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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA20-63

Filed: 1 December 2020

Moore County, No. 17CRS052617

STATE OF NORTH CAROLINA

v.

JUSTIN EDWARD CHRISCOE, Defendant.

Appeal by Defendant from judgments entered 25 April 2019 by Judge James M. Webb in Moore County Superior Court. Heard in the Court of Appeals 23 September 2020.

Attorney General Joshua H. Stein, by Assistant Attorney General Norlan Graves, for the State.

Law Office of Richard J. Costanza, P.A., by Richard J. Costanza, for the Defendant.

DILLON, Judge.

Justin E. Chriscoe (“Defendant”) appeals from judgments entered upon a jury verdict finding him guilty of discharging a weapon into occupied property and assault with a deadly weapon inflicting serious injury (“AWDWISI”). We conclude that Defendant received a fair trial, free from reversible error.

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I. Background

Defendant and the victim, Matthew Munz (“Mr. Munz”) were longtime friends. However, on 10 September 2017 they engaged in a text message argument consisting of insults and, ultimately, challenges to a physical fight. Defendant and Mr. Munz decided to meet near Defendant’s home. Once Mr. Munz parked, Defendant told him to get out of his truck, but Defendant did not exit his own vehicle. When Mr. Munz placed his left foot on the ground, he was immediately shot in the abdomen. Another shot grazed his shoulder and hit the roof of his vehicle. Mr. Munz pulled himself back into his truck and shut the door, but he was shot again as a third shot passed through his driver’s side door.

Mr. Munz called 911, then drove about five miles away to a local church where he received first aid.

As a result of the altercation, Defendant was indicted on one count of discharging a weapon into occupied property and AWDWISI, and, by superseding indictment, with discharging a weapon into occupied property and assault with a deadly weapon with intent to kill inflicting serious injury (“AWDWIKISI”). Following a jury trial, Defendant was found guilty of discharging a weapon into occupied property and AWDWISI. Defendant timely appealed.

II. Analysis

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Defendant argues that the trial court erred in admitting a portion of Mr. Munz's testimony, contending that it did not meet the criteria for admission as expert testimony or lay opinion testimony.¹ Specifically, Mr. Munz testified that though he thought he had been shot in the buttocks, he later reasoned that he was shot right above the heart and that the bullet traveled through his body and rested in his hip. Also, he testified that he was no further than one foot away from the truck when shot based on the "angle" or "trajectory" of the bullet.

We review the trial judge's decisions regarding the admission of lay opinion and expert testimony for abuse of discretion. *State v. Anderson*, 322 N.C. 22, 28, 366 S.E.2d 459, 463 (1988); *State v. Washington*, 141 N.C. App. 354, 362, 540 S.E.2d 388, 395 (2000). "Abuse of discretion results where the court's ruling is manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision." *State v. Hennis*, 323 N.C. 279, 285, 372 S.E.2d 523, 527 (1988).

Mr. Munz was never tendered as an expert witness, and the State does not make an argument under a theory of expert testimony. Therefore, we examine this

¹ We disagree with the State's contention that Defendant's argument was not preserved by objection. The State argues that the general objections made by defense counsel were not sufficient and required counsel to provide the basis for his objections as the grounds were not apparent. We consider Defendant's argument sufficiently preserved and address Defendant's argument on the merits.

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case solely under the lay opinion testimony rationale.² Rule 701 of our Rules of Evidence provides:

If the witness is not testifying as an expert, his testimony in the form of opinions or inferences 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 (2017). Our Supreme Court has further elaborated:

Opinion evidence is generally *inadmissible* whenever the witness can relate the facts so that the jury will have an adequate understanding of them and the jury is as well qualified as the witness to draw inferences and conclusions from the facts. If either of these conditions is *absent*, the evidence is *admissible*.

State v. Lindley, 286 N.C. 255, 257, 210 S.E.2d 207, 209 (1974) (emphasis added) (citations and quotation marks omitted).

Here, Mr. Munz testified from his personal observations of being shot three times. He used language such as “I think” and “I thought” to describe the experience. Given the trial court’s discretion in the realm of opinion testimony, it was within the court’s discretion to conclude that Mr. Munz was testifying about something (a) rationally based on his perception and (b) helpful to a clear understanding of his testimony or the determination of a fact in issue. *See* N.C. Gen. Stat § 8C-1, Rule 701. It does not appear that the trial court’s decision was “manifestly unsupported

² *See* N.C. R. App. P. 28(a) (“Issues not presented and discussed in a party’s brief are deemed abandoned.”).

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by reason” or “so arbitrary that it could not have been the result of a reasoned decision.” *Hennis*, 323 N.C. at 285, 372 S.E.2d at 527. Therefore, we conclude that the trial court did not err in admitting Mr. Munz’ testimony.

Assuming *arguendo* that the trial court did err in admitting the challenged testimony, Defendant has failed to show that, had the evidence been excluded, a different result would have been reached at the conclusion of his trial. Other evidence at trial included testimony from law enforcement personnel, a firearm analyst, Mr. Munz’ family, and Defendant’s own admission to shooting at Mr. Munz and his vehicle after exchanging threatening and insulting text messages. Any potential prejudice from Mr. Munz’ challenged testimony was not enough to constitute reversible error in this case.

III. Conclusion

We conclude that the trial court did not commit reversible error in admitting Mr. Munz’ testimony.

NO ERROR.

Judges INMAN and YOUNG concur.

Report per Rule 30(e).