

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA13-153

NORTH CAROLINA COURT OF APPEALS

Filed: 15 October 2013

STATE OF NORTH CAROLINA

v.

Durham County

Nos. 12 CRS 3906, 50223-24

GEORGE ANTHONY ADAMS,
Defendant.

Appeal by defendant from judgment entered 16 August 2012 by Judge A. Robinson Hassell in Durham County Superior Court. Heard in the Court of Appeals 7 October 2013.

Attorney General Roy Cooper, by Special Deputy Attorney General Iain M. Stauffer, for the State.

Jarvis John Edgerton, IV, for defendant-appellant.

BRYANT, Judge.

Defendant appeals from a judgment entered upon his conviction for two counts of breaking or entering, two counts of misdemeanor larceny, and attaining habitual felon status. We find no error.

Defendant was tried during the 13 August 2012 Criminal Session of Durham County Superior Court. The State's evidence showed that defendant stole various personal belongings from two vehicles parked in a residential driveway on 9 January 2012.

The jury began deliberations at 12:21 p.m. on 15 August 2012 and broke for lunch at 1:15 p.m. The jury resumed deliberations at 2:35 p.m., and at 3:19 p.m. sent a request to the trial court for reinstruction on reasonable doubt and circumstantial evidence. Neither party objected. The State also indicated that it would not object if the court preferred to give the jury a written copy of all of the instructions. The trial court, however, declined to reinstruct the jury on circumstantial evidence and reasonable doubt, giving the following explanation to counsel: "And I'll go ahead and tell you all now the Court in its discretion is going to decline to reinstruct, since I just did it three hours ago." After bringing the jury back in, the judge explained that he would not reread the instructions and told the jury "to recall as best you can the evidence placed before you as well as the instructions previously given to you not that long ago"

The jury found defendant guilty of two counts of breaking or entering and two counts of misdemeanor larceny. Defendant

thereafter entered a plea of guilty to having attained habitual felon status. The trial court sentenced defendant to a consolidated term of 26 to 44 months imprisonment. Defendant appeals.

Defendant argues that the trial court erred by failing to reinstruct the jury on reasonable doubt and circumstantial evidence following the jury's request for reinstruction. We review the trial court's decision following such a request for an abuse of discretion. See *State v. Prevette*, 317 N.C. 148, 163-64, 345 S.E.2d 159, 168-69 (1986).

An "[a]buse 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) (citing *State v. Parker*, 315 N.C. 249, 258-59, 337 S.E.2d 497, 502-03 (1985)). "In our review, we consider not whether we might disagree with the trial court, but whether the trial court's actions are fairly supported by the record." *State v. Lasiter*, 361 N.C. 299, 302, 643 S.E.2d 909, 911 (2007) (citing *Wainwright v. Witt*, 469 U.S. 412, 434, 83 L. Ed. 2d 841, 858 (1985)).

Our General Statutes provide that "[a]fter the jury retires for deliberation, the judge may give appropriate additional instructions to . . . [r]espond to an inquiry of the jury made in open court" N.C. Gen. Stat. § 15A-1234(a)(1) (2011). Because the language of N.C. Gen. Stat. § 15A-1234(a)(1) is permissive, "[t]he court is not required to repeat instructions which were previously given to the jury in the absence of some error in the charge but may do so in its discretion." *State v. Bartow*, 77 N.C. App. 103, 110, 334 S.E.2d 480, 484 (1985) (citing *State v. Hockett*, 309 N.C. 794, 800, 309 S.E.2d 249, 252 (1983)). Additionally, our Supreme Court noted "that the trial court is in the best position to determine whether further additional instruction will aid or confuse the jury in its deliberations, or if further instruction will prevent or cause in itself an undue emphasis being placed on a particular portion of the court's instructions." *Prevette*, 317 N.C. at 164, 345 S.E.2d at 169.

In the instant case, the trial court's ruling was not "manifestly without reason." Rather, the trial court explained that it had read the instructions only a few hours earlier and preferred for the jurors to recall the instructions as best they

could. Therefore, we hold the trial court did not abuse its discretion.

Defendant argues, among other things, that the trial court's "blanket rule" for denying the reinstruction was not based on particular facts or circumstances of the case and therefore amounted to an abuse of discretion. We are not persuaded. We find no evidence in the record for defendant's assertion that the trial court imposed a "blanket rule" in denying the instruction. Contrary to defendant's argument, the court made no indication that a certain amount of time must pass before it rereads an instruction. Accordingly, we find no error on the part of the trial court.

No error.

Judges HUNTER, Robert C., and McCULLOUGH concur.

Report per Rule 30(e).