An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA16-19

Filed: 4 October 2016

Stanly County, Nos. 14 CRS 50141-42

STATE OF NORTH CAROLINA

v.

TIMOTHY DEMOND WRIGHT, Defendant.

Appeal by defendant from judgments entered on or about 8 July 2015 by Judge Joe Crosswhite in Superior Court, Stanly County. Heard in the Court of Appeals 19 September 2016.

Attorney General Roy A. Cooper III, by Assistant Attorney General Colin A. Justice, for the State.

Winifred H. Dillon for defendant-appellant.

STROUD, Judge.

Timothy Demond Wright ("defendant") appeals from judgments entered upon jury verdicts finding him guilty of felony breaking or entering, attempted felony larceny, injury to real property, and carrying a concealed weapon. We find no error.

Shortly after midnight on 22 January 2014, Jason Shue ("Shue"), a paramedic with Stanly County Emergency Medical Services, responded to a police dispatch about a possible breaking and entering at TLC Automotive ("TLC"), a scooter repair

business. When he arrived at TLC, he saw two men, defendant and Bernard Rushing ("Rushing"), leaving the scene. A few minutes later, Sergeant Dan Morris of the Albemarle Police Department arrived at TLC and noticed that the back fence had been cut and a window was broken. The owner of TLC, Timothy Robinson ("Robinson"), arrived at the scene and reported that three scooters had been moved from the inside to the outside of the building and that two of the scooters had their seats removed.

Deputy Wayne Poplin ("Deputy Poplin") of the Stanly County Sheriff's Department was also responding to the breaking and entering dispatch when he encountered defendant and Rushing walking about two-and-a-half blocks from TLC. Deputy Poplin exited his patrol vehicle and went to speak to the two men. He saw Rushing discard something into some nearby bushes. Shue was brought to their location and identified a man as wearing the same clothing as one of the individuals he saw leaving TLC. Defendant and Rushing were arrested, and during a search incident to the arrest, police found a switchblade in defendant's pocket. In addition, officers discovered tin snips in the nearby bushes and hardware used to secure the scooter seats in Rushing's pockets.

Defendant was indicted for felony breaking and entering, attempted felony larceny, injury to real property, and carrying a concealed weapon. Prior to trial, defendant's counsel filed a motion to suppress, alleging that the incriminating

evidence against defendant was obtained by means of an illegal stop and frisk because Deputy Poplin did not have reasonable suspicion to stop defendant or probable cause to arrest him. The motion asked the trial court to "[s]uppress all evidence because of a violation of the Defendant's Fourth Amendment Rights pursuant to N.C.G.S. 20-38.6."

On 6 July 2015, the trial court granted the State's motion to dismiss the motion to suppress for failure to state a claim. Defendant was then tried by a jury, and on 8 July 2015, the jury returned verdicts finding defendant guilty of all charges. The trial court sentenced defendant to an active term of 15 to 27 months of imprisonment for the convictions for breaking and entering, attempted larceny, and injury to real property. In addition, the court sentenced defendant to a consecutive sentence of 30 days of imprisonment for the concealed weapon conviction. On 14 July 2015, defendant filed a written notice of appeal.

As an initial matter, we note that although defendant filed a written notice of appeal from the trial court's judgments, defendant has also filed with this Court a petition for writ of certiorari seeking review of those judgments, asserting that his written notice of appeal may have been defective. N.C.R. App. P. 4, which governs appeals in criminal cases, requires a party that files written notice of appeal to "serv[e] copies thereof upon all adverse parties within fourteen days after entry of the judgment . . . ." N.C.R. App. P. 4 (2016). In this case, defendant's notice of appeal

does not include any indication that it was served on the State. However, the State has waived Rule 4's service requirement by failing to object to lack of service at the trial level or in this appeal. *See State v. Williams*, 235 N.C. App. 201, 204, 761 S.E.2d 662, 664 (2014) (" '[W]here the appellee failed, by motion or otherwise, to raise [an] issue as to service of notice in either the trial court or in this Court and has proceeded to file a brief arguing the merits of the case, . . . [the appellee] has waived service of notice [of appeal.]' " (quoting *Hale v. Afro-Am. Arts, Int'l*, 110 N.C. App. 621, 626, 430 S.E.2d 457, 460 (Wynn, J., dissenting), *rev'd for reasons stated in dissenting opinion*, 335 N.C. 231, 436 S.E.2d 588 (1993))), *appeal dismissed and disc. review denied*, 368 N.C. 241, 768 S.E.2d 857 (2015). Therefore, defendant's appeal is properly before us, and we dismiss as moot defendant's petition for writ of certiorari.

Defendant's sole argument on appeal is that the trial court erred by dismissing his motion to suppress. However, defendant has failed to preserve this issue for appellate review. "In order 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) (2016). " '[A] pretrial motion to suppress evidence is not sufficient to preserve for appellate review the issue of whether the evidence was properly admitted if the defendant fails to object at the time the evidence is introduced at trial.' " *State v. Harwood*, 221 N.C.

App. 451, 455, 727 S.E.2d 891, 896 (2012) (quoting *State v. Barden*, 356 N.C. 316, 332, 572 S.E.2d 108, 120 (2002)); s*ee also State v. Golphin*, 352 N.C. 364, 463, 533 S.E.2d 168, 232 (2000) ("To preserve an issue for appeal, the defendant must make an objection at the point during the trial when the State attempts to introduce the evidence."). In this case, after the trial court dismissed defendant's motion to suppress, defense counsel was asked whether he wished to address the court further. Counsel replied, "Not with respect to that motion, Your Honor, other than to notify the Court and the district attorney's office that we will be amending it to file a separate motion, Your Honor." However, counsel did not file an amended motion, but instead elected to proceed to trial.

Defendant then failed to object at trial to testimony regarding Deputy Poplin's stop of defendant and to the introduction of any evidence that was recovered as a result of that stop. Moreover, in his brief, defendant does not argue that the admission of this evidence amounted to plain error. *See* N.C.R. App. P. 10(a)(4) (2016) ("In criminal cases, an issue that was not preserved by objection noted at trial and that is not deemed preserved by rule or law without any such action nevertheless may be made the basis of an issue presented on appeal when the judicial action questioned is specifically and distinctly contended to amount to plain error.").

Since defendant did not object to the introduction of the challenged evidence at trial and does not now assert that the admission of that evidence amounted to plain

error, his argument is not properly before us. Accordingly, we conclude defendant received a fair trial, free from error.

NO ERROR.

Judges TYSON and INMAN concur.

Report per Rule 30(e).