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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-1102

Filed 3 September 2024

Mecklenburg County, Nos. 20CRS208153, 20CRS010046, 20CRS211153

STATE OF NORTH CAROLINA

v.

RICKY LEE BYNUM, Defendant.

Appeal by Defendant from judgment entered 15 December 2022 by Judge Eric L. Levinson in Mecklenburg County Superior Court. Heard in the Court of Appeals 19 August 2024.

*Attorney General Joshua H. Stein, by Assistant Attorney General Eric J. Meehan, for the State.*

*Drew Nelson for Defendant.*

PER CURIAM.

Defendant Ricky Lee Bynum appeals from judgment entered upon a jury's verdict convicting him of assault with a deadly weapon and of possession of a firearm by a felon. We conclude that Defendant received a fair trial, free of reversible error.

**I. Factual and Procedural Background**

Defendant was charged with assault with a deadly weapon and possession of

a firearm by a felon arising from a shooting which occurred on 3 March 2020. Defendant was tried by a jury.

During the trial, the State called an eyewitness (the “witness”) to the shooting and law enforcement officers to testify.

The officers testified that immediately after the shooting when the officers were interviewing this witness, the witness identified the shooter to be a man he had seen before named “Rick.” The officers then took the witness several blocks away where they had apprehended a suspect. The witness told the officers that he was “a hundred percent [that the apprehended suspect was] the person he saw do the shooting.” However, the suspect identified by the witness was not Defendant.

During Defendant’s trial, which occurred over two years after the shooting and after the witness identified the apprehended suspect as the shooter, the witness identified Defendant as the shooter. Defendant objected to this in-court identification. Defendant was convicted by the jury, and the trial court entered judgment accordingly. Defendant appealed.

## **II. Analysis**

There is some question as to whether Defendant properly appealed. In the exercise of our discretion, to the extent we lack jurisdiction to consider Defendant’s argument on appeal, we grant Defendant’s petition for writ of *certiorari*.

In this appeal, Defendant makes a single argument. He argues that the trial court erred by allowing the witness to testify, contending that the witness testimony

was “inherently incredible.”

Our Supreme Court established that witness testimony should not be submitted to a jury if the testimony given is inherently incredible:

Ordinarily, the weight to be given the testimony of a witness is exclusively a matter for jury determination. Even so, this rule does not apply when, as here, the only testimony that would justify submission of the case for jury consideration is in irreconcilable conflict with physical facts established by plaintiff's uncontradicted evidence.

...

As a general rule, evidence which is inherently impossible or in conflict with indisputable physical facts or laws of nature is not sufficient to take the case to the jury, and in case of such inherently impossible evidence, the trial court has the duty of taking the case from the jury.

*State v. Miller*, 270 N.C. 726, 731, 154 S.E.2d 902, 905 (1967) (citations omitted). In that case, the Court said that the testimony was inherently incredible because the witness saw the defendant, a stranger, from 286 feet away in a parking lot in the middle of the night and the eyewitness's description differed from the defendant's actual appearance. *Id.* at 732, 154 S.E.2d at 906.

The general, however, is that witness credibility is a matter of jury evaluation and “only in rare instances will credibility be a matter for the Court's determination.” *State v. Green*, 296 N.C. 183, 188, 250 S.E.2d 197, 201 (1978)).

In support of his argument, Defendant notes that it was “drizzly” when the shooting occurred, the witness was fifty to one-hundred feet from the shooter, and the

witness did not know Defendant well. Perhaps in this environment it would be difficult for the witness to accurately see Defendant. However, we do not believe that the witness's in-court identification of Defendant as the shooter was in conflict with "indisputable physical facts or laws of nature" shown by the evidence.

Defendant, though, argues that we should create a new category of "inherently incredible" witness testimony which should be excluded. Namely, Defendant contends, this category should include any in-court identification which contradicts an identification made shortly after the incident. However, we held in another case that a similar argument was "not predicated on impossibility; rather, to the witness's credibility . . . [a]s [the d]efendant has not argued that this testimony is actually in conflict with a physical fact or a law of nature, [the d]efendant cannot establish on this basis that the evidence was inherently incredible." *State v. Wilson*, 291 N.C. App. 279, 287–88, 895 S.E.2d 581, 589 (2023).

In this case, the witness made his in-court identification of Defendant as the shooter. Defendant was able to cross-examine the witness concerning this identification, including the witness's identification of the apprehended suspect shortly after the shooting. The jury weighed the witness's testimony and other evidence and concluded that Defendant was the shooter. We conclude that the trial court did not err by allowing the witness to testify.

NO ERROR.

Panel consisting of Chief Judge DILLON, Judges GORE and GRIFFIN.

STATE V. BYNUM

*Opinion of the Court*

Report per Rule 30(e).