

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA06-475

NORTH CAROLINA COURT OF APPEALS

Filed: 19 December 2006

STATE OF NORTH CAROLINA

v.

Nash County
No. 04 CRS 51790

WILLIE CLARENCE ALSTON

Appeal by defendant from judgment entered 11 October 2005 by Judge Quentin T. Sumner in Nash County Superior Court. Heard in the Court of Appeals 11 December 2006.

Attorney General Roy Cooper, by Assistant Attorney General Sarah Y. Meacham, for the State

Nora H. Hargrove for defendant-appellant.

LEVINSON, Judge.

On 12 July 2004, Willie Clarence Alston (defendant) was indicted for a statutory sex offense. The case was tried at the 10 October 2005 Criminal Session of Nash County Superior Court.

The State presented evidence at trial which tended to show the following: On 10 March 2004, the victim, TD, a fifteen year old girl, had just gotten off the school bus when she saw the defendant, Willie Clarence Alston. Defendant told TD to get in the car because he was going to take her to pick up Shirley Johnson. Johnson, TD's aunt, had custody of TD and had raised her since she

was two years old. TD's brother and his girlfriend were already in the car, and TD got in the car. They dropped TD's brother and girlfriend off at a Travel Lodge and continued driving to Rocky Mount, where they stopped at a bank and purchased sodas. While they were driving, defendant started feeling TD's breasts. He pulled her shirt out, and then took his finger and put it in TD's vagina. TD told him to stop, and defendant replied that he was sorry.

At trial, Johnson testified on cross-examination that several days later, she took TD to the emergency room to have her examined. Johnson testified that the doctor told her "there weren't no penetration." Defendant's counsel then asked:

Q: That's what the doctor said?

A: Yes, no penetration, penis or nothing, but he didn't say nothing about no finger.

Following the presentation of evidence, but prior to closing arguments, the trial court handed the parties a verbatim transcript of Johnson's testimony. The trial court then instructed counsel for both parties that if they used any part of Johnson's testimony in their argument, they should "use the entire verbatim response."

Defendant was convicted of a statutory sex offense and sentenced to a term of 192 to 240 months imprisonment. Defendant appeals.

Defendant's sole argument on appeal is that the trial court erred by improperly limiting his counsel's use of Johnson's testimony in his closing argument. Defendant contends that by imposing a verbatim reading requirement, counsel was deprived of

his right to argue the evidence in the strongest manner possible in favor of the defendant.

After careful review of the record, briefs and contentions of the parties, we find no error. Control of closing arguments is left to the sole discretion of the trial court. *State v. Barrett*, 343 N.C. 164, 181, 469 S.E.2d 888, 898 (1996). “Trial counsel is allowed wide latitude in argument to the jury and may argue all of the evidence which has been presented as well as reasonable inferences which arise therefrom.” *State v. McNeil*, 350 N.C. 657, 685, 518 S.E.2d 486, 503 (1999) (quoting *State v. Guevara*, 349 N.C. 243, 257, 506 S.E.2d 711, 721 (1998)). Here, we hold that the trial court did not abuse its discretion by placing the limitation on counsel’s use of Johnson’s testimony.

Prior to closing arguments, defendant moved to dismiss the charges. In support of the motion, counsel for defendant argued that Johnson testified that the doctor told her no penetration occurred. In response, the prosecutor argued that counsel had misquoted Johnson. The trial court denied the motion to dismiss. Then, prior to closing, the trial court issued its directive that Johnson’s testimony be used verbatim. The court’s directive was evidently based on its belief that counsel had misquoted Johnson’s testimony, and it acted *sua sponte* to prevent further misuse of the testimony during closing argument. The court did not prevent counsel from using Johnson’s testimony, or mandate that it be used, but merely placed limits on its use in order to ensure that it was presented fairly. Thus, we conclude that the trial court’s

directive was not "so arbitrary that it could not have been the result of a reasoned decision." *State v. Blakeney*, 352 N.C. 287, 298, 531 S.E.2d 799, 809 (2000). Accordingly, we find no error.

No error.

Judges TYSON and BRYANT concurr.

Report per Rule 30(e).