

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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

NO. COA01-495

NORTH CAROLINA COURT OF APPEALS

Filed: 2 July 2002

STATE OF NORTH CAROLINA

v.	Rowan County
TIMOTHY MAQUEL DAVIS	Nos. 95 CRS 1319
	95 CRS 1320
	95 CRS 1322
	95 CRS 1734

Appeal by defendant from judgment entered 14 April 1997 by Judge Henry E. Frye, Jr. in Rowan County Superior Court. Heard in the Court of Appeals 13 March 2002.

*Attorney General Roy A. Cooper, by Assistant Attorney General V. Lori Fuller, for the State.*

*R. Marshall Bickett, Jr. for defendant-appellant.*

TIMMONS-GOODSON, Judge.

Timothy Maquel Davis ("defendant") appeals his convictions of first-degree kidnapping, robbery with a dangerous weapon, and attempted murder. For the reasons discussed herein, we hold that defendant received a fair trial, free from prejudicial error.

The State's evidence tended to show the following: On 5 January 1995, Patti Jane White ("White") was assaulted outside of her convenience store located in Kannapolis, North Carolina. At trial, White testified that as she walked towards the dumpster, a man grabbed her, demanded the store's money bag, placed a rope

around her neck, choked her, bit her face, and threatened to kill her. He then struck her in the head with a piece of asphalt. White testified that she lost consciousness and therefore was unable to identify her assailant. She further testified that a diamond solitaire ring she wore before the assault was missing.

Sergeant Chuck Adams of the Kannapolis Police Department testified that two days after the assault, he searched the home of Eric Mills, Leona Mills, Regina Poole and defendant pursuant to a search warrant. He seized a black hooded sweatshirt and a glove from defendant's bedroom, both of which appeared to have bloodstains. During a second search conducted on 27 January 1995, officers seized a pair of blue jeans from the same room. At trial, Leona Mills testified that all of the clothing items belonged to defendant. She further admitted that on 9 January 1995 she "pawned" a ring for defendant. The ring was later identified as the ring that was stolen from Patti during the robbery.

The State presented evidence outside the presence of the jury consisting of defendant's confession to separate burglary and rape charges occurring in Cabarrus County. The State further established that a search warrant was obtained for defendant's blood in connection with the investigation of the burglary and rape charges. The trial court found that defendant's blood was drawn pursuant to a lawful search warrant and was therefore admissible as evidence in the current proceeding.

Special Agent David J. Spittle ("Agent Spittle"), a forensic serologist with the State Bureau of Investigation testified that

the forensic examination in this case was conducted by Special Agent Jennifer Elwell ("Agent Elwell"). Agent Spittle testified from the test reports prepared by Agent Elwell, who was unavailable to testify at trial. Because Agent Spittle did not perform the blood tests conducted on defendant's clothing, defendant objected to the testimony of Agent Spittle. Defendant specifically contested the results pertaining to three pairs of defendant's jeans, where one test produced an inconclusive result. After conducting a *voir dire*, the trial court found as fact that the chain of custody as to the jeans was "unclear" and further found that "Agent Elwell is the only person who could determine whether or not more than one pair of blue jeans was sent for analysis for the presence of blood." The court, therefore, did not allow Agent Spittle to testify concerning the blood tests conducted on the jeans. However, Agent Spittle was permitted to testify that the blood grouping tests conducted on defendant's sweatshirt and the glove revealed results that were consistent with Patti's Type A blood.

The jury subsequently found defendant guilty of first-degree kidnapping, robbery with a dangerous weapon, assault with a deadly weapon with intent to kill inflicting serious injury, and attempted murder. The court arrested judgment as to the assault with a deadly weapon with the intent to kill inflicting serious injury and sentenced defendant on the remaining charges. Defendant appeals.

---

In his first assignment of error, defendant contends that the

trial court erred by admitting into evidence a sample of his blood collected pursuant to an unrelated crime. We note that defendant has failed to cite any authority in support of this contention in violation of our Appellate Rules of Procedure. See N.C.R. App. P. 28(b)(5)(2002). Accordingly, defendant's argument is deemed abandoned.

In his second assignment of error defendant contends that the trial court erred by allowing Agent Spittle to testify concerning the results of blood grouping tests performed by another agent. Defendant questions the reliability of the testing and opinion of the nonpresent expert.

Rule 702 of the North Carolina Rules of Evidence provides: "If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert . . . may testify thereto in the form of an opinion." N.C. Gen. Stat. § 8C-1, Rule 702 (2001). Under N.C. Gen. Stat. § 8C-1, Rule 703, an expert may "give an opinion based on evidence not otherwise admissible at trial, provided the evidence is of the type reasonably relied upon by other experts in the field." *State v. Daughtry*, 340 N.C. 488, 512, 459 S.E.2d 747, 759 (1995), *cert. denied*, 516 U.S. 1079, 133 L. Ed. 2d 739 (1996). Rule 703 further provides that an expert may properly base his or her opinion on tests performed by another person, if the tests are of the "type reasonably relied upon by experts in the particular field[.]" *State v. Huffstetler*, 312 N.C. 92, 108, 322 S.E.2d 110, 120 (1984), *cert. denied*, 471 U.S.

1009, 85 L. Ed. 2d 169 (1985). "Inherently reliable information is admissible to show the basis for an expert's opinion, even if the information would otherwise be inadmissible hearsay." *Daughtry*, 340 N.C. at 511, 459 S.E.2d at 758.

In *State v. Wade*, 296 N.C. 454, 462, 251 S.E.2d 407, 412 (1979), our Supreme Court stated:

1. A physician, as an expert witness, may give his opinion, including a diagnosis, based either on personal knowledge or observation or on information supplied [to] him by others, . . . if such information is inherently reliable even though it is not independently admissible into evidence. The opinion, of course, may be based on information gained in both ways.

2. If his opinion is admissible the expert may testify to the information he relied on in forming it for the purpose of showing the basis of his opinion.

In adopting and expanding this standard to the field of forensic serology, the Supreme Court held in *Huffstetler* that the "tests forming the basis of [a] serologist's testimony are sufficiently reliable to support the admission of [an] expert opinion based upon those tests." *Huffstetler*, 312 N.C. at 107, 322 S.E.2d at 120.

Applying the foregoing principles to the present case, the evidence establishes that Agent Spittle was properly qualified as an expert in the field of forensic serology. He testified concerning blood that was drawn from defendant and whether it matched bloodstains found on certain items of clothing. Agent Spittle testified as to the results of the lab tests conducted by his colleague, Agent Elwell. The tests were standard blood grouping tests and were of a type reasonably relied upon and

commonly used by experts in the field of serology. Agent Spittle further testified that he reviewed Agent Elwell's notes before trial. We therefore conclude that the trial court did not err in admitting the testimony of Agent Spittle. This assignment of error is therefore overruled.

No error.

Judges WYNN and TYSON concur.

Report per Rule 30(e).