

IN THE UTAH COURT OF APPEALS

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State of Utah,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Plaintiff and Appellee,)	Case No. 20060959-CA
)	
v.)	F I L E D
)	(October 18, 2007)
Earl Lee Smith,)	
)	
Defendant and Appellant.)	2007 UT App 343

Third District, West Jordan Department, 051100582
The Honorable Terry L. Christiansen

Attorneys: Patrick V. Lindsay, Provo, and Margaret P. Lindsay,
Orem, for Appellant
Lohra L. Miller, Salt Lake City, and R. Josh Player,
West Jordan, for Appellee

Before Judges Greenwood, Davis, and McHugh.

PER CURIAM:

Defendant Earl Lee Smith appeals his conviction for assault. Defendant asserts that the district court erred when it refused to allow an expert witness to testify regarding Defendant's state of mind. Specifically, Defendant argues that the district court failed to conduct a proper inquiry into the probative value of the expert's testimony.

When addressing the admissibility of expert testimony, "a trial court must determine whether there is a sufficient foundation for the expert's opinion. The trial court is allowed considerable latitude of discretion in the admissibility of expert testimony, and in the absence of a clear showing of abuse, this court will not reverse." State v. Pendergrass, 803 P.2d 1261, 1265 (Utah Ct. App. 1990) (quotations and citations omitted).

In this case, Defendant made no attempt to lay a proper foundation for the introduction of the testimony of his expert witness, a mental health expert. Accordingly, the trial court held that any opinion Defendant's expert witnesses could provide would be too speculative:

The Court: What would the doctor, what is his proffer in terms of what he would say?

. . . .

[Counsel for Defendant:] What [Defendant] wants [the expert] to testify to is [Defendant's] state of mind or probable state of mind when Mr. Guerrero made a statement about his son.

The Court: Isn't that speculation?

[Counsel for Defendant:] Clearly if the [c]ourt rules it's inadmissible.

When the district court focused on the problem of lack of foundation, no further assistance was provided:

The Court: It seems to me that it calls for a substantial amount of speculation. I don't know that it's the type of thing where medical testimony could be anything more than pure speculation unless there's some foundation that hasn't been proffered. At this point I don't see where that would be admissible evidence.

[Counsel for Defendant:] We will excuse the doctor.

Given the lack of foundation for the expert testimony, along with the problems inherent with testimony regarding Defendant's "probable state of mind" at any given time, the district court properly determined that any such testimony would be purely speculative. Accordingly, Defendant has failed to show that the district court abused its discretion when it excluded the expert testimony.

Affirmed.

Pamela T. Greenwood,
Associate Presiding Judge

James Z. Davis, Judge

Carolyn B. McHugh, Judge