training in July of 2017, and that allowed me to complete cases involving forensic firearm identification.

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[State]: [Did] you have the opportunity to actually conduct examinations of firearms and ballistics?

[Fields]: Yes, it was part of my training to do practical exercises.

[State]: Did they test you to see if you were proficient at identifying whether a particular bullet or a cartridge was fired from a particular gun?

[Fields]: Yes.

[State]: Did you have to pass that in order to qualify to do this job?

[Fields]: Yes.

[State]: Was this a practical exam or how did it work?

[Fields]: There was practical exams at the end of every module within the unit. And at the end each phase they had a mock case that I completed, which included a whole trial process, mock trial.

[State]: During your career at the North Carolina Crime Lab, how many examinations of firearms, shell casings and cartridges do you believe you performed?

[Fields]: Thousands.

[State]: And with each one of those cases do you generate a report?

[Fields]: Yes.

[State]: And for each one of those cases what is the policy of the lab as far as any type of peer review?

[Fields]: All of our cases go-- undergo a hundred percent review.

[State]: What does that mean?

[Fields]: It means each examination I do, once I reach my conclusion, another examiner will then examine the same evidence and reach a conclusion to make sure that both of our conclusions are the same.

....

[State]: So is their review independent?

[Fields]: Yes. They will have my notes when they do it but they will examine the evidence on their own.

[State]: So have you ever testified in court before?

[Fields]: Yes.

....

[State]: And were you qualified as an expert in firearms examination?

[Fields]: Yes.

When asked by the State what makes firearms identification possible, Fields testified:

[A]ll firearms are unique during the manufacturing process. The tools used to create the firearms will have random imperfections and irregularities that will then transfer these unique characteristics to the surface of the firearm. It's much like when you use sandpaper, it will change with each use so each firearm will be slightly different in the individual markings that are left on it. And then during the firing process these marks are then transferred from the surface of the firearm to the surface

of the ammunition components Once I receive evidence I can view these individual things under a comparison microscope.

Fields next explained the procedures and methods she used when analyzing the bullets in the instant case:

[Fields]: When I first receive the firearm I will first make sure that it's safe and unloaded and then I will begin a function test.

[State]: And what is a function test?

[Fields]: So a function test involves making sure the firearm functions as it's intended. I will check to make sure that there are (sic) no external damage to the firearm, that all safeties that are present are working correctly. I will check for internal damage. I will check the magazine capacity cycling capabilities and create test fires.

. . . .

[Fields]: Once I checked that the firearm was safe to fire, I selected ammunition components that were similar to those submitted for comparison and then I created the test fires by firing into a water tank.

[State]: Why did you fire into a water tank?

[Fields]: When we need to keep the bullets, firing into a water tank prevents the bullets from being damaged in any way.

. . . .

[State]: So after you do a function test on a weapon like K-1 there, what is your next step in the examination?

[Fields]: After the function test and the test fires are created I will then compare the test fire on the microscope to ensure that the details from the firearm are replicating well. And if I'm able to identify the test fires to each other then I will move on to comparing any questioned evidence that I have.

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[State]: How many times did you fire that particular firearm for test firing?

[Fields]: I believe it was three times. Six times. I created six test fires.

[State]: And you described firing into water, is that correct?

[Fields]: Yes.

....

[State]: And so what is the purpose of you actually doing these test fires and producing these bullets?

[Fields]: Producing the test fires will confirm that the firearm is functioning properly. And also it will allow items to be created to be compared to any evidence item submitted.

....

[Fields]: I examined [the bullet] for any class characteristics. When I first received the item I labeled the packaging and removed the item and cleaned it of any-- if there is any materials on it and then I weighed it, measured it, diameter and engraved it with case number and my initials.

[State]: When you talk about class characteristics, can you explain to the jury what you are referring to there?

[Fields]: The class characteristics are one of the two characteristics we observe in our examination. Class characteristics are a more broad group. They're an indicated restrictive group source and they are determined prior to manufacturing.

[State]: So give me an example of what a class characteristic will be?

[Fields]: With bullets, a class characteristic will be caliber, direction of twist or number of lands and grooves.

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[Fields]: Lands and grooves are what make up the rifling and therefore the direction of twist within the barrel of the firearm and they are just raising the lowered portions that are cut into the barrel that will impart the spin on the bullet.

.....

[Fields]: I determined the caliber to be caliber 38 class, nine millimeter. Also determined there to be six land and groove impressions and a right direction of twist.

[State]: And is that under a microscopic exam?

[Fields]: The direction of twist can be determined visually. The lands and grooves are generally used under a stereoscope and the caliber is determined through a combination of the weight and diameter and design.

[State]: So after you did that portion of the examination, what did you do?

[Fields]: After I completed that portion I then began my comparison to the test items I created.

.....

[Fields]: So when I examine the test fires I will determine which was producing the characteristics the best compared to the characteristics that I might be looking for on the questioned item. Then I would try to locate an alignment between the test item and the questioned item and alignment meaning the lands and grooves would be like in phases rotating together. In this case I focused on T-4 to the T-6 test fires. The T-1 through T-3 had some slippage which means the land and grooves did not engage properly with the bullets when they were fired. So I use a different material to create the next three test fires. I examined the bullet facing to the left and right to determine-- see if the individual characteristics were better

viewed with the lighting from one way or another. And I compared like T-4, 5 and 6 all to Q-6.

.....

Fields next explained the procedures and methods she used when analyzing the cartridge casings in the instant case:

Q. How do you do [examine cartridge casings]?

A. It's similar to the way that I would examine the fired bullets. I will examine the cartridge case for class characteristics, usually the caliber stands on the head stamp which is the face of [. . .] where the primer is located. And its class characteristics will be based on the detail left on its breech face.

.....

[State]: So, ma'am, please explain the process with these shell casings, cartridge casings, on how you did your comparison between your test fires versus the items sent to you by the Sheriff's Department?

[Fields]: The same way that I examined the test fires to each other just like with the bullets. I first check to be sure the details were producing from the firearm and once I determine that they were, I then compared the questioned items to the test fires on the comparison microscope.

[State]: Did you do that for each of the five shell casings that the Sheriff's Department sent you?

[Fields]: Yes.

[State]: And what did you learn based on your examination?

[Fields]: Q-1, 2, 3, 4, and 5 cartridge casings were fired in the K-1 pistol.

[State]: Make sure I understand that correctly. You're saying that those shell casings came out of that gun, they were fired from that gun?

[Fields]: Yes.

[State]: And did you prepare a report regarding your findings in this case?

[Fields]: Yes.

Fields' opinion testimony shows that: (1) she was formally educated and trained in forensic science and in the field of firearms examination; (2) she tested and analyzed the firearm, bullets, and cartridge casings in keeping with the procedures and methods learned during her specialized training in firearms examination; (3) her tests generated data, which she analyzed and used to form an opinion on whether or not the bullets and casings came from the recovered firearm; and (4) the data and conclusion were described in a written report and subsequently peer-reviewed by one of Fields' colleagues in the Firearms Unit. The trial court has the discretion to "use those factors that it believes will best help it determine whether the testimony is reliable," *McGrady*, 368 N.C. at 890, 787 S.E.2d at 9, and these factors support a determination that Fields' opinion testimony was reliable.

During cross-examination, Defendant's counsel asked Fields about the national standards set forth by the Association of Firearm and Tool Mark Examiners ("AFTE"). Fields explained that she and her peers at the Crime Lab all use the same national standard when completing their work, and that the standard comes from the AFTE. Fields explained that, for firearms examinations in general, there is an accepted error rate of one percent, and that she does not yet have an error rate because, based on her proficiency test and her examinations that are reviewed by

another examiner, she has not yet made an error. Fields then testified about various reports and studies conducted on the field of firearms analysis. We note that “[v]igorous cross-examination, presentation of contrary evidence, and careful instruction on the burden of proof are the traditional and appropriate means of attacking . . . admissible evidence.” *Daubert*, 509 U.S. at 596. “These conventional devices, rather than wholesale exclusion . . . are the appropriate safeguards where the basis of scientific testimony meets the standards of Rule 702.” *Id.*

As Fields’ testimony shows that her opinion was the product of reliable principles and methods, and that she reliably applied the principles and methods to the facts of the case, we conclude that the trial court did not abuse its discretion, much less plainly err, in admitting Fields’ expert opinion testimony on forensic firearms examination. *See Godwin*, 369 N.C. at 611, 800 S.E.2d at 51.

IV. Conclusion

For the reasons stated herein, we hold that the trial court did not err by admitting Fields’ expert opinion testimony. Defendant received a fair trial, free of error.

NO ERROR.

Judges DIETZ and MURPHY concur.