An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA11-358
NORTH CAROLINA COURT OF APPEALS

Filed: 18 October 2011

STATE OF NORTH CAROLINA

v. Forsyth County
No. 10 CRS 53575

REGINALD LEWIS PRATT

Appeal by defendant from judgment entered 30 November 2010 by Judge Richard W. Stone in Forsyth County Superior Court. Heard in the Court of Appeals 19 September 2011.

Attorney General Roy Cooper, by Assistant Attorney General Ann W. Matthews, for the State.

Appellate Defender Staples Hughes, by Assistant Appellate Defender Charlesena Elliott Walker, for defendant-appellant.

THIGPEN, Judge.

Defendant appeals from judgment entered after a jury found him guilty of assault on a female. We find no error at trial.

Defendant first argues the trial court erred in its instructions to the jury. On cross-examination, defense counsel questioned Ms. Manning about charges she took out against defendant and phone calls she made to the police during the four

months leading up to the incident in question. Ms. Manning admitted she accused defendant of assaulting and threatening her in January, and of raping her in February and March. She further admitted she did not appear in court to pursue the charges. During the jury charge, the trial court instructed the jury that evidence was received tending to show defendant raped, assaulted and threatened Ms. Manning in the past and that such evidence could be considered for the purpose of showing motive, intent and absence of mistake. Defendant did not object to this instruction at trial and now argues the trial court committed plain error in instructing the jury as such. As the defendant did not object to the trial court's instruction, plain error analysis is the applicable standard of review. *State v. Collins*, 334 N.C. 54, 62, 431 S.E.2d 188, 193 (1993). "Under the plain error rule, defendant must convince this Court not only that there was error, but that absent the error, the jury probably would have reached a different result." *State v. Jordan*, 333 N.C. 431, 440, 426 S.E.2d 692, 697 (1993).

In this case, defendant acknowledges that Rule 404(b) permits evidence of other crimes, wrongs, or acts to prove motive, intent, or absence of mistake. However, he contends Ms. Manning never testified that the acts she accused defendant of

committing actually happened or that the allegations she made to the police or magistrate were true. Defendant contends because Ms. Manning never testified he did as she claimed, her testimony did not serve as a basis for the trial court's instruction to the jury and he is entitled to a new trial.

First, we note defendant erroneously asserts Ms. Manning never testified that her accusations were true. On re-direct examination, the State elicited the following testimony from Ms. Manning:

> [STATE]: Ms. Manning, you said that four prior incidents did occur with this Defendant earlier that year; is that correct?
>
> [MS. MANNING]: Yes, sir.
>
> [STATE]: So your testimony here is they actually did happen, you didn't make them up; is that right?
>
> [MS. MANNING]: No, I did not make them up.

Furthermore, this Court has stated, "[s]ince the scope of Rule 404(b) includes 'wrongs or acts,' the Rule does not on its face require such extrinsic acts result in criminal liability." *State v. Suggs*, 86 N.C. App. 588, 591, 359 S.E.2d 24, 26, *cert. denied*, 321 N.C. 299, 362 S.E.2d 786 (1987). "[C]onviction of other crimes is not a prerequisite to their admissibility under Rule 404(b)." *Id.* at 592, 359 S.E.2d at 27. Accordingly, we

conclude the trial court did not err in its instruction to the jury.

Lastly, defendant argues the trial court erred when it overruled his objections to the deputy's testimony that by feeling a large knot on the back of Ms. Manning's head he had "verified" her claim that defendant punched her in the back of her head. Defendant contends the deputy's opinion testimony improperly vouched for Ms. Manning's credibility and he is entitled to a new trial.

"The standard of review for admission of evidence over objection is whether it was admissible as a matter of law, and if so, whether the trial court abused its discretion in admitting the evidence." *State v. Bodden*, 190 N.C. App. 505, 512, 661 S.E.2d 23, 27 (2008) (citation omitted), *disc. review denied and appeal dismissed*, 363 N.C. 131, 675 S.E.2d 660 (2009). "Under the North Carolina Rules of Evidence, a lay witness may testify in the form of opinions or inferences only if the opinions or inferences 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.'" *State v. McVay*, 174 N.C. App. 335, 339, 620 S.E.2d 883, 885-86 (2005) (quoting N.C. Gen. Stat. § 8C-1, Rule 701

(2003)). Our Courts have held "a witness may state the 'instantaneous conclusions of the mind as to the appearance, condition, or mental or physical state of persons, animals, and things, derived from observation of a variety of facts presented to the senses at one and the same time.'" *State v. Spaulding*, 288 N.C. 397, 411, 219 S.E.2d 178, 187 (1975) (quoting *State v. Skeen*, 182 N.C. 844, 109 S.E. 71 (1921)), *sentence vacated on other grounds*, 428 U.S. 904, 49 L. Ed. 2d 1210 (1976). These statements are referred to as "shorthand statements of facts." *Id.*

Here, we conclude the deputy's testimony amounted to nothing more than shorthand statements of fact based on his knowledge and observations. We conclude the testimony did not implicate the defendant's guilt, but rather explained the deputy's perception of Ms. Manning and the "large knot" he felt on the back of her head. Accordingly, this argument is overruled.

NO ERROR.

Chief Judge MARTIN and Judge HUNTER, JR. concur.

Report per Rule 30(e).