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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-475

Filed 4 June 2024

Transylvania County, Nos. 20 CRS 169–71

STATE OF NORTH CAROLINA

v.

JOAN CHARLENE GREEN, Defendant.

Appeal by Defendant from judgment entered 10 August 2022 by Judge Peter B. Knight in Transylvania County Superior Court. Heard in the Court of Appeals 24 January 2024.

*Attorney General Joshua H. Stein, by Assistant Attorney General Dorian Woolaston, for the State.*

*Ryan Legal Services, PLLC, by John E. Ryan III, for Defendant-Appellant.*

CARPENTER, Judge.

Joan Charlene Green (“Defendant”) appeals from judgment after a jury convicted her of possession of drug paraphernalia and possession of methamphetamine. On appeal, Defendant argues that the trial court erred in denying her motion to suppress evidence obtained from the search of her purse during

a traffic stop. Because Defendant failed to properly preserve the issue for review, we dismiss Defendant's appeal.

### **I. Factual & Procedural Background**

The evidence tends to show the following: On 3 August 2019, at approximately 11:00 p.m., Sergeant Nathan Whitmire<sup>1</sup> of the Transylvania County Sheriff's Office observed a vehicle on Old Highway 64 in Transylvania County driving without working tag lights. After following the vehicle for a short time, Sergeant Whitmire initiated a traffic stop. The driver complied and pulled over. Charles Ward was in the driver's seat of the vehicle, and Defendant was in the passenger seat.

After informing Ward of the reason for the stop, Sergeant Whitmire invited Ward to step out and view the tag lights for himself. Ward stepped out of the vehicle to look. As Ward stood at the rear of the vehicle, Sergeant Whitmire asked if Ward had anything illegal in the vehicle. At this point, in Sergeant Whitmire's opinion, Ward became "visibly nervous." Sergeant Whitmire then asked Ward if he would consent to a search of the vehicle. Ward said "search all you want."

At this point, Sergeant Whitmire had already called for assistance, and Deputy Hunter Galloway arrived to assist with the vehicle search. One of the officers asked Defendant to step outside the vehicle, and as she exited, "she left her purse in the vehicle. She did not voice any objection to the search of . . . Ward's vehicle, or make

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<sup>1</sup> The trial record refers to Whitmire as Lieutenant. At all times relevant to the investigation, however, Whitmire was a Sergeant with the Transylvania County Sheriff's Office.

any comment about her purse.” Sergeant Whitmire stood with Defendant and Ward at the rear of the vehicle while Deputy Galloway searched the vehicle.

Officers discovered a pipe and a freshly used needle wrapped in a paper towel inside Defendant’s purse. When Sergeant Whitmire asked Defendant about the needle, Defendant “admitted to using meth” earlier that same evening at a house known by law enforcement for drug use. Defendant also indicated that she had methamphetamine on her person, hidden in her groin area. Defendant consented to a search of her person. Upon search, officers discovered a small bottle they believed contained methamphetamine in her groin area. Officers released Ward at the scene with a warning to repair his vehicle’s tag lights, and they took Defendant into custody.

On 12 June 2020, a Transylvania County grand jury indicted Defendant on one count of possession of drug paraphernalia, one count of possession of methamphetamine, and one count of possession of marijuana paraphernalia. On 1 October 2021, Defendant filed a motion to suppress all evidence obtained from the search of her purse. On 8 August 2022, after a pretrial hearing on Defendant’s motion to suppress, the trial court denied Defendant’s motion to suppress. At trial, when the State introduced the evidence obtained from the search of Defendant’s purse, Defendant did not object.

On 10 August 2022, a jury convicted Defendant of possession of drug paraphernalia and possession of methamphetamine. The jury found Defendant not

guilty of possession of marijuana paraphernalia. The trial court imposed a term of six to seventeen months of imprisonment, suspended, and placed Defendant on eighteen months of supervised probation. On 12 August 2022, Defendant filed timely written notice of appeal.

## **II. Jurisdiction**

This Court has jurisdiction under N.C. Gen. Stat. §§ 7A-27(b)(1) and 15A-1444(a) (2023).

## **III. Issue**

The issue before this Court is whether the trial court erred in denying Defendant's motion to suppress.

## **IV. Preservation**

Before reaching the merits, we must determine whether Defendant properly preserved the issue. To preserve the denial of a motion to suppress for appeal, a defendant "must present an objection when the evidence is introduced at trial," even when the evidence was previously considered during a pretrial hearing. *State v. Ayscue*, 169 N.C. App. 548, 553, 610 S.E.2d 389, 394 (2005). As such, a defendant "cannot rely on [her] pretrial motion to suppress to preserve an issue for appeal. [Her] objection must be renewed at trial." *State v. Golphin*, 352 N.C. 364, 463, 533 S.E.2d 168, 232 (2000) (citations omitted).

A defendant who has failed to properly preserve her argument for appeal may request plain-error review from the denial of a motion to suppress. *State v. Waring*,

364 N.C. 443, 508, 701 S.E.2d 615, 655 (2010). The defendant's request, however, must be specific and direct. *See id.* at 508, 701 S.E.2d at 655; *see also* N.C. R. App. P. 10(c)(4) ("In criminal cases, a question which was not preserved by objection . . . nevertheless may be made the basis of an assignment of error where the judicial action questioned is specifically and distinctly contented to amount to plain error.").

Here, although Defendant filed a pretrial motion to suppress, she failed to object at trial when the State presented the evidence obtained from the search of her purse. Furthermore, Defendant failed to allege plain error in her argument to this Court. *See State v. Dorton*, 172 N.C. App. 759, 768, 617 S.E.2d 97, 103 (2005) ("[D]efendant is not entitled to plain error review in the instant case due to his failure to allege plain error in his . . . brief to this Court." (internal citations omitted)). Consequently, Defendant has waived her right to appellate review of this issue.

## **V. Conclusion**

As Defendant failed to properly preserve the issue for appeal and subsequently failed to request plain-error review, we must dismiss Defendant's appeal.

DISMISSED.

Judges HAMPSON and GORE concur.

Report per Rule 30(e).