NO. COA13-141
NORTH CAROLINA COURT OF APPEALS

Filed: 15 October 2013

STATE OF NORTH CAROLINA

v. Wayne County
No. 10 CRS 52590

NORMAN JOSEPH HORN

Appeal by defendant from judgment entered 5 September 2012 by Judge Arnold O. Jones, II in Wayne County Superior Court. Heard in the Court of Appeals 30 September 2013.

Attorney General Roy Cooper, by Special Deputy Attorney General Terence D. Friedman, for the State.

Appellate Defender Staples Hughes, by Assistant Appellate Defenders John F. Carella and Benjamin Dowling-Sendor, for defendant-appellant.

HUNTER, Robert C., Judge.

Defendant Norman Joseph Horn appeals from a judgment imposed upon a jury verdict finding him guilty of felony indecent exposure. The trial court sentenced defendant to a term of five to six months imprisonment and ordered defendant to register as a sex offender for thirty years. Defendant gave

notice of appeal in open court. After careful review, we dismiss defendant's appeal.

Defendant first argues the trial court erred in allowing an investigating detective to testify that he determined defendant was twenty-nine years old through a background check performed using an unidentified database. Defendant, however, has not preserved this issue for appeal because his trial counsel made only a general objection to the detective's testimony.

"In order to preserve an issue for appellate review, a party must have presented to the trial court a timely request, objection, or motion, stating the specific grounds for the ruling the party desired the court to make if the specific grounds were not apparent from the context." N.C.R. App. P. 10(a)(1). "'A general objection, when overruled, is ordinarily not adequate unless the evidence, considered as a whole, makes it clear that there is no purpose to be served from admitting the evidence.'" *State v. Perkins*, 154 N.C. App. 148, 152, 571 S.E.2d 645, 648 (2002) (quoting *State v. Jones*, 342 N.C. 523, 535, 467 S.E.2d 12, 20 (1996)).

Here, defendant was charged with felony indecent exposure, which requires the State to prove defendant was at least eighteen years old at the time of the offense. N.C. Gen. Stat.

§ 14-190.9(a1) (2011). To prove defendant's age, the State asked the following of Detective Sergeant Larry Mitchell, who had been involved in the investigation of the underlying case:

> Q. Now, Detective Mitchell, in the course of this investigation at all, did you inquire into the defendant's age?
>
> A. Yes, ma'am, I did.
>
> Q. And how did you do that?
>
> A. Through a background check. We have a database we can just pull up people's names and get, you know, a history on it.
>
> Q. And through that background check, how old did you find the defendant to be?
>
> A. He was --
>
> [Defense Counsel]: Objection.
>
> THE COURT: Overruled. Answer the question.
>
> A. He was 29 years old.
>
> Q. And would this be at the time of the event?
>
> A. Yes, ma'am. That was in 2010, the time of the event.

Defense counsel's objection does not state the specific ground for the objection and the ground is not apparent from the context of the inquiry. The evidence of defendant's age was directly relevant to an element of the crime, and thus counsel's general objection failed to properly preserve this issue for

appeal. *Perkins*, 154 N.C. App. at 152, 571 S.E.2d at 648. This argument is dismissed.

Defendant also argues the trial court erred in denying his motion to dismiss the charge of felony indecent exposure because the State presented insufficient evidence of defendant's age. However, this argument is also not properly before this Court because at trial defendant's argument in support of his motion to dismiss was that the State did not present sufficient evidence that the exposure occurred in a public place.

It is well established that "where a theory argued on appeal was not raised before the trial court, the law does not permit parties to swap horses between courts in order to get a better mount in the appellate courts." *State v. Holliman*, 155 N.C. App. 120, 123, 573 S.E.2d 682, 685 (2002) (citations and quotation marks omitted). This precludes a defendant from presenting on appeal "a different theory to support his motion to dismiss than that he presented at trial[.]" *State v. Euceda-Valle*, 182 N.C. App. 268, 272, 641 S.E.2d 858, 862, *appeal dismissed and cert. denied*, 361 N.C. 698, 652 S.E.2d 923 (2007); *see also State v. Shelly*, 181 N.C. App. 196, 205-06, 638 S.E.2d 516, 524 (holding a similar argument was waived on appeal where the defendant argued lack of premeditation and deliberation at

the trial level, but presented an argument based on the rule of *corpus delicti* on appeal), *disc. review denied*, 361 N.C. 367, 646 S.E.2d 768 (2007). Accordingly, this argument is dismissed. Because neither of defendant's arguments are properly before this Court, we dismiss defendant's appeal.

DISMISSED.

Judges BRYANT and McCULLOUGH concur.

Report per Rule 30(e).