

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT KNOXVILLE  
January 24, 2023 Session

**FILED**  
02/17/2023  
Clerk of the  
Appellate Courts

**STATE OF TENNESSEE v. KATHERINE E. PILLEY**

**Appeal from the Criminal Court for Hamblen County  
No. 2020-CR-390 Alex E. Pearson, Judge**

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**No. E2022-00348-CCA-R3-CD**

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The Defendant, Katherine E. Pilley, pleaded guilty to possession of methamphetamine, a Class A misdemeanor. *See* T.C.A. § 39-17-418(a), (c)(1) (2018) (subsequently amended) (simple possession of methamphetamine). The trial court sentenced the Defendant to eleven months, twenty-nine days suspended to probation after thirty days in confinement. On appeal, the Defendant presents a certified question of law, challenging the trial court's denial of a motion to suppress evidence obtained during the warrantless search of the Defendant's car. Because the certified question is overly broad as it fails to identify the scope and limits of the legal issue reserved, we conclude that we are without jurisdiction to consider this appeal. The appeal is dismissed.

**Tenn. R. App. P. 3 Appeal as of Right; Appeal Dismissed**

ROBERT H. MONTGOMERY, JR., J., delivered the opinion of the court, in which JAMES CURWOOD WITT, JR., P.J., and KYLE A. HIXSON, J., joined.

Joseph O. McAfee, Greeneville, Tennessee, for the appellant, Katherine E. Pilley.

Jonathan Skrmetti, Attorney General and Reporter; Edwin Alan Groves, Jr., Assistant Attorney General; Dan E. Armstrong, District Attorney General; Kim Morrison, Assistant District Attorney General, Dustin Click, Assistant District Attorney General for the appellee, State of Tennessee.

**OPINION**

This case relates to the May 21, 2020 traffic stop and search of the Defendant's car, which resulted in the discovery of methamphetamine, hydrocodone, and drug paraphernalia. The Defendant was indicted for charges of possession of illegal drugs, possession of drug paraphernalia, and speeding. The Defendant filed a motion to suppress alleging that the search of her car was in violation of the Fourth Amendment to

the United States Constitution and article I, section 7 of the Tennessee Constitution. She did not contest the validity of the stop, but she alleged that she was detained longer than was reasonably necessary to effectuate the purposes of the initial stop resulting in an unlawful seizure.

At the suppression hearing, Tennessee Highway Patrol (THP) Trooper Toby Cameron testified that he stopped the Defendant's car after the trooper's radar indicated she was traveling eighty-eight miles per hour in a seventy-mile-per-hour zone. He said that the Defendant appeared "nervous and anxious," that she stated she had just driven from Florida to her home in Greene County, Tennessee, the day before, and that she was returning to Florida. He stated that he saw a small pouch on the front passenger seat with a plastic "baggie" hanging out of it and that he noticed the smell of marijuana. During the stop, the Defendant acknowledged that she had multiple "DUIs" in Greene County and gave verbal consent to search her car. A portion of the trooper's patrol car video was received as an exhibit and played at the hearing.

The trial court denied the Defendant's motion to suppress finding that the validity of the initial stop was not an issue, that there was sufficient reasonable suspicion to justify additional detention and seek the Defendant's permission to search her car, and that the Defendant gave valid consent for a search. The court based its finding on the trooper's initial conversation with the Defendant, his identification of a pouch and baggie on the passenger front seat, and his belief that he smelled marijuana in the Defendant's car.

After the suppression hearing, the Defendant entered a best interest guilty plea to possession of methamphetamine, reserving a certified question of law to which the State and the trial court consented and certified as dispositive of the case. *See North Carolina v. Alford*, 400 U.S. 25 (1970). The Defendant's certified question is as follows, "Did the court err by denying the Defendant's motion to suppress which sought to suppress all evidence recovered by the State, including the alleged methamphetamine, as a result of the warrantless search of the Defendant's vehicle?"

The Defendant asserts that her certified question complies with all the requirements of Tennessee Rule of Criminal Procedure 37(b)(2)(A) and the supreme court's *Preston* decision. *See State v. Preston*, 759 S.W.2d 647 (Tenn. 1988). The State argues that the certified question does not comply with *Preston* because the question is overly broad. We agree with the State.

Tennessee Criminal Procedure Rule 37(b)(2)(A) provides that an appeal can be taken from a plea of guilty if the Defendant enters into a plea agreement and explicitly reserves with the consent of the State and the trial court a certified question of law that is dispositive of the case. *See Tenn. R. Crim. P. 37(b)(2)(A)(i)-(iv); State v. Armstrong*,

126 S.W.3d 908, 910 (Tenn. 2003). “An issue is dispositive when this court must either affirm the judgment or reverse and dismiss. An issue is never dispositive when we might reverse and remand[.]” *State v. Wilkes*, 684 S.W.2d 663, 667 (Tenn. Crim. App. 1984). Furthermore, the fact that the defendant, the State, and the trial judge have agreed the issue is dispositive does not bind this court. *Preston*, 759 S.W.2d at 651. “[T]he appellate courts must . . . determine if the record on appeal demonstrates how that question is dispositive of the case. . . . If the appellate court does not agree that the certified question is dispositive, appellate review should be denied.” *Id.* (citing *State v. Jennette*, 706 S.W.2d 614, 615 (Tenn. 1986)); see *State v. Dailey*, 235 S.W.3d 131, 134-35 (Tenn. 2007). The certified question must also clearly identify “the scope and limits of the legal issue reserved[.]” See Tenn. R. Crim. P. 37(b)(2)(A)(ii).

Our supreme court in *Preston* provided specific guidance regarding appellate review of a certified question of law pursuant to Tennessee Rule of Criminal Procedure 37(b)(2)(A):

the question of law must be stated so as to clearly identify the scope and the limits of the legal issue reserved. For example, where questions of law involve the validity of searches and the admissibility of statements and confessions, etc., the reasons relied upon by the defendant in the trial court at the suppression hearing must be identified in the statement of the certified question of law and review by the appellate courts will be limited to those passed upon by the trial judge and stated in the certified question[.] . . . No issue beyond the scope of the certified question will be considered.

759 S.W.2d at 650. “Failure to properly reserve a certified question of law pursuant to *Preston* will result in the dismissal of the appeal.” *State v. Jeffrey Van Garrett*, No. E2018-02228-CCA-R3-CD, 2020 WL 1181805, at \*2 (Tenn. Crim. App. Mar. 11, 2020) (citing *State v. Pendergrass*, 937 S.W.2d 834, 838 (Tenn. 1996)). The burden of reserving, articulating, and identifying the issue rests upon the Defendant. *Pendergrass*, 937 S.W.2d at 838.

This court has noted that

certified questions of law which fail to narrowly construe the issues and identify the trial court’s holding do not provide an adequate basis for our review. See *State v. Treat*, No. E2010-02330-CCA-R3-CD, 2011 WL 5620804, at \*5 (Tenn. Crim. App. 2011) (holding that a certified question that did not “articulate the reasons previously relied upon by the Defendant in support of his arguments [and did] not describe the trial court’s holdings on the constitutional issues presented” was overly broad); *State v. Hawks*, No. W2008-02657-CCA-R3-CD, 2010 WL 597066, at \*5 (Tenn. Crim.

App. 2010) (holding that the certified question was overly broad because it did not specify what police action rendered the search and arrest unconstitutional, and did not adequately set forth the legal basis for the claim); *see also State v. Horton*, No. W2008-01170-CCA-R3-CD, 2009 WL 2486173, at \*4 (Tenn. Crim. App. 2009) (holding that the certified question was framed too broadly such that the appeal court would have to conduct a complete overview of search and seizure law to answer it, which the court declined to do).

*State v. Robert Glenn Hasaflook*, No. M2012-02360-CCA-R3-CD, 2013 WL 4859577, at \*4 (Tenn. Crim. App. Sept. 12, 2013), *perm. app. denied* (Tenn. Jan 15, 2014).

The Defendant's certified question in this case is overly broad in many respects. It fails to identify the reasons relied upon by the Defendant at the suppression hearing. It fails to specify what law enforcement action rendered the search unconstitutional. It fails to specify the legal basis for the Defendant's claim, and it fails to describe the trial court's holdings on the constitutional issues. *See Preston*, 759 S.W.2d at 650; *Robert Glenn Hasaflook*, 2013 WL 4859577, at \*4; *Bradley Hawks*, No. W2008-02657-CCA-R3-CD, 2010 WL 597066, at \*4-5 (Tenn. Crim. App. Feb. 19, 2010), *perm. app. denied* (Tenn. Jun. 16, 2010).

In her brief, the Defendant relies on *State v. Harris*, 919 S.W.2d 619, 621 (Tenn. Crim. App. 1995), in which our court read broadly the *Preston* criteria and looked to the trial court's final order to supply the required information not included in the defendant's certified question. After *Harris*, our supreme court in *Armstrong* made clear that the *Preston* certification question requirements are "explicit and unambiguous" and rejected the application of a substantial compliance standard when applying the *Preston* requirements. *Armstrong*, 126 S.W.3d at 912. The Defendant's reliance on *Harris* is misplaced.

Because the Defendant has failed to identify the scope and limits of the legal issue reserved in her certified question, we are without jurisdiction to consider this appeal. Accordingly, the appeal is dismissed.

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ROBERT H. MONTGOMERY, JR., JUDGE