

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA26-145

Filed 21 October 2026

Avery County, Nos. 22CR000171-050, 22CR050054-050

STATE OF NORTH CAROLINA

v.

BEVERLY GWYN HARMON, Defendant.

Appeal by defendant from judgment entered 22 August 2023 by Judge R. Gregory Horne in Avery County Superior Court. Heard in the Court of Appeals 15 September 2026.

Attorney General Jeff Jackson, by Assistant Attorney General Hillary F. Patterson, for the State.

Stephen D. Fuller for defendant-appellant.

GORE, Judge.

Defendant Beverly Gwyn Harmon appeals the judgment entered against her. Defendant was granted certiorari to review this case. Upon review of the record and the briefs, we discern no plain error in part and remand in part to correct a clerical error.

I. Factual Background

Detectives in Avery County received information from informants that defendant was trafficking methamphetamine out of the home where she was staying with her sister, Donna Carpenter, on Bertie Street. Detective Lee was aware of

defendant and believed she had been staying at the home on Bertie Street for several months. The detectives obtained a search warrant for the Bertie Street home and upon arrival they found defendant on a couch in the living room; Carpenter in her room; Nick Ward, a friend of Carpenter's, in the kitchen, and approximately eight others in the living room with defendant. Detectives searched a cabinet located right beside defendant and discovered the following: defendant's wallet, a case with defendant's name on it, defendant's speaker, scales with methamphetamine residue, a cell phone, pipes for smoking marijuana and methamphetamine, plastic baggies, three clear plastic bags of methamphetamine, totaling 28.52 grams, and mail addressed to defendant with the Bertie Street address. In the kitchen they found Ward, who appeared to be packaging methamphetamine for sale. Defendant, Carpenter, and Ward were arrested.

Defendant was charged and indicted with trafficking in methamphetamine, possession with intent to manufacture, sell, or distribute methamphetamine, and habitual offender status. During trial, Ward testified on cross-examination that he knew defendant after she came out of prison. Detective Lee testified he knew of defendant because she had previously been targeted in an undercover police investigation. Defendant did not object to these statements. The trial court instructed the jury on the control element of possession and defendant did not object to this charge. The jury returned guilty verdicts for trafficking in methamphetamine and possession with intent to sell or deliver methamphetamine. Defendant pled

guilty to having obtained habitual felon status. Defendant was sentenced to 65 to 90 months' imprisonment with a concurrent sentence of 70 to 96 months' imprisonment.

Defendant through no fault of her own failed to timely appeal the judgments, but on 15 May 2025, this Court granted defendant's petition for writ of certiorari to review the judgments entered 22 August 2023.

II. Issues Presented

Defendant seeks review of evidence admitted during trial that she alleges was a violation of Rule 404(b) of the North Carolina Rules of Evidence. Defendant also seeks review of a portion of the jury instructions regarding her control of the premises and constructive possession. Defendant states that we review both issues under a de novo standard but also argues that the trial court plainly erred for both issues. Although the State argues defendant failed to preserve plain error review for the evidentiary issue, we determine defendant's articulation of the plain error rule along with her application of plain error was sufficient to "specifically and distinctly contend the trial court's action amounted to plain error." N.C.R. App. P. 10(a)(4) (cleaned up).

For a defendant to succeed under plain error they must prove the following three factors:

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. Gillard, 386 N.C. 797, 820 (2024).

A. Rule 404(b) Evidence

Defendant argues the trial court plainly erred by allowing certain testimony evidence in violation of Rule 404(b). The testimony evidence included a detective's statement that he previously assisted the police department "with an undercover operation in which Ms. Harmon was the target, and she was in the residence." The additional challenged evidence was a statement by Nick Ward, that he "only knew [defendant] when she got out of prison and started living at Donna's." Defendant argues these statements amounted to a fundamental error because they were not relevant for a proper purpose under Rule 404(b).

Under Rule 404(b),

Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake, entrapment or accident.

N.C. R. Evid. 404(b). "Evidence of other offenses is admissible so long as it is relevant to any fact or issue other than the character of the accused." *State v. Coffey*, 326 N.C. 268, 278 (1990) (cleaned up).

In the present case, the evidence was relevant for a proper purpose under Rule 404(b). A central part of the case was the State's ability to prove defendant had constructive possession of the methamphetamine because it was found near her and not on her in a house with approximately eight other people present. The State needed to prove defendant had ability to exert dominion and control over the drugs. The two challenged statements were relevant apart from showing a criminal history. They tended to show defendant was living with her sister and was known to reside at the home on Bertie Street. Further, the statement by Ward was admitted during cross-examination when defense sought to impeach the witness.

Although defendant argues the statements had a probable impact on the jury verdict, we determine there was plenary evidence beyond these statements to establish defendant's housing status. Police were first alerted to defendant by informants that gave information about defendant's involvement with trafficking methamphetamine at the Bertie Street home. A detective testified he knew defendant had been living at this home on Bertie Street for several months. When law enforcement arrived with a search warrant, defendant was found sitting on a couch beside a cabinet in which they found: a speaker with defendant's name on it, a set of scales with methamphetamine residue, plastic baggies, a cell phone, a case that belonged to defendant, mail addressed to defendant with the Bertie Street mailing address, three bags of methamphetamine weighing approximately 28 grams in total, and defendant's wallet.

There was additional evidence that defendant used methamphetamine and gave methamphetamine to others. There was evidence defendant was seen giving methamphetamine to others multiple times, and that one witness could get drugs from defendant if he had money with him. There was testimony evidence that defendant was at the home most of the time when one witness visited. This evidence, as a whole, is sufficient to demonstrate that the absence of the challenged statements would not have impacted the jury verdict. On that basis, we further conclude this issue does not rise to the level that affects the integrity, fairness, or public reputation of the judicial proceedings. Therefore, the trial court did not plainly err by admitting the witnesses' statements.

B. Jury Instructions

Next, defendant seeks plain error review of the jury instructions on constructive possession. Defendant argues the trial court plainly erred by instructing the jury on the following when there was no evidence to support it:

If you find beyond a reasonable doubt that a substance was found in or at a certain premises, and that the defendant exercised control over those premises, whether or not the defendant owned it, this would be a circumstance from which you may infer that the defendant was aware of the presence of the substance and had the power and intent to control its disposition or use.

Defendant argues the only evidence of control over the premises was Donna's name on the lease and that defendant was merely a guest who lived there part-time. We disagree.

The trial court is tasked with the duty to instruct the jury with “a clear instruction that applies the law to the evidence in such a manner as to assist the jury in understanding the case and in reaching a correct verdict.” *State v. Montgomery*, 299 N.C. App. 124, 129 (2025) (cleaned up). The trial court “should not give instructions to the jury which are not supported by the evidence produced at the trial.” *State v. Cameron*, 284 N.C. 165, 171 (1973).

The State must provide evidence of constructive possession when the controlled substance is not found on the defendant. “Constructive possession exists when a person, although not having actual possession of the controlled substance, has the intent and capability to maintain control and dominion over the controlled substance.” *State v. Shine*, 173 N.C. App. 699, 705 (2005) (cleaned up). When the defendant does not have exclusive possession of the property, “constructive possession of the contraband materials may not be inferred without other incriminating circumstances.” *Id.* Other incriminating circumstances include:

- (1) the defendant’s ownership and occupation of the property;
- (2) the defendant’s proximity to the contraband;
- (3) indicia of the defendant’s control over the place where the contraband is found;
- (4) the defendant’s suspicious behavior at or near the time of the contraband’s discovery;
- and (5) other evidence found in the defendant’s possession that links the defendant to the contraband.

State v. Chekanow, 370 N.C. 488, 496 (2018) (cleaned up).

The evidence presented at trial was sufficient to support the trial court’s jury instruction. The evidence included defendant’s mail with the Bertie Street address,

located in the same cabinet as the methamphetamine, the scales with methamphetamine residue, the plastic baggies, and defendant's wallet. Additionally, there was a speaker and a case labeled with defendant's name in the cabinet. There was testimony evidence that defendant was seen giving methamphetamine to others and using methamphetamine at the house, and there was testimony that defendant was often at the house when the witness visited. Accordingly, the trial court did not plainly err by instructing the jury on the "control of the premises instruction."

C. Clerical Error

Finally, defendant argues the record contains a clerical error because the judgement states defendant was convicted of "deliver methamphetamine" rather than possession with intent to sell and deliver methamphetamine. "When, on appeal, a clerical error is discovered in the trial court's judgment or order, it is appropriate to remand the case to the trial court for correction because of the importance that the record speak the truth." *State v. Smith*, 188 N.C. App. 842, 845 (2008) (quotation marks and citations omitted).

The State concedes the trial court clerically erred by listing defendant as convicted of "deliver methamphetamine" rather than possession with intent to sell or deliver methamphetamine. Accordingly, it is proper to remand solely to allow the trial court to correct the clerical error in the judgment.

III. Conclusion

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Opinion of the Court

The trial court did not plainly err by allowing the testimony statements by Detective Lee and Nick Ward. Additionally, the trial court did not plainly err by instructing the jury on control of the premises. However, the trial court's judgment includes a clerical error that requires us to remand solely for its revision.

NO PLAIN ERROR IN PART, REMAND IN PART.

Judges STROUD and CARPENTER concur.