

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-402

Filed: 20 November 2018

Davie County, No. 15 CRS 51326

STATE OF NORTH CAROLINA

v.

DEVONTE J. WILLIAMS, Defendant.

Appeal by Defendant from judgment entered 16 February 2017 by Judge Richard S. Gottlieb in Davie County Superior Court. Heard in the Court of Appeals 9 November 2018.

Attorney General Joshua H. Stein, by Assistant Attorney General Margaret A. Force, for the State.

Glover & Petersen, P.A., by Ann B. Petersen, for the defendant-appellant.

MURPHY, Judge.

Defendant Devonte J. Williams appeals from a judgment entered upon his convictions for statutory sex offense and indecent liberties with a child. We conclude that Defendant received a fair trial free from prejudicial error.

On 16 February 2017, the jury returned a verdict of not guilty on one count of statutory sex offense, but guilty on the other count of statutory sex offense and

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indecent liberties with a child. The trial court consolidated the convictions for judgment and sentenced Defendant to an active term of 225 to 330 months. Defendant gave oral notice of appeal in open court.

Before this Court, Defendant contends that the trial court abused its discretion by denying a jury request to review evidence because it erroneously believed it had no discretion to grant the request. We disagree.

N.C. G. S. § 15A-1233 (2017) addresses the “[r]eview of testimony” and “use of evidence by the jury.” N.C. G. S. § 15A-1233(a) provides that

If the jury after retiring for deliberation requests a review of certain testimony or other evidence, the jurors must be conducted to the courtroom. The judge in his discretion, after notice to the prosecutor and defendant, may direct that requested parts of the testimony be read to the jury and may permit the jury to reexamine in open court the requested materials admitted into evidence. In his discretion the judge may also have the jury review other evidence relating to the same factual issue so as not to give undue prominence to the evidence requested.

Id. The statute requires the trial court to “exercise its discretion in determining whether to permit requested evidence to be read to or examined by the jury together with other evidence relating to the same factual issue.” *State v. Ashe*, 314 N.C. 28, 34, 331 S.E.2d 652, 656 (1985). If a trial court fails in its duty “by denying the jury’s request to review [evidence or testimony] upon the ground that the trial court has no power to grant the motion in its discretion, the ruling is reviewable, and the alleged

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error is preserved by law even when the defendant fails to object.” *State v. Starr*, 365 N.C. 314, 317, 718 S.E.2d 362, 365 (2011) (quotation marks and citation omitted).

In the present case, the jury sent out a note during its deliberations that read: “The jury requests the following: Copy of Defendant’s statements to Detective Palmer.” In speaking with the attorneys prior to calling the jury into the courtroom, the trial court stated, “I don’t recall those being made an exhibit. . . . [T]he fact that they were not an exhibit means that I can’t give them to them. And I don’t think as a usual matter, we make detectives’ notes exhibits anyway.” The jury was recalled to the courtroom, wherein the trial court informed the jury, “I’m unable to allow you a copy of any statements. Those statements are not part of the evidence.”

Defendant contends that the jury meant to request a copy of the *transcript* of Detective Palmer’s testimony as it related to the statements Defendant gave her. However, this Court cannot infer the intent of the jury, and what it actually requested was a “Copy of Defendant’s statements to Detective Palmer.” There is nothing in the record to show that there ever was a verbatim copy of the statements Defendant provided Detective Palmer, and while Detective Palmer took notes recording Defendant’s statements to her, those notes were not admitted into evidence. The trial court correctly concluded that it lacked authority to provide the jury a copy of Detective Palmer’s notes. *See State v. Parker*, 61 N.C. App. 94, 99-100, 300 S.E.2d 451, 454 (1983) (“The trial judge has no authority to permit the jury to take exhibits

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or other materials to the jury room that have not been received into evidence.”). Defendant does not point to any duty of the trial court to inquire of the jury whether the jury intended to request something other than what it stated. If the defense believed that the jury was actually requesting a portion of the transcript, it was incumbent upon the defense to argue that point at trial before the trial court instructed the jury that it could not grant the request. Defendant did not object to the instruction as it was given.

Given that the trial court lacked authority to provide the jury a copy of Defendant’s statements to Detective Palmer, the court did not abuse its discretion in refusing the request. As a result, we conclude that Defendant received a fair trial free from prejudicial error.

NO ERROR.

Judges STROUD and DIETZ concur.

Report per Rule 30(e).