IN THE UTAH COURT OF APPEALS

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State of Utah, Plaintiff and Appellee, v. Sunni Rae McEntire, Defendant and Appellant.	)	MEMORANDUM DECISION (Not For Official Publication) Case No. 20050705-CA F I L E D (April 12, 2007) 2007 UT App 120

Eighth District, Duchesne Department, 041800072
The Honorable John R. Anderson

Attorneys: Julie George, Salt Lake City, for Appellant
Mark L. Shurtleff and Karen A. Klucznik, Salt Lake City, for Appellee

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Before Judges Greenwood, McHugh, and Orme.

GREENWOOD, Associate Presiding Judge:

Defendant Sunnie Rae McEntire was convicted by a jury of aggravated assault, a second degree felony. See Utah Code Ann. § 76-5-102 (2003). Defendant appeals, claiming the trial court erred by (1) failing to present her version of the defense of habitation instruction to the jury, and (2) limiting her cross-examination of the victim as to crimes or other bad acts. The State argues that we should not address the substance of either of Defendant's claims because they were not preserved for appeal. We agree.

"[A] court may review an error in [a] jury instruction[], even if such instruction was not objected to at trial, to avoid manifest injustice. Manifest injustice . . . is determined using the plain error standard." State v. Irwin, 924 P.2d 5, 10 n.5 (Utah Ct. App. 1996) (internal quotation marks omitted). It is well settled, however, that an appellate court will not review a jury instruction, even under the manifest injustice exception, when "counsel, either by statement or act, affirmatively represented to the court that he or she had no objection to the

jury instruction." State v. Geukgeuzian, 2004 UT 16,¶9, 86 P.3d 742 (quotations and citation omitted).

In this instance, the trial court and counsel engaged in an off-the-record discussion regarding the proposed jury instructions. At the conclusion of that discussion, and on the record, the prosecutor informed the court that she objected to the defense of habitation instruction. In contrast, Defendant's trial counsel made no similar objection even though she was given a clear opportunity to do so. In fact, trial counsel affirmed the trial court's recitation of the record without any objection regarding the defense of habitation instruction.

Defendant asserts that this issue was preserved because trial counsel objected to the instruction during the off-the-record discussion. However, a defendant who first raises an objection in an off-the-record discussion is "obliged to make an objection on the record." State v. Calliham, 2002 UT 86,¶33 & n.11, 55 P.3d 573. Consequently, we will not review the merits of Defendant's claim. See Geukgeuzian, 2004 UT 16 at ¶9.

We reach the same conclusion regarding Defendant's evidentiary claim. At trial, defense counsel commenced questioning the victim about an alleged, pending, felony child abuse charge. The prosecutor objected, and the court sustained the objection. Defense counsel then asked for a sidebar conference, at the conclusion of which she stated, "That's all I have for this witness, Judge."

On appeal, Defendant objects to the trial court's ruling sustaining the prosecutor's objection. "Utah courts require specific objections in order to bring all claimed errors to the trial court's attention to give the court an opportunity to correct the errors if appropriate." State v. Hardy, 2002 UT App 244,¶14, 54 P.3d 645 (quotations and citation omitted). If an issue was not objected to in the trial court, a defendant may raise it for the first time on appeal if he or she demonstrates that exceptional circumstances exist or that the trial court committed plain error. See State v. Dean, 2004 UT 63,¶13, 95 P.3d 276. In this case, Defendant did not object to the trial court's ruling, and she does not argue plain error or exceptional circumstances on appeal. Moreover, Defendant does not provide any evidence that the victim had actually been charged with any crimes or that those charges had any bearing on the victim's veracity. Because Defendant's claim is unpreserved, see id., and purely speculative, see State v. Gonzales, 2002 UT App 256,¶20, 56 P.3d 969, we reject it.

In summary, we do not address the merits of either of Defendant's claims because they were not preserved before the trial court.

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Pamela T. Greenwood,
Associate Presiding Judge

WE CONCUR:

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Carolyn B. McHugh, Judge

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Gregory K. Orme, Judge