

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA22-642

Filed 18 April 2023

Columbus County, Nos. 18CRS052462, 18CRS052463

STATE OF NORTH CAROLINA

v.

WILLIAM DEWAYNE SIMMONS

Appeal by Defendant from judgments entered 4 November 2021 by Judge James E. Hardin, Jr., in Columbus County Superior Court. Heard in the Court of Appeals 10 January 2023.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Marc Bernstein, for the State.

Glover & Petersen, P.A., by James R. Glover, for Defendant.

COLLINS, Judge.

Defendant William Dewayne Simmons appeals from judgments entered upon jury verdicts of guilty of robbery with a firearm and first degree murder. Defendant argues that the trial court erred by allowing an investigating officer to indirectly comment on Defendant's credibility. Because the investigating officer's testimony

was admissible as lay opinion evidence and was not a comment on Defendant's credibility, the trial court did not err by allowing the testimony.

I. Factual Background and Procedural History

On 7 November 2018, a grand jury indicted Defendant on charges of first degree murder and robbery with a firearm. Defendant was tried beginning on 26 October 2021. At trial, the State presented to the jury a video of an interview between Detective Matt Parker and Defendant that took place while Parker was investigating the murder. During the interview, Defendant indicated to Detective Parker that a man had approached Defendant and the victim and demanded money from the victim. Defendant stated that the man shot the victim, forced Defendant to drag the victim's body into the woods, and told Defendant that he would kill Defendant and his family if he told anyone about the murder. Defendant described the man as being between 20 and 30 years old, having a lot of tattoos, and having a faded haircut.

After presenting the video, the State questioned Parker about the man Defendant described:

[STATE]: Detective Parker, we watched a very long interview yesterday; correct?

[PARKER]: Correct.

[STATE]: And in that interview, the defendant told you that someone else shot [the victim]; correct?

[PARKER]: He did.

[STATE]: Was he able to provide you a specific name in that interview? Do you recall?

[PARKER]: Not a name, no.

STATE V. SIMMONS

Opinion of the Court

[STATE]: Did he provide you a general description of a person?

[PARKER]: He did. He gave me a description.

. . . .

[STATE]: Were you able to ascertain who the defendant was describing?

[PARKER]: I was.

[STATE]: And who was that?

[PARKER]: That was John Carver.

[STATE]: Did you go speak to John Carver?

[PARKER]: I did.

[STATE]: Without talking about the substance of it, did you consider him a suspect after speaking to him?

[PARKER]: No, I did not.

. . . .

[STATE]: Were you able to speak with anybody about John Carver?

[PARKER]: I was, yes.

[STATE]: And maybe his whereabouts?

[PARKER]: I was.

[STATE]: Without giving the substance of that, were you concerned at all that John Carver was involved in this murder?

. . . .

[PARKER]: No, I was not concerned that anybody else was involved.

On 3 November 2021, the jury returned guilty verdicts for robbery with a firearm and first degree murder on the basis of malice, premeditation, and deliberation. Defendant was sentenced to 64 to 89 months' imprisonment for robbery

with a firearm, and life imprisonment without the possibility of parole for murder. Defendant appealed in open court.

II. Discussion

A. Standard of Review

“[W]hether a lay witness may testify as to an opinion is reviewed for abuse of discretion.” *State v. Washington*, 141 N.C. App. 354, 362, 540 S.E.2d 388, 395 (2000) (citation omitted).

B. Detective Parker’s Opinion Testimony

Defendant argues that the trial court erred by allowing Parker to indirectly comment on Defendant’s credibility. Specifically, Defendant argues that “Parker’s testimony that John Carver was not a suspect and not involved in the murder was clearly inadmissible opinion testimony about the credibility of [Defendant’s] account about how [the victim] was killed and by whom.”

A lay witness may testify in the form of an opinion or inference “to those opinions or inferences which are (a) rationally based on the perception of the witness and (b) helpful to a clear understanding of his testimony or the determination of a fact in issue.” N.C. Gen. Stat. § 8C-1, Rule 701 (2021). However, “when police officers testify as lay witnesses, they are not permitted to invade the province of the jury by commenting on the credibility of the defendant.” *State v. Houser*, 239 N.C. App. 410, 415, 768 S.E.2d 626, 631 (2015) (citation omitted).

Here, the State presented to the jury a video of Parker’s interview with

Defendant. During the interview, Defendant indicated that another individual had shot the victim and described that individual to Parker. Parker testified that he was able to ascertain that Defendant was describing John Carver and that, after speaking with Carver and others about Carver, Parker did not consider Carver a suspect and was not concerned that anyone else was involved in the victim's shooting.

Parker's testimony reflected his own perception of his interview with Carver and others and was helpful to explain to the jury his investigative process, including that Parker made efforts to follow the leads Defendant provided. This is within the bounds of Rule 701. *See, e.g., Houser*, 239 N.C. App. at 416-17, 768 S.E.2d at 631-32 (holding testimony that evidence was inconsistent with defendant's version of the incident was "explaining the investigative process that led officers to [collect more evidence]" and "not an impermissible statement that defendant was not telling the truth"). Accordingly, the trial court did not err by allowing Parker's testimony.

III. Conclusion

Because Parker's testimony was admissible under Evidence Rule 701 and not an impermissible comment on Defendant's credibility, the trial court did not err by allowing Parker's testimony.

NO ERROR.

Chief Judge STROUD and Judge ZACHARY concur.

Report per Rule 30(e).