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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-392

Filed 2 April 2025

Mecklenburg County, Nos. 20CRS237181-590, 20CRS237182-590, 20CRS237184-590

STATE OF NORTH CAROLINA

v.

CHRISTOPHER LEE ROBERSON

Appeal by defendant from judgment entered 16 June 2023 by Judge Donald Ray Cureton in Superior Court, Mecklenburg County. Heard in the Court of Appeals 26 February 2025.

*Attorney General Jeff Jackson, by Special Deputy Attorney General Carl Newman, for the State.*

*Appellate Defender Glenn Gerding, by Assistant Appellate Defender John F. Carella, for defendant.*

ARROWOOD, Judge.

Christopher Lee Roberson (“defendant”) appeals from judgment entered 16 June 2023 upon his conviction of felony assault by strangulation. On appeal, defendant argues: (1) the trial court violated N.C.G.S. § 15A-1233 by improperly sending evidence to the jury during deliberations; (2) the trial court violated

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defendant's right to confrontation by admitting certain statements into evidence; (3) he received ineffective assistance of counsel when his counsel failed to object to excusing a juror; and (4) the crime of assault on a female is unconstitutional under the Equal Protection Clause of the North Carolina Constitution. For the following reasons, we vacate the trial court's judgment and remand for a new trial.

I. Background

On 26 July 2021, the State obtained three indictments against defendant for: (1) assault by strangulation; (2) assault on a female; and (3) communicating threats. These indictments stemmed from a dispute that occurred on 2 November 2020 between defendant and his ex-girlfriend.

On 9 June 2023, defendant filed a motion to dismiss the charges against him, arguing that the crime of assault against a female violates the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution. The trial court denied defendant's motion to dismiss the charges against him stating that this Court and the North Carolina Supreme Court have not weighed in on the constitutionality of the offense and the trial court declined to do so as well.

After defendant was indicted, the case proceeded to trial beginning on 12 June 2023 and concluded on 16 June 2023. During jury selection, the trial court instructed potential jurors that in order to be eligible to serve on the jury, they must not have been previously convicted of a felony. One juror ("Juror G"), stated he had been convicted of a felony in 1980 and he was unsure if his rights had been restored

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since his conviction. As a result, the trial court excused Juror G for cause “out of an abundance of caution” and neither the State nor defendant’s counsel objected to this.

During trial, the trial court heard a motion in limine for admitting 911 calls made on the day of the incident. The motion specifically related to the 911 call made during the night of the incident; defendant argued the call should be excluded as hearsay because the nature of the call was testimonial. After a hearing on the motion, the trial court deemed that the 911 call was not testimonial in nature because it was made during an ongoing emergency. Accordingly, the trial court admitted the 911 call into evidence without playing the call for the jury. Counsel for defendant also made a hearsay objection on the record for admitting the calls in violation of the Sixth Amendment Confrontation Clause.

At the close of the State’s evidence, defendant again moved to dismiss the charges against him, arguing the evidence was insufficient to support submitting the charges to a jury. After the defense rested, defendant’s counsel renewed his motion to dismiss all three charges against defendant for insufficient evidence and also renewed his objection on the constitutionality of the assault against a female charge. The trial court again denied defendant’s motion to dismiss, stating that the evidence provided to this jury was sufficient and noted defendant’s constitutional objections to the assault against a female charge.

During jury deliberations, the jury requested from the trial court to receive excerpts and transcripts of testimony given during trial from the victim’s mother,

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sister, and the nurse that examined her. The jury also requested forensic reports, photos, and diagrams of defendant's injuries. Defendant's counsel objected to the jury taking the requested evidence back into the jury room for deliberations. The trial court denied the jury's request to receive transcripts of testimony given during trial, but granted the jury's request to receive forensic documents. After the documents were sent back to the jury for deliberation, defendant's counsel argued that N.C.G.S. § 15A-1233 prohibited these documents from being submitted to the jury room against defendant's objection. Defendant's counsel requested that the trial court retrieve the documents from the jury and note his objection again for the record.

The jury completed deliberations and returned a guilty verdict on all three charges. The trial court consolidated defendant's two misdemeanor convictions with the conviction for felony assault by strangulation. On 16 June 2023, defendant was sentenced to six to seventeen months imprisonment. Defendant entered oral notice of appeal on 16 June 2023.

II. Discussion

On appeal, defendant argues: (1) the trial court violated N.C.G.S. § 15A-1233 when it sent exhibits back to the jury room during jury deliberations; (2) the trial court violated defendant's right to confrontation by admitting statements made during a 911 call against defendant's objections; (3) defendant received ineffective assistance of counsel when his attorney failed to object to the trial court excusing an eligible juror; and (4) the crime of assault against a female is unconstitutional under

the Fourteenth Amendment of the United States Constitution and Article I, § 19 of the North Carolina Constitution. We vacate defendant's conviction for the following reasons.

A. N.C.G.S. § 15A-1233

Defendant first argues the trial court violated N.C.G.S. § 15A-1233 when it granted the jury's request to review forensic documents by sending the documents back to the jury room against defendant's objections. The State concedes that the trial court committed prejudicial error in violating this statute and defendant is entitled to a new trial.

N.C.G.S. § 15A-1233 states:

(a) 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.

(b) Upon request by the jury *and with consent of all parties*, the judge may in his discretion permit the jury to take to the jury room exhibits and writings which have been received in evidence. If the judge permits the jury to take to the jury room requested exhibits and writings, he may have the jury take additional material or first review other evidence relating to the same issue so as not to give undue prominence to the exhibits or writings taken to the jury room. If the judge permits an exhibit to be taken to the jury room, he must, upon request, instruct the jury not to

conduct any experiments with the exhibit.

N.C.G.S. § 15-1233 (emphasis added). Our Supreme Court has held that “permitting juries to take evidence to the jury room without the consent of the parties constitutes error.” *State v. Mumma*, 372 N.C. 226, 233 (2019). Additionally, our Supreme Court held that the defendant has the burden of showing prejudice by stating,

In evaluating whether defendant was prejudiced by the trial court’s erroneous decision to allow the members of the jury to review items that had been introduced into evidence in the jury room without his consent, we examine whether there is a reasonable possibility that, had the error in question not been committed, a different result would have been reached.

*Id.* at 233–34 (internal quotations omitted).

Here, the trial court made several errors in granting the jury’s request to review at deliberation forensic reports, photos, and anatomical diagrams submitted as evidence. First, after the jury submitted a written request to review this evidence, the trial court did not call the jury back into the courtroom to clarify their requests for the documents. Rather, the trial court made its determinations on the jury’s requests outside the presence of the jury. This is in direct contravention of N.C.G.S. 15A-1233(a).

Second, the trial court delivered the requested forensic documents to the jury room against the objections of defendant’s counsel. Defendant’s counsel objected twice to these documents going back to the jury deliberation room, once when the trial court was initially deliberating the jury’s request, and again when the trial court

noted that N.C.G.S. § 15-1233 was potentially violated here. Therefore, the trial court erred in sending forensic documents back to the jury without first conducting the jurors back to the courtroom and sending the documents to the jury against defendant's objection.

Additionally, defendant has shown the trial court's error was prejudicial. First, the primary felony defendant was charged with was assault by strangulation. Although the definition of the term "strangulation" is not codified in N.C.G.S. § 14-32.4(b), "wrapping one's hands around another's throat and applying pressure until the person loses consciousness certainly falls well within the boundaries of the term." *State v. Little*, 188 N.C. App. 152, 157 (2008). In their closing arguments, the State relied on this definition and stated that because the victim had experienced asphyxia, and was strangled to the point of near unconsciousness, all the elements of assault by strangulation were met.

However, throughout the evidence presented at trial, the victim provided inconsistent accounts as to whether or not she lost consciousness as a result of defendant's actions on 2 November 2020. First, she initially reported to the intake nurse that she never lost consciousness. Second, in her statement given to Officer Taylor, she never reported losing consciousness. She also reported to the paramedic that defendant had strangled her to "near unconsciousness" but not that she actually lost consciousness. One of the only pieces of evidence the State heavily relied on to show asphyxia was the examining nurse's report where the victim indicated that she

lost consciousness during the strangulation.

Thus, because the jury only received the nurse's report in the jury room during deliberations, and not any of the inconsistent evidence or testimony presented at trial, the trial court erred in submitting this evidence to the jury during deliberations against defendant's objection, and the defendant has met his burden of showing the trial court's error prejudiced him.

B. Right to Confrontation and Effective Assistance of Counsel

Two of defendant's remaining issues on appeal are: (1) the trial court violated defendant's right to confront witnesses against him when it admitted 911 calls made on the night of the incident and (2) defendant received ineffective assistance of counsel when his counsel failed to object to the dismissal of an eligible juror. However, as we are vacating the judgment from the trial court and ordering a new trial, these issues are moot and we decline to address these contentions.

C. Defendant's Constitutional Claim

Finally, defendant argues on appeal that the crime of assault on a female is unconstitutional under the Fourteenth Amendment of the United States Constitution and Article I, § 9 of the North Carolina Constitution. We disagree.

This Court is bound by prior decisions of another panel of this Court that addresses the same issues in a different case. *In re Civil Penalty*, 324 N.C. 373, 384 (1989). This Court has previously held that the crime of assault against a female does not "deny males equal protection of law in violation of the Fourteenth



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Amendment to the Constitution of the United States.” *State v. Gurganus*, 39 N.C. App. 395, 402 (1979). Therefore, the trial court did not err in submitting this charge to the jury. However, because of the violation set forth in issue one, we remand all the issues for a new trial.

III. Conclusion

For the foregoing reasons, we vacate judgment and remand this matter to the trial court for a new trial.

JUDGMENT VACATED; REMANDED FOR NEW TRIAL.

Judges CARPENTER and STADING concur.

Report per Rule 30(e).