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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-580

Filed 16 April 2025

Forsyth County, Nos. 21CRS059858-330; 21CRS059862-330

STATE OF NORTH CAROLINA

v.

DAMION ALVIN PARCHMENT

Appeal by Defendant from judgments entered 22 August 2023 by Judge Michael D. Duncan in Forsyth County Superior Court. Heard in the Court of Appeals 18 March 2025.

*Attorney General Jeff Jackson, by Special Deputy Attorney General Martin T. McCracken, for the State-Appellee.*

*Joseph P. Lattimore for Defendant-Appellant.*

COLLINS, Judge.

Defendant Damion Alvin Parchment appeals from judgments entered upon guilty verdicts of various crimes, including carrying a concealed gun. Defendant's sole argument on appeal is that the trial court erred or plainly erred by failing to clarify the law when the jury asked about the intent necessary for the offense of carrying a concealed gun. Because Defendant invited any error, Defendant has

waived appellate review of this issue.

### **I. Background**

Defendant was tried for various charges including carrying a concealed gun. The trial court instructed the jury consistent with pattern jury instruction 235.12 on the charge of carrying a concealed pistol or handgun:

For you to find the Defendant guilty of this offense the State must prove three things to you beyond a reasonable doubt. First, that the Defendant carried a pistol or handgun.

Second, that the pistol or handgun was concealed, that is hidden from the view of others on or about the Defendant's person in such a way that the Defendant could quickly use it if prompted to do so by any violent motive.

And third, the Defendant acted willfully and intentionally, that is the Defendant intended to carry and conceal the pistol or handgun.

If you find from the evidence beyond a reasonable doubt that on or about the alleged date the Defendant willfully and intentionally carried and concealed on or about the Defendant's person a pistol or handgun while off the Defendant's own premises, it would be your duty to return a verdict of guilty.

Twelve minutes after exiting the court room to deliberate, the jury sent a note to the trial court that read as follows:

count: carrying concealed gun  
235.12  
"third, that the defendant  
acted willfully and intentionally . . . .  
that is that the defendant  
intended to carry . . . ."  
question:  
When does "intent" to  
carry begin?

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The following discussion between the trial court and the attorneys ensued:

THE COURT: . . . What says the State?

[THE STATE]: The question was when does that intent begin.

THE COURT: When does intent to carry begin?

[THE STATE]: Well, I'm not sure exactly what they're looking for with that question. But I think if they find that at any time he had that intent, that that would be sufficient to return a verdict of guilty if that's the one part that they're hung up on. I don't know if we can further go into defining intent beyond what's in the jury instructions.

THE COURT: What do you say, [Defendant]?

[DEFENDANT]: I think they just have to refer to the jury instructions. 120.10 gives them the intent. And then the 235.12 - - the jury asked the question and I don't think there's anything else we can say.

THE COURT: All right. Anything further from State or Defendant requesting that I mention to the jurors?

[THE STATE]: Not from the State, Your Honor.

[DEFENDANT]: No, Your Honor.

After bringing the jury back into the courtroom, the trial court instructed the jury in relevant part as follows:

The 235.12, that goes to the exact pattern jury instruction in North Carolina that sets out the elements of carrying a concealed handgun or pistol. So I'm willing to answer any questions that I can, but I have to be very careful what I say.

This particular question that you've asked, all that I can tell you is that you are to rely on your own good judgment and common sense in deciding the facts from the evidence. And then you're to apply those facts to law that I've already instructed you.

The jury found Defendant guilty of carrying a concealed gun. Defendant gave oral notice of appeal in open court.

## **II. Discussion**

Defendant contends that the trial court erred or plainly erred by not clarifying the law when the jury asked about the intent necessary for the offense of carrying a concealed weapon.

### **A. Standard of Review**

Generally “to preserve an issue for appellate review, 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(a)(1). In a criminal case, an unpreserved error may be reviewed for plain error “when the judicial action questioned is specifically and distinctly contended to amount to plain error.” N.C. R. App. P. 10 (a)(4). However, “a defendant who invites error has waived his right to all appellate review concerning the invited error, including plain error review.” *State v. Barber*, 147 N.C. App. 69, 74 (2001) (citation omitted).

Here, the trial court asked the State and Defendant for their thoughts on a response to the jury’s question. Defendant responded, “I think they just have to refer to the jury instructions. 120.10 gives them the intent. And then the 235.12 - - the jury asked the question and I don’t think there’s anything else we can say.” The trial court then instructed the jury consistent with Defendant’s response. Any error in the

trial court's instruction was thus invited by Defendant, and Defendant cannot be prejudiced by it. *See* N.C. Gen. Stat. § 15A-1443(c) (2024) ("A defendant is not prejudiced by . . . error resulting from his own conduct."). As a result of Defendant's invited error, he has waived appellate review of this issue, including plain error review. *See Barber*, 147 N.C. App. at 74.

### **III. Conclusion**

Because Defendant invited any error in the trial court's response to the jury's question, Defendant has waived appellate review of this issue.

NO ERROR.

Judges STROUD and ZACHARY concur.

Report per Rule 30(e).