

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA23-905

Filed 17 December 2024

Brunswick County, No. 18 CRS 55383

STATE OF NORTH CAROLINA

v.

JONI LYN MARTINEZ, Defendant.

Appeal by Defendant from judgment entered 13 January 2023 by Judge Jason C. Disbrow in Brunswick County Superior Court. Heard in the Court of Appeals 13 August 2024.

Attorney General Joshua H. Stein, by Assistant Attorney General Kunal J. Choksi, for the State.

Caryn D. Strickland, for Defendant-Appellant

CARPENTER, Judge.

Joni Lyn Martinez (“Defendant”) appeals from judgment entered after a jury convicted her of: possessing a Schedule III controlled substance with intent to manufacture, sell, or deliver; selling a Schedule III controlled substance; and possessing drug paraphernalia. On appeal, Defendant argues that: (1) the trial court erred by allowing the State to impeach Defendant with a prior Class 3 misdemeanor;

(2) she received ineffective assistance of counsel (“IAC”); (3) the trial court plainly erred by admitting testimony that Defendant used drugs in the presence of the confidential informant’s (“CI”) children; and (4) the trial court erred by excluding Defendant’s testimony that CI was banned from Food Lion for stealing. After careful review, we disagree with Defendant and discern no plain error.

I. Factual & Procedural Background

On 6 May 2019, a Brunswick County grand jury indicted Defendant for one count of each of the following: possessing a Schedule III controlled substance with intent to manufacture, sell, or deliver; selling a Schedule III controlled substance; and possessing drug paraphernalia. The State began trying Defendant on 9 January 2023, and trial evidence tended to show the following.

CI, who was working with the Brunswick County Sheriff’s Office, agreed to participate in a “controlled buy” with Defendant. CI and Defendant had been friends “for a long time,” and Defendant admitted to using drugs with CI in the past. Defendant has since completed treatment for her drug addiction.

On 20 December 2018, around 7:00 p.m., Sergeants Zeller and Jared met with CI in a vehicle behind the Food Lion on Long Beach Road. During the meeting, CI told Sergeant Zeller that she intended to buy five Suboxone strips from Defendant. Suboxone strips are comparable in size to a Listerine strip. Indeed, because of their size, Suboxone strips are frequently “smuggled into the jail,” by being hidden “behind postage stamps” and “belt loops.” Sergeant Zeller searched CI for Suboxone strips

before CI approached Defendant on 20 December 2018; however, because of her gender, there were “some limitations” on Sergeant Zeller’s ability to search her. After conducting the search, Sergeant Zeller gave CI traceable money to purchase drugs from Defendant and a recording device to document the exchange. CI exited Sergeant Zeller’s car and walked around a corner to meet with Defendant.

Sergeant Zeller did not directly observe the exchange between Defendant and CI, and the State did not call CI to testify at Defendant’s trial because she had “become the subject of another criminal investigation.” The State did, however, produce a video of the interaction between CI and Defendant.

The video shows CI giving Defendant a one-hundred-dollar bill and Defendant giving CI a small package. After receiving the package, CI said, “thank you, ma’am,” to which Defendant replied, “I put them in an extra bag.” Defendant then said to CI, “I told you; I said you’re buying me a fucking beer.” Defendant and CI both laughed at Defendant’s comment and then, while walking away from Defendant, CI stated she “was about to walk [her] happy ass to Subway.” In response, Defendant said, “I wish I had them damn coupons.”

Defendant testified and denied selling drugs to CI. According to Defendant, she and CI had plans to “meet up later at a party” and CI called her earlier that day to tell her that “[CI] had some money and wanted [Defendant] to go in [to the Food Lion] and get alcohol with it because [CI was] banned from going into Food Lion for stealing.” The State lodged a general objection to Defendant’s testimony. The trial

court sustained the State's objection and instructed the jury to "disregard the last statement by the witness."

Defendant testified that CI gave her the one-hundred-dollar bill so she could purchase alcohol "for the party later" and that the baggie she handed CI contained "Subway coupons," not drugs. When officers approached Defendant inside Food Lion after the interaction with CI, Defendant was "at the beer cooler with the door open with alcohol in [her] hand."

On direct examination, defense counsel asked Defendant, in reference to 20 December 2018, "did you have a gun on you that night?" Defendant said she was carrying a firearm "in [her] inner jacket pocket" because she "walked through the woods to get [to the Food Lion]" and had "previously been raped."

On cross-examination, the State attacked Defendant's credibility by questioning her about using drugs in the presence of CI's children and her ability to purchase a firearm. The State also referenced Defendant's 2016 conviction for possessing drug paraphernalia.

On 13 January 2023, the jury convicted Defendant of all charges. The trial court sentenced Defendant to five-to-fifteen months imprisonment suspended for a period of twenty-four months of supervised probation. On 24 January 2023, Defendant filed written notice of appeal but failed to file a certificate of service contemporaneously with her notice. On 2 February 2023, Defendant filed a petition for writ of certiorari ("PWC").

II. Jurisdiction

We first address whether we have jurisdiction to reach the merits of Defendant's appeal. This Court has jurisdiction to review "any final judgment of a superior court." N.C. Gen. Stat. § 7A-27(b)(1) (2023). Our Rules of Appellate Procedure, however, require that a criminal defendant attach a certificate of service to their notice of appeal from a final judgment. *See* N.C. R. App. P. 4(c), 26(d). This requirement is not jurisdictional, and the State "may waive the failure of service by not raising the issue by motion or otherwise and by participating without objection in the appeal." *Hale v. Afro-Am. Arts Int'l*, 335 N.C. 231, 232, 436 S.E.2d 588, 589 (1993).

Here, Defendant noticed appeal from a final judgment but failed to attach a certificate of service to her notice. The State, however, has participated in this appeal without objection, so it has waived any objection to Defendant's Rule 4 violations. *See id.* at 232, 436 S.E.2d at 589. Accordingly, we have jurisdiction and dismiss Defendant's PWC as moot. *See* N.C. Gen. Stat. § 7A-27(b)(1).

III. Issues

The issues are whether: (1) the trial court erred by allowing the State to impeach Defendant with a prior Class 3 misdemeanor; (2) Defendant received IAC; (3) the trial court plainly erred by admitting testimony that Defendant had previously used drugs in the presence of CI's children; and (4) the trial court erred in striking Defendant's testimony that CI was banned from Food Lion for stealing.

IV. Analysis

A. Rule 609

In her first argument, Defendant asserts that the trial court violated Rule 609 by allowing the State to question her about her 2016 conviction for possessing drug paraphernalia. Before analyzing Defendant’s argument, however, we first address the State’s assertion that Defendant failed to preserve this argument for our review.

“Rule 10 of the North Carolina Rules of Appellate Procedure contains a specificity requirement.” *State v. McLymore*, 380 N.C. 185, 192, 868 S.E.2d 67, 73 (2022) (citation omitted). Rule 10 provides that “a party must have presented to the trial court a timely request, objection, or motion, stating the *specific grounds* for the ruling the party desired the court to make if the specific grounds were not apparent from the context.” N.C. R. App. P. 10(b)(1) (emphasis added). This requirement is satisfied if the objection in question “puts the trial court and opposing party on notice as to *what* action is being challenged and *why* the challenged action is thought to be erroneous” *McLymore*, 380 N.C. at 193, 868 S.E.2d at 74 (emphasis added). Even where a party does not state the specific grounds, but instead lodges a general objection, the issue will still be preserved “if the *what* and the *why* are apparent from the context” *Id.* at 193, 868 S.E.2d at 74 (emphasis added).

Below is the relevant questioning concerning Defendant’s 2016 conviction.

The State: You’re not legally able to purchase a firearm, are you?

Defense counsel: Objection.

Trial Court: Sustained. Let's not wander too far off.

The State: Ma'am, what have you been convicted of in the last 10 years that carries a sentence of 60 days or more?

Defendant: Nothing. What do you mean?

The State: Weren't you charged with drug offenses and pled to drug paraphernalia in 2016?

Defendant: Oh, yeah.

The State: You realize that makes you a federally prohibited person from possessing a firearm?

Defendant: I had—well, maybe. But I already had previous gun permits prior to that.

The State: You weren't able to get one at this time, though, were you?

Defendant: No.

Defense counsel raised a general objection to the State's question about Defendant's ability to "legally purchase a firearm" but did not object to any of the State's questions that followed. Importantly, when the State explicitly asked Defendant about her 2016 conviction, defense counsel did not object. Furthermore, defense counsel's general objection to the State's question: "You're not legally able to purchase a firearm, are you?" does not preserve Defendant's Rule 609 argument. Not only was the objection lodged in response to a different question, the "what" and the "why" for defense counsel's objection is not apparent from the context. *See McLymore*, 380 N.C. at 193, 868 S.E.2d at 74. The objection could have been raised for a number of reasons and because we are a reviewing court, we are not in a position to speculate as to why defense counsel raised the objection. Accordingly, Defendant's Rule 609 argument is not preserved for appeal.

In a criminal case, however, we may “review unpreserved issues for plain error when they involve either (1) errors in the judge’s instructions to the jury, or (2) rulings on the admissibility of evidence.” *State v. Gregory*, 342 N.C. 580, 584, 467 S.E.2d 28, 31 (1996) (citing *State v. Sierra*, 335 N.C. 753, 761, 440 S.E.2d 791, 796 (1994)). We will only review for plain error, however, if the defendant “specifically and distinctly” argues that the trial court plainly erred. *See State v. Frye*, 341 N.C. 470, 496, 461 S.E.2d 664, 677 (1995); N.C. R. App. P. 10(a)(4) (2023). Notably, a defendant does not specifically and distinctly argue plain error by simply listing “plain error” as an alternative. *See State v. Grooms*, 353 N.C. 50, 66, 540 S.E.2d 713, 723 (2000) (“Additionally, while defendant’s assignment of error includes plain error as an alternative, he does not specifically argue in his brief that there is plain error in the instant case.”).

Here, the testimony regarding the 2016 conviction was a “ruling on the admissibility of evidence,” *see Gregory*, 342 N.C. at 584, 467 S.E.2d at 31, that Defendant has “specifically and distinctly” asserted was plain error, *see Frye*, 341 N.C. at 496, 461 S.E.2d at 677. Accordingly, despite defense counsel not objecting, we review for plain error. *See Gregory*, 342 N.C. at 584, 467 S.E.2d at 31.

To establish plain error, a defendant must pass a three-part test:

First, the defendant must show that a fundamental error occurred at trial. Second, the defendant must show that the error had a probable impact on the outcome, meaning that absent the error, the jury probably would have returned a different verdict. Finally, the defendant must

show that the error is an exceptional case that warrants plain error review, typically by showing that the error seriously affects the fairness, integrity or public reputation of judicial proceedings.

State v. Reber, 386 N.C. 153, 158, 900 S.E.2d 781, 786 (2024) (citations and quotation marks omitted).

The second prong of the plain-error test requires a defendant to show that, because of the trial court's error, a different verdict "is significantly more likely than not." *Id.* at 159, 900 S.E.2d at 787. In other words, the defendant must show that a different result would have been "almost certain" without the error. *Id.* at 159, 900 S.E.2d at 787 (citing New Oxford American Dictionary (3d ed. 2010) and Merriam-Webster's Collegiate Dictionary (11th ed. 2007)). Under this prong of plain-error review, we view the effect of the error in isolation. *See State v. Holbrook*, 137 N.C. App. 766, 768–69, 529 S.E.2d 510, 511–12 (2000). This means, we will not look at the cumulative effect of all of the errors at trial, but rather will analyze the effect of each alleged error on the verdict, individually. *See id.* at 768–69, 529 S.E.2d at 511–12.

Under Rule 609, the credibility of a witness may be attacked through "evidence that the witness has been convicted of a felony, or of a Class A1, Class 1, or Class 2 misdemeanor." N.C. Gen. Stat. § 8C-1, Rule 609(a) (2023). Rule 609 does not permit evidence of a Class 3 misdemeanor to attack a witness's credibility. *See State v. Riley*, 202 N.C. App. 299, 302, 688 S.E.2d 477, 480 (2010).

On appeal, the State concedes that Defendant's 2016 conviction was a Class 3 misdemeanor. Thus, the trial court erred by allowing the State to impeach Defendant by asking her about her 2016 conviction. *See id.* at 302, 688 S.E.2d at 480. Because the trial court erred, the first prong of the plain-error test is satisfied. *See Reber*, 386 N.C. at 158, 900 S.E.2d at 786.

Defendant, however, has not established that without this error, the jury "almost certainly" would have reached a different result. *See id.* at 158, 900 S.E.2d at 787. The State's evidence tends to support the State's theory of the case. The video shows CI giving Defendant a one-hundred-dollar bill and Defendant giving CI a small baggie. Although Defendant maintains the encounter was not a drug exchange, but rather argues that CI gave her the money "to go in the store and buy alcohol for [a] party later," neither CI nor Defendant make any mention of a party in the video. Additionally, Defendant's assertion that she gave CI Subway coupons, not drugs, also does not align with the conversation in the video. In the video, after the exchange took place, CI told Defendant she was headed to Subway. It was only then that Defendant mentioned the Subway coupons saying: "I wish I had them damn coupons."

When considering the video, and the other admissible evidence, we cannot say that without the cross-examination of Defendant about her 2016 conviction, the jury "almost certainly" would have reached a different result. *See Reber*, 386 N.C. at 158, 900 S.E.2d at 787. Had the State not impeached Defendant with her 2016 conviction,

this may have been a closer case for the jury; however, “a close case is not enough to prevail on the prejudice prong of plain error.” *See id.* at 162, 900 S.E.2d at 789.

There is no question the State violated Rule 609 by eliciting testimony from Defendant regarding her 2016 conviction, a Class 3 misdemeanor. Nonetheless, Defendant has not satisfied the second prong of plain-error review. Accordingly, the trial court did not plainly err by allowing the State to question Defendant about her 2016 conviction. *See id.* at 158, 900 S.E.2d at 786.

B. IAC Claim

Next, Defendant asserts she received IAC. Specifically, she argues that her defense counsel was ineffective for asking her, on direct examination, whether she had a concealed-carry permit and whether she possessed a gun on 20 December 2018.

This Court reviews IAC claims de novo. *State v. Wilson*, 236 N.C. App. 472, 475, 762 S.E.2d 894, 896 (2014) (citing *State v. Martin*, 64 N.C. App. 180, 181, 306 S.E.2d 851, 852 (1983)). Under a de novo review, this Court “considers the matter anew and freely substitutes its own judgment’ for that of the lower tribunal.” *State v. Williams*, 362 N.C. 628, 632–33, 669 S.E.2d 290, 294 (2008) (quoting *In re Greens of Pine Glen Ltd. P’ship*, 356 N.C. 642, 647, 576 S.E.2d 316, 319 (2003)).

“A defendant’s right to counsel includes the right to the effective assistance of counsel.” *State v. Braswell*, 312 N.C. 553, 562, 324 S.E.2d 241, 248 (1985) (citing *McMann v. Richardson*, 397 U.S. 759, 771, 90 S. Ct. 1441, 1449, 25 L. Ed. 2d 763, 773 (1970)). In general, to establish a claim for IAC, a defendant “must show that his

counsel's conduct fell below an objective standard of reasonableness.” *Id.* at 561–62, 324 S.E.2d at 248. In making such a showing, the defendant must satisfy a two-part test. *See id.* at 562, 324 S.E.2d at 248 (1985) (citing *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064, 80 L. Ed. 2d 674, 693 (1984)).

First, a defendant must show that her defense counsel's performance was “deficient.” *Id.* at 561–62, 324 S.E.2d at 248. A defense counsel's performance is considered “deficient” if the defense counsel “made errors so serious that [he] was not functioning as the ‘counsel’ guaranteed [to] the defendant by the Sixth Amendment.” *Strickland*, 466 U.S. at 687, 104 S. Ct. at 2064, 80 L. Ed. 2d at 693. There is a strong presumption that a defense counsel “rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” *Id.* at 690, 104 S. Ct. at 2066, 80 L. Ed. 2d at 695.

Second, a defendant must show that she was prejudiced by her defense counsel's deficient performance. *Braswell*, 312 N.C. at 561–62, 324 S.E.2d at 248. Defendant must establish that “there [was] a reasonable probability that, but for counsel's errors, there would have been a different result in the proceedings.” *Id.* at 562–63, 324 S.E.2d at 248. “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” *State v. Allen*, 360 N.C. 297, 316, 626 S.E.2d 271, 286 (2006).

If this Court, however, “can determine at the outset that there is no reasonable probability that in the absence of counsel's alleged errors the result of the proceeding

would have been different” then it will not be necessary for us to decide whether a defense counsel’s alleged errors were actually deficient. *Braswell*, 312 N.C. at 563, 324 S.E.2d at 249.

Here, defense counsel elicited testimony from Defendant that she did not have a concealed-carry permit, and that she was carrying a gun on 20 December 2018. Although this Court can hypothesize as to the reasons why defense counsel asked Defendant these particular questions, it is not necessary for us to do so because there is no reasonable probability that the outcome of Defendant’s case would have been different if defense counsel had not asked the questions. *See Braswell*, 312 N.C. at 563, 324 S.E.2d at 249. For the same reasons discussed above, we cannot say that absent the questioning regarding the gun, the jury would have reached a different result. The other evidence of guilt is substantial and supports the State’s theory of the case. Thus, Defendant cannot meet the second prong of the test for an IAC claim. *See id.* at 563, 324 S.E.2d at 249. Accordingly, we deny Defendant’s IAC claim.

C. Evidence of Previous Drug Use

In her third argument, Defendant asserts that the trial court plainly erred by allowing the State to question her about previously using drugs with CI in the presence of CI’s children. Specifically, Defendant argues that the question violated Rules of Evidence 401, 404(a), and 403 because it was “irrelevant, inflammatory, and designed to capitalize on the passions of the jury.”

Here, on cross-examination, the State asked Defendant: “Were [CI’s] children present when you used drugs together?” Defense counsel did not object, and Defendant responded: “Yes.” Although defense counsel did not object, Defendant has “specifically and distinctly” argued that the trial court plainly erred by admitting this testimony. *See Frye*, 341 N.C. at 496, 461 S.E.2d at 677. Accordingly, we review for plain error. *See Gregory*, 342 N.C. at 584, 467 S.E.2d at 31. Again, in our determination of whether Defendant has satisfied all parts of the three-part plain-error test, *see Reber*, 386 N.C. at 158, 900 S.E.2d at 786, we must consider this alleged error independently, not in combination with the State’s Rule 609 violation discussed above, *see Holbrook*, 137 N.C. App. at 768–69, 529 S.E.2d at 511–12.

Under Rule 401, “evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence,” is relevant evidence. N.C. Gen. Stat. § 8C-1, Rule 401(a) (2023). Irrelevant evidence is inadmissible. *See* N.C. Gen. Stat. § 8C-1, Rule 402 (2023). Rule 404(a) prohibits admission of “[e]vidence of a person’s character or trait of his character” if the evidence is being introduced for propensity purposes. N.C. Gen. Stat. § 8C-1, Rule 404(a) (2023). Lastly, Rule 403 provides that even relevant evidence “may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice” N.C. Gen. Stat. § 8C-1, Rule 403 (2023).

Here, even assuming the State's questioning violated one or all of the aforementioned Rules of Evidence, Defendant has not established plain error. *See Reber*, 386 N.C. at 158, 900 S.E.2d at 786. Viewed in isolation, we cannot say that without Defendant's testimony that she previously used drugs with CI in the presence of CI's children, the jury "almost certainly" would have returned a different verdict. *See id.* at 158, 900 S.E.2d at 787.

Again, if the trial court excluded this evidence, this may have been a closer case for the jury, but "a close case is not enough to prevail on the prejudice prong of plain error." *See id.* at 158, 900 S.E.2d at 787. Accordingly, we conclude the trial court did not plainly err by admitting Defendant's testimony that she previously used drugs with CI in the presence of CI's children.

D. Stricken Testimony

In Defendant's final argument, she asserts that the trial court erred by excluding her testimony that CI was "banned from going into Food Lion for stealing." At the outset, we address whether this issue is preserved for our review. As previously mentioned, "to preserve an issue for appellate review, the appellant must have raised that specific issue before the trial court to allow it to make a ruling on that issue." *Regions Bank v. Baxley Com. Properties, LLC*, 206 N.C. App. 293, 298–99, 697 S.E.2d 417, 421 (citing N.C. R. App. P. 10(b)(1)). Rule 10 provides that "a party must have presented to the trial court a timely request, objection, or motion, stating the *specific grounds* for the ruling the party desired the court to make if the

specific grounds were not apparent from the context.” N.C. R. App. P. 10(b)(1) (emphasis added).

Here, defense counsel asked Defendant the following question on direct examination:

Defense counsel: Okay. How did you come to be meeting [CI] at the Food Lion?

Defendant: She had called me and had said that she had some money and wanted me to go in and get alcohol with it because she’s banned from going into Food Lion for stealing.

The State: Objection.

Trial Court: Sustained. Jury shall disregard the last statement by the witness.

Although the “substance” of the excluded testimony is “apparent from the context,” *see State v. Everett*, 178 N.C. App. 44, 56, 630 S.E.2d 703, 710 (2006), the “specific grounds” for the objection is not, *see* N.C. R. App. P. 10(b)(1). The State—the objecting party who typically raises the “specific issue” for the trial court to resolve—did not “stat[e] the specific grounds” for its objection to defense counsel’s question. *See Regions Bank*, 206 N.C. App. at 298–99, 697 S.E.2d at 421; N.C. R. App. P. 10(b)(1). Because the State’s objection and trial court’s ruling on that objection could have been made for a number of reasons, the grounds for the objection are not apparent from the context. *See Everett*, 178 N.C. App. at 56, 630 S.E.2d at 710.

Likewise, Defendant did not make an argument at trial for admission of the evidence in response to the State’s objection or the trial court’s ruling on the objection.

Indeed, Defendant did not request to be heard on the objection and did not otherwise request the trial court to overrule the State's objection based on Rules 401, 403, 404, or any other grounds. So, the arguments Defendant now raises on appeal were not "raised . . . before the trial court to allow it to make a ruling on [those] issue[s]." *See Regions Bank*, 206 N.C. App. at 298–99, 697 S.E.2d at 421 (citing N.C. R. App. P. 10(b)(1)). Because the grounds for the State's objection are not apparent from the context, and Defendant did not challenge the ruling or "put[] the trial court and opposing party on notice as to what action [was] being challenged and why the challenged action [was] thought to be erroneous," Defendant's arguments as to why the testimony was admissible are not properly preserved for our review. *See McLymore*, 380 N.C. at 193, 868 S.E.2d at 74.

This Court may, however, "apply the plain error standard of review to unpreserved instructional and evidentiary errors in criminal cases," *State v. Maddux*, 371 N.C. 558, 564, 819 S.E.2d 367, 371 (2018) (citing *State v. Lawrence*, 365 N.C. 506, 512, 723 S.E.2d 326, 330 (2012)), so long as the defendant "specifically and distinctly' contend[s] that the alleged error constitutes plain error," *Lawrence*, 365 N.C. at 516, 723 S.E.2d at 333 (quoting N.C. R. App. P. 10(a)(4)). Notably, an "empty assertion of plain error, without supporting argument or analysis of prejudicial impact, does not meet the spirit or intent of the plain error rule." *State v. Cummings*, 352 N.C. 600, 637, 536 S.E.2d 36, 61 (2000).

Here, unlike Defendant's previous evidentiary arguments, she does not

“specifically and distinctly” argue that the trial court plainly erred by striking her testimony. *See Frye*, 341 N.C. at 498, 461 S.E.2d at 677. Instead, she simply states: “Alternatively, if the Court finds this issue unpreserved [Defendant] contends that it amounts to plain error that was fundamental and likely affected the jury’s verdict.” Defendant makes no other mention of the plain-error standard, nor provides a plain-error analysis explaining how the exclusion of her testimony constituted plain error. *See Cummings*, 352 N.C. at 637, 563 S.E.2d at 61 (explaining that the requirement to specifically and distinctly contend plain error does not remove the requirements of Rule 28 which provide that a party must include arguments supporting their contentions); *see also* N.C. R. App. P. 28(a) and (b)(6). Because Defendant made an “empty assertion of plain error,” *see Cummings*, 352 N.C. at 637, 563 S.E.2d at 61, she failed to “specifically and distinctly” argue the exclusion of her testimony was plain error, *see Frye*, 341 N.C. at 496, 461 S.E.2d at 677. Accordingly, Defendant has waived her right to appellate review of this issue.

V. Conclusion

In sum, we conclude the trial court did not plainly err by allowing the State to impeach Defendant with a prior Class 3 misdemeanor or by admitting testimony that Defendant previously used drugs with CI in the presence of CI’s children. Defendant’s argument that the trial court erred by striking her testimony is waived. Finally, we deny Defendant’s IAC claim.

NO PLAIN ERROR.

STATE V. MARTINEZ

Opinion of the Court

Judges ZACHARY and WOOD concur.

Report per Rule 30(e).