An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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

NO. COA08-1512

NORTH CAROLINA COURT OF APPEALS

Filed: 16 June 2009

STATE OF NORTH CAROLINA

v. Wake County
No. 00 CRS 99443
07 CRS 15716

MELDON ANDRE PHILLIPS

Court of Appeals

Appeal by defendant from judgments entered 7 June 2007 by Judge J.B. Allen, Jr. in Wake County Superior Court. Heard in the Court of Appeals 20 May 2009.

Slip Opinion

Attorney General Roy A. Cooper, III, by Assistant Attorney General John P. Scherer II, for the State.

Richard E. Jester, for defendant-appellant.

JACKSON, Judge.

Meldon Andre Phillips ("defendant") appeals his 7 June 2007 conviction for possession of crack cocaine as an habitual felon. For the reasons stated below, we hold no error.

On 9 November 2000, Detectives Gerald Kent Takano ("Detective Takano") and Chuck Lynch ("Detective Lynch")[1] of the Raleigh Police Department were investigating illegal drug and prostitution

[1] Although by the time of trial Detective Takano had been promoted to Corporal and Detective Lynch had been promoted to Sergeant, we refer to their rank at the time of the incidents at issue.

activity at 4925-A Coral Ridge Court. While Detectives Takano and Lynch were at the front of the house trying to conduct a "knock and talk" with the residents, they heard a banging noise from the back of the house. Detective Lynch asked Detective Takano to check the back of the house while he stayed in front to ensure that no one exited.

Detective Takano saw two men on the back porch, knocking at the back door. "They both had their hands in their pockets – one had one hand in his pocket and knocking on the door, the other one had both hands back in his pockets." Detective Takano identified himself as a police officer and asked the men to take their hands out of their pockets. He also called for Detective Lynch. Although one man complied with Detective Takano's request, the other – later identified as defendant – did not. Detective Takano again asked defendant to remove his hands from his pockets, this time in a more forceful tone; defendant again did not comply. Detective Takano then drew his weapon in a "low ready" position and in a very forceful voice asked defendant to remove his hands from his pockets slowly. Upon this third request, defendant slowly, and in a casual manner, removed his hands from his pockets.

Detective Takano then asked the men to place their hands on the deck railing. Although the one man immediately complied, defendant slowly "shuffled up" to the rail and laid his hands on the railing "in a nonchalant manner." When Detective Lynch arrived in back of the house, Detective Takano informed him what had

transpired and that defendant was a "no person," meaning that he had refused to comply with instructions.

Detective Lynch instructed defendant to come down the back porch stairs slowly. As defendant slowly complied, he had an "I don't give a shit look" and appeared to be "sizing them up" to determine whether he could "take them." Detective Lynch asked defendant if he had any weapons on his person, to which defendant mumbled in response, "No." Detective Lynch then conducted a frisk of defendant's outer clothing and felt a hard lump that he believed to be crack cocaine. As he pulled the object from defendant's pocket, defendant attempted to flee the scene, but was quickly apprehended and arrested.

On 7 June 2007, a jury convicted defendant of possession of crack cocaine. Defendant pled guilty to having attained the status of habitual felon. The trial court determined that his prior record level was V and sentenced defendant in the mitigated range to a term of seventy to ninety-three months imprisonment in the custody of the Department of Correction. Defendant appeals.

Defendant presents a single argument in his brief – that the trial court erred in denying his motion to suppress the crack cocaine seized as a result of the frisk search on 9 November 2000. We disagree.

We note that "a motion *in limine* [i]s not sufficient to preserve for appeal the question of admissibility of evidence if the defendant does not object to that evidence at the time it is offered at trial." *State v. Golphin*, 352 N.C. 364, 405, 533 S.E.2d

168, 198 (2000), *cert. denied*, 532 U.S. 931, 149 L. Ed. 2d 305 (2001) (citation omitted). Here, upon introduction of the cocaine into evidence, defense counsel was asked if he had something to say; he said, "No objection." Absent a contemporaneous objection, our review is limited to plain error. *State v. Gary*, 348 N.C. 510, 518, 501 S.E.2d 57, 63 (1998) (citations omitted).

Pursuant to Rule 10 of the North Carolina Rules of Appellate Procedure,

> In criminal cases, a question which was not preserved by objection noted at trial and which is not deemed preserved by rule or law without any such action, nevertheless may be made the basis of an assignment of error where the judicial action questioned is *specifically and distinctly contended to amount to plain error*.

N.C. R. App. P. 10(c)(4) (2007) (emphasis added). Defendant has failed to specifically and distinctly allege plain error; therefore, he is not entitled to plain error review of the issue. *See State v. Dennison*, 359 N.C. 312, 312-13, 608 S.E.2d 756, 757 (2005) (per curiam); *Gary*, 348 N.C. at 518, 501 S.E.2d at 63.

Accordingly, we hold no error in the trial below.

No error.

Judges McGEE and ERVIN concur.

Report per Rule 30(e).