

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA24-182

Filed 19 March 2025

Randolph County, Nos. 16 CRS 235, 18 CRS 64

STATE OF NORTH CAROLINA

v.

KEYAYONE LAMONT MURPHY

Appeal by defendant from judgments entered 8 March 2023 by Judge Thomas H. Lock in Randolph County Superior Court. Heard in the Court of Appeals 12 February 2025.

Attorney General Jeff Jackson, by Special Deputy Attorney General Michael T. Henry, for the State.

Anne Bleyman for the defendant-appellant.

TYSON, Judge.

Keayone Lamont Murphy (“Defendant”) appeals from judgments entered upon a jury’s verdicts finding him guilty of intentional child abuse causing serious injury and assault with a deadly weapon inflicting serious injury. We discern no prejudicial error.

I. Background

STATE V. MURPHY

Opinion of the Court

Defendant lived in an apartment with his girlfriend Cheryl, and her four children: seven-year-old “Zoe”; six-year-old “Liam”; four-year-old “James”; and infant “Alice” in October 2016. (pseudonyms used to protect the identity of minors). Defendant had previously disciplined the children by confining them to their rooms, beating them, and forcing them to do “exercises”, which entailed holding cans of food out in front of them all night. The children were prohibited from entering Defendant’s and Cheryl’s bedroom and were not allowed to touch Defendant’s safe located inside the room.

James and Liam played in Defendant’s and Cheryl’s bedroom while Defendant was at work on 4 October 2016. Defendant arrived home, observed his safe door had been moved, and he became very angry. Liam was frightened and told Defendant James had touched the safe. Defendant grabbed James by the throat, slammed him against the wall repeatedly, beat him with his fists, threw him to the ground, stomped on him, whipped him in the face with a metal belt buckle, and threw him down a flight of stairs.

Cheryl and the other children observed this incident. Defendant grabbed a bag and left the apartment. James remained motionless at the bottom of the stairs while Cheryl attempted to rouse him. Cheryl unsuccessfully attempted to wake him up. Cheryl texted Defendant. Defendant told Cheryl to take James to the hospital if she could not wake him up, but she should “have an explanation” for “every mark on him.” Defendant insisted Cheryl “take all responsibility” because he could not be “involved

in anything like this.” Defendant told Cheryl to “Google how to wake someone up from a seizure;” if unsuccessful to take James to the hospital; and, tell hospital staff he had suffered a “seizure,” got “overheated,” fought his “big heavy-handed brother,” and was “always hitting his head.”

Cheryl took James to an Asheboro hospital, where James was found to be in a critical condition and in danger of death. James had severe wounds to his head, bruises from head to toe, and an intracranial hemorrhage causing a brain bleed.

James was rushed into emergency surgery, where a piece of his skull was removed to alleviate the swelling of his brain. James was airlifted to Wake Forest Baptist Medical Center and was connected to a breathing machine, a C-spine collar, and a subclavian line. These injuries were determined to be consistent with severe life-threatening and physical child abuse. James remained hospitalized for 97 days.

Law enforcement officers and the Department of Social Services were dispatched to the hospital. The DSS social worker on call that evening, Christine Ann Mills, went to the hospital, interviewed Cheryl, and then went to the apartment to speak with Defendant and the other children. Mills asked Defendant what had happened to James, and he responded he did not know what had happened. The other children described Defendant’s actions against James to Mills.

Cheryl texted Defendant and informed him law enforcement officers already knew how James’ injuries occurred because Liam had told the details to Mills.

Defendant called Asheboro Police Detective William Russell Smith at 10:30

STATE V. MURPHY

Opinion of the Court

p.m. the next day and asked what was going on with the investigation. He told Detective Smith his name had come up in the investigation, and he wanted to come to the police department to clear his name of any wrongdoing in James' injuries. Defendant agreed to meet at 11:00 p.m. that evening to speak with Detective Smith, but he never showed up for the meeting.

DSS social worker Morgan Halkyer was assigned to James' and the other children's cases. Halkyer met with Defendant on 7 October 2016 while he was in custody, identified herself as a social worker, and explained she was there to gather information regarding the abuse allegations.

Defendant told Halkyer when he arrived home from work on 4 October 2016, he observed the door to his safe had been moved and demanded an explanation from the children. Defendant admitted he took off his belt, ordered James to lay on his belly, and he "hit James on the butt with the belt once," and then James "locked up and went stiff and his eyes rolled around." Halkyer spent approximately two hours speaking with Defendant.

Detective Smith obtained a warrant for Defendant's arrest. Defendant was charged with attempted first-degree murder, assault with a deadly weapon with intent to kill inflicting serious injury, and intentional child abuse.

The State dismissed the attempted first-degree murder charge and proceeded to trial on assault with a deadly weapon with intent to kill inflicting serious injury and on intentional child abuse. Defendant was convicted of both assault with a

deadly weapon with intent to kill inflicting serious injury and intentional child abuse. The jury found as an aggravating factor Defendant knew or should have known a child, who was not involved in the offense, was able to see and hear the commission of the offenses. Defendant was sentenced as a prior record level II offender in the aggravated range to consecutive sentences of 225 to 282 months and 36 to 56 months. Defendant appeals.

II. Jurisdiction

This Court possesses jurisdiction pursuant to N.C. Gen. Stat. §§ 7A-27(b)(1) and 15A-1444(a) (2023).

III. Issue

Defendant argues the trial court erred in admitting Defendant's statements to DSS social worker Halkyer.

IV. Defendant's Statements

Defendant argues the trial court erred in admitting Halkyer's testimony. Defendant contends Halkyer was conducting a custodial interrogation, and he should have received *Miranda* warnings prior to the questioning.

The State asserts Defendant waived his right to contest the denial of his motion. A suppression motion must be made prior to trial unless the State fails to give adequate pre-trial notice of its intent to use the evidence. *See* N.C. Gen. Stat. § 15A-975(a) (2023).

Defendant's counsel initially asserted he had not received notice of Defendant's

statements to Halkyer. The next day, outside of the presence of the jury, when the trial court was going to take up the issue of the State's prior notice, Defendant's counsel asserted, "That [issue] is off the table We received it electronically."

This Court has long held: "When no exception to the general rule applies, failure to make a timely motion to suppress prior to trial is a waiver of any right to contest the inadmissibility of evidence on constitutional grounds." *State v. Maccia*, 311 N.C. 222, 228, 316 S.E.2d 241, 244 (1984) (citation omitted). Defendant asserts he is entitled to the exception under N.C. Gen. Stat. § 15A-975(b)(1) (2023). However, Defendant's trial counsel conceded he had received notice provided by the State at trial. Defendant is not entitled to the exception under N.C. Gen. Stat. § 15A-975(b)(1). Defendant has waived his right to contest the admissibility of Halkyer's testimony.

Presuming, without deciding, Defendant did not waive appellate review of Halkyer's testimony, he is not entitled to relief.

Our Supreme Court held a social worker's questioning of a prisoner does not constitute a custodial interrogation implicating a defendant's Fifth and Sixth Amendment rights. *State v. Nations*, 319 N.C. 318, 325, 354 S.E.2d 510, 514 (1987) ("*Nations I*") (applying factual background to the Fifth Amendment); *State v. Nations*, 319 N.C. 329, 331, 354 S.E.2d 516, 518 (1987) ("*Nations II*") (applying factual background to Sixth Amendment). In *Nations I* and *Nations II*, the Court held if the social worker: (1) is not a sworn law enforcement officer; (2) conducts the interview

to further statutory duties as a DSS social worker; (3) was not directed by law enforcement to conduct the interview; and (4) did not conduct the interview for the purpose of furthering criminal proceedings, a custodial interrogation implicating a defendant's Fifth and Sixth Amendment rights did not occur. *Nations I*, 319 N.C. at 325, 354 S.E.2d at 514; *Nations II*, 319 N.C. at 331, 354 S.E.2d at 518. Our Supreme Court held a DSS worker, who had interviewed the defendant after his right to counsel attached, was not a law enforcement agent and the interview of the defendant did not constitute interrogation. *Nations I*, 319 N.C. at 325, 354 S.E.2d at 514; *Nations II*, 319 N.C. at 331, 354 S.E.2d at 518.

This Court held a social worker was a law enforcement agent where the social worker had been in contact with law enforcement prior to interviewing the defendant, interviewed the defendant with a detective present, and actively participated in the law enforcement investigation. *State v. Morrell*, 108 N.C. App. 465, 473-74, 424 S.E.2d 147, 152-53 (1993).

Halkyer spoke to Defendant while he was in custody regarding the asserted abuse of James. Halkyer identified herself as a social worker and relayed she was gathering information to report to DSS. Law enforcement officers were not present in the interview with Halkyer. Law enforcement officers did not direct Halkyer to the questions she asked in the interview. Law enforcement officers did not direct or encourage her interview. Halkyer was interviewing Defendant for the purposes of protecting the other children in the household and not for the purpose of gathering

information to charge Defendant with a crime.

In *Nations I*, *Nations II*, and here, unlike the worker in *Morrell*, the social services worker was focused on gathering information to *discern* how to move forward in their role as a DSS employee and not acting as an agent of law enforcement. See *State v. Taylor*, 332 N.C. 372, 383, 420 S.E.2d 414, 421 (1992) (applying *Nations* to where the defendant confessed to murders to cellmate, who was not an agent of the government, following being given *Miranda* warnings and being assigned counsel); *State v. Al-Hamood*, 264 N.C. App. 638, 824 S.E.2d 925 (2019) (unpublished) (applying *Nations* to where the defendant spoke to a child protective services assessor where spoken to without an attorney present and where no *Miranda* warnings had been given). Defendant's arguments are overruled

V. Conclusion

Defendant has waived appellate review of the admissibility of Halkyer's testimony. Presuming the issue was preserved, Defendant has failed to show prejudice. *Taylor*, 332 N.C. at 383, 420 S.E.2d at 421.

Defendant received a fair trial, free of prejudicial errors he preserved and argued. There is no error in the jury's verdicts or in the judgments entered thereon. *It is so ordered.*

NO ERROR.

Judges HAMPSON and GRIFFIN concur.

Report per Rule 30(e).