An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-679

Filed: 20 March 2018

Gaston County, No. 14 CRS 52862

STATE OF NORTH CAROLINA

v.

ROBERT CANNON HAYES, JR.

Appeal by Defendant from judgment entered 27 October 2016 by Judge Robert T. Sumner in Gaston County Superior Court. Heard in the Court of Appeals 12 March 2018.

Attorney General Joshua H. Stein, by Assistant Attorney General Terence D. Friedman, for the State.

Rudolph Widenhouse, by M. Gordon Widenhouse, Jr., for Defendant-Appellant.

INMAN, Judge.

Robert Cannon Hayes, Jr. ("Defendant") appeals from a judgment entered upon his conviction for driving while impaired ("DWI"). Defendant argues that the trial court improperly permitted the arresting officer to testify as an expert regarding the administration of two field sobriety tests. After careful review, we conclude there was no prejudicial error.

Factual and Procedural History

On 12 March 2014, at approximately 9:29 p.m., Officer A.M. Hilton ("Officer Hilton") of the Mount Holly Police Department received a call that property had been damaged at Times Turn Around, a gas station in Mount Holly. When he arrived at the gas station to investigate, he found a black Chevrolet Suburban had hit an air pump used to inflate tires and knocked it 20 to 30 feet from its pedestal. Defendant was found close by the vehicle, stumbling around, his clothes disheveled, and missing a shoe. Officer Hilton began speaking with Defendant and detected the odor of alcohol coming from his breath. He asked Defendant where he had been coming from, and Defendant told him he had been playing at a benefit poker tournament. Defendant could not recall how he got to Times Turn Around, and did not even know he was in Mount Holly.

Officer Hilton asked Defendant if he had consumed any alcohol that night, and Defendant told him that he had one beer and one mixed drink containing gin. He then began administering field sobriety tests on Defendant. Officer Hilton concluded that Defendant's performance on these tests indicated impairment. He arrested Defendant and transported him to the police department. At the police department, Defendant submitted to Intoximeter testing. This testing determined that Defendant's blood alcohol level was .09.

Defendant testified at trial that he had very little memory of the night he was arrested, and suspected that he may have been drugged for the purpose of being robbed. Defendant admitted that he was driving the Chevrolet Suburban that night. Defendant presented an expert witness who testified that, while it was impossible to determine exactly what occurred, it was his opinion that "some other drug other than alcohol was most likely involved." Based on this evidence, the trial court instructed the jury on the defense of automatism.

Defendant was convicted of DWI. The trial court sentenced Defendant to a suspended term of sixty days of imprisonment and placed him on unsupervised probation for twelve months. Defendant appealed.

Analysis

Defendant's sole argument on appeal is that the trial court improperly permitted Officer Hilton to testify as an expert regarding his administration of two field sobriety tests, the walk-and-turn and one-legged stand tests, and the cues of impairment Defendant demonstrated during this testing. We conclude that Defendant was not prejudiced by this evidence.

"The admission of evidence which is technically inadmissible will be treated as harmless unless prejudice is shown such that a different result likely would have ensued had the evidence been excluded." *State v. Taylor*, 154 N.C. App. 366, 372, 572 S.E.2d 237, 242 (2002). "To establish prejudice based on evidentiary rulings, [the]

defendant bears the burden of showing that a reasonable possibility exists that, absent the error, a different result would have been reached." *State v. Lynch*, 340 N.C. 435, 458, 459 S.E.2d 679, 689 (1995), *cert. denied*, 517 U.S. 1143, 134 L.Ed.2d 558 (1996). "If there is overwhelming evidence of defendant's guilt or an abundance of other evidence to support the State's contention, the erroneous admission of evidence is harmless." *State v. Williams*, 164 N.C. App. 638, 644, 596 S.E.2d 313, 317 (2004).

Here, even assuming *arguendo* that admission of Officer Hilton's testimony should have been excluded, we conclude there was no prejudice in light of the overwhelming evidence of Defendant's guilt. Officer Hilton's challenged testimony went strictly to the question of impairment. Under N.C. Gen. Stat. § 20-138.1, a person commits the crime of driving while impaired:

> if he drives any vehicle upon any highway, any street, or any public vehicular area within the State:
>
> . . . .
>
> > (2) After having consumed sufficient alcohol that he has, at any relevant time after the driving, an alcohol concentration of 0.08 or more. The results of a chemical analysis shall be deemed sufficient evidence to prove a person's alcohol concentration;

N.C. Gen. Stat. § 20-138.1(a) (2017). In addition to the challenged testimony, Officer Hilton testified, and Defendant stipulated, that Defendant's blood alcohol

concentration was .09, which is over the legal limit of .08. *Id.* Thus, overwhelming evidence was presented at trial that Defendant was impaired.

Moreover, we further note that the basis of Defendant's defense was not that he was unimpaired. Instead, Defendant claimed that he was drugged without his knowledge, and the jury was instructed on the defense of automatism. As demonstrated by the verdict, the jury rejected this defense. Thus, even if Officer Hilton's testimony was improper, Defendant cannot show that "there is a reasonable possibility that, had the error in question not been committed, a different result would have been reached at the trial." N.C. Gen. Stat. § 15A-1443(a) (2017).

Conclusion

For the foregoing reasons, we conclude there was no prejudicial error.

NO PREJUDICIAL ERROR.

Judges BRYANT and HUNTER concur.

Report per Rule 30(e).