

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA11-383
NORTH CAROLINA COURT OF APPEALS

Filed: 15 November 2011

STATE OF NORTH CAROLINA

v.

Catawba County
Nos. 09 CRS 52256-58

DAVID GENE CARLE

Appeal by defendant from judgments entered 7 September 2010 by Judge Edgar B. Gregory in Catawba County Superior Court. Heard in the Court of Appeals 17 October 2011.

Attorney General Roy Cooper, by Assistant Attorney General Jane Rankin Thompson, for the State.

Russell J. Hollers III for defendant-appellant.

McCULLOUGH, Judge.

On 20 April 2009, defendant David Gene Carle ("defendant") was indicted for two counts of taking indecent liberties with a child. On 30 August 2010, a bill of information was entered charging defendant with one count of statutory sex offense. On 7 September 2010, a jury found defendant guilty as charged, and the trial court sentenced defendant to two terms of 16 to 20

months and one term of 192 to 240 months, with all three sentences running concurrently. Defendant appeals.

Defendant was tried during the 30 August 2010 Criminal Session of Catawba County Superior Court. On the morning of Friday, 3 September 2010, the trial court informed the parties outside the presence of the jury that defense counsel was ill and unable to attend the trial that day. Therefore, the trial court decided to resume trial on the following Tuesday, after the Labor Day holiday, to ensure that defendant received a fair trial. The trial court then informed the jury of the situation, and asked if any juror had a conflict with returning on Tuesday. After receiving no response from the jurors, the trial court continued the trial to 7 September 2010 at 9:30 a.m.

Defendant's sole argument on appeal is that the trial court lacked jurisdiction to enter judgment against him because the judgments purportedly were entered out of session. In support for his argument, defendant relies on *State v. Boone*, 310 N.C. 284, 311 S.E.2d 552 (1984), and *State v. Trent*, 359 N.C. 583, 614 S.E.2d 498 (2005). Both cases involved orders pertaining to motions to suppress evidence. In each case, the trial court did not rule on the motion in open court, but later entered an order. *Trent*, 359 N.C. at 584, 614 S.E.2d at 499; *Boone*, 310

N.C. at 286, 311 S.E.2d at 554. In *Trent*, our Supreme Court held that “an order of the superior court, in a criminal case, must be entered during the term, during the session, in the county and in the judicial district where the hearing was held.’ Absent consent of the parties, an order entered in violation of these requirements is null and void and without legal effect.” *Trent*, 359 N.C. at 585, 614 S.E.2d at 499 (quoting *Boone*, 310 N.C. at 287, 311 S.E.2d at 555).

We find the instant case distinguishable. Unlike the courts in *Boone* and *Trent*, the trial court in the instant case extended the session. Pursuant to N.C. Gen. Stat. § 15-167, a trial court may extend a session of court as follows:

Whenever a trial for a felony is in progress on the last Friday of any session of court and it appears to the trial judge that it is unlikely that such trial can be completed before 5:00 P.M. on such Friday, the trial judge may extend the session as long as in his opinion it shall be necessary for the purposes of the case Whenever a trial judge continues a session pursuant to this section, he shall cause an order to such effect to be entered in the minutes, which order may be entered at such time as the judge directs, either before or after he has extended the session.

N.C. Gen. Stat. § 15-167 (2009). Here, the trial was not able to be completed by Friday, 3 September 2010. Therefore, the trial court extended the session to the following Tuesday.

Although N.C. Gen. Stat. § 15-167 directs the trial court to enter an order continuing the session, the trial court may satisfy the requirements of N.C. Gen. Stat. § 15-167 without entering a written order. See *State v. Locklear*, 174 N.C. App. 547, 550-51, 621 S.E.2d 254, 256-57 (2005). In *Locklear*, we held that where the trial court had several discussions with counsel and the jury in open court regarding the extension, without objection from defendant, entry of a written order was not necessary to extend the session. *Id.*

As in *Locklear*, the trial court in the instant case repeatedly announced that it was recessing court due to defense counsel's illness and that the trial would resume on 7 September 2010. Defendant did not object, and the session was extended. Furthermore, the trial court's witness list contains an entry on 3 September 2010 which states: "Court Delayed due to Johnny Hayes being ill - Court to resume 9-7-10." We find this entry and the oral pronouncement of the trial court sufficient to extend the session in accordance with N.C. Gen. Stat. § 15-167. Therefore, we find no error in the judgments of the trial court.

No error.

Judges McGEE and ELMORE concur.

Report per Rule 30(e).