STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0030

State of Minnesota,
Respondent,

vs.

Jurez Slaughter,
Appellant.

Filed June 16, 2009
Affirmed
Johnson, Judge

Stevens County District Court
File No. 75-CR-06-411

Lori Swanson, Attorney General, John B. Galus, Assistant Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134; and

Charles C. Glasrud, Stevens County Attorney, 601 1/2 California Avenue, P.O. Box 593, Morris, MN 56267 (for respondent)

Lawrence Hammerling, Chief Appellate Public Defender, Roy G. Spurbeck, Assistant Public Defender, 540 Fairview Avenue North, Suite 300, St. Paul, MN 55104 (for appellant)

Considered and decided by Shumaker, Presiding Judge; Johnson, Judge; and Collins, Judge.*

*Retired judge of the district court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 10.

U N P U B L I S H E D O P I N I O N

JOHNSON, Judge

Jurez Slaughter was convicted of second-degree unintentional felony murder based on evidence that his five-month-old son died of traumatic head injuries that were sustained while he was in Slaughter's care. On appeal, Slaughter argues that the district court denied him his rights to present a complete defense and to a fair trial by limiting the testimony of his expert witness concerning the amount of force necessary to cause the child's head injuries. We conclude that the district court did not err in its evidentiary rulings and, therefore, affirm.

FACTS

In 2006, Slaughter resided in the city of Morris with a woman, M.C., who gave birth in January 2006 to a boy whom they named Paul. On the evening of June 2, 2006, Slaughter and M.C. argued. Later that evening, Slaughter watched Paul and another child belonging to M.C. while M.C. napped. Slaughter woke M.C., saying that something was wrong with Paul. Slaughter then left suddenly, saying that he was taking Paul to the hospital.

When Slaughter arrived at the hospital, Paul was not breathing, and his heart had stopped. Medical personnel were able to revive him, and he was transferred to Children's Hospital in Minneapolis. Doctors at Children's Hospital observed that Paul was unresponsive, that his pupils were dilated, that he had retinal hemorrhages in his eyes, that his soft spot was bulging, and that he was unresponsive to painful stimuli. Through tests, hospital personnel determined that Paul had a skull fracture on his left parietal bone,

that his brain was swelling, and that there was hemorrhaging in his subdural space. Paul died on June 9, 2006.

During Paul's hospitalization, Slaughter gave several different accounts about what had caused Paul's injuries. He initially told nurses in Morris that he found Paul rolled over on top of a horseshoe-shaped pillow, choking. The story about the pillow changed over the course of time. Slaughter later told police that he tripped while carrying Paul, causing Paul to fall from his arms and hit his head on a footstool and then the floor.

The state charged Slaughter with second-degree unintentional felony murder in violation of Minn. Stat. § 609.19, subd. 2(1) (2004), with the underlying felony being assault in violation of Minn. Stat. § 609.221, subd. 1 (2004). Slaughter waived his right to a jury trial, and the district court conducted a bench trial over eight days in August 2007.

At trial, the state called several witnesses who testified both that Paul's injuries were caused by a single impact with violent force and that the injuries could not have been caused by the type of fall that Slaughter described while at the hospital. A pediatric intensive-care physician testified that the force required to cause Paul's injuries would be comparable to the force generated by an adult hitting a baseball with a bat. The same physician testified that if a person of Slaughter's height dropped Paul on a carpeted floor, the fall would not have produced the type of injuries Paul suffered. The medical director of the pediatric intensive care unit at Children's Hospital testified that Paul's injuries resulted from a single impact that involved violent force. A pediatrician testified that, in his medical opinion, Paul's head was struck once against a relatively flat object or

surface, such as a table, door, or wall. The pediatrician agreed with the other physicians that a fall from Slaughter's arms would not have caused Paul's injuries.

Slaughter presented the expert testimony of John Plunkett, M.D., whom the state agreed is an expert in forensic pathology. Dr. Plunkett testified, consistent with Slaughter's statement at the hospital, that Paul's injuries could have been caused by a fall onto the footstool and onto the floor. Dr. Plunkett conceded, however, that Paul's injuries could not be explained by the pillow scenario that Slaughter had initially described.

During his direct examination of Dr. Plunkett, Slaughter's counsel also sought to elicit expert testimony concerning biomechanics, which defense counsel indicated would allow a quantification of the force necessary to cause Paul's injuries. Before Dr. Plunkett provided the substance of his expert testimony, the state moved to preclude him from testifying as an expert in biomechanics. The district court permitted both the defense and the state to conduct voir dire of Dr. Plunkett regarding his qualifications as to biomechanics. Dr. Plunkett testified that biomechanics is "the application of the . . . principles of mechanics . . . to living tissues" and that pathologists use biomechanics to calculate the force and energy necessary to cause injuries or death. Dr. Plunkett testified that he did not have formal training in the subject and that he had taken only high school- and college-level courses in physics. The district court granted the state's motion on the ground that Dr. Plunkett's testimony would not be helpful:

> The basis for expert testimony is to assist the fact-finder in areas where the fact-finder may not have a familiarity. I have taken high school physics and I'm aware of general principles

> in that regard and since there has been no more extensive formal training in that regard, I'm going to find that Dr. Plunkett lacks the foundation to testify or render opinions relating to biomechanics.

Thereafter, on several occasions, the district court sustained the state's objections to questions posed by defense counsel that called for Dr. Plunkett to quantify the force necessary to fracture a skull, the force necessary to cause a subdural hematoma, the minimum impact necessary to cause a subdural hematoma, and the impact necessary to cause injuries such as those sustained by Paul.

In September 2007, the district court issued a 30-page order with its findings of fact, conclusions of law, and order for judgment. The district court found Slaughter guilty of the charged offense. In November 2007, the district court imposed the presumptive guidelines sentence of 144 months of imprisonment. Slaughter appeals.

D E C I S I O N

Slaughter raises only one issue on appeal. He argues that the district court erred by preventing Dr. Plunkett from testifying as an expert in biomechanics. Slaughter contends that the district court's rulings deprived him of his right to present a defense and his right to a fair trial.

Both the United States Constitution and the Minnesota Constitution guarantee criminal defendants the right to present a meaningful defense. U.S. Const. amends. VI, XIV; Minn. Const. art. I, § 7. A defendant in a criminal case nonetheless is required to "establish the relevance and admissibility of the evidence." *State v. Svoboda*, 331 N.W.2d 772, 775 (Minn. 1983). "The admission of expert testimony is within the broad

discretion accorded a trial court, and rulings regarding materiality, foundation, remoteness, relevancy, or the cumulative nature of the evidence may be reversed only if the trial court clearly abused its discretion." *State v. Ritt*, 599 N.W.2d 802, 810 (Minn. 1999) (quotation and citations omitted).

A. Offer of Proof

As an initial matter, we first consider the state's argument that Slaughter failed to properly preserve his argument because he did not make an offer of proof at trial. An appellant may not challenge a ruling excluding evidence unless "the substance of the evidence was made known to the court by offer or was apparent from the context within which questions were asked." Minn. R. Evid. 103(a). In *State v. Harris*, 713 N.W.2d 844 (Minn. 2006), the supreme court declined to review a ruling that excluded expert testimony because the appellant did not make an offer of proof and because the substance of the excluded evidence was not apparent from the record. *Id*. at 848-49. In contrast, in *In re Welfare of M.P.Y.*, 630 N.W.2d 411 (Minn. 2001), the supreme court held that although the appellant had not made an offer of proof, the substance of the excluded evidence was apparent based on statements made by appellant's attorney in opening statements. *Id*. at 415.

In this case, Slaughter's proffer was limited. It did not include specific numbers quantifying the amount of force described by Dr. Plunkett. But it nonetheless appears that the district court understood the nature of Dr. Plunkett's proposed testimony on biomechanics. The district court sustained objections to specifically worded questions, such as, "how much force does it take to fracture a skull?," and "how much impact would

it cause for a subdural hematoma to occur?" Although the proffer may be incomplete in the sense that the record does not include Dr. Plunkett's answers to the questions asked, the district court clearly understood the nature of Dr. Plunkett's proposed testimony. In addition, it may have been appropriate for defense counsel to refrain from providing more specifics in light of the fact that the case was being tried to the court. Thus, Slaughter adequately preserved his challenge to the district court's rulings.

B. Admissibility of Expert Testimony Concerning Biomechanics

As stated above, Slaughter argues that the district court erred by preventing Dr. Plunkett from testifying as an expert in biomechanics. Slaughter contends that Dr. Plunkett is qualified to give expert testimony on the subject of biomechanics because, among other things, he has taken tutorials from a professor at the University of California at Berkeley and has read more than 500 articles on the subject. But the district court's rulings were not based on a lack of qualifications but, rather, on the ground that the proposed expert testimony would not be helpful to the finder of fact, the district court.

A district court may admit expert testimony if the expert's specialized knowledge will assist the factfinder "to understand evidence or to determine a fact in issue." Minn. R. Evid. 702. "The basic consideration in admitting expert testimony under Rule 702 is the helpfulness test -- that is, whether the testimony will assist the jury in resolving factual questions presented." *State v. Grecinger*, 569 N.W.2d 189, 195 (Minn. 1997). As the supreme court has explained,

> If the subject of the testimony is within the knowledge and experience of a [factfinder] and the testimony of the expert will not add precision or depth to the [factfinder's] ability to

> reach conclusions about that subject which is within their experience, then the testimony does not meet the helpfulness test.

State v. Helterbridle, 301 N.W.2d 545, 547 (Minn. 1980).

Here, the district court received a considerable amount of expert testimony regarding the force necessary to cause Paul's injuries. Dr. Plunkett testified that Paul's injuries could have been caused by a fall, including a fall onto the footstool and the floor, as Slaughter described in a pre-trial statement. Dr. Plunkett was allowed to testify generally about the subject of biomechanics and how it allows him to determine whether sufficient force was present to cause a particular injury. It appears that the biomechanic calculations that Slaughter sought to introduce likely informed the testimony that Dr. Plunkett was permitted to give. It also appears that the district court did not preclude Dr. Plunkett from supplying the facts necessary to allow the district court, using its own experience with basic physics, to calculate the amount of force that would have been generated by a fall from a given height. The only evidence that actually was excluded by the district court was specific figures regarding force, expressed in terms of pounds of force, foot-pounds of force, or pounds per square inch. The overall conclusion of Dr. Plunkett's expert analysis -- that an accidental fall from Slaughter's arms could have caused Paul's injuries -- was presented. In light of the evidence that was admitted, and in light of the fact that the district court was the finder of fact, we conclude that the district court did not abuse its discretion by limiting Dr. Plunkett's expert testimony.

C. Harmless Error

The state also argues that, even if the district court erred, the error would be harmless. *See* Minn. R. Crim. P. 31.01. A district court's erroneous exclusion of a defendant's evidence is harmless error if this court is "satisfied beyond a reasonable doubt that if the evidence had been admitted and the damaging potential of the evidence fully realized, [the finder of fact] would have reached the same verdict." *State v. Post*, 512 N.W.2d 99, 102 (Minn. 1994) (footnote omitted). If there is a reasonable possibility that the verdict might have been different if the evidence had been admitted, the error must be deemed prejudicial. *Id*.

There are two reasons why any error by the district court in excluding Dr. Plunkett's proffered testimony would be harmless. First, there was no specific evidence in the record regarding the height at which Slaughter allegedly was holding Paul, or even the manner in which he allegedly was holding Paul, and, thus, no specific evidence of the distance that Paul allegedly fell. Although the district court attempted to estimate the distance of the purported fall, the value of Dr. Plunkett's proffered testimony about force and velocity would be significantly diminished without specific information because it would be based on hypothetical facts. Second, Dr. Plunkett's testimony is irrelevant in light of the district court's finding of fact that Paul's injuries were caused not by a fall but by a "slam," which the district court defined to mean "the intentional infliction of violent force causing Paul's head to strike a hard, flat surface." The district court simply did not find Slaughter's pre-trial statements about the purported fall to be credible.

Based on our review of the district court's detailed, well-written order, we believe that the proposed testimony of Dr. Plunkett could have made his expert opinion only slightly more detailed but, in doing so, would not have altered the district court's view of Slaughter's credibility and its findings about what occurred in Slaughter's residence. Thus, we are "satisfied beyond a reasonable doubt that," if the district court would have admitted all of Dr. Plunkett's proffered testimony, the district court "would have reached the same verdict." *Post*, 512 N.W.2d at 102.

In sum, the district court did not deny Slaughter his constitutional rights to present a complete defense and to a fair trial.

Affirmed.