An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-421

Filed: 15 January 2019

Henderson County, No. 16CRS000555

STATE OF NORTH CAROLINA

v.

COURTNEY MICHELLE SMITH, Defendant.

Appeal by Defendant from judgment entered 7 November 2017 by Judge J. Thomas Davis in Henderson County Superior Court. Heard in the Court of Appeals 17 October 2018.

Attorney General Joshua H. Stein, by Assistant Attorney General Jeremy D. Lindsley, for the State.

Sharon L. Smith for the Defendant.

DILLON, Judge.

Defendant Courtney Michelle Smith appeals from the trial court's judgment upon a jury verdict finding her guilty of possession with intent to distribute methamphetamine and of attaining habitual felon status. Defendant contends that incriminating evidence of her guilt was discovered solely as a result of unlawfully obtained statements, rendering the evidence inadmissible under the exclusionary

rule and the "fruit of the poisonous tree" doctrine. We hold the evidence was admissible under the inevitable discovery exception to the exclusionary rule. Further, because we conclude that Defendant at least constructively possessed the contraband at issue in this case, we find no reversible error.

I. Background

This case arises from an arrest of Defendant and the search of her purse. At trial the evidence tended to show as follows:

On 15 August 2015, a police detective observed Defendant's vehicle parked alongside the curb of First Avenue in Hendersonville in violation of a local ordinance. The detective recognized the vehicle from a recent encounter with Defendant and suspected that there may be an outstanding warrant for Defendant's arrest.

Defendant was standing on the sidewalk next to her car with her purse over her shoulder when the detective pulled up and turned on his blue lights. The detective also saw a man step out of the driver's side of the vehicle.

The detective approached the vehicle. He notified Defendant that there was a warrant out for her arrest and requested that she speak with him. Defendant placed her purse on the ground beside the vehicle and walked over to the detective's patrol car. The detective placed Defendant under arrest for her outstanding warrant, handcuffed her, and asked her if she had "anything illegal on her." Defendant informed the detective that she had a scale, a pipe, and methamphetamine in her

purse. The detective put Defendant in his patrol car and then went to retrieve Defendant's purse.

Before touching the purse, the detective saw that the purse was open and that it contained a number of small plastic bags in a larger plastic bag sitting atop the purse's contents. He immediately recognized those bags as the type commonly used to sell drugs. Upon searching the purse, the detective found methamphetamine and other drug paraphernalia. The detective charged Defendant with possession of methamphetamine with intent to distribute and of attaining habitual felon status.

At the opening of the trial, Defendant moved to suppress the evidence of the items found in the purse. The trial court ruled that Defendant's admission to the detective's question regarding her possession of illicit drugs was inadmissible because she had not yet received a *Miranda* warning. But the trial court also ruled that the contents of her purse were admissible. The jury convicted Defendant of both charges.

Defendant timely appeals.

II. Analysis

Defendant essentially makes two arguments on appeal, which we address in turn.

A. Suppression of Evidence

Defendant appeals the trial court's denial of her motion to suppress the evidence found in her purse.

We review a denial of a motion to suppress by determining whether "competent evidence supports the trial court's findings of fact and whether the findings of fact support the conclusions of law." *State v. Biber*, 365 N.C. 162, 167-68, 712 S.E.2d 874, 878 (2011).

The exclusionary rule excludes evidence that is gained in violation of the Fourth Amendment to the United States Constitution. *State v. McKinney*, 361 N.C. 53, 58, 637 S.E.2d 868, 872 (2006).

The parties concede that Defendant's response to the detective that she was carrying illicit drugs in her purse should be excluded under the exclusionary rule because she had not yet been read her *Miranda* rights. Defendant further argues, though, that the contents of the purse found by the detective should also have been excluded under the "fruit of the poisonous tree" doctrine. We disagree. Though the detective was initially prompted to go pick up Defendant's purse by her statements, for the reasons stated below, we conclude that the purse's contents were admissible.

We hold that the evidence was admissible under the "inevitable discovery" exception to the exclusionary rule. *Nix v. Williams*, 467 U.S. 431, 444 (1984); *State v. Garner*, 331 N.C. 491, 500, 417 S.E.2d 502, 507 (1992). This exception permits the admission of evidence if the State proves by a preponderance of the evidence that the law enforcement officer would have inevitably discovered the evidence regardless of any illegality in the search. *Garner*, 331 N.C. at 500, 417 S.E.2d at 507 ("If the

prosecution can establish by a preponderance of the evidence that the information ultimately or inevitably would have been discovered by lawful means . . . then the deterrence rationale has so little basis that the evidence should be received."). In *Garner*, our Supreme Court adopted "a case-by-case approach, recognizing that the particular facts of any given case will determine whether, absent other means, proof of an ongoing, independent investigation is necessary to show inevitability." *Id.* at 503, 417 S.E.2d at 508.

The detective would have inevitably discovered the contents of the purse, notwithstanding Defendant's incriminating statement. It was certainly reasonable and customary under department policy for the detective to retrieve Defendant's purse when he was in the process of arresting her. When the detective went to retrieve the purse, he saw that the purse was open. And before he touched the purse, he was able to see in plain view an unusually large number of plastic bags on top of the other contents of the purse. This discovery is constitutionally permissible under the "plain view doctrine." This doctrine is a recognized exception to the warrant requirement in search and seizure cases that allows officers to search and seize evidence if (1) the officer was in a place where he had a right to be when the evidence was discovered; (2) the evidence was discovered inadvertently; and (3) it was immediately apparent to the officer that the items observed were evidence of a crime or contraband. *State v. Mickey*, 347 N.C. 508, 516, 495 S.E.2d 669, 675 (1998).

As the trial court determined, based on the detective's recognition that the type of packaging he observed was often used to package methamphetamine for sale *and* the detective's prior experience with Defendant, we conclude that the discovery of the contents in the purse was inevitable. The discovery of the contents of Defendant's purse, therefore, was not made by "exploitation of [the] illegality" of her statements but was made "by means sufficiently distinguishable to be purged of the primary taint." *Wong Son v. U.S.*, 371 U.S. 471, 487-88 (1963).

B. Denial of Motion to Dismiss

Defendant argues that the trial court erred in denying her motion to dismiss the drug charge.

We review the trial court's denial of a motion to dismiss *de novo*. *State v. Pender*, 243 N.C. App. 142, 151, 776 S.E.2d 352, 360 (2015). The motion is properly denied if "there is substantial evidence (1) of each essential element of the offense charged, or of a lesser offense included therein, and (2) of the defendant's being the perpetrator of such offense." *State v. Powell*, 299 N.C. 95, 98, 261 S.E.2d 114, 117 (1980). "Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *State v. Fletcher*, 348 N.C. 292, 323, 500 S.E.2d 668, 686 (1998). "[W]e must view the evidence in the light most favorable to the State, giving the State the benefit of all reasonable inferences." *State v. Fritsch*, 351 N.C. 373, 378-79, 526 S.E.2d 451, 455 (2000). Contradictions and discrepancies

in the evidence are for the jury to resolve. *State v. Benson*, 331 N.C. 537, 544, 417 S.E.2d 756, 761 (1992).

Here, Defendant argues that there was insufficient proof that she possessed the drugs found in her purse because the purse was left near the car, out of her immediate possession, and within reach of her male companion. We disagree.

The elements for the crime of possession with intent to sell or deliver a controlled substance are as follows: (1) a substance must be possessed, (2) that substance must be a controlled substance, and (3) an intent to distribute or sell the controlled substance must be present. *State v. Casey*, 59 N.C. App. 99, 116, 296 S.E.2d 473, 483-84 (1982). "An accused's possession of narcotics may be actual or constructive." *State v. Harvey*, 281 N.C. 1, 12, 187 S.E.2d 706, 714 (1972). "A person is in constructive possession of a thing when, while not having actual possession, he has the intent and capability to maintain control and dominion over that thing." *State v. Beaver*, 317 N.C. 643, 648, 346 S.E.2d 476, 480 (1986).

The drugs and plastic bags were found in Defendant's purse, which the detective saw hanging over Defendant's shoulder when he first stopped his patrol car. The purse was always in plain view and the detective never observed anyone else handle the purse, remove anything from the purse, or place anything into the purse after Defendant placed it on the curb. It is true that the purse was unattended for a short period of time while the detective arrested Defendant, but this factor goes to

the weight of the evidence. Therefore, taken in the light most favorable to the State, the evidence was sufficient to establish that Defendant was in possession of the drugs and other contraband.

III. Conclusion

We hold that the contents of Defendant's purse were admissible under the "inevitable discovery" exception to the Fourth Amendment's exclusionary rule. We also hold that the evidence was sufficient to find that Defendant was in possession of the contents of her purse. Therefore, we conclude that Defendant received a fair trial, free from reversible error.

NO ERROR.

Judges STROUD and BERGER concur.

Report per Rule 30(e).