

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA13-255
NORTH CAROLINA COURT OF APPEALS

Filed: 1 October 2013

STATE OF NORTH CAROLINA

v.

Guilford County
Nos. 11 CRS 91417-18

RAUL RETANA RAMOS

Appeal by defendant from judgment entered 18 October 2012 by Judge Edgar B. Gregory in Guilford County Superior Court. Heard in the Court of Appeal 23 September 2013.

Assistant Attorney General Roy Cooper, by Assistant Attorney General Daphne D. Edwards, for the State.

Appellate Defender Staples Hughes, by Assistant Appellate Defender Constance E. Widenhouse, for defendant-appellant.

ERVIN, Judge.

Defendant Raul Retana Ramos appeals from a judgment sentencing him to a consolidated term of 175 to 219 months imprisonment based upon his convictions for trafficking in more than 400 grams of cocaine by possession and trafficking in more than 400 grams of cocaine by transportation. On appeal, Defendant contends that the trial court erred by allowing a law enforcement officer to testify that, in his opinion, Defendant

was guilty of the crimes with which he had been charged. After careful consideration of Defendant's challenge to the trial court's judgment in light of the record and the applicable law, we conclude that the trial court's judgment should remain undisturbed.

I. Factual Background

A. Substantive Facts

In October 2011, Detective Alexander Williams of the Drug and Vice Unit of the Greensboro Police Department received information from a confidential informant to the effect that an Hispanic male named "Raul" was selling large amounts of cocaine. According to the informant, Raul was 5'6" tall, approximately 38 years of age, and had a "fat belly, mustache, short hair" and "messed up teeth." The informant told Detective Williams that Raul lived in a trailer at Oakwood Mobile Home Park and drove a pearl-colored Cadillac Escalade and a black Lincoln Navigator. After receiving this information, Detective Williams went to the mobile home park, located a black Lincoln Navigator at Lot No. 157, and determined that the Lincoln was registered to Defendant.

At that point, Detective Williams procured the assistance of Detective Steve Hollers of the Greensboro Police Department, who agreed to participate in an undercover drug operation. In

accordance with the instructions that he received from Detective Williams, the informant introduced Detective Hollers to Defendant and helped arrange a transaction in which Detective Hollers would purchase a kilogram of cocaine from Defendant.

On 25 October 2011, Detective Hollers and the informant drove in an unmarked SUV to a restaurant parking lot at which they were supposed to meet Defendant. At that time, Detective Hollers, who was dressed in plain clothes, was wearing a body wire which allowed other officers situated at various points in the vicinity of the parking lot to hear the conversations in which he participated. A few minutes after the informant called Defendant and told him that he and Detective Hollers "were ready to do business," Defendant entered the parking lot in his light-colored Cadillac Escalade and parked next to the passenger side of the unmarked SUV. A younger male, later determined to be Jose Ramon Lemus, occupied the Escalade's front passenger seat.

After the informant and Defendant emerged from their respective vehicles and spoke briefly, Defendant spoke to Detective Hollers through the open passenger door of the unmarked SUV. At that point, Detective Hollers handed Defendant a nylon gym bag containing \$38,000. Upon receiving the gym bag, Defendant rifled through the money, appeared satisfied, and turned away with the bag. As Defendant turned away, Detective

Hollers told Defendant that Detective Hollers needed to retain possession of the money until he had had an opportunity to examine the cocaine. As a result, after leaving the gym bag containing the money on the seat of the unmarked SUV, Defendant returned to his Escalade and spoke to Mr. Lemus, who climbed into the Escalade's luggage area. After Mr. Lemus got out of the Escalade, Defendant walked back to the unmarked SUV and handed Detective Hollers two disk-shaped objects which were contained in one cellophane-wrapped package. As soon as Detective Hollers made a comment indicating that he had cocaine in his possession, the arrest team intervened to arrest Defendant and Mr. Lemus. A subsequent analysis indicated that the package which Defendant delivered to Detective Hollers contained 991 grams of cocaine.

After being taken into custody, Defendant was transported to the police station and interviewed by Detective Williams and Detective Roberto Monge, the latter of whom spoke Spanish fluently. At that time, Defendant told the investigating officers that a white man and woman called him and asked to purchase a kilogram of cocaine; that he bought a kilogram of cocaine from an Hispanic man from whom he had made previous purchases; that he had hidden the cocaine overnight in a house at which he was doing construction; that he had received a phone

call from the man and woman about buying a kilo of cocaine before going to the restaurant parking lot; and that Mr. Lemus had nothing to do with the cocaine transaction despite the fact that Defendant had asked him to retrieve the cocaine from the Escalade.

B. Procedural History

On 25 October 2011, magistrate's orders were issued charging Defendant with conspiring with Mr. Lemus to traffic in more than 400 grams of cocaine by possession, trafficking in more than 400 grams of cocaine by transportation, and trafficking in more than 400 grams of cocaine by possession. On 12 December 2011, the Guilford County grand jury returned bills of indictment charging Defendant with conspiring with Mr. Lemus to traffic in more than 400 grams of cocaine, trafficking in more than 400 grams of cocaine by transportation, and trafficking in more than 400 grams of cocaine by possession. The charges against Defendant came on for trial before the trial court and a jury at the 15 October 2012 criminal session of the Guilford County Superior Court. On 18 October 2012, the jury returned verdicts finding Defendant guilty of trafficking in more than 400 grams of cocaine by possession and trafficking in more than 400 grams of cocaine by transportation and acquitting Defendant of conspiring with Mr. Lemus to traffic in more than

400 grams of cocaine by possession. At the conclusion of the ensuing sentencing hearing, the trial court consolidated the two charges for which Defendant had been convicted for judgment and sentenced him to a term of 175 to 219 months imprisonment. Defendant noted an appeal to this Court from the trial court's judgment.

II. Substantive Legal Analysis

On direct examination, Detective Williams testified that:

Q. And — and your instruction then was to — for the informant to do what?

A. To basically arrange for this transaction. And I had explained that I wanted an undercover detective to be there for the transaction.

Q. Can you tell the members of the jury why it was important to introduce an undercover officer in this drug transaction, why — why a police officer was to be introduced?

A. In my opinion it's —

[DEFENSE COUNSEL]: Object.

THE COURT: Objection is overruled. You may answer.

A. It's such a, I mean, it's such a strong case when you actually have a law enforcement officer —

[DEFENSE COUNSEL]: Objection. Move to strike.

THE COURT: Motion is denied.

Q. Go ahead.

A. — when you have a law enforcement officer actually witnessing and actually conducting the actual transaction.

Q. When part of your instruction was that the undercover officer was to be involved in this transaction, how did you explain that was supposed to take place?

A. I explained that — that basically we wanted to do this transaction in — in a public place and that I wanted to try to accomplish this the following day.

In his brief, Defendant argues that Detective Williams' statement that "it's such a strong case . . . when you have a law enforcement officer actually witnessing and [] conducting the actual transaction" constituted an improper expression of an opinion to the effect that Defendant was guilty and "improperly invaded the province of the jury." We disagree.

Admittedly, opinion testimony by a non-expert witness is "limited 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. A trial court's ruling regarding the admissibility of lay opinion testimony is reviewed for abuse of discretion. *State v. Washington*, 141 N.C. App. 354, 362, 540 S.E.2d 388, 395 (2000), *disc. review denied*, 353 N.C. 396, 547 S.E.2d 427 (2001). Thus,

the ultimate issue for our consideration in this case is whether the trial court abused its discretion by failing to sustain Defendant's objections to the admission of the relevant portion of Detective Williams' testimony.

The testimony against which Defendant's argument is directed does not, when read in context, amount to the expression of an opinion that Defendant was guilty or that the State had a strong case against Defendant. On the contrary, the challenged testimony served to explain Detective Williams' decision to have an officer accompany an informant during the controlled buy. As a result, we conclude that the trial court did not abuse its discretion by allowing the admission of the relevant portion of Detective Williams' testimony.

In addition, even if the trial court should have sustained Defendant's objections to the challenged portion of Detective Williams' testimony, we cannot conclude that Defendant is entitled to relief from his convictions based upon this series of rulings. In order to obtain relief from a criminal conviction on appeal, a defendant must show that the error upon which he or she relies in seeking relief was prejudicial, i.e., that, absent the trial court's error, there is a reasonable possibility that the jury would have reached a different result. *State v. Rasmussen*, 158 N.C. App. 544, 556, 582 S.E.2d 44, 53,

disc. review denied, 357 N.C. 581, 589 S.E.2d 362 (2003). At trial, both Detective Williams and Detective Hollers testified concerning the cocaine transaction in which Defendant was involved. In addition, Defendant confessed that he had sold cocaine to Detective Hollers after receiving a phone call from the informant. As a result, given the overwhelming strength of the State's case, Defendant has failed to demonstrate that there is a reasonable possibility that, had the trial court sustained his objections to the admission of the challenged testimony, the jury would have returned a different verdict at Defendant's trial. Thus, for all of these reasons, we conclude that the trial court did not commit prejudicial error by overruling Defendant's objections to the admission of the challenged portion of Detective Williams' testimony and that the trial court's judgment should, and hereby does, remain undisturbed.

NO ERROR.

Judges DILLON and DAVIS concur.

Report per Rule 30(e).