IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT KNOXVILLE

NOVEMBER 1996 SESSION

FILED

December 12, 1996

Cecil Crowson, Jr.
Appellate Court Clerk

STATE OF TENNESSEE,	)
	) C.C.A. No. 03C01-9511-CR-00359
Appellee,	)
	) Hamilton County Criminal No. 203217-74-76
V.	)
	) Honorable Douglas A. Meyer, Judge
	)
GEORGE LEBRON MORGAN,	) (Second Degree Murder; Aggravated
	) Robbery, Attempted Aggravated Robbery)
Appellant.	)

FOR THE APPELLANT:

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OPINION FILED: _____

AFFIRMED

PAUL G. SUMMERS,
Judge

O P I N I O N

The appellant, George Lebron Morgan, was convicted of second degree murder, aggravated robbery, and attempted aggravated robbery. He was sentenced to twenty years for second degree murder, ten years for aggravated robbery, and five years for attempted aggravated robbery. The second degree murder and the attempted robbery sentences were ordered to run consecutively. The aggravated robbery sentence was ordered to run concurrently. The appellant raises four issues for review:

1. Whether his statement should have been admitted;

2. Whether an expert should have been appointed to examine the audio tape containing his statement;

3. Whether the prosecution's reference to a juvenile record constituted a mistrial; and

4. Whether consecutive sentences were warranted.

Upon review, we affirm the trial court's decision.

FACTS

The appellant, Antonio Morgan, Jamichael Clifford, and Tana Thompson (the appellant's girlfriend) were together in a car on the night of the murder. The appellant and Morgan apparently decided to rob someone. They exited the car and walked to the middle of 17th Street in Chattanooga.

The victims walked by the appellant and Morgan. The appellant asked the victims "[w]hat's up?" As the victims continued past the appellant, the appellant pulled out a gun and shot into the air. The victims stopped. The appellant pointed the gun at the victims. The appellant then instructed Morgan to pat the victims down. One of the victims, Mr. Williams, pleaded with the appellant not to rob him. Morgan, however, took Mr. Williams' beeper, necklace, wedding ring, and money. The appellant then stated "I'm going to count to three and I'm going to shoot." Mr. Williams was then shot and killed.

SUPPRESSION

The appellant argues that the trial judge erred in admitting his statement. He contends that his statement was coerced. He maintains that the detective's "references to [his] girlfriend frightened [him]. . . ."[1]

The trial court listened to arguments of counsel and reviewed the statement. The trial court then found that: (1) the appellant's statement was "freely and voluntarily made of his own accord"; (2) the appellant was never "emotionally threatened"; and (3) what the detective advised the appellant of "was [not in] any way threatening at all." The trial court chose to accept the detective's veracity over that of the appellant's. The record does not preponderate against the trial court's finding. This issue is without merit.

EXPERT ASSISTANCE

The appellant alleges that the trial court erred in not appointing experts in his noncapital case. The appellant requested a ballistics expert to testify as to the murder weapon's accuracy. The appellant claims this expert would have supported his theory that he did not intentionally shoot the victim. The appellant also requested an expert to examine the tape of his confession. He argues that an audio engineer would have testified that the tape revealed evidence of coaching and rerecording. We disagree.

In noncapital cases, a trial court may not authorize defense experts absent a showing of particularized need. Tenn. Code Ann. § 40-14-201(b); State

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[1] The appellant and Morgan were transported to and fled the crime scene in the appellant's girlfriend's mother's car. The appellant's girlfriend waited on the appellant to return and drove the car as they fled. The detective indicated that the appellant's girlfriend could possibly go to jail depending upon her involvement. He stated:

> that until we talked to her and until we realized whether or not she was actually involved, we would not know whether she would go to jail. I did tell him that yes, there was a possibility she would go to jail. There was also a possibility she would not.

v. Barnett, 909 S.W.2d 423, 431 (Tenn. 1995). Particularized need is demonstrated by a showing: (1) that a defendant will be deprived of a fair trial without expert assistance, or (2) there is a reasonable likelihood that the assistance will materially assist in preparation of the case. Id. "[M]ere hope or suspicion that favorable evidence is available" is not sufficient to establish need under material assistance. State v. Edwards, 868 S.W.2d 682, 697 (Tenn. Crim. App. 1993).

Whether expert assistance is required in noncapital cases is a matter left to the trial court's sound discretion. We find no abuse of discretion. The appellant's contention presented a mere "hope or suspicion that favorable evidence [was] available." The evidence does not preponderate against the trial court's ruling. This issue is devoid of merit.

PROSECUTORIAL MISCONDUCT

The appellant urges this Court to grant him a new trial based upon alleged prosecutorial misconduct. He argues that the state improperly questioned the appellant about his prior juvenile record. The state attempted to ask:

> Q. On page 17, you state, "It ain't like we just went looking for that certain person to kill, but that person, see, what it is, he was more like me, know what I'm saying? He's more been in jail a lot from what I hear. He was just more like me."

The appellant's counsel objected and the question was not completed. He maintains that this question biased the jury. We disagree.

The state merely restated an excerpt from the appellant's previously admitted statement. The state asked neither specific questions concerning the statement excerpt nor the appellant's juvenile record. Moreover, in light of the overwhelming evidence, we find the question did not prejudice the jury's verdict. This issue is without merit.

CONSECUTIVE SENTENCES

The appellant last assigns error in the trial court's decision to run his sentences consecutively. He maintains that the record does not support the trial court's finding that he was both a persistent and a dangerous offender. We disagree.

The appellant was 19 when he committed these offenses. His juvenile record is disconcerting. He had been adjudicated on charges of burglary, grand larceny of an automobile, theft of property over $ 500.00, escape from custody of the Department of Youth Development, and assault involving a handgun while on escape status. In the instant case, the appellant committed murder, aggravated robbery, and attempted aggravated robbery. The appellant showed little regard for human life and exhibited no hesitation about committing a crime involving high risk to human life.[2] The trial court's findings are amply supported by the record. This issue is without merit.

AFFIRMED.

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PAUL G. SUMMERS, Judge

[2] Another potential victim was present when the appellant murdered Mr. Williams.

CONCUR:

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JOE B. JONES, Presiding Judge

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JOHN K. BYERS, Senior Judge