

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA13-183

NORTH CAROLINA COURT OF APPEALS

Filed: 1 October 2013

STATE OF NORTH CAROLINA

v.

Wake County
Nos. 10 CRS 227200-01,
11 CRS 12776

JACK ROBERT CYR

Appeal by defendant from judgments entered 3 February 2012 by Judge Paul G. Gessner in Wake County Superior Court. Heard in the Court of Appeals 11 September 2013.

Attorney General Roy Cooper, by Special Deputy Attorney General Jennie Wilhelm Hauser, for the State.

Appellate Defender Staples Hughes, by Assistant Appellate Defender Benjamin Dowling-Sendor, for defendant-appellant.

BRYANT, Judge.

Where defendant has not preserved an issue for appellate review, the appeal must be dismissed.

Defendant Jack Robert Cyr appeals from judgments entered upon jury verdicts finding him guilty of attempted second-degree

rape and two counts of second-degree sexual offense. The trial court consolidated defendant's convictions into two judgments for sentencing, and sentenced defendant to consecutive terms of 73 to 97 months imprisonment. Defendant gave notice of appeal in open court.

Defendant's sole argument on appeal is that the trial court erred in preventing his trial counsel from cross-examining an investigating officer about the content of a statement made by defendant to the officer. Defendant, however, has not preserved this issue for appellate review.

Our Supreme Court has held that

"[i]n 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. We also held that the essential content or substance of the witness' testimony must be shown before we can ascertain whether prejudicial error occurred."

State v. Raines, 362 N.C. 1, 20, 653 S.E.2d 126, 138 (2007) (internal citation omitted); N.C. Gen. Stat. § 8C-1, Rule 103(a)(2) (2011). Where the significance of the evidence is not obvious, "[a]bsent an adequate offer of proof, we can only

speculate as to what a witness's testimony might have been." *State v. Jacobs*, 363 N.C. 815, 818, 689 S.E.2d 859, 861-62 (2010) (citations omitted).

During direct examination by the State, Investigator Grady Privette testified that he had interviewed defendant during the course of his investigation. On direct, Investigator Privette did not testify about the contents of any statement given by defendant during the interview. However, defendant sought to introduce the content of the statement during cross-examination of Investigator Privette. Defendant argued the statement was exculpatory and that prohibiting the admission of the statement's content after the State had introduced evidence that a statement had been made would allow an unfair inference the statement was incriminating. The trial court denied defendant's request to question Investigator Privette regarding the content of the statement.

Defendant now argues the trial court erred in denying his request because the State had "opened the door" to the admissibility of the content of the statement when the prosecutor questioned Investigator Privette about the interview with defendant. Defendant, however, beyond stating before the trial court that the contents of the interview was exculpatory,

failed to make a specific offer of proof regarding the statement and has thus not preserved this issue for appellate review. Trial counsel's generalized characterization of the statement as exculpatory is insufficient to establish the essential content and significance of the statement. Thus, even assuming it was error to exclude defendant's statement, without further development of the content of the statement, we are unable to ascertain whether prejudicial error occurred. Because defendant failed to make a specific offer of proof and the significance of the statement is not obvious from the record, defendant's sole issue on appeal has not been properly preserved for appellate review. Accordingly, defendant's appeal is dismissed.

Dismissed.

Judges HUNTER, Robert C. and STEELMAN concur.

Report per Rule 30(e).