

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA14-544
NORTH CAROLINA COURT OF APPEALS

Filed: 16 December 2014

STATE OF NORTH CAROLINA

v.

Forsyth County
No. 12 CRS 60457

DARIAN DENARD ANDREWS, JR.

Appeal by defendant from judgment entered 18 July 2013 by Judge Edwin G. Wilson in Forsyth County Superior Court. Heard in the Court of Appeals 10 November 2014.

Attorney General Roy Cooper, by Assistant Attorney General Deborah M. Greene, for the State.

James W. Carter for defendant-appellant.

ELMORE, Judge.

Defendant Darian Denard Andrews, Jr. appeals from the judgment entered after a jury found him guilty of robbery with a dangerous weapon and two counts of resisting a public officer. We find no prejudicial error at trial.

On 22 April 2013, defendant was indicted by a Forsyth County grand jury for one count of robbery with a dangerous weapon and two counts of resisting a public officer. The case

came on for trial at the 15 July 2013 Criminal Session of Forsyth County Superior Court before Judge Edwin G. Wilson. Once the jury pool was seated in the courtroom, Judge Wilson announced the case and asked defendant to "stand up, turn around, and face the members of the jury." Judge Wilson then identified defense counsel, the prosecutor, the alleged robbery victim, Jonathan Zackoff, and the two officers alleged to be victims in the resisting a public officer cases. Subsequently, a jury found defendant guilty of all charges and the trial court sentenced defendant to 72-99 months imprisonment. Defendant gave notice of appeal in open court.

Defendant's sole argument on appeal is the trial court impermissibly expressed its opinion by introducing defendant to the jury and identifying defendant as "the defendant." Defendant contends the trial court violated N.C. Gen. Stat. § 15A-1222 (2013) which states "[t]he judge may not express during any stage of the trial, any opinion in the presence of the jury on any question of fact to be decided by the jury[;]" and N.C. Gen. Stat. § 15A-1232 (2013) which states that "[i]n instructing the jury, the judge shall not express an opinion as to whether or not a fact has been proved and shall not be required to state, summarize or recapitulate the evidence, or to explain the

application of the law to the evidence." Defendant's argument is without merit.

Prior to selection of jurors, the judge must identify the parties and their counsel and briefly inform the prospective jurors, as to each defendant, of the charge, the date of the alleged offense, the name of any victim alleged in the pleading, the defendant's plea to the charge, and any affirmative defense of which the defendant has given pretrial notice as required by Article 52, Motions Practice. The judge may not read the pleadings to the jury.

N.C. Gen. Stat. § 15A-1213 (2013).

In this case, the trial court did not express its opinion by identifying defendant as "the defendant." The trial judge complied with his obligation pursuant to section 15A-1213 to inform the prospective jurors about the case, which includes an obligation to identify the parties.

Moreover, our Supreme Court has previously rejected defendant's argument. In *State v. Brown*, 306 N.C. 151, 175, 293 S.E.2d 569, 584-85, *cert. denied*, 459 U.S. 1080, 74 L. Ed. 2d 642, (1982), the defendant argued that "the trial court impermissibly expressed its opinion by refusing to grant the defendant's request that he be referred to by his name and not as 'the defendant.'" Our Supreme Court stated that it was "unable to imagine the slightest prejudice resulting to

defendant from the historical practice in our trial courts of referring to the defendant as 'the defendant.'" *Id.* at 175, 293 S.E.2d at 585. Likewise, in this case, we discern no prejudice to defendant.

No error.

Judges STEELMAN and DILLON concur.

Report per Rule 30(e).