

IN THE SUPREME COURT

OF THE STATE OF NORTH DAKOTA

<b>State of North Dakota,</b>	)	
	)	<b>Supreme Court No. 20160197</b>
<b>Plaintiff and Appellee,</b>	)	
	)	<b>District Court No. 51-2014-CR-02238</b>
	)	
<b>vs.</b>	)	
	)	
	)	
<b>Anthony L. Campbell,</b>	)	
	)	
<b>Defendant and Appellant.</b>	)	

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**APPELLEE’S BRIEF**

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**APPEAL FROM THE DISTRICT COURT  
CRIMINAL JUDGMENT DATED MAY 13, 2016,  
IN AND FOR THE COUNTY OF WARD, STATE OF NORTH DAKOTA,  
NORTH CENTRAL JUDICIAL DISTRICT  
HONORABLE RICHARD L. HAGAR  
JUDGE OF THE DISTRICT COURT, PRESIDING**

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**[¶1] TABLE OF AUTHORITIES**

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## [¶2] STATEMENT OF FACTS

[¶3] Anthony Leon Campbell, hereinafter “Campbell,” was charged with murder, a class AA felony, for causing the death of Shannon Brunelle on or about September 15, 2014. Appendix, hereinafter “App.,” page 11. The bloodied body of Brunelle had been found in a garage in northwest Minot. App. 12. Campbell was the last person to be seen with Brunelle. App. 12. Autopsy revealed Brunelle had been stabbed to death. App. 12-13. Transcript, hereinafter “Tr.,” Day 3, p. 140, line 24 – 141, line 23, p. 142, line 16 – p. 144, line 15. In addition, he had been beaten with a blunt object. Tr. Day 3, p. 140, lines 1-18, p. 142, lines 1-8.

[¶4] Evidence was received at trial that Campbell’s DNA was found inside a pair of bloody athletic shoes, believed to have been worn by the killer. Tr. Day 5, p. 42, lines 15-22, p. 44, lines 12-25, p. 47, lines 3-10. Campbell’s DNA was located on a broken golf, believed to have been used to strike Brunelle. Tr. p. 49, lines 18-25.

[¶5] Campbell was convicted by a jury on January 21, 2016. App. 112. He was sentenced to 45 years with the North Dakota Department of Corrections. App. 113.

## [¶6] LAW AND ARGUMENT

[¶7] I. The District Court did not abuse its discretion in limiting the testimony of Ross Rolshoven.

[¶8] Evidentiary rulings are reviewed under an abuse of discretion standard. State v. Streeper, 2007 ND 25, ¶11, 727 N.W.2d 759. A district court has broad discretion in admitting or excluding evidence. Id. A district court abuses its discretion when it acts arbitrarily, capriciously, or unreasonably or if it misinterprets or misapplies the law. Id. At trial of this matter, the defense offered Ross Rolshoven, a private investigator, as an expert in private investigations. Tr. Day 7, p. 15, lines 6-8. The District Court found him

to be an expert “investigator with regard to accidents and so forth.” Tr. Day 7, p. 17, lines 19-22. The District Court determined that “anything else would go to” weight of the evidence offered. Tr. Day 7, p. 17, line 23. Rolshoven was allowed to testify as to perceived deficiencies in the investigation. Tr. Day 7, p. 21, lines 6-17. He testified that he believed there were two people involved in the murder of Shannon Brunelle. Tr. Day 7, p. 22, lines 21-23. He was allowed to testify to his belief of another person’s involvement in the murder. Tr. Day 7, p. 36, lines 17-25.

[¶9] “The test for admission of expert testimony is whether or not such testimony will assist the trier of fact to understand the evidence or to determine a fact in issue and whether or not the witness is qualified as an expert.” State v. Fontaine, 382 N.W.2d 374, 377 (N.D. 1986). The Fontaine Court reviewed a district court’s refusal to allow an expert to testify to a hypothetical situation bearing remarkable similarities to the facts of the case on the grounds that allowing such testimony would invade the province of the jury. This Court determined that the district court “reached an appropriate balance” in allowing the expert to give general testimony concerning the difficulty of eyewitnesses to properly identify persons, but did not permit an answer to the hypothetical question that was factually similar to the facts of the case at bar. Id. at 378.

[¶10] Just as in Fontaine, the District Court allowed testimony from Rolshoven about the investigation conducted by the Minot Police Department, but excluded testimony about his belief, or not, that Campbell was responsible for the murder. The District Court did allow testimony about Rolshoven’s theory of who was responsible for the murder. Rolshoven was qualified as an expert in accident investigation, not criminology, or even crime scene investigation. The District Court’s limitations on Rolshoven’s testimony was not an abuse of discretion.

[¶11] II. The District Court did not abuse its discretion and did not deny Campbell a fair trial.

[¶12] A. The District Court did not allow prior bad act testimony at trial.

[¶13] The offer of proof referenced in Campbell's appendix is in reference to a statement made by Campbell in the course of a conversation over social media. Records of this conversation were received, by stipulation, as State's Exhibit 94. Tr. Day 1, p. 8, line 20 – p. 9, line 8. Campbell, through counsel, requested an offer of proof as to what rebuttal testimony the State would present if he testified. No testimony had yet been received by Campbell when this discussion was had. Thus, there could be no offer of proof. Campbell testified that his statement, in the course of this conversation, that he was between a rock and a hard place, was in reference to the difficult turn his life had taken. Tr. Day 6, p. 51, lines 13-17. He also testified that he had been accused of burglarizing his ex-girlfriend's house. Tr. Day 6, p. 52, lines 7-8. He testified that his statement that he had "f'd" up was a reference to returning to Minot. Tr. Day 6, p. 52, lines 13-16. Campbell's former girlfriend, Mindy Weisse, testified in rebuttal that Mr. Campbell took her cell phone from her home. Tr., Day 7, p. 41, lines 6-7. Campbell opened the door to this testimony.

[¶14] The testimony Campbell references in his brief regarding drug use is the direct testimony of Mindy Weisse in the State's case-in-chief. The only testimony elicited was that Ms. Weisse had a conversation with Mr. Campbell about drug use. Any questions regarding the particulars of that conversation were objected to and sustained by the District Court. Campbell did admit, on cross examination, to using methamphetamine approximately two months prior to the murder. Tr., Day 6, p. 59, lines 12-13. Upon

request of the defense, the Court gave a limiting instruction regarding prior acts. Tr. Day 7, p. 119, lines 8-12.

[¶15] B. The prosecutor's remarks were not improper nor violative of Campbell's rights.

[¶16] The State's inquiry into the private investigator's rate of pay was proper. There was no objection to this testimony. The District Court did not find Rolshoven to be an expert criminal investigator. It simply noted "his experience supports as an investigator with regard to accidents and so forth. So he may be accepted as that. Anything else would go to credibility or weight." Tr., Day 7, p. 17, lines 19-24. It is completely proper for an attorney to challenge a purported expert's status as such. The objection was to his being declared an expert criminal investigator, which the District Court sustained.

[¶17] The State's characterization of the CSI image of fingerprints as myth is supported by the testimony. Tr. Day 6, p. 34, line 24 – p. 36, line 11. The State never disputed the evidentiary value of fingerprints, but rather pointed out the frequency and ease of finding fingerprints, as represented in a popular television program, is a myth.

[¶18] The State's comment that there was no evidence to connect the blood spot in the parking lot to the crime scene was supported by the evidence. The spot was several feet from the crime scene, with no trail of blood to connect the spot to the crime scene. Tr. Day 3, p. 57, lines 1-7, p. 77, lines 16-21.

[¶19] C. The District Court did not abuse its discretion in denying Campbell's motion for judgment of acquittal.

[¶20] After the prosecution closes its case, the trial court, on motion of the defendant, must enter a judgment of acquittal if the evidence is insufficient to sustain a conviction. Rule 29, N.D.R.Crim.P. In ruling on a motion for judgment of acquittal, the trial court is to view the evidence in a light most favorable to the prosecution and assume the truth of

the prosecution's evidence. State v. Schaeffer, 450 N.W.2d 754, 756 (N.D. 1990). The trial court must deny the motion if there is substantial evidence upon which a reasonable mind could find guilt beyond a reasonable doubt. Id.

[¶21] Points raised regarding Detective Sergeant David Goodman's investigation go to weight and credibility determinations which are squarely within the province of the jury. Schaeffer, 450 N.W.2d at 756. This Court does not substitute its judgment for that of the jury on issues of weight and credibility. Id.

[¶22] Evidence of fingerprint analysis of golf club is not "newly discovered evidence." The report was disclosed in discovery, which is how defense counsel got it. Defense counsel raised the issue of fingerprinting the golf club before the jury. The evidence was available and was used by the defense at trial.

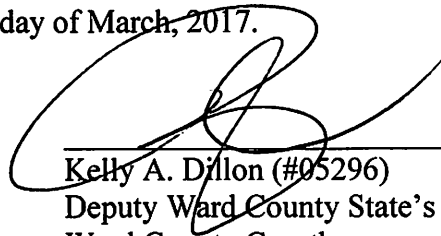


[¶23] **CONCLUSION**

[¶24] The District Court's limitations on Ross Rolshoven's testimony do not constitute an abuse of discretion. In spite of those limitations Rolshoven was allowed to testify to his theory of the case. The evidentiary rulings complained of do not amount to an abuse of discretion. The District Court's ruling on Campbell's motion for judgment of acquittal was supported by substantial evidence upon which a reasonable mind could find guilt beyond a reasonable doubt.

[¶25] WHEREFORE the State requests this Court affirm the judgment below.

Respectfully submitted this 27<sup>th</sup> day of March, 2017.



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**AFFIDAVIT OF SERVICE**

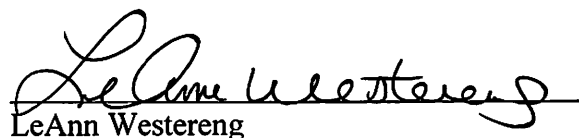
LeAnn Westereng, being first duly sworn, deposes and says:

That she is a citizen of the United States of America, over the age of twenty-one years, and is not a party to nor interested in the above entitled action; that on the 29<sup>th</sup> day of March, 2017, this Affiant provided a true and correct copy of the following documents in the above entitled action:

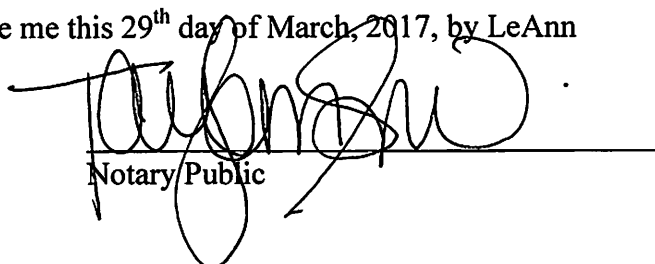
**APPELLEE'S BRIEF WITH CORRECTED TITLE PAGE**

By ELECTRONIC SERVICE to the following:

**BENJAMIN PULKRABEK**  
**ATTORNEY AT LAW**  
[PULKRABEK@LAWYER.COM](mailto:PULKRABEK@LAWYER.COM)

  
LeAnn Westereng

Subscribed and sworn to before me this 29<sup>th</sup> day of March, 2017, by LeAnn Westereng.

  
Notary Public

