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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-697

Filed 06 June 2023

Cleveland County, Nos. 20 CRS 52547; 21 CRS 466

STATE OF NORTH CAROLINA

v.

AMY JO CROTTS

Appeal by Defendant from judgments entered 8 December 2021 by Judge Athena Fox Brooks in Cleveland County Superior Court. Heard in the Court of Appeals 7 March 2023.

Attorney General Joshua H. Stein, by Assistant Attorney General Milind K. Dongre, for the State.

Blass Law, PLLC, by Danielle Blass, for Defendant.

WOOD, Judge.

Defendant appeals from convictions of felony possession of a schedule II-controlled substance, felony possession of cocaine, and delivery of cocaine. After careful review of the record, we conclude that Defendant received a fair trial free from prejudicial error.

I. Background

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On 28 June 2020, Officer Price of the Kings Mountain Police Department was surveilling the parking lot near a shopping center in Kings Mountain after receiving several complaints about potential drug activity in the area. Officer Price, a K-9 handler, had been an officer for over five years and had made several drug arrests.

Around 9:50 p.m., Officer Price observed a burgundy Ford Taurus park in the parking lot near a laundromat. Immediately after, a dark-colored sedan also entered the parking lot and parked near the Taurus. The laundromat was the only business open at this time, and, though it was night, Officer Price would later recall that nearby streetlights aided his visibility of the two vehicles.

Shortly after the two vehicles parked, Officer Price observed Defendant exit the rear passenger door of the Taurus with a black purse in her hand. She then walked over to the dark sedan. When she arrived, Defendant leaned toward an open driver's window and exchanged something with the driver. Defendant then returned to the Taurus, placed the black purse into the trunk, and entered the back seat. Both vehicles drove away.

Officer Price followed the Taurus and activated his blue lights to conduct a stop. Once stopped, Officer Price observed four people in the Taurus. Defendant's adult daughter was the driver and owner of the vehicle. Defendant's son sat in the passenger seat, while Defendant's then girlfriend, Ms. Ruff, sat in the rear, passenger side seat. Defendant sat in the rear, driver side seat.

Officer Price noticed that everyone in the vehicle appeared nervous. Officer

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Price called for backup and requested all occupants exit the vehicle. Once the vehicle was empty, Officer Price had his K-9 perform a drug sniff around the car. The K-9 alerted to the presence of narcotics. Officer Price, assisted by another officer, searched the vehicle and discovered a glass smoking pipe with white residue in it located near the driver seat. They also located another glass pipe and two syringes in a red bag that Defendant had previously held during the traffic stop. One of the syringes contained a clear substance. They also discovered three small bags, two containing a crystalline substance and the other containing a green, leafy substance, in a purse held by Ms. Ruff during the traffic stop. They next searched the trunk and found the black purse that Defendant had stored before leaving the parking lot. The purse contained a small bag of crystalline substance, another glass pipe, and Defendant's daughter's driver license. Officer Price arrested all occupants and transported them to the Cleveland County Detention Center.

At the jail, officers searched Ms. Ruff and Defendant. They discovered another bag containing a crystalline substance in Ms. Ruff's underwear. Defendant was subsequently indicted for possession of methamphetamine and possession and delivery of cocaine on 10 August 2020. On 26 March 2021, in a pretrial motion, Defendant moved to suppress all evidence, arguing that the Kings Mountain Police Department obtained the evidence in violation of Defendant's right to be free from unreasonable searches and seizures. The trial court denied the motion on 18 May 2021.

At trial, which took place on 6 December 2021, Ms. Ruff testified as one of the State's witnesses against Defendant. She testified that Defendant purchased drugs for the both of them. They were both in a romantic relationship at the time of the relevant events of this appeal, but they ended their relationship shortly after being charged.

Ms. Alyssa Tinnin, a forensic chemist with the State Crime Lab, testified as the State's expert witness. She testified that she analyzed four suspected drug samples collected from the black purse and Ms. Ruff's underwear. She stated three of the four substances tested positive for methamphetamine and cocaine.

At the end of the State's case, Defendant moved to dismiss all charges for insufficient evidence. The trial court denied the motion.

On 8 December 2021, the jury returned guilty verdicts as to the charges of possession of methamphetamine, possession of cocaine, and delivery of cocaine. The trial court sentenced Defendant to 8 to 19 months imprisonment for felony possession of a schedule II controlled substance, 8 to 19 months imprisonment for felony possession of cocaine, and 15 to 27 months imprisonment for delivery of cocaine. The trial court ordered the last two sentences to run consecutively to the first and suspended the sentence, placing Defendant on supervised probation for 36 months. Defendant gave oral notice of appeal in open court and appeals from these judgments pursuant to N.C. Gen. Stat. § 7A-27(b).

II. Discussion

Defendant alleges several prejudicial defects with the trial court's rulings. Defendant claims the trial court erred when it (1) failed to suppress evidence obtained in violation of Defendant's constitutional rights, (2) allowed a conviction to proceed in violation of Defendant's right against double jeopardy, (3) denied motions to dismiss charges for insufficient evidence, and (4) admitted evidence of an expert's testimony without proper foundation. We address each argument in turn.

A. Evidence Suppression

Defendant first challenges the trial court's denial of her motion to suppress evidence collected as a result of Officer Price's traffic stop. Defendant alleges that this evidence was obtained in violation of her right to be free from unreasonable searches and seizures and, therefore, should have been excluded at trial. Specifically, Defendant argues that Officer Price did not possess "reasonable suspicion to conduct an investigatory stop" and challenges the trial court's relevant findings of fact and conclusion of law holding otherwise.

Our ability to review an evidence suppression issue turns on whether a defendant properly moved to suppress the evidence at the trial level. *State v. Miller*, 371 N.C. 266, 268-69, 814 S.E.2d 81, 83 (2018). Here, Defendant moved the trial court to suppress evidence pursuant to N.C. Gen. Stat. § 15A-974. Accordingly, Defendant has preserved this issue for our review.

"The standard of review in evaluating the denial of a motion to suppress is 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) (citing *State v. Brooks*, 337 N.C. 132, 140-41, 446 S.E.2d 579, 585 (1994)). “[F]indings of fact ‘are conclusive on appeal if supported by competent evidence, even if the evidence is conflicting.’ ” *State v. Brewington*, 352 N.C. 489, 498, 532 S.E.2d 496, 501 (2000) (quoting *State v. Eason*, 336 N.C. 730, 745, 445 S.E.2d 917, 926 (1994)). “Conclusions of law are reviewed de novo and are subject to full review.” *Biber*, 365 N.C. at 168, 712 S.E.2d at 878 (citing *State v. McCollum*, 334 N.C. 208, 237, 433 S.E.2d 144, 160 (1993)). “ ‘Under a *de novo* review, the court considers the matter anew and freely substitutes its own judgment’ for that of the lower tribunal.” *Id.* (quoting *State v. Williams*, 362 N.C. 628, 632-33, 669 S.E.2d 290, 294 (2008)). Generally, evidence must be excluded from the eyes of a jury if “obtained in violation of our constitution.” *State v. Carter*, 322 N.C. 709, 724, 370 S.E.2d 553, 562 (1988).

1. Findings of Fact

Defendant argues that the trial court’s findings of fact 4, 5, 7, 9, 12, and 14, are not supported by competent evidence. We disagree.

Finding 4 reads, “K & M Auto Supply was in a well-lit area, illuminated by streetlights.” Defendant challenges the sufficiency of evidence tending to show that the area was “well-lit.” At the hearing for the motion to suppress, Officer Price testified that it was night when he observed Defendant in the parking lot of K&M Auto Supply but that the parking lot offered “a pretty good level of lighting” due to

“ambient light . . . from everywhere else.” He noted “streetlights around the laundromat” and on a nearby street. He further testified that he “could see [the two vehicles] very well.” From this, the trial court could appropriately find that the parking lot of K&M Auto Supply was “well-lit.”

Finding 5 reads, “Simultaneously with the Ford Taurus pulling into the parking lot, another vehicle pulled into the same lot. Officer Price identified this vehicle as a dark-colored sedan.” Officer Price testified that the dark-colored sedan entered the parking lot “immediately after the Ford Taurus pulled in.” Defendant claims that the trial court could not have found two vehicles entered the parking lot “simultaneously” if the evidence showed that one vehicle entered the parking lot “immediately after” the other. The semantic conflict here is trivial, and the evidence supports this finding.

Finding 7 reads, “Officer Price observed the Defendant and the driver of the dark-colored sedan engage in a very brief and short transaction in which the Officer observed the Defendant and the occupant of the sedan exchange items.” Defendant takes issue with the finding that Officer Price observed an “exchange of items” when he admitted, “I couldn’t describe the items they were exchanging, but it did look like an exchange of items to me.” As the State points out, this argument ignores the nature of circumstantial evidence. Though Officer Price was unable to identify the items being exchanged, his testimony, that he witnessed *something* being exchanged, supports the trial court’s finding that Defendant exchanged items.

Finding 9 reads, “After making contact with the person in the dark sedan, the Defendant returned to the Ford Taurus and placed the purse she was carrying into the trunk of the Ford Taurus and then got in the rear driver’s side door.” Here, Defendant contests evidence supporting the finding that Defendant made “contact” with the person in the dark sedan. Defendant asserts the absence of evidence supporting any physical contact between Defendant and the person in the dark sedan and directs our attention to Officer Price’s testimony stating the contrary: “I can’t say that I saw them touch hands.” However, the trial court’s use of “contact” here is equivocal. While this word may refer to the “union or junction of body surfaces,” it may also mean “to make connection with” or “get in communication with.” *Contact*, Websters Third New International Dictionary (1971). We conclude Officer Price’s testimony that he witnessed “an exchange of items” and that Defendant was “leaning in and reaching in” is sufficient to support a finding that Defendant made “contact” with the person in the dark sedan.

Finding 12 reads, “Officer Price was patrolling an area that he identified as an area that had numerous complaints of drug activity.” Defendant challenges the “numerous” aspect of this finding, citing Officer Price’s testimony that he “received a narcotics complaint for that area.” Defendant ignores Officer Price’s further testimony about “having narcotics complaints about transactions in the area.” This finding is supported by the evidence presented.

Finding 14 reads, “That upon the hand-to-hand transaction that lasted a

matter of seconds, the Defendant left the scene.” Similar to findings 7 and 9 above, Defendant argues that this finding is not supported by any evidence and that Officer Price explicitly admitted to not seeing any hand touching. As discussed above, Officer Price’s testimony that “[i]t was just a quick walk-up, exchange items, and then she left” is sufficient to support the trial court’s finding of fact.

In summary, competent evidence supported the contested findings of fact. We now address Defendant’s challenge to the conclusion of law.

2. Conclusion of Law

Defendant challenges the trial court’s conclusion that Officer Price possessed “reasonable suspicion to conduct an investigatory stop.” Defendant asserts that Officer Price’s suspicion, if any, amounted to no more than a mere subjective hunch that lacked sufficient justification to conduct a warrantless stop and violated Defendant’s right to be free from an unreasonable seizure. We disagree.

“Article 1, Section 20 of the Constitution of North Carolina prohibits unreasonable searches and seizures.” *State v. Arrington*, 311 N.C. 633, 643, 319 S.E.2d 254, 260 (1984). “Although potentially brief and limited in scope, a traffic stop is considered a ‘seizure.’” *State v. Otto*, 366 N.C. 134, 136, 726 S.E.2d 824, 827 (2012). “Law enforcement officers may initiate a traffic stop if the officer has a ‘reasonable, articulable suspicion that criminal activity is afoot.’” *State v. Johnson*, 378 N.C. 236, 244, 861 S.E.2d 474, 483 (2021) (quoting *State v. Styles*, 362 N.C. 412, 414, 665 S.E.2d 438, 439 (2008)). Defining reasonable suspicion, our Supreme Court held,

Reasonable suspicion demands more than a mere hunch on the part of the officer but requires less than probable cause and considerably less than preponderance of the evidence. In any event, reasonable suspicion requires only some minimal level of objective justification and arises from specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant the intrusion

Id. at 244-45, 861 S.E.2d at 483 (internal quotation marks and citations omitted). “A court ‘must consider the totality of the circumstances—the whole picture in determining whether a reasonable suspicion’ exists.” *Otto*, 366 N.C. at 138, 726 S.E.2d at 828 (quoting *Styles*, 362 N.C. at 414, 665 S.E.2d at 440). Officers may “draw on their own experience and specialized training to make inferences from and deductions about the cumulative information available to them.” *State v. Williams*, 366 N.C. 110, 116, 726 S.E.2d 161, 167 (2012) (quoting *United States v. Arvizu*, 534 U.S. 266, 273, 122 S. Ct. 744, 750-51, 151 L. Ed. 2d 740, 749-50 (2002)). Relevant to this case, “[a] determination that reasonable suspicion exists . . . need not rule out the possibility of innocent conduct.” *Id.* at 117, 726 S.E.2d at 167.

Applying these principles, this Court held in *State v. Carmon* that an officer had reasonable, articulable suspicion that a drug deal was taking place in the parking lot of an open grocery store. 156 N.C. App. 235, 241, 576 S.E.2d 730, 735 (2003). At about 10:00 p.m., the officer witnessed the defendant exchange something with the driver of a parked car. *Id.* at 237, 576 S.E.2d at 733. The defendant then appeared to conceal an item in his jacket, nervously stop at a pay phone, and then enter another

parked car before a woman emerged from the store, sat in the driver's seat next to the defendant, and drove away. *Id.* at 238, 576 S.E.2d at 733. This Court considered "[t]he nighttime exchange as well as [the officer's] past experience in observing drug transactions" as appropriate factors to consider when it affirmed the trial court's denial of that defendant's motion to suppress. *Id.* at 240, 576 S.E.2d at 735.

Officer Price observed remarkably similar occurrences in the present case. The trial court's findings of fact state that two vehicles, one containing Defendant, entered the parking lot of a shopping center on a Sunday night shortly before 10:00 p.m., a time when the laundromat was the only open and nearby business. Defendant exited the vehicle, retrieved a purse from the trunk of the car in which she was traveling, approached the other vehicle, briskly exchanged items with someone inside that vehicle, returned to her vehicle, placed the purse back into the trunk, and left the parking lot without ever having entered the laundromat. The findings also note Officer Price's "six years of experience and training in narcotics and narcotics detection" and the "numerous complaints of drug activity" in the area. Upon these facts, an officer could have developed reasonable suspicion that a drug transaction had taken place.

Despite her short stop in the parking lot without entering the only nearby business open that night, Defendant argues that a reasonable officer could have determined her brief stop at the lot was for innocent purposes. Indeed, one could have speculated that Defendant was perhaps catching up with an old friend, at an

hour and location which best suited them, or that Defendant intended to support her local laundromat but had a last-minute change of heart when she arrived. Yet, as stated previously, “[a] determination that reasonable suspicion exists . . . need not rule out the possibility of innocent conduct.” *Williams*, 366 N.C. at 117, 726 S.E.2d at 167. Based upon his training and experience, Officer Price had a rational basis from which to reasonably suspect a narcotics transaction had transpired.

Because we hold that the trial court’s findings of fact are supported by competent evidence and that these findings support its conclusion of law that Officer Price acted with reasonable suspicion when he stopped Defendant we overrule this argument.

B. Double Jeopardy

Defendant next presents this Court with a double jeopardy issue. She claims that the trial court, in violation of Defendant’s right to be free from double jeopardy, improperly allowed her convictions of both cocaine delivery and the alleged lesser included offense of cocaine possession. However, Defendant did not raise this issue with the trial court and, therefore, has not properly preserved this issue for our review pursuant to the Rules of Appellate Procedure. N.C. R. App. P. 10(a)(1); *see State v. McKenzie*, 292 N.C. 170, 176, 232 S.E.2d 424, 428 (1977) (“[T]he double jeopardy protection may not be raised on appeal unless the defense and the facts underlying it are brought first to the attention of the trial court.”). Because Defendant failed to raise this argument before the trial court, she has waived this

issue on appeal. Accordingly, we do not address this argument.

C. Motion to Dismiss

Defendant next argues that the trial court erred when it denied Defendant's motion to dismiss the charges of methamphetamine possession and cocaine possession and delivery. Defendant argues that the State presented the jury with insufficient evidence to support every element of the offenses charged. Pursuant to N.C. Gen. Stat. § 7A-27(b), Defendant properly moved the trial court to dismiss the charges, thereby preserving this issue for appeal.

We review *de novo* a trial court's denial of a motion to dismiss for insufficient evidence to determine "[w]hether the State presented substantial evidence of each essential element of the offense." *State v. Chekanow*, 370 N.C. 488, 492, 809 S.E.2d 546, 550 (2018) (quoting *State v. Crockett*, 368 N.C. 717, 720, 782 S.E.2d 878, 881 (2016)). We are "concerned only with the sufficiency of the evidence to take the case to the jury and not with its weight" *Id.* (quoting *State v. Malloy*, 309 N.C. 176, 178, 305 S.E.2d 718, 720 (1983)). "In reviewing challenges to the sufficiency of evidence, we must view the evidence in the light most favorable to the State, giving the State the benefit of all reasonable inferences." *State v. Scott*, 356 N.C. 591, 596, 573 S.E.2d 866, 869 (2002) (citing *State v. Benson*, 331 N.C. 537, 544, 417 S.E.2d 756, 761 (1992)).

1. Methamphetamine Possession Charge

A person may be convicted of possessing methamphetamine when that person (1) knowingly (2) possesses (3) methamphetamine. N.C. Gen. Stat. § 90-95(a)(3)

(2022); *State v. Weldon*, 314 N.C. 401, 403, 333 S.E.2d 701, 702 (1985) (“Felony possession of a controlled substance has two essential elements. The substance must be possessed, and the substance must be knowingly possessed.”). To satisfy the possession element, “a defendant must have the ‘power and intent to control’ the ‘disposition or use’ of the substance.” *State v. Harris*, 361 N.C. 400, 403, 646 S.E.2d 526, 528 (2007) (quoting *State v. Harvey*, 281 N.C. 1, 12, 187 S.E.2d 706, 714 (1972)). As for the knowledge element, it “is almost never provable by direct evidence. Its existence almost always must be proved, if at all, by circumstantial evidence.” *Weldon*, 314 N.C. at 406, 333 S.E.2d at 704.

Here, Defendant’s methamphetamine possession charge stems from the methamphetamine found in a black purse. Officer Price testified that he witnessed Defendant retrieve the same black purse from the trunk of the vehicle in which she rode, walk with the purse to the alleged drug dealer’s vehicle, return with the purse to her own vehicle, and place the purse back into the trunk. When Officer Price later stopped the vehicle in which Defendant was a passenger, he searched the trunk for the purse and found that it contained what appeared to be methamphetamine. Officer Price also discovered a wallet and driver license in the purse, belonging to Ms. Ruff.

Defendant challenges the sufficiency of evidence to support this possession charge on two fronts: the “knowing” element and the “possession” element. Defendant argues a reasonable jury could not have convicted Defendant based solely

on Officer Price's testimony that Defendant brought someone else's purse with her to the alleged drug dealer before returning the purse to the trunk. Defendant alleged that, unbeknown to her, the methamphetamine could have been in the purse prior to Defendant's handling it. Therefore, Defendant argues the officer's testimony was insufficient to show that Defendant possessed the methamphetamine or, in the least, that Defendant knew she possessed the methamphetamine. We disagree.

When viewed in the light most favorable to the State, Officer Price's testimony supported both elements of the possession charge and allowed a rational juror to conclude that Defendant knowingly possessed methamphetamine. A jury could conclude that, though the purse may have contained Ms. Ruff's wallet and identification or may have even been Ms. Ruff's purse, Defendant nonetheless utilized the purse to conceal drugs that Officer Price witnessed her purchase. This issue was for the jury to decide, for it is the responsibility of "the jury to weigh the evidence." *State v. Squires*, 272 N.C. 402, 407, 158 S.E.2d 345, 349 (1968). "Whether evidence has any weight is a matter of law for the Court. If it has weight, the jury must manipulate the scales." *Id.* The evidence here had weight, and the jury weighed that evidence against Defendant. Defendant's argument is overruled.

2. Cocaine Possession and Delivery Charges

The elements necessary to prove the offense of possessing cocaine are similar to those necessary for possessing methamphetamine; Defendant must (1) knowingly (2) possess (3) cocaine. N.C. Gen. Stat. § 90-95(a)(3) (2022). The charge of delivering

cocaine must be supported by evidence showing “the actual constructive, or attempted transfer from one person to another of a controlled substance.” § 90-87(7). Upon the charges of possession and delivery of cocaine, Defendant challenges the sufficiency of evidence to support both the knowing possession and delivery, or transfer, of cocaine.

Police discovered the cocaine in Ms. Ruff’s underwear during a strip search. Ms. Ruff testified that Defendant gave her the cocaine. Defendant argues here, without authority, that her “convictions for possession of cocaine and delivery of cocaine are absurd given that no cocaine was ever found in [Defendant’s] possession” and that Ms. Ruff’s testimony was not sufficient because her motive was “to gain favor to avoid prosecution as a habitual felon at the expense of [Defendant].”

As with the methamphetamine possession charge above, Defendant’s argument ignores the jury’s responsibility to weigh the evidence. The jury had the opportunity to weigh the credibility of Ms. Ruff’s testimony in light of her possession of the cocaine and her interest in avoiding a conviction, and Defendant’s counsel appropriately cross-examined Ms. Ruff about these concerns. A defendant may be charged with possession and delivery of a controlled substance though police did not personally witness the possession or delivery. *See State v. Brooks*, 83 N.C. App. 179, 194, 349 S.E.2d 630, 639 (1986) (codefendant’s direct evidence testimony sufficient). Ms. Ruff’s testimony, when viewed in the light most favorable to the State, was sufficient to allow the charge to go to the jury and for a reasonable jury to convict Defendant. The trial court did not err when it denied Defendant’s motion to dismiss

this charge. Thus, this argument is overruled.

D. Testimonial Foundation

Defendant next challenges the admissibility of the expert witness's testimony in light of Rule 702 of our Rules of Evidence and claims that the testimony prejudiced Defendant. Specifically, Defendant takes issue with what she contends is the State's lack of foundation to show that the expert relied upon sufficient facts, data, principles, and methods to arrive at her conclusion, that the "proffered method of proof was not shown to be sufficiently reliable." Defendant did not object to the expert witness testimony at trial. Defendant did not object to the expert witness testimony at trial and therefore has failed to properly preserve this argument on appeal. "Unpreserved error in criminal cases . . . is reviewed only for plain error." *State v. Lawrence*, 365 N.C. 506, 512, 723 S.E.2d 326, 330 (2012); N.C. R. App. P. 10(a)(4) (2022). This review "applies on appeal to unpreserved instructional or evidentiary error." *Id.* at 518, 723 S.E.2d at 334.

"For error to constitute plain error, a defendant must demonstrate that a fundamental error occurred at trial." *Id.* "To show that an error was fundamental, a defendant must establish prejudice—that, after examination of the entire record, the error 'had a probable impact on the jury's finding that the defendant was guilty.'" *Id.* (quoting *State v. Odom*, 307 N.C. 655, 660, 300 S.E.2d 375, 378 (1983)). A trial court plainly errs "only in truly exceptional cases," *State v. Walker*, 316 N.C. 33, 39, 340 S.E.2d 80, 83 (1986), and the error must be of "something so basic, so prejudicial, so

lacking in its elements that justice cannot have been done.” *Odom*, 307 N.C. at 660, 300 S.E.2d at 378.

Rule 702 of our Rules of Evidence requires that expert testimony be sufficiently reliable to be admissible. *State v. McGrady*, 368 N.C. 880, 890, 787 S.E.2d 1, 9 (2016). Expert testimony is considered reliable if “(1) [t]he testimony is based upon sufficient facts or data[,] (2)[t]he testimony is the product of reliable principles and methods[, and] (3) [t]he witness has applied the principles and methods reliably to the facts of the case.” N.C. Gen. Stat. § 8C-1, R. 702(a) (2022). “The precise nature of the reliability inquiry will vary from case to case depending on the nature of the proposed testimony. In each case, the trial court has discretion in determining how to address the three prongs of the reliability test.” *McGrady*, 368 N.C. at 890, 787 S.E.2d at 9.

In *State v. Piland*, this Court held that a trial court did not plainly err when it allowed an expert to merely testify that the expert conducted a “chemical analysis” without explaining the process and without objection from the defendant. 263 N.C. App. 323, 340, 822 S.E.2d 876, 888 (2018). The expert testified, “I then performed a chemical analysis on a single tablet to confirm that they did in fact contain what the manufacturer had reported,” before concluding that the substance was contraband “[b]ased on the results of my analysis.” *Id.* at 338-39, 822 S.E.2d at 888. Though the admission of this evidence would have ordinarily failed the reliability test and been held as an abuse of discretion, it did not constitute the “baseless speculation” indicative of plain error. *Id.* at 339, 822 S.E.2d at 888. This Court contrasted that

scenario with the one in *State v. Brunson*. In *Brunson*, this Court held that a trial court plainly erred when it admitted the unobjected testimony of an expert who confessed that she “performed no chemical analysis” and only looked to the stamped description on the pills at issue to identify them. 204 N.C. App. 357, 358, 693 S.E.2d 390, 391 (2010).¹

We note the facts of this case are more similar to *Piland*. In her testimony, the State’s expert witness, Ms. Tinnin, summarized her analysis prior to sharing her conclusions as to each of the items seized from Defendant.

At the lab we do a preliminary test as well as a confirmatory test. Our preliminary test typically include things such as color test[s], which is just a test where you add a reagent to the sample and if it changes colors, it can indicate that a certain category of drug is present and then we have confirmatory test[s] that are more specific to each drug.

After detailing the evidence’s chain of custody, Ms. Tinnin stated, “I did the analysis—I started the analysis on September 14th and finished it on September 17th.”

She then outlined the tests that she performed on each of the four relevant items received by her lab. As to the first item, she said, “I did the color test that I was speaking [of] earlier, the preliminary test, and that color indicated to me that

¹ We note that *Brunson* was decided before North Carolina’s Rule 702(a) included a three prong reliability test. The standard applied in *Brunson* was substantially less rigid than the current Rule 702(a) standard.

there was a phenethylamine present. A phenethylamine is just a category of drugs that include amphetamine, methamphetamine as well as phenethylamine.” She testified that this item weighed 0.16 grams and that it “was analyzed and found to contain methamphetamine.”

Ms. Tinnin similarly testified regarding the second item tested:

I performed the same color test and ended up with a different result that kind of guided me towards cocaine and then I performed a more specific preliminary test that’s more specific toward cocaine. I looked under the microscope and when you add a reagent to the substance, it will form processes if it is present. I documented that and then performed a confirmatory test to confirm.

She quickly concluded that it was “analyzed and found to contain cocaine” and that it weighed 0.17 grams.

As to the third item, Ms. Tinnin stated, “I also did that color test which led me to believe that phenethylamine group was present and then I did a confirmatory test to identify the substance.” It also “was analyzed and found to contain methamphetamine,” and she testified that it weighed 0.80 grams.

Ms. Tinnin tested a fourth item, but it was “found to contain no controlled substances identified” after she completed “a color test as well as a confirmatory test.”

All of the items tested and Ms. Tinnin’s conclusions were outlined in the lab report. The State published this report to the jury, and the end of the report reads, “Analysis of the above item(s) was conducted using two or more of the following methods: color test, microcrystalline test, IR, GC, MS.”

Ms. Tinnin's testimony is bare and lacking an explanation concerning the reliability of her testing method; however, the testimony was not so deficient as to constitute fundamental error. Though Ms. Tinnin properly analyzed the four substances at issue, "[t]he evidence merely lacks any discussion of that analysis." *Piland*, 263 N.C. App. at 339, 822 S.E.2d at 888. As in *Piland*, "[w]e agree that the failure to consider the methods of analysis employed was an abuse of discretion, but this does not amount to plain error in this case." *Id.* Thus, under a plain error review, Defendant's argument is overruled.

III. Conclusion

The trial court did not err when it denied Defendant's motion to suppress evidence obtained as a result of the traffic stop. Defendant waived her double jeopardy argument by not raising it before the trial court. Sufficient evidence supported the trial court's denial of Defendant's motion to dismiss the drug charges. Any error in the trial court's ruling allowing the State's expert's testimony was not sufficient to constitute prejudicial error. Accordingly, we hold Defendant received a fair trial free from prejudicial error.

NO ERROR.

Judges ZACHARY and CARPENTER concur.

Report per Rule 30(e).