An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA05-1440

NORTH CAROLINA COURT OF APPEALS

Filed: 19 September 2006

STATE OF NORTH CAROLINA

v.

Rutherford County
No. 03 CRS 000004, 000013

BILLY JUNIOR BRADLEY,
Defendant.

Appeal by Defendant from judgment entered 16 September 2004 by Judge E. Penn Dameron, Jr. in Superior Court, Rutherford County. Heard in the Court of Appeals 15 August 2006.

Attorney General Roy Cooper, by Special Deputy Attorney General Amar Majmundar, for the State.

Rudolf Widenhouse & Fialko, by M. Gordon Widenhouse, Jr., for defendant-appellant.

WYNN, Judge.

No person may be tried, convicted, sentenced, or punished for a crime when by reason of mental illness or defect he is unable to assist in his defense in a rational or reasonable manner.[1] Here, Defendant argues that the trial court erred in determining that he was competent to stand trial. As there was evidence to support the trial court's findings, we hold that the trial court's conclusion that Defendant was competent to stand trial is binding on appeal.

---

[1] *See* N.C. Gen. Stat. § 15A-1001(a) (2005).

On 6 January 2003, Defendant Billy Junior Bradley was indicted on the charges of first-degree murder and first-degree kidnapping. On 6 September 2004, Defendant filed a motion for a hearing on capacity to proceed. After conducting a *voir dire* hearing, the trial court concluded that Defendant was competent to stand trial.

Following trial, the jury found Defendant guilty of first-degree murder and kidnapping. Defendant was sentenced to life imprisonment without parole for the first-degree murder charge and 116 to 149 months imprisonment for the first-degree kidnapping charge. Defendant appeals contending that the trial court (I) erred in denying his challenge to competency, (II) erred in preventing him from entering into evidence testimony regarding plea negotiations with his accomplice, and (III) committed plain error in failing to instruct the jury on interested witnesses.

I.

Defendant argues that the trial court erred in denying his challenge to competency. Section 15A-1001(a) of the North Carolina General Statutes sets out the test for determining a defendant's competency:

> No person may be tried, convicted, sentenced, or punished for a crime when by reason of mental illness or defect he is unable to understand the nature and object of the proceedings against him, to comprehend his own situation in reference to the proceedings, or to assist in his defense in a rational or reasonable manner. This condition is hereinafter referred to as "incapacity to proceed."

N.C. Gen. Stat. § 15A-1001(a) (2005). "[A] defendant does not have to be at the highest stage of mental alertness to be competent to

be tried. So long as a defendant can confer with his or her attorney so that the attorney may interpose any available defenses for him or her, the defendant is able to assist his or her defense in a rational manner." *State v. Shytle,* 323 N.C. 684, 689, 374 S.E.2d 573, 575 (1989). The purpose of section 15A-1001(a) along with section 15A-1002 "is to ensure that a defendant will not be tried or punished while mentally incapacitated." *State v. Aytche*, 98 N.C. App. 358, 361, 391 S.E.2d 43, 45 (1990). When the trial judge determines, in his discretion, the question of a defendant's capacity without a jury the court's findings of fact, if supported by the evidence, are conclusive on appeal. *State v. McCoy*, 303 N.C. 1, 18, 277 S.E.2d 515, 528 (1981); *State v. Reid*, 38 N.C. App. 547, 548-49, 248 S.E.2d 390, 391 (1978).

In this case, following a *voir dire* hearing, the trial court concluded that Defendant "is competent in every respect including his ability to cooperate with and assist his counsel should he choose to do so." The trial court made the following findings of fact to support his conclusion: (1) all of the evidence tended to show that Defendant understood the nature of the proceedings against him; (2) differences between the conclusions reached by Mr. Clement and Dr. Rollins and Dr. Hilkey revolve primarily around the issue of whether Defendant's performance on the Georgia Competency Test was effected by what Dr. Rollins concluded to be his malingering; (3) Dr. Hilkey did not specifically perform the Georgia Competency Test and therefore the question of whether that particular test was valid is not specifically addressed by Dr.

Hilkey; (4) Defendant has tended to focus on limited aspects of the defense which he wishes to present; (5) it is not uncommon for defendants charged with serious offenses not to be entirely forthcoming with their counsel; (6) Dr. Rollins concluded that Defendant was competent to stand trial, had the ability to understand the nature of the proceedings against him, understood his position with regard to the law, and that he had the ability to cooperate with his attorney with a reasonable degree of rational understanding; (7) Dr. Rollins specifically evaluated Defendant's competency with an instrument designed to test his ability to confer and cooperate and assist his counsel, and his diagnosis was that Defendant was malingering.

The State presented evidence, in the form of Dr. Rollins' written evaluation, which supported the trial court's findings that Dr. Rollins examined Defendant and concluded that Defendant was malingering on the tests and was competent to stand trial. Defendant argues that Dr. Hilkey's testimony opposed Dr. Rollins' conclusion and supported the contention that he was incompetent to stand trial. Dr. Hilkey did conclude that Defendant was incompetent to stand trial because Defendant did not have the capacity to "rationally understand the nature of the charges against him and to effectively communicate with counsel." However, Dr. Hilkey also testified that "when asked about specific issues about his case, he would tend to talk about how he wanted to be defended." The trial court gave greater weight to Dr. Rollins' evaluation and conclusion than to Dr. Hilkey's conclusion.

However, questions of credibility and the weight to be accorded the evidence remain in the province of the finder of facts. *Scott v. Scott*, 336 N.C. 284, 291, 442 S.E.2d 493, 497 (1994). Accordingly, as there was evidence to support the trial court's findings of fact, the trial court's conclusion that Defendant is competent to stand trial is conclusive on appeal. *See McCoy*, 303 N.C. at 18, 277 S.E.2d at 528.

II.

Defendant next argues that the trial court erred in sustaining an objection and preventing him from entering into evidence testimony regarding plea negotiations with his accomplice. Defendant assigns error to two objections. The first assignment of error relates to defense counsel's objection to a question asked by the State which defense counsel later withdrew. Therefore, that objection is not properly preserved for appellate review. *See* N.C. R. App. P. 10(b). The second assignment of error relates to the trial court sustaining an objection made by the State during defense counsel's cross-examination. After a series of questions to John Boyd regarding plea negotiations between the district attorney and his client, Barbara Morrow, defense counsel asked "If that expectation is realized, what's the approximate sentence that Barbara receives?" The State objected to the question and the trial court sustained the objection. Defense counsel made no offer of proof regarding evidence of the length of the sentence of a *possible* plea agreement with Ms. Morrow nor did he except to the trial court's ruling. "In order for a party to preserve for

appellate review the exclusion of evidence, the significance of the excluded evidence must be made to appear in the record and a specific offer of proof is required unless the significance of the evidence is obvious from the record." *State v. Ray*, 125 N.C. App. 721, 726, 482 S.E.2d 755, 758 (1997). Therefore, Defendant has failed to properly preserve his objection for appellate review. We note that Ms. Morrow testified that she was "hoping for the plea bargain[,]" and the length of the sentence would be "105 months, and 96 months on the other one, if [she's] not mistaken." Therefore, evidence had already been presented of Ms. Morrow's plea bargain expectations.

III.

Defendant last argues that the trial court committed plain error by failing to instruct the jury regarding witness credibility and interested witnesses. We disagree.

Defendant failed to object at trial to the trial court's jury instructions; therefore, Defendant argues that the trial court's omission of an instruction amounted to plain error. N.C. R. App. P. 10(c)(4). Our Supreme Court adopted the plain error rule as an exception to the appellate court requirement of preserving basis for assignments of error at the trial court level. *See State v. Odom*, 307 N.C. 655, 300 S.E.2d 375 (1983) (applied to assignments of error regarding jury instructions). The proponent must show that:

> [A]fter reviewing the entire record, it can be said the claimed error is a '*fundamental* error, something so basic, so prejudicial, so lacking in its elements that justice cannot

> have been done,' or 'where [the error] is grave error which amounts to a denial of a fundamental right of the accused,' or the error has 'resulted in a miscarriage of justice or in the denial to appellant of a fair trial' or where the error is such as to 'seriously affect the fairness, integrity or public reputation of judicial proceedings' or where it can be fairly said 'the instructional mistake had a probable impact on the jury's finding that the defendant was guilty.'

Odom, 307 N.C. at 660, 300 S.E.2d at 378 (quoting *United States v. McCaskill*, 676 F.2d 995, 1002 (4th Cir. 1982) (footnotes omitted), *cert. denied*, 459 U.S. 1018, 74 L. Ed. 2d 513 (1982)).

However, "an instruction to scrutinize the testimony of a witness on the ground of interest or bias is a subordinate feature of the case which does not require the trial judge to give the cautionary instruction *unless there is a request for such instruction*." *State v. Vick*, 287 N.C. 37, 43, 213 S.E.2d 335, 339 (1975); *see also State v. Dale*, 343 N.C. 71, 77-78, 468 S.E.2d 39, 43 (1996). Therefore, the trial court was not required to give an instruction on the scrutiny of interested witnesses unless requested by Defendant. Accordingly, the trial court did not err, much less commit plain error, in not giving an instruction on interested witnesses.

No error.

Judges HUDSON and TYSON concur.

Report per rule 30(e).