UNC SCHOOL OF GOVERNMENT

# 2025 Winter Criminal Law Webinar

**December 5, 2025 / 1:30 p.m. – 3:00 p.m.**

*Cosponsored by the UNC-Chapel Hill School of Government*
*&*
*The North Carolina Office of Indigent Defense Services*

The 2025 Winter Criminal Law Webinar will cover recent criminal law decisions issued by the North Carolina appellate courts and highlight significant criminal law legislation enacted by the North Carolina General Assembly. School of Government faculty Phil Dixon, Brittany Bromell, and Daniel Spiegel will discuss a wide range of issues affecting felony and misdemeanor cases in the North Carolina state courts. The webinar includes a dynamic visual presentation, live audio, and interactive Q & A.

**CLE Credit: 1.50 Hours of General CLE Credit**

## SPEAKERS

**Phil Dixon Jr., Teaching Associate Professor; Director, Public Defense Education**

Phil Dixon primarily works with public defenders and defense lawyers. He joined the School of Government in 2017. Previously, he worked as a defense lawyer in eastern North Carolina for over eight years. During that time, he represented criminal defendants and juveniles charged with all types of crimes at the trial level. In 2023, he was named director of the School's Public Defense Education group. In collaboration with Indigent Defense Services, he works to provide training and consultation to defenders and other court system actors, as well as to research and write on criminal law and related issues. He earned a bachelor's degree from UNC-Chapel Hill and law degree with highest honors from North Carolina Central University School of Law.

**Brittany Bromell, Assistant Professor of Public Law and Government**

Brittany Bromell is an expert in criminal law and procedure, with expertise in domestic violence and computer crimes. As a faculty member, Bromell teaches and advises courtroom professionals, including judges, magistrates, prosecutors, defense attorneys, and law enforcement officers. She joined the School of Government in July 2020. Prior to joining the School, she received a bachelor's degree from Duke University and a J.D. from the North Carolina Central University School of Law*, summa cum laude*, where she served as the notes and comments editor for the *North Carolina Central Law Review*. Bromell is a member of the North Carolina State Bar.

**Daniel Spiegel, Assistant Professor of Criminal Law, Procedure, and Evidence**

Daniel Spiegel is an assistant professor at the School of Government, specializing in criminal law, procedure, and evidence. He joined the School's courts faculty in January 2024. Spiegel serves as a criminal law expert and teaches and consults with court actors on criminal justice issues, with an emphasis on public defense. Previously, he practiced criminal law in North Carolina for 13 years, serving as an assistant public defender in Mecklenburg and Hoke Counties, assistant appellate defender statewide, and assistant district attorney and policy counsel in Durham County. Spiegel earned a bachelor's degree from Johns Hopkins University, a Master of Music from The Juilliard School, and a J.D. cum laude from Harvard University.

**2025 Legislation Affecting Criminal Law and Procedure**

Brittany Bromell



(Last updated December 1, 2025)

Below are summaries of 2025 legislation affecting criminal law and procedure, juvenile law and procedure, and motor vehicle law. To obtain the text of the legislation, click on the link provided below or go to the General Assembly's website, www.ncleg.gov. Be careful to note the effective date of each piece of legislation.

1) **S.L. 2025-4 (H 74): Safe surrender of infants.** Effective May 14, 2025, section 5.4 of the act amends G.S. 14-318.2(c) (misdemeanor child abuse) and G.S. 318.4(c) (felony child abuse). The act raises the age that a parent may abandon their child pursuant to G.S. 14-322.3 from less than seven (7) days old to less than thirty (30) days old.

2) **S.L. 2025-15 (H 183): Wake surfing on Lake Glenville.** Effective for offenses committed on or after October 1, 2025, section 1 of this act prohibits wake surfing within 200 feet of the shoreline or any structure, moored vessel, kayak, canoe, paddleboard, or swimmer on Lake Glenville in Jackson County. The act defines wake surfing as operating a motorboat with weight added in the stern via water-filled tanks or other ballasts for the purpose of creating an artificially enlarged wake that is or is intended to be surfed by another person towed behind the boat. A violation of this local restriction is a Class 1 misdemeanor and carries a minimum fine of one hundred dollars ($100.00), in addition to any other applicable penalties. The restriction is enforceable by officers of the Wildlife Resources Commission, sheriffs and deputy sheriffs, and other peace officers with general subject matter jurisdiction.

3) **S.L. 2025-16 (H 612): Permanent no contact orders against violent offenders.** Effective for offenses committed on or after December 1, 2025, section 3.1 of the act amends G.S. 15A-1340.50 (permanent no contact orders) to apply to convicted violent offenders rather than convicted sex offenders. The act expands the definition of "permanent no contact order" to prohibit contact with the victim's immediate family and makes the same clarifying change throughout the statute. The act also defines "violent offense" to include any of the following:
    (1) A criminal offense that requires registration under Article 27A of Chapter 14 of the General Statutes.
    (2) A Class A through G felony that is not otherwise covered under the previous subsection.
    (3) Assault by strangulation under G.S. 14-32.4(b).

[1] Special thanks to Faith Gray and Amelia Walker, second-year law students at The University of North Carolina School of Law, for their significant contributions to the preparation of these summaries.

The act amends G.S. 15A-1340.50(e) to clarify that if any member of the victim's immediate family is included in the permanent no contact order, they must be specifically identified in the order. Subsection (h) is amended to allow the order to be modified.

*Felony child abuse*. Effective for offenses committed on or after December 1, 2025, section 3.2 of the act amends G.S.14-318.4, broadening the scope of people who can be prosecuted for the offense to include, in addition to the parent, "any other person providing care to or supervision" of a child less than 16 years older. The act removes subsection (a6) defining "grossly negligent omission" and redefines the term under subsection (d)(1). The act also adds subsection (a7) which makes it a Class B2 felony for any parent or other person providing care to or supervision of a child less than 16 years of age to, for the purposes of causing fear, emotional injury, or deriving sexual gratification from, intentionally and routinely inflict physical injury on the child and deprive them of necessary food, clothing, shelter, or proper physical care.

**4)** **S.L. 2025-18 (H 251): Nondiscrimination in state disaster recovery assistance.** Effective for offenses committed on or after December 1, 2025, section 2 of this act enacts new G.S. 166A-19.4, which provides that no United States citizen, national, or qualified alien as defined in 8 U.S.C. § 1641 shall be denied or discriminated against by the State or its agencies and employees for disaster recovery assistance on the basis of political affiliation or political speech. A knowing violation of this provision is a Class I felony.

*Temporary housing during an emergency.* Effective for offenses committed on or after December 1, 2025, section 4 of this act expands G.S. 14-288.1 to include definitions for "emergency area" and "temporary housing." "Emergency area" is defined as the geographical area covered by a declared state of emergency. "Temporary housing" includes any of the following:

(1) A tent, trailer, mobile home, or any other structure being used for human shelter which is designed to be transportable and is not permanently attached to the ground, to another structure, or to any utility system on the same premises.
(2) A vehicle being used as temporary living quarter.
(3) Any equipment used to transport or deliver a structure or vehicle described in sub-subdivision a. or b. of this subdivision.
(4) Any item attached, affixed, or connected to, or intended to be attached, connected, or affixed to, a structure or vehicle described in sub-subdivision a. or b. of this subdivision to provide air conditioning, heating, or a source of power for the structure or vehicle.

The act also amends G.S. 14-288.6(a) (trespass during emergency) to clarify that the offense occurs when a person enters on the property of another without legal justification in an emergency area during a declared state of emergency when the usual security of property is not effective due to the emergency that prompted the declared state of emergency. The act amends G.S. 14-288.6(b) to clarify the punishment for looting while trespassing during an emergency. A violation of the looting offense is punishable as follows:

(1) Class F felony if the looted property is temporary housing or is taken from temporary housing.
(2) Class H felony if the looted property is anything other than property described in subdivision (1).

**5)** S.L. 2025-20 (H 91)**: Commercialization of American Legion emblem.** Effective June 26, 2025, section 2.2 of this act repeals G.S. 14-395 which made it a Class 3 misdemeanor for any individual not a member of the American Legion to wear the recognized emblem of the American Legion or to use the emblem for advertising or commercialization purposes, or display it upon their property, place of business, or any other place.

**6)** S.L. 2025-25 (H 40)**: Miscellaneous**. Effective June 26, 2025, section 4 of the act amends G.S. 14-113.7A (excluding certain types of transactions from crimes of credit card fraud), changing references from "credit card" to "financial transaction card".

*Abandonment and nonsupport of children*. Effective June 26, 2025, section 5 of the act repeals Article 15A of G.S. Chapter 15, pertaining to investigation of offenses involving abandonment and nonsupport of children.

*Expunctions*. Effective June 26, 2025, section 31 of the act amends the following expunction-related statutes: G.S. 15A-145.5, -145, -145.1, 145.2, -145.3, -145.4, -145.6, and -145.7 to clarify that the effect of an expunction under these statutes is governed by G.S. 15A-153 (effect of expunction), except that the protected nondisclosure under G.S. 15A-153(b) does not apply to a sentencing hearing when the person has been convicted of a subsequent criminal offense. The act similarly amends G.S. 15A-145.8, -145.8A, -145.9, -146, -147, and -149 to clarify that the effect of an expunction under these statutes is governed by G.S. 15A-153.

**7)** S.L. 2025-27 (H 576)**: Unlicensed adult care homes.** Effective for offenses committed on or after December 1, 2025, section 3.2 of the act amends G.S. 131D-2.5(b) and G.S. 131D-2.6 to increase the penalties for operating as an adult care facility without a license. Any individual or corporation that establishes, conducts, manages, or operates a multiunit housing with services program, subject to registration, that fails to register is guilty of a Class H felony, including a fine of one thousand dollars ($1,000) per day for each day the facility is in operation in violation of the statutory requirements.

**8)** S.L. 2025-37 (H 67)**: International physician licensure**. Effective January 1, 2026, section 2.(a) of this act enacts new G.S. 90-12.03, regulating the issuance of internationally-trained physician employee licenses. Under subsection (b) of the new statute, the holder of the internationally-trained physician employee license is prohibited from practicing medicine or surgery outside the confines of the North Carolina hospital or rural medical practice, or its affiliate, by whose employment the holder was qualified to be issued the license. Violation of

this provision is a Class 3 misdemeanor and will result in a fine of no more than five hundred dollars ($500.00) for each offense.

9) S.L. 2025-45 (H 737): **Inexperienced operator continuous coverage**. Effective July 1, 2026, section 8 of this act amends G.S. 20-309 (financial responsibility prerequisite to registration) to add new subsection (a3), which provides that a person subject to the inexperienced operator premium surcharge under G.S. 58-36-65(k) may not drive a vehicle unless their liability insurance policy includes the required surcharge. This requirement does not apply if the person shows financial responsibility through an alternative authorized method. The act also amends G.S. 20-16 (authority of Division to suspend license) to include a violation of G.S. 20-309(a3) as grounds for license suspension. The act amends G.S. 20-309.2 to require an insurer to notify the DMV when a person subject to the inexperienced operator premium surcharge under G.S. 58-36-65(k) is added to or removed from a liability insurance policy, or when a policy covering such a person is canceled. G.S. 20-309.2(a1) is amended to require the DMV to maintain accurate insurance records for persons subject to the inexperienced operator premium surcharge.

10) S.L. 2025-47 (S 391): **Motor vehicle laws.** Effective for offenses committed on or after December 1, 2025, section 17 of the act adds new subsection (f) to G.S. 20-146 (drive on right side of highway), which states that except when entering or exiting the highway, avoiding a hazard, or to pass, a motor vehicle having a gross vehicle weight rating of 26,001 pounds or more shall not operate in the left most lane of a controlled-access highway with six or more lanes.

*Requirement for tinted windows upon approach of law enforcement.* Effective for offenses committed on or after December 1, 2025, section 22.(d) of the act adds new subsection (g) to G.S. 20-127 (windows and windshield wipers), requiring the driver of a vehicle with tinted windows to roll down the windows when a law enforcement officer is approaching. If the officer approaches from the passenger side, the driver is required to roll down the passenger window.

For more on other motor vehicle law changes in this bill, see Belal Elrahal, *Summer 2025 Motor Vehicle Law Changes*, N.C. CRIM. L., UNC SCH. OF GOV'T BLOG (Aug. 6, 2025).

11) S.L. 2025-51 (S 710): **NC Private Protective Services Board.** Effective October 1, 2025, section 3 of the act amends G.S. 14-415.12 (criteria to qualify for issuance of a permit) to include courses certified or sponsored by the North Carolina Private Protective Services Board and Secretary of Public Safety to those courses that may be taken by an applicant for a concealed handgun permit. The act also amends G.S. 15A-151 (confidential agency files) to allow the file for expungements to be disclosed upon request of the North Carolina Private Protective Services Board or the North Carolina Security Systems Licensing Board if the criminal record was expunged for licensure or registration purposes only.

**12)** S.L. 2025-54 (H 620)**: Juvenile custody.** Effective for proceedings occurring on or after December 1, 2025, section 10 of this act modifies several provisions related to juvenile custody.

Section 10.(a) of the act expands the proceedings where an order for nonsecure custody may be issued in G.S. 7B-1903 to include criminal proceedings (currently the order may be issued only in delinquency proceedings). The statute is also amended to allow the court to examine criminal indictments and information in addition to the juvenile petition.

Section 10.(b) of the act expands G.S. 7B-1904 to allow an initial order for secure custody to be issued when the superior court has ordered the removal of a case to juvenile court. The official executing the order is required to give a copy of the order to the juvenile and the juvenile's parent, guardian, or custodian. If the order is for nonsecure custody, the official executing the order must also give a copy of the order to remove the case from superior court and nonsecure custody order to the person or agency with whom the juvenile is being placed. If the order is for secure custody, copies of the order to remove the case from superior court and the custody order must accompany the juvenile to the detention facility or holdover facility of the jail. The statute also requires that a message of the Department of Public Safety stating that an order to remove the case from superior court and secure custody order relating to a specified juvenile are on file in a particular county be construed as authority to detain the juvenile in secure custody until copies of both orders can be forwarded to the juvenile detention facility. The copies of the order to remove the case from superior court and the secure custody order must be transmitted to the detention facility no later than 72 hours after the initial detention of the juvenile.

Section 10.(c) of the act expands G.S. 15A-960 (removal of juveniles) to specify that if the superior court removes the case to juvenile court for adjudication and the juvenile has been granted pretrial release as provided in G.S. 15A-533 and G.S. 15A-534, the obligor must be released from the juvenile's bond upon the superior court's review of whether the juvenile will be placed in secure custody as provided in G.S. 7B-1903.

*Bail bonds*. Effective for proceedings occurring on or after December 1, 2025, section 10.(d) of the act expands the list occurrences that terminate an obligor's bail bond obligations under G.S. 15A-534(h) to include the court's review of a juvenile's secure or nonsecure custody status pursuant to remand under G.S. 7B-2603 (right to appeal transfer decisions) or the removal under G.S. 15A-960 for disposition as a juvenile case.

**13)** S.L. 2025-57 (S 655)**: First degree trespass.** Effective for offenses committed on or after December 1, 2025, section 4 of the act expands G.S. 14-159.12, providing that a person commits the offense of first degree trespass if, without authorization, they enter or remain on the lands of the Catawba Indian Nation after the person has been excluded by resolution passed by the Catawba Indian Nation Executive Committee.

**14)** S.L. 2025-58 (H 357)**: Continuing Care Retirement Communities Act.** Section 2 of this act enacts new Article 64A of G.S. Chapter 58, regulating continuing care retirement communities. Effective for offenses committed on or after, December 1, 2025, new G.S. 58-64A-305 makes a

willful and knowing violation of any provision of the Article a Class 1 misdemeanor. The Commissioner may refer any available evidence concerning a violation of the Article, or of any rule adopted or order issued pursuant to the Article, to the Attorney General or a district attorney. The Attorney General or a district attorney may institute the appropriate criminal proceedings under the Article, with or without evidentiary referral from the Commissioner. The statute also specifies that nothing in the Article limits the power of the State to punish any person for any conduct that constitutes a crime under any other statute.

**15)** S.L. 2025-59 (S 442): **Child abuse.** Effective for offenses committed before, on, or after July 1, 2025, section 2 of the act adds new subsection (d) to G.S. 14-318.2 and new subsection (c1) to G.S. 14-318.4, providing that any parent of a child less than 18 years of age, or any other person providing care to or supervision of the child, is not guilty of child abuse for raising a child consistent with the child's biological sex, including referring to a child consistent with the child's biological sex, and making related mental health or medical decisions based on the child's biological sex. Nothing in the new provisions will be construed to authorize or allow any other acts or omissions that would constitute child abuse, including the infliction of serious physical injury or the creation of a substantial risk of physical injury. The act also amends G.S. 14-318.4(d)(2) to clarify that for purposes of defining "serious physical injury," a parent raising a child consistent with the child's biological sex does not constitute serious mental injury.

**16)** S.L. 2025-65 (S 664)**: Open container.** Effective for offenses committed on or after October 1, 2025, section 4.(b) of the act amends G.S. 20-138.7(a), clarifying that no person shall drive a motor vehicle on the highway or the right-of-way of a highway while both of the following conditions are met: (1) there is an alcoholic beverage in the passenger area other than the unopened manufacturer's original container; and (2) the driver is consuming alcohol or while alcohol remains in the body.

**17)** S.L. 2025-67 (H 23)**: Lake Norman Marine Commission.** Effective July 7, 2025, section 5.1(c) of the act amends and expands the laws under Article 6B of G.S. Chapter 77, regulating the Lake Norman Marine Commission. Under amended G.S. 77-89.8(b), the punishment for violation of any regulation of the Commission commanding or prohibiting an act is increased to a Class 3 misdemeanor, including a fine of not less than two hundred dollars ($200.00) but not more than five hundred dollars ($500.00) per violation.

**18)** S.L. 2025-70 (S 429)**: Various criminal law changes.** This act makes changes to various laws related to criminal law and procedure.

*Exposing a child to a controlled substance*. Effective for offenses committed on or after December 1, 2025, section 1 of this act enacts new G.S. 14-318.7 (exposing a child to a controlled substance). The statute defines "child" as any person less than 16 years of age. It also provides definitions for "controlled substance" and ingest." A person who knowingly,

intentionally, or with reckless disregard for human life causes or permits a child to be exposed to a controlled substance will be charged as follows:

- A Class H felony
- A Class E felony if the violation results in the child ingesting the controlled substance
- A Class D felony if the violation results in the child ingesting the controlled substance and suffering serious physical injury
- A Class C felony if the violation results in the child ingesting the controlled substance and suffering serious bodily injury
- A Class B1 felony if the violation results in the child ingesting the controlled substance and the ingestion proximately causes the child's death

The penalties set forth in the statute apply unless the conduct is covered under another provision of law that provides greater punishment. The statute does not apply to a person that intentionally gives a child a controlled substance that has been prescribed for the child by a licensed medical professional when given to the child in the prescribed amount and manner. For further discussion, see Phil Dixon, *New Crime of Exposing a Child to Controlled Substances and Other 2025 Drug Law Changes*, N.C. CRIM. L., UNC SCH. OF GOV'T BLOG (July 31, 2025).

*Disclosure and release of autopsy information*. Effective October 1, 2025, section 2.(a) of the act expands G.S. 130A-385 regarding the duties of a medical examiner upon receipt of notice from the investigating public law enforcement agency or prosecuting district attorney that a death is under criminal investigation or the subject of a criminal prosecution. New subsection (d5) provides that any person who willfully and knowingly discloses or releases records or materials in violation of subsection (d1) or (d3) of the statute, or who willfully and knowingly possesses or disseminates records or materials that were disclosed or released in violation of subsection (d1) or (d3) of the statute, is guilty of a Class 1 misdemeanor. More than one occurrence of disclosure, release, possession, or dissemination of the same item by the same person is not a separate offense. No person will be guilty of a Class 1 misdemeanor under this subsection for disclosing, releasing, possessing, or disseminating records or materials if, at the time of the disclosure, release, possession, or dissemination, notice that the record or material is record of a criminal investigation had not been provided as required by subsection (d1) of the statute. A person who discloses or releases information pursuant to subsection (d3) of the statute in reliance on the written consent of an individual who represents to be the child's parent or guardian and who acts in good faith without actual knowledge that the representation is false will not be subject to civil or criminal liability. This subsection defines the terms "disclose" and "release."

*Solicitation of minors by computer*. Effective for offenses committed on or after December 1, 2025, section 3 of the act modifies the punishment for solicitation of minors by computer under G.S. 14-202.3(c). Under the amended statute, the first violation is a Class G felony. A second or subsequent violation, or a first violation when the defendant had a prior conviction in any federal or state court in the United States that is substantially similar to the offense, is a Class E felony. If either the defendant, or any other person for whom the defendant was arranging the meeting, actually appears at the meeting location, the violation is a Class D felony.

*Witness immunity.* Effective July 9, 2025, section 4 of the act amends G.S. 15A-1052(b) and G.S. 15A-1053(b) to remove the requirement that the district attorney inform the Attorney General or their designated deputy/assistant of their intent to seek immunity for a testifying witness who might assert a privilege against self-incrimination in cases necessary to the public interest.

*Sex offender registration*. Effective for petitions filed on or after December 1, 2025, section 5 of the act amends G.S. 14-208.12A (request for termination of registration requirement) to require the clerk of court to collect a filing fee for a petition to the superior court to terminate the 30-year registration requirement of the sex offender registry and place the petition on the criminal docket to be calendared by the district attorney. Subsection (a2) of the statute is amended to require the hearing to be calendared during a criminal session of superior court. The act also enacts new subsection (d) of G.S. 14-208.12A, which provides that a person who files a petition to terminate the 30-year requirement is required to pay the civil filing fee at the time the petition is filed, but the fee requirement does not apply to petitions filed by an indigent.

Section 5 of the act also amends G.S. 14-208.12B (registration requirement review) to require that the petition be calendared during a criminal session of the superior court, and adding new subsection (j) which provides that a person who files a petition for a judicial determination of the requirement to register is required to pay the civil filing fee at the time the petition is filed, but the fee requirement does not apply to petitions filed by an indigent.

*Crime Victims Compensation Act*. Effective for applications filed on or after July 9, 2025, section 7 of the act amends G.S. 15B-11(a)(3) (grounds for denial of claim or reduction of award) to allow compensation to be denied under the North Carolina Crime Victims Compensation Act if the criminally injurious conduct was not reported within six months of occurrence, and there was no good cause for the delay. This provision was previously required the conduct to be reported within 72 hours of its occurrence.

*Secret peeping*. Effective for offenses committed on or after December 1, 2025, section 8 of the act amends G.S. 14-202. The amended statute includes definitions for the phrases "private area of an individual" and "under circumstances in which that individual has a reasonable expectation of privacy," and includes an expanded definition of the term "room." The offense is expanded to include the intent to create a photographic image. The act removes subsection (e) from the statute and enacts new subsection (e1), which provides that—unless covered under some other provision of law providing greater punishment—any person who, with the intent to create a photographic image of a private area of an individual without the individual's consent, knowingly does so under circumstances in which the individual has a reasonable expectation of privacy is guilty of a Class I felony.

*Sexual activity by substitute parent or custodian*. Effective for offenses committed on or after December 1, 2025, section 9 of the act amends G.S. 14-27.31 to include a religious organization or institution as an eligible custodian for the offense. The act also enacts new subsection G.S. 14-27.31(d), defining "custody" to mean the care, control, or supervision of a minor by any adult who, by virtue of their position, role, employment, volunteer status, or

relationship to a minor, exercises supervisory authority or control over a minor, or is responsible for the minor's welfare, safety, or supervision, regardless of whether such responsibility arises from express appointment, organizational duty, professional obligation, or circumstantial necessity.

*Felony school notifications*. Effective July 9, 2025, section 10 of the act amends G.S. 7B-3101(a) to clarify that all felony school notifications are limited to Class A through Class E felonies. For further discussion, see Jacquelyn Greene, *2025 Delinquency Law Changes*, N.C. CRIM. L., UNC SCH. OF GOV'T BLOG (Nov. 25, 2025).

*Recording court proceedings*. Effective for proceedings commenced on or after July 9, 2025, section 11 of the act amends G.S. 15A-1241(b) (record of proceedings) to require that arguments of counsel on questions of law be recorded upon motion of any party or upon the judge's own motion.

*Failure to yield*. Effective for offenses committed on or after December 1, 2025, section 12 of the act amends G.S. 20-160.1(a) to increase the punishment for the offense of failure to yield that results in serious bodily injury. In addition to a $500 fine, the offense is now a Class 2 misdemeanor, and upon conviction, the violator's driver's license must be revoked for 90 days.

Effective for offenses committed on or after December 1, 2025, section 13 of the act amends G.S. 20-175.2 to clarify the penalty for failure to yield the right-of-way to a blind or partially blind pedestrian. Any person who violates the statute is guilty of a Class 2 misdemeanor. For further discussion, see Belal Elrahal, *Summer 2025 Motor Vehicle Law Changes*, N.C. CRIM. L., UNC SCH. OF GOV'T BLOG (Aug. 6, 2025).

*Fentanyl offenses*. Effective for offenses committed on or after December 1, 2025, section 14 of the act amends G.S. 90-95 to increase the punishment for fentanyl offenses. The manufacture, sale, or delivery, or possession with intent to manufacture, sell or deliver fentanyl or carfentanil, or any salt, compound, derivative, or preparation thereof, or any mixture containing any of these substances is a Class F felony. Simple possession of fentanyl or carfentanil, or any salt, compound, derivative, or preparation thereof, or any mixture containing any of these substances, is a Class H felony.

The act also creates the felony offense "trafficking in fentanyl or carfentanil," codified as G.S. 90-95(h)(4c). Under this provision, any person who sells, manufactures, delivers, transports, or possesses four grams or more of fentanyl or carfentanil, or any salt, compound, derivative, or preparation thereof, or any mixture containing any of these substances, is punishable as follows:

- if the amount is four grams or more, but less than 14 grams, then the person is punished as a Class E felon and sentenced to a minimum term of 90 months and a maximum term of 120 months in the State's prison with a fine of $500,000.

- if the amount is 14 grams or more but less than 28 grams, then the person is punished as a Class D felon and sentenced to a minimum term of 175 months and a maximum term of 222 months in the State's prison with a fine of $750,000.
- if the amount is 28 grams or more, the person is punished as a Class C felon and sentenced to a minimum term of 225 months and a maximum term of 282 months in the State's prison with a fine of $1 million.

For further discussion, see Phil Dixon, *New Crime of Exposing a Child to Controlled Substances and Other 2025 Drug Law Changes*, N.C. CRIM. L., UNC SCH. OF GOV'T BLOG (July 31, 2025).

*Motions for appropriate relief.* Effective for verdicts entered on or after December 1, 2025, section 15 of the act amends G.S. 15A-1415 to set limits on motions for appropriate relief in noncapital cases. The act enacts new subsection G.S. 15A-1415(a1), which provides that a defendant in a noncapital case may file a postconviction motion for appropriate relief based on any of the grounds enumerated in the statute within seven years from the latest of any of the events listed in subdivisions (1) through (5) of subsection (a) of the statute.

The act removes the following from the list of grounds which the defendant may assert by a motion for appropriate relief made more than 10 days after entry of judgment:

- There has been a significant change in law, either substantive or procedural, applied in the proceedings leading to the defendant's conviction or sentence, and retroactive application of the changed legal standard is required.
- The defendant is in confinement and is entitled to release because their sentence has been fully served.

The act adds the aforementioned provisions to the list of claims that a defendant may raise at any time after the verdict, and includes the following new claim:

- In a noncapital case, the defendant can demonstrate pursuant to G.S. 15A-1419(c) that one of the following exists:
  - Good cause for excusing the grounds for denial listed in subsection (a) of G.S. 15A-1419 and actual prejudice resulting from the defendant's claim.
  - Failure to consider the defendant's claim will result in a fundamental miscarriage of justice.

The amended statute also allows a defendant to file a motion for appropriate relief based on any of the grounds under this statute at any time if the district attorney for the prosecutorial district where the case originated consents to the motion being filed. For further discussion, see Joseph L. Hyde, *New Limits on MARs in Noncapital Cases*, N.C. CRIM. L., UNC SCH. OF GOV'T BLOG (Aug. 12, 2025).

*Filial responsibility crime.* Effective for offenses committed on or after July 1, 2025, section 16 of the act repeals G.S. 14-326.1, which criminalized failure to support parents.

*Domestic violence.* Effective for offenses committed on or after December 1, 2025, section 17.(a) of the act amends G.S. 14-33 (misdemeanor assaults) to add subsection (e), clarifying that an offense under the statute is not to be considered a lesser included offense of misdemeanor crime of domestic violence. Section 17.(b) of the act amends G.S. 14-33.2 (habitual misdemeanor assault) to include misdemeanor crime of domestic violence as a qualifying offense. Section 17.(c) of the act amends G.S. 15A-401(b) (arrest by a law enforcement officer) to include misdemeanor crime of domestic violence as an offense for which an officer can conduct a warrantless arrest. Section 17.(d) of the act amends G.S. 15A-534.1 (crimes of domestic violence) to include misdemeanor crime of domestic violence as a qualifying offense.

Effective for offenses committed on or after December 1, 2025, section 18 of the act enacts new G.S. 14-32.6, creating the offense of habitual domestic violence. A person commits this offense if they have committed an offense under G.S. 14-32.5 (misdemeanor crime of domestic violence), or they commit an assault where the person is related to the victim by one of the relationship descriptions in G.S. 14-32.5, and has two or more prior convictions, with the earlier of the two convictions occurring no more than 15 years prior to the current violation. The prior convictions include:

(1) Two or more convictions of an offense under G.S. 14-32.5 or an offense committed in another jurisdiction substantially similar to an offense under G.S. 14-32.5
(2) One prior conviction of an offense described in subdivision (1) and at least one prior conviction of an offense in North Carolina or another jurisdiction involving an assault where the person is related to the victim by one of the relationship descriptions in G.S. 14-32.5.

A conviction under this statute cannot be used as a prior conviction for any other habitual offense statute. A person convicted of this offense is guilty of a Class H felony for the first offense. Subsequent convictions are punished at a level which is one offense class higher than the offense class of the most recent prior conviction under this statute, not to exceed a Class C felony. For further discussion, see Brittany Bromell, *Filling in the Gaps: Changes on the Horizon for Misdemeanor Crime of Domestic Violence*, N.C. CRIM. L., UNC SCH. OF GOV'T BLOG (July 30, 2025).

*Concurrent sentencing*. Effective for offenses committed on or after December 1, 2025, section 19 of the act amends G.S. 15A-1354(a) (concurrent and consecutive terms of imprisonment), removing the requirement that sentences run concurrently as a default. The amended statute requires the court to make a finding on the record stating the reasoning for the determination of imposing consecutive or concurrent sentences. For further discussion, see Jamie Markham, *The End of the Concurrent Sentence Default*, N.C. CRIM. L., UNC SCH. OF GOV'T BLOG (Dec. 1, 2025).

*Online reporting of lost or stolen firearms.* Effective October 1, 2025, section 23 of the act enacts new G.S. 14-409.44 to allow law enforcement agencies that have online crime reporting systems to receive online reports from individuals regarding lost or stolen firearms. Online

reports of lost or stolen firearms submitted to any local law enforcement agency are records of criminal investigations or records of criminal intelligence information and are not public records. A person who willfully makes or causes to be made a false, deliberately misleading, or unfounded report of a lost or stolen firearm is to be punished in accordance with G.S. 14-225 (false reports to law enforcement agencies or officers). The statute clarifies that it does not require a local law enforcement agency to acquire and implement an online crime reporting system that allows individuals to file online reports of crimes.

**19) S.L. 2025-71 (S 311): Various criminal law changes.** This act makes changes to various laws related to criminal law and procedure.

*Assault on a utility worker*. Effective for offenses committed on or after December 1, 2025, section 1 of the act expands G.S. 14-33(b) to include another way by which a person commits the offense of misdemeanor assault. Under new subdivision (10), the offense is committed if the person assaults a utility or communications worker while the worker is (i) readily identifiable as a worker and (ii) discharging or attempting to discharge his or her duties. The new subdivision clarifies that the term "utility or communications worker" means an employee of, agent of, or under contract with an organization, entity, or company, whether State-created or privately, municipally, county, or cooperatively owned, that provides electricity, natural gas, liquid petroleum, water, wastewater services, telecommunications services, or internet access services. The term "readily identifiable as a worker" includes the worker wearing, at the time of the assault, a uniform, hat, or other outerwear bearing the logo of the utility or communications company for which the worker is an employee of, agent of, or under contract with.

*Embalming fluid*. Effective for offenses committed on or after December 1, 2025, section 2 of the act enacts new G.S. 90-210.29C prohibiting the unlawful sale of embalming fluid. Under the new statute, it is unlawful for a funeral director, embalmer, or resident trainee to knowingly give, sell, permit to be sold, offer for sale, or display for sale, other than for purposes within the general scope of their activities as a funeral director, embalmer, or resident trainee, embalming fluid to another person with actual knowledge that the person is not a funeral director, embalmer, or resident trainee. Violation of the statute is a Class I felony, including a fine of not less than one hundred dollars ($100.00) and not more than five hundred dollars ($500.00).

The act also enacts new Article 5I of G.S. Chapter 90, proscribing criminal possession of embalming fluid. Under new G.S. 90-113.154, both of the following are unlawful:

(1) Possessing embalming fluid for any purpose other than the lawful preservation of dead human bodies by a person authorized by law to engage in such activity or the lawful preservation of wildlife by a person licensed in taxidermy pursuant to G.S. 113-273(k).
(2) Selling, delivering, or otherwise distributing embalming fluid to another person with knowledge that the person intends to utilize the embalming fluid for any purpose other than the lawful preservation of dead human bodies by a person authorized by law to engage in such activity or the lawful preservation of wildlife by a person licensed in taxidermy pursuant to G.S. 113-273(k).

A person who violates either of these provisions will be punished as follows:

(1) A Class I felony if the violation involves less than 28 grams
(2) A Class G felony if the violation involves 28 grams or more of embalming fluid, but less than 200 grams
(3) A Class F felony if the violation involves 200 grams or more of embalming fluid, but less than 400 grams
(4) A Class D felony if the violation involves 400 grams or more of embalming fluid

Nothing in the statute is to be construed as prohibiting possession of embalming fluid by, or selling, delivering, or otherwise distributing embalming fluid to funeral directors, embalmers, resident trainees, or licensed taxidermists for the purposes of embalming. The statute also specifies that the terms "embalmer," "embalming," "embalming fluid," "funeral director," and "resident trainee" are defined in G.S. 90-210.20.

(*as amended by section 3.5(a) of S.L. 2025-91 (S 245)*): The act also amends G.S. 90-96.2 (drug-related overdose) to allow for immunity for violations of G.S. 90-113.154(b)(1) involving less than 28 grams of embalming fluid.

*Unlawful business entry.* Effective for offenses committed on or after December 1, 2025, section 4.(a) of the act adds new subsection (b1) to G.S. 14-54 (breaking or entering buildings generally), creating the offense of unlawful business entry. Any person who, with the intent to commit an unlawful act, enters any area of a building (i) that is commonly reserved for business personnel where money or other property is stored or (ii) clearly marked with a sign that indicates to the public that entry is forbidden is guilty of a Class 1 misdemeanor for a first offense and a Class I felony for a second or subsequent offense.

*Larceny of gift cards.* Effective for offenses committed on or after December 1, 2025, section 4.(b) of the act enacts new G.S. 14-72.12, prohibiting larceny of gift cards. The terms are defined in accordance with G.S. 14-86.5. A person commits the offense if the person does any of the following:

(1) Acquires or retains possession of a gift card or gift card redemption information without the consent of the cardholder or card issuer.
(2) Obtains a gift card or gift card redemption information from a cardholder or card issuer by means of false or fraudulent pretenses, representations, or promises.
(3) Alters or tampers with a gift card or its packaging with intent to defraud another

A violation of the statute is a Class 1 misdemeanor if the value of the gift card acquired, retained, or for which the gift card redemption information is obtained, or is altered or tampered with, is not more than one thousand dollars ($1,000). Any other violation of this section is a Class H felony. The terms "gift card," "gift card issuer," "gift card redemption information," and "gift card value" are as defined in G.S. 14-86.5.

*Organized retail theft.* Effective for offenses committed on or after December 1, 2025, section 4.(c) of the act amends G.S. 14-86.5 to include definitions for the terms "gift card," "gift card issuer," "gift card redemption information," and "gift card value."

The act expands G.S. 14-86.6, adding three new ways by which a person can commit the offense of organized retail theft:

- Conspires with another person to acquire or retain possession of a gift card or gift card redemption information without the consent of the cardholder or card issuer.
- Devises a scheme with one or more persons to obtain a gift card or gift card redemption information from a cardholder or card issuer by means of false or fraudulent pretenses, representations, or promises.
- Conspires with another person to alter or tamper with a gift card or its packaging with intent to defraud another.

The act also amends G.S. 14-86.6(a2) to include "gift card value" in the terms of the punishment classification. The act amends G.S. 14-86.6(c) to allow gift cards and gift card redemption information to be included for aggregation purposes.

*Possession of explosives*. Effective for offenses committed on or after December 1, 2025, section 5 of the act expands G.S. 14-49 (malicious use of explosive or incendiary) to punish possession of any explosive or incendiary device or material with the intent to violate the statute. The offense is a Class H felony.

*Reckless driving*. Effective for offenses committed on or after December 1, 2025, section 6 of the act expands G.S. 20-140 to increase the penalties for reckless driving. Any person who violates the statute is guilty of a Class 1 misdemeanor if the reckless driving causes serious injury. Any person who violates the statute is guilty of a Class A1 misdemeanor if the reckless driving causes serious bodily injury.

*Hit and run*. Effective for offenses committed on or after December 1, 2025, section 7.(a) of the act repeals G.S. 20-17(a)(4) which required the Division of Motor Vehicles to revoke the license of a driver upon receiving record of the driver's conviction for the failure to stop and render aid after a hit and run, in violation of G.S. 20-166(a) or (b).

Section 7.(c) of the act amends G.S. 20-166(a) (duty to stop in event of a crash) to clarify that notwithstanding the provisions of G.S. 15A-1340.17 (punishment limits), if the crash results in the death of another person, the court must sentence the defendant in the aggravated range of the appropriate prior record level. The act also expands G.S. 20-166(e) to provide that a person convicted of a hit and run under the statute must have their license revoked for four years (with the ability to apply for a new license after three years from revocation) unless the crash results in the death of another person. A person convicted of a hit and run under the statute must have their license revoked permanently (with the ability to apply for a new license after seven years from revocation) if the crash results in the death of another person. For any revocation resulting from a violation of the statute, the person may apply for a new license after one year from revocation.

New subsection (e1) under G.S. 20-166 provides that upon filing an application for a new license pursuant to the statute, the DMV may issue a new license upon satisfactory proof that the former licensee has been of good behavior during the revocation period and that the

applicant's conduct and attitude entitle the applicant to favorable consideration. The DMV may impose terms and conditions upon the new license for the balance of the revocation period. When the revocation period is permanent, the restrictions and conditions imposed by the DMV may not exceed three years.

*Street racing*. Effective for offenses committed on or after December 1, 2025, section 7.(b) expands G.S. 20-141.3 to create penalty enhancements for street racing. The offense is a Class H felony if the speed competition causes serious injury, and the driver's license is to be revoked for four years, with the ability to apply for a new license after three years from revocation. The offense is a Class G felony if the speed competition causes serious bodily injury or death, and the driver's license is to be revoked permanently, with the ability to apply for a new license after seven years from revocation. For any other violation of the statute, the driver's license is to be revoked for three years, with the ability to apply for a new license after 18 months from revocation.

New subsection (d1) under G.S. 20-141.3 provides that upon filing an application for a new license pursuant to the statute, the DMV may issue a new license upon satisfactory proof that the former licensee has been of good behavior during the revocation period and that the applicant's conduct and attitude entitle the applicant to favorable consideration. The DMV may impose terms and conditions upon the new license for the balance of the revocation period. When the revocation period is permanent, the restrictions and conditions imposed by the DMV may not exceed three years.

*Limited driving privileges*. Effective for offenses committed on or after December 1, 2025, section 7.(d) of the act expands G.S. 20-179.3 to allow a person whose driving privilege was forfeited under G.S. 20-166(a1) or (b) to be eligible for a limited driving privilege if specified conditions are met.

*Possession of firearms by a felon*. Effective for offenses committed on or after December 1, 2025, section 8 of the act expands G.S. 14-415.1 to include enhanced penalties for possession of a firearm by a felon. The enhanced penalties apply during the commission or attempted commission of a felony under (i) Chapter 14 or (ii) Article 5 of Chapter 90 of the General Statutes and are as follows:

- A Class F felony
- A Class D felony if the person brandishes a firearm or a weapon of mass death and destruction. To brandish is to display all or part of the firearm or weapon of mass death and destruction or otherwise make the presence of the firearm or weapon of mass death and destruction known to another person.
- A Class C felony if the person discharges a firearm or a weapon of mass death and destruction

*Larceny of mail*. Effective for offenses committed on or after December 1, 2025, section 9 of the act adds new subsection (c1) to G.S. 14-72 (larceny of property), clarifying that where the larceny, receiving, or possession of stolen goods is mail, the person must be sentenced at one

class level higher than the principal offense for which they were convicted. The term "mail" means a letter, package, bag, or other item of value sent or delivered to another by any method of delivery, including through a common carrier, commercial delivery service, or private delivery.

*Burglary.* Effective for offenses committed on or after December 1, 2025, section 10 of this act modifies the offense of burglary and creates penalty enhancements for specific types of burglary. The act amends G.S. 14-51 to separate and clarify the offenses of first- and second-degree burglary. First-degree burglary is committed when a person breaks and enters the dwelling house or room used as a sleeping apartment of another with the intent to commit any felony or larceny therein and any person is in the actual occupation of any part of said dwelling house or sleeping apartment at the time of the commission of the crime. The offense is second-degree burglary if the property was not actually occupied at the time of the commission of the crime. For further discussion, see Jeff Welty, *Did the General Assembly Just Remove the "Nighttime" Element of Burglary?*, N.C. CRIM. L., UNC SCH. OF GOV'T BLOG (July 28, 2025).

The act also expands G.S. 14-52, -53, and -54 to create enhancements for the respective burglary offenses under each statute. If a person possessed a firearm about his or her person during the commission of an offense under any of those statutes, in addition to any other sentence enhancement required by law, the person must be sentenced at a felony class level one class higher than the principal felony for which the person was convicted. An indictment or information for the felony must allege in that indictment or information the facts that qualify the offense for an enhancement. One pleading is sufficient for all felonies that are tried at a single trial.

*Pretrial use of ignition interlock.* Effective for offenses committed on or after December 1, 2025, section 11.(a) of the act expands G.S. 20-179(e) to include a new mitigating factor under subdivision (6b). Under the new provision, the judge may consider whether, prior to trial, the defendant voluntarily equipped a designated motor vehicle with a functioning ignition interlock system of a type approved by the Commissioner, operated only the designated vehicle with the ignition interlock system for a minimum of six months, and produced evidence satisfactory to the judge that the defendant did not start the vehicle with an alcohol concentration greater than 0.02 or commit any other acts that would be considered violations of the interlock policies established by the DMV for use of an ignition interlock system or a violation of G.S. 20-17.8A. This factor only applies to a defendant who meets all of the following requirements:

a. The defendant was charged with an offense under G.S. 20-138.1.
b. The vehicle being operated by the defendant was not involved at the time of the offense in a crash resulting in the serious injury or death of a person.
c. At the time of the offense, the defendant held either a valid driver's license or a license that had been expired for less than one year.
d. At the time of the offense, the defendant did not have an additional unresolved pending charge involving impaired driving, or an additional conviction of an offense involving impaired driving within the five years preceding the date of the offense.

e. At the time of the offense the person did not have an alcohol concentration of 0.15 or more.
f. The defendant equipped the designated motor vehicle with an ignition interlock system no later than 45 days after being charged with the offense.
g. The defendant only operated the designated motor vehicle with a limited driving privilege that is valid in this State or during a time when the defendant's driver's license was not revoked or suspended.

Section 11.(b) of the act amends G.S. 20-179.5 (affordability of ignition interlock system) to clarify that the costs incurred from voluntarily installing an ignition interlock system, including costs for monitoring the ignition interlock system, must be paid by the person voluntarily installing the system. Additionally, a person meeting the requirements of G.S. 20-179(e)(6b)a.-f. who is unable to afford the cost of an ignition interlock system may apply to an authorized vendor for a waiver of a portion of the costs of an ignition interlock system.

*Commercial booting.* Effective for offenses committed on or after December 1, 2025, section 11.5(a) of the act enacts new G.S. 20-219.3A, which provides that it is a Class 2 misdemeanor to immobilize a commercial motor vehicle using a device such as a boot or any other device for the purposes of parking enforcement.

*Misdemeanor expunction.* Effective for petitions filed on or after July 9, 2025, section 12 of the act amends G.S. 15A-145.5(c)(1)a., changing timing of when a person can file a petition for expunction of one nonviolent misdemeanor from five years to three years after the date of the conviction or when any active sentence, period of probation, or post-release supervision has been served, whichever is later.

**20) S.L. 2025-72 (S 118): Veterans handgun permit.** Effective for applications for concealed handgun permits and permit renewals submitted on or after July 1, 2025, section 1 of the act adds subsection (a2)to G.S. 14-415.19, providing that permit fees for individuals who were discharged honorably or under honorable conditions from military service in the Armed Forces of the United States are the same as for retired sworn law enforcement officers under subsection (a1). In addition to any other information required by statute, applicants claiming a reduced fee under the amended statute are required provide documentation (i) showing the person was discharged honorably or under general honorable conditions from military service in the Armed Forces of the United States and (ii) deemed satisfactory by the sheriff. The county finance officer is required to remit the proceeds of the fees assessed under this provision in the same manner as proceeds remitted under subsection (a1).

*(Repealed by Section 3 of S.L. 2025-91 (S 245), effective September 30, 2025). Remote drivers license renewal for active duty military.* Effective for licenses renewed on or after October 1, 2025, section 5.(a) of the act amends G.S. 20-7 (issuance and renewal of drivers licenses) to allow an active duty member of the Armed Forces stationed outside of North Carolina, their spouse and dependent children to remotely renew a license a second consecutive time if the

license is not a REAL ID, or, if it is a REAL ID, it is being converted to a non-REAL ID compliant license for purposes of the renewal.

*Handgun permit expiration notice via email.* Effective October 1, 2025, section 7 of the act amends G.S. 14-415.14 (application form to be provided by sheriff) to add subsection (a1), requiring the handgun permit application to provide the permittee an option to consent for communications related to the permit to be sent by email. The State Bureau of Investigation must also provide a paper form that a permit holder can submit to the sheriff to provide or revoke their consent for electronic communications. The act also amends G.S. 14-415.16(a) (renewal of permit) to clarify that the expiration notice must be sent by first class mail to the last known address of the permittee or, with consent of the permittee, by electronic means to a designated electronic mail address of the permittee.

**19)** **S.L. 2025-73 (S 375): Hazing.** Effective for offenses committed on or after December 1, 2025, section 1 of the act amends G.S. 14-35 to expand the criminal offense of hazing and increase the punishment. The penalty is increased from a Class 2 misdemeanor to a Class A1 misdemeanor for any student in attendance at any university, college, or school in North Carolina to engage in hazing, or to aid or abet any other student in the commission of the offense. Under the amended statute, it is a Class I felony for any school personnel, including, but not limited to, a teacher, school administrator, student teacher, school safety officer, or coach, at any university, college, or school in North Carolina to engage in hazing or to aid or abet any other person in the commission of the offense. Hazing is defined under the statute as subjecting a student to physical or serious psychological injury as part of an initiation, or as a prerequisite to membership, into any organized school group, including any society, athletic team, fraternity or sorority, or other similar group.

**20)** **S.L. 2025-79 (S 416): Personal Privacy Protection Act.** Effective for offenses committed on or after December 1, 2025, this act enacts new Article 18 of G.S. Chapter 55A, prohibiting public agencies from collecting, disclosing, or releasing personal information about members, volunteers, and financial and nonfinancial donors to 501(c) nonprofit organizations, except as permitted by State or federal law or regulation. Under new G.S. 55A-18-06(c), a person who knowingly violates the Article is guilty of a Class 2 misdemeanor.

**21)** **S.L. 2025-81 (H 193): Weapons on educational property.** Effective for offenses committed on or after December 1, 2025, section 1 of this act expands G.S. 14-269.2 (weapons on campus or other educational property) to define the terms "school administrative director" and "school board of trustees." Section 2 of the act expands the list of exemptions from the offense under G.S. 14-269.2(g) to include employees and volunteers of nonpublic schools. Under the amended statute, the employee or volunteer of a nonpublic school must meet all of the following criteria:

a. The person has written authorization from the school board of trustees or the school administrative director to possess and carry a firearm or stun gun on the educational property that is owned, used, or operated by the nonpublic school.
b. The weapon is a firearm or a stun gun.

c. The person has a concealed handgun permit issued in accordance with Article 54B of G.S. Chapter 14 or is considered valid under G.S. 14-415.24.
d. The person has successfully completed under the direct supervision of a certified National Rifle Association instructor or the equivalent a minimum of eight hours of courses on, or relating to, gun safety and the appropriate use of firearms that is in addition to the firearms training and safety course required for a concealed handgun permit under G.S. 14-415.12(a)(4). This is an annual training requirement.
e. The nonpublic school adopts and maintains written standard operating procedures regarding the possession and carrying of the weapons listed in this subdivision on the educational property and distributes to the parents of students attending the nonpublic school copies of the written standard operating procedures on an annual basis.
f. The person is on the premises of the educational property that is owned, used, or operated by the nonpublic school at which the person is an employee or volunteer.

Section 3 of the act expands G.S. 14-269.2(k1) to allow a person to possess and carry a handgun on educational property in a building that is a place of religious worship if the person is attending worship services, funeral services, wedding ceremonies, Christenings, religious fellowships, and any other sacerdotal functions in the building. The term "attending" includes ingress and egress between the building and the designated parking area for the place of religious worship.

*Crimes against public officers*. Effective for offenses committed on or after December 1, 2025, section 4 of the act amends G.S. 14-16.6 (assault on executive, legislative, or court officer), 14-16.7 (threats against executive, legislative, or court officer), and 14-16.8 (no requirement of receipt of the threat) to include assaults on and threats against local elected officers. The amended penalties for assaults under G.S. 14-16.6 are as follows:

- Class H felony
- Class E felony if the assault is with a deadly weapon
- Class D felony if the assault results in serious bodily injury

The penalties for all threats under G.S. 14-16.7 are increased from a Class I felony to a Class H felony. The act also expands G.S. 14-16.10 to define “local elected officer” as “an elected officer of a political subdivision of this State.”

Section 5 of the act amends G.S. 163-275(11) (felonious acts) to include acts committed against any chief judge, judge of election, or other election officer <u>because of</u> that person’s duties in the registration of voters or in conducting any primary or election. The current version of the statute applies only to acts done to the officer <u>in the discharge of</u> those duties.

Section 6 of the act enacts new G.S. 15A-534.9 to create special pretrial release rules for defendants who commit threats against public officers. Under the new statute, in all cases in which the defendant is charged with a violation of G.S. 14-16.6, 14-16.7, or 163-275(11), the judicial official who determines the conditions of pretrial release must be a judge. The judge must consider the defendant’s criminal history when setting the conditions of release but must not unreasonably delay the determination of conditions of pretrial release for the purpose of

reviewing the defendant's criminal history report. The judge must act within 48 hours of arrest of the defendant, and if a judge has not acted, then a magistrate must act. In addition to the pretrial release provisions of G.S. 15A-534, the following provisions apply:

(1) If the judge determines that the immediate release of the defendant will pose a danger of injury to others and that the execution of an appearance bond will not reasonably assure that the injury will not occur, the judge may retain the defendant in custody for a reasonable period of time while determining the conditions of pretrial release.
(2) In addition to requiring the defendant to execute a secured appearance bond, the judge may impose the following conditions:
    a. That the defendant stay away from the home, school, business, or place of employment of the alleged victim.
    b. That the defendant refrain from assaulting or threatening the alleged victim.
    c. That the defendant stay away from specific locations or property where the offense occurred.
    d. That the defendant stay away from other specified locations or property.
(3) In the event that the defendant is mentally ill or a substance abuser and dangerous to himself or herself or others, the provisions of Article 5 of G.S. Chapter 122C apply.

*Law enforcement shooting ranges*. Effective July 29, 2025, section 7 of the act enacts new G.S. 14-409.25A, providing additional protection for relocated law enforcement shooting ranges. Notwithstanding any provision of law, for any law enforcement shooting range that operates in the same location for at least 25 years, relocates to a new location within the same county, and has no substantial change in use, the following applies:

(1) The provisions of Article 53C of G.S. Chapter 14 shall be applied to the law enforcement shooting range based on the date the range began operation in the original location.
(2) A local government may not prohibit the law enforcement shooting range from conducting night operations for law enforcement training purposes if the range provides at least 48 hours' written notice to the local government of the date and time the night operations will be conducted.
(3) A local government may not require the law enforcement shooting range to comply with a setback line of more than 100 feet.

The act also expands G.S. 14-409.45 to define "law enforcement organization" and "law enforcement shooting range."

**22) S.L. 2025-85 (H 318): Legal status of prisoners.** Effective for any person confined in or released from a county jail, local confinement facility, district confinement facility, satellite jail, or work release unit on or after October 1, 2025, section 1 of the act modifies the list of charged offenses triggering an examination into a detained person's citizenship/residency status under G.S. 162-62. Under the amended statute, the following categories of offenses trigger the inquiry:

(1) Any felony.
(2) A Class A1 misdemeanor under Article 6A, Article 7B, or Article 8 of G.S. Chapter 14.
(3) Any violation of G.S. 50B-4.1.

(4) Any offense involving impaired driving as defined in G.S. 20-4.01.

The act also amends G.S. 162-62(b1)(2) to require a judicial official to issue an order directing the prisoner to be held in custody and transferred to the custody of an officer of Immigration and Customs Enforcement of the United States Department of Homeland Security upon that officer's appearance at the facility and request for custody. This provision applies if the prisoner appearing before the judicial official is the same person subject to the detainer and administrative warrant. The act also amends G.S. 162-62(b1)(3)a. to clarify that the release is upon the passage of 48 hours from the time the prisoner would otherwise be released from the facility.

The act enacts new subdivision (4) of G.S. 162-62(b1), providing that for any prisoner held pursuant to an order issued under this statute, no later than two hours after the time when the prisoner would otherwise be released from the facility, the administrator or other person in charge of the facility shall notify ICE of the date and time that the prisoner will be released pursuant to G.S. 162-62(b1)(3)a. The notification shall be made in the manner indicated on the Department of Homeland Security Immigration Detainer – Notice of Action form.

*Pretrial release*. Effective for persons appearing before a judicial official for a determination of pretrial release conditions on or after October 1, 2025, section 2 of the act enacts new subsection (d4) of G.S. 15A-534 (procedure for determining conditions of pretrial release). Under this provision, when conditions of pretrial release are being determined for a defendant charged with any felony, a Class A1 misdemeanor under Article 6A, Article 7B, or Article 8 of Chapter 14 of the General Statutes, any violation of G.S. 50B-4.1, or any offense involving impaired driving as defined in G.S. 20-4.01, the judicial official must attempt to determine if the defendant is a legal resident or citizen of the United States by an inquiry of the defendant, or by examination of any relevant documents, or both. If the judicial official is unable to determine if the defendant is a legal resident or citizen of the United States, the judicial official must set conditions of pretrial release and commit the defendant to an appropriate detention facility pursuant to be fingerprinted, for a query of ICE, and to be held for a period of two hours from the query of ICE.

If by the end of the two-hour period no detainer and administrative warrant have been issued by ICE, the defendant must be released pursuant to the terms and conditions of the release order. If before the end of the two-hour period a detainer and administrative warrant issued by ICE have been received by the facility, the defendant must be processed pursuant to G.S. 162-62(b1). For further discussion, see Brittany Bromell, *Legislature Revisits Law on Immigration Detainers*, N.C. CRIM. L., UNC SCH. OF GOV'T BLOG (Sept. 2, 2025).

**23) S.L. 2025-88 (S 55): Residential squatters.** Effective December 1, 2025, this act enacts new Article 22D of G.S. Chapter 14, creating a civil remedy for the expedited removal of unauthorized persons from private property. The Article outlines the requirements for civil removal proceedings, including provisions about initial filings, appeals, immunity from liability, and remedy for wrongful removal. Under G.S. 14-159.54 of the Article, the failure of an unauthorized person to vacate a residential property in accordance with a court order issued

pursuant to the Article will constitute a criminal trespass under G.S. 14-159.13(a)(1) (second degree trespass). Additionally, G.S. 14-159.56(b) of the Article specifies that the law does not limit the rights of a property owner or limit the authority of a law enforcement officer to arrest an unauthorized person for trespassing, vandalism, theft, or other crimes.

**24) S.L. 2025-91 (S 245): Remote renewals of drivers licenses.** Effective September 30, 2025, section 1 of the act amends G.S. 20-7(f) to allow for remote issuance of full provisional licenses. The act expands the requirements for remote renewal or issuance to include holders who possess a valid limited provisional license and are at least 16 years old but less than 18 years old at the time of the remote issuance. The act expands the requirements to allow remote renewal if the license holder's last transaction was in person and included a new photograph, except that a license holder may remotely renew a license a second consecutive time if either:

- the license being renewed is not REAL ID compliant, or
- the license being renewed is REAL ID compliant but is being converted to a non-REAL ID compliant license for purposes of the renewal.

Section 2 of the act amends G.S. 20-11(f) to eliminate the requirement that a Level 2 limited provisional license holder submit a driving log in order to apply for a Level 3 full provisional license. The amendment also allows for remote issuance of the Level 3 full provisional license.

**25) S.L. 2025-93 (H 307), as amended by section 5.3 of S.L. 2025-97 (S 449): Iryna's Law.** Effective for persons appearing before a judicial official for the determination of pretrial release conditions on or after December 1, 2025, section 1 of this act modifies laws involving pretrial release.

Section 1.(a) of this act adds new subsection (2a) to G.S. 15A-501 (police processing and duties upon arrest), requiring a law enforcement officer to inform any judicial official determining conditions of pretrial release of any relevant behavior of the defendant observed by the officer prior to, during, or after the arrest that may provide reasonable grounds for the judicial official to believe the defendant is a danger to themselves or others.

Section 1.(b) of the act modifies G.S. 15A-531 to define the term "violent offense" as any of the following:

- Any Class A through G felony that includes assault, the use of physical force against a person, or the threat of physical force against a person, as an essential element of the offense.
- Any felony offense requiring registration pursuant to Article 27A of Chapter 14 of the General Statutes, whether or not the person is currently required to register.
- An offense under G.S. 14-17, and any other offense listed in G.S. 15A-533(b).
- An offense under G.S. 14-18.4, 14-34.1, 14-51, 14-54(a1), 14-202.1, 14-277.3A, or 14-415.1, or an offense under G.S. 90-95(h)(4c) that involves fentanyl.
- Any offense that is an attempt to commit an offense listed above.

Section 1.(c) of the act amends G.S. 15A-533(b) (right to pretrial release) to clarify that there is a rebuttable presumption that no condition of release will reasonably assure the appearance of

the person as required and the safety of the community for a defendant charged with a crime listed under G.S. 15A-533(b).

Section 1.(d) modifies G.S. 15A-534(a) to remove written promises to appear from the list of permissible conditions of pretrial release that a judicial official can impose. The act also amends G.S. 15A-534(b) to clarify that a judicial official must impose an unsecured bond or a custody release, unless that defendant is charged with a violent offense. If a defendant has been convicted of three or more offenses (each of which is at least a Class 1 misdemeanor) in separate sessions of court within the previous 10 years, the judicial official must then impose a secured bond with or without electronic house arrest.

The act adds new subsection (b1) to G.S.15A-534, which provides that for a defendant charged with any violent offense, there is a rebuttable presumption that no condition of release will reasonably assure the appearance of the person as required and the safety of the community. However, if the judicial official determines that pretrial release is appropriate for a defendant, the judicial official must do one of the following:

(1) For a defendant charged with a first violent offense, impose a secured bond with or without electronic house arrest.
(2) For a defendant charged with a second or subsequent violent offense, after (i) being convicted of a prior violent offense, or (ii) being released on pretrial release conditions for a prior violent offense, impose electronic house arrest, if available, with a secured bond.

The act modifies G.S. 15A-534(c) to add that in determining which conditions of release to impose, the judicial official must direct the arresting law enforcement officer, a pretrial services program, or a district attorney to provide a criminal history report for the defendant and must consider the criminal history when setting conditions of pretrial release. The judicial must also consider a defendant's housing situation on the basis of available information.

The act modifies G.S. 15A-534(d) to add that in all orders authorizing pretrial release for (i) a defendant who is charged with a violent offense or (ii) a defendant who has been convicted of three or more offenses in separate sessions of court (each of which is at least a Class 1 misdemeanor) within the previous 10 years, the judicial official must make written findings of fact explaining the reasons why the judicial official determined the conditions of release to be appropriate by applying the factors provided in G.S. 15A-534(c). For further discussion, see Brittany Bromell, *Iryna's Law and Pretrial Release*, N.C. CRIM. L., UNC SCH. OF GOV'T BLOG (Nov. 4, 2025); Brittany Bromell, *"Violent Offenses" under G.S. 15A-531(9)*, N.C. CRIM. L., UNC SCH. OF GOV'T BLOG (Nov. 26, 2025).

*Involuntary commitment proceedings*. Effective for persons appearing before a judicial official for the determination of pretrial release conditions on or after December 1, 2026, section 1.(c) of the act also adds new subsection (b1) to G.S. 15A-533, requiring a judicial official to set conditions of pretrial release and issue a separate order if a defendant is

- (i) charged with a violent offense and (ii) the judicial official determines, after a search of the court records for the defendant, that the defendant has previously been subject to an order of involuntary commitment (IVC) within the prior three years, OR
- charged with any offense and the judicial official has reasonable grounds to believe the defendant is a danger to themselves or others.

The resulting order must include all of the following:

(1) A requirement that the defendant receive an initial examination by a commitment examiner to determine if there are grounds to petition for IVC of the defendant. The examination must comply with and satisfy the requirements of the initial examination as provided in G.S. 122C-263(c).
(2) A requirement that the arresting officer immediately transport, or cause to be transported by an officer of the arresting officer's agency, the defendant to a hospital emergency department or other crisis facility with certified commitment examiners for the initial examination. If the defendant has met all other conditions of pretrial release, the transporting officer may release the defendant after the initial examination is conducted if one of the following criteria is met:
    a. No petition for IVC is filed.
    b. A petition for IVC is filed, but no custody order is issued.
(3) A requirement that the commitment examiner, after conducting the initial examination, do one of the following:
    a. Petition for IVC of the defendant if there are grounds for that petition.
    b. Provide written notice to the judicial official that entered the order for initial examination that there are no grounds to petition for IVC of the defendant.
(4) A provision that whether or not the defendant has met all other conditions of pretrial release, if a petition for IVC is filed, the custody of the defendant must be determined pursuant to the provisions of that Article during the pendency of that petition and any hearings and orders issued pursuant to that Article.
(5) A provision that if a defendant has not met all other conditions of pretrial release, if one of the following criteria is met, the defendant must be transported to and held in the local confinement facility of the county where the conditions of pretrial release were set until all conditions of pretrial release have been met:
    a. A petition for IVC is not filed.
    b. A custody order is not issued pursuant to G.S. 122C-261.
    c. At any other time, the provisions of Article 5 of Chapter 122C of the General Statutes would result in the release of the defendant.

*Sentencing*. Effective for offenses committed on or after December 1, 2025, section 2 of the act amends G.S. 15A-1340.16(d) and G.S. 15A-2000(e) to add as an aggravating sentencing factor that the offense was committed by the defendant while the victim was using a public transportation system as defined in G.S. 160A-601.

*Death penalty proceedings*. Section 6.(a) of the act amends G.S. 15A-1415(a) to clarify that a hearing for a motion for appropriate relief based on grounds in the statute is required to be

heard by the court within 24 months of the motion being filed. If the court continues the hearing beyond 24 months, it must make a written finding of extraordinary circumstances that provide good cause for a delay. Section.(b) of the act amends G.S. 15A-2000(d) to similarly clarify that the review of conviction and sentence of death must occur within 24 months of entry of judgment unless the Chief Justice of the Supreme Court makes a written finding of extraordinary circumstances that provide good cause for a delay. These amendments are effective for (i) motions filed and judgments entered on or after December 1, 2025, and (ii) motions filed or judgments entered prior to December 1, 2025, and any motions pending on December 1, 2025, except that any motion filed or judgment entered more than 24 months prior to December 1, 2025 must be heard or reviewed no later than December 1, 2027, and must be scheduled for hearing or review no later than December 1, 2026.

Effective for any filings made and any proceedings or hearings held on or after December 1, 2025, section 6.(c) of the act enacts new G.S. 15A-2007 (postconviction venue for capital defendants), which provides that notwithstanding any other provision of law, the venue for any filing, claim, or proceeding related to the conviction, sentencing, treatment, housing, or execution of a defendant that has been convicted of a capital offense and sentenced to death must be in the county of conviction. The statute does not apply to matters that are authorized by law to be filed directly with the Supreme Court of North Carolina.

*Death penalty methods*. Effective October 3, 2025, section 6.5(a) of the act amends G.S. 15-187 (death penalty) to reinstate death by electrocution and death by the administration of lethal gas. The statute is also amended to clarify that the default method of executing a death sentence is as described in G.S. 15-188(a) (lethal injection). If the method adopted in G.S. 15-188(a) (lethal injection) is declared unconstitutional by a North Carolina court of competent jurisdiction, then the provisions in G.S. 15-188(b) apply. The warden of Central Prison is permitted to obtain and employ both the drugs and equipment necessary to carry out the sentence. The statute further clarifies that if the method of executing a death under G.S. 15-188(a) is unavailable for any other reason, then the provisions in G.S. 15-188(b) apply.

Section 6.5(b) expands 15-188 (manner and place of execution) to add new subsections (b)-(e). Under 15-188(b), the Secretary of the Department of Adult Correction (DAC), within 120 days of notice of a judgment being entered that lethal injection has been declared unconstitutional by a North Carolina court of competent jurisdiction or notice that the lethal injection is not available, must select another method of executing a death sentence that has been adopted by another state unless such method has been declared unconstitutional by the United States Supreme Court. If the alternative method of execution is then declared unconstitutional by a North Carolina court of competent jurisdiction, then the DAC Secretary must select another method within 120 days of notice of such a judgment being entered.

The expanded law further requires the DAC to establish protocols and procedures within 120 days once the DAC establishes a method of execution pursuant to 15-188(b). The DAC Secretary must immediately schedule a date for the execution of the original death sentence not more than 60 days from upon the establishment of the protocols and procedures, or within the timeframe specified in G.S. 15-194 (time for execution), if applicable. The DAC Secretary must report within 14 days the alternative method of execution chosen pursuant to G.S. 15-

188(b) to the Joint Legislative Commission on Governmental Operations. The Attorney General and the DAC Secretary must report to the Joint Legislative Commission on Governmental Operations in every case in which a mode of execution is challenged by a defendant, deemed unconstitutional by a North Carolina court of competent jurisdiction, or is not an available mode for some other reason within 7 days of such event.

*Involuntary commitments*. Effective for dismissals and proceedings occurring on or after December 1, 2025, section 7.(a) of the act adds new subdivision (a1) to G.S. 15A-1003 (referral of incapable defendant for civil commitment proceedings), stating that prior to the dismissal of any charges pursuant to G.S. 15A-1008, if the defendant is not subject to a mental illness involuntary commitment order, the court must make the determinations and findings required by G.S. 15A-1003(a) upon motion of the district attorney.

Section 7.(b) of the act modifies G.S. 15A-1008(c) to remove the ability of the prosecutor to, upon the defendant becoming capable of proceeding, reinstitute proceedings dismissed pursuant to G.S. 15A-1008(a)(1) or (3) by the filing of a written notice with the clerk of court, defendant, and defendant's attorney of record. G.S. 15A-1008(c) continues to provide that a dismissal pursuant to G.S. 15A-1008(a)(1) or (3) is without prejudice to the refiling of the charges. The act also modifies G.S. 15A-1008(d) to clarify that the dismissal of the criminal charges are not expunged by operation of law.

*Probation and PRS for juveniles*. Effective for offenses committed on or after December 1, 2025, section 8.(a) of the act amends G.S. 7B-2510 (conditions and violation of probation) to add new subsection (c1). The new subsection provides that prior to expiration of an order of probation entered for an adjudication of an offense that would be a Class A, B1, or B2 felony if committed by an adult, the court may extend the term of probation for additional periods of up to one year after notice and a hearing, if the court finds that the extension is necessary to protect the community or to safeguard the welfare of the juvenile. The total period of probation entered for an adjudication of an offense that would be a Class A, B1, or B2 felony if committed by an adult must not exceed three years. At the discretion of the court, the hearing to determine to extend probation may occur after the expiration of an order of probation at the next regularly scheduled court date or if the juvenile fails to appear in court. The act also amends G.S. 7B-2510(d) to allow the prosector to file a motion for the court to review the progress of any juvenile on probation at any time.

Section 8.(b) amends G.S. 7B-2511 (termination of probation) to clarify that in cases involving a victim as defined in G.S. Chapter 7B, Article 20A, the order terminating probation may be entered with the juvenile present after notice and a hearing. If a victim has requested to be notified of court proceedings, the Division of Juvenile Justice (DJJ) must provide notice to the victim, and the court must provide the prosecutor, the victim, or the person who may assert the victim's rights the opportunity to be heard at the hearing.

Section 8.(c) amends G.S. 7B-2514 (post-release supervision planning) to add new subsection (b1), which provides that every plan developed for an offense that would be a Class A, B1, B2, or C felony if committed by an adult must require the juvenile to complete three years of post-release supervision. The DJJ must develop the plan in writing and base the terms on the needs

of the juvenile and the protection of the public. The act also amends G.S. 7B-2514(g) to clarify that for plans developed pursuant to G.S. 7B-2514(b1), post-release supervision may be terminated with the juvenile present after notice and a hearing. If a victim has requested to be notified of court proceedings, the DJJ must provide notice to the victim, and the court must provide the prosecutor, the victim, or the person who may assert the victim's rights the opportunity to be heard at the hearing. For further discussion, see Jacquelyn Greene, *2025 Delinquency Law Changes*, N.C. CRIM. L., UNC SCH. OF GOV'T BLOG (Nov. 25, 2025).

**26) S.L. 2025-94 (H 926): Surveyor right of entry.** Effective for acts occurring on or after October 6, 2025, section 2.(b) of this act enacts new G.S. 14-159.15, creating a limited right of entry to land by professional land surveyors. Under the new statute, a professional land surveyor has the right to enter upon the lands of others, if necessary to perform surveys for the practice of land surveying, including the location of property corners, boundary lines, rights-of-way, and easements, and may carry with them their customary equipment and vehicles. An entry by a professional land surveyor to perform the practice of land surveying under this section does not constitute trespass under G.S. Chapter 14, Articles 22 or 22A and will not cause the professional land surveyor to be subject to arrest or a civil action by reason of the entry. The statute does not, however, give authority to a professional land surveyor to destroy, injure, damage, or move anything on the lands of another without the written permission of the landowner, and is not to be construed as removing civil liability for such damage.

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# Criminal Case Update Paper
# Winter Criminal Law Webinar
# Dec. 5, 2025

Cases covered include published criminal and related decisions from the North Carolina appellate courts and the Fourth Circuit Court of Appeals decided between February 19, 2025, and November 5, 2025. State cases were summarized by SOG criminal law faculty members and Fourth Circuit cases were summarized by Phil Dixon. To obtain summaries automatically by email, sign up for the Criminal Law Listserv. Summaries are also posted on the North Carolina Criminal Law Blog.

## Warrantless Stops and Seizures

**The trial court did not err in denying the defendant's motion to suppress evidence found in his bag when competent evidence supported the court's conclusion that the defendant abandoned his reasonable expectation of privacy in it**

State v. Pardo, No. COA24-1036, ___ N.C. App. ___ (Oct. 1, 2025). In this Carteret County drug trafficking case, the defendant appealed the denial of his motion to suppress after pleading guilty. The drugs were found in a camera bag that the defendant left unattended at a Best Buy for approximately 40 minutes during an investigation of a prior incident by loss prevention officers. The trial court denied the motion to suppress based on its conclusion that the defendant intended to abandon the bag and therefore relinquished his reasonable expectation of privacy in it. In reviewing the trial court's denial of the defendant's motion to suppress, the court of appeals reviewed the trial court's findings of fact and found they were supported by competent evidence. The appellate court concluded that by leaving the bag unattended in a public place for 40 minutes, knowing it contained drugs and $65,000 in cash, and not mentioning it or attempting to retrieve it once officers arrived on the scene, the defendant abandoned it and relinquished his reasonable expectation of privacy in it.

**Canine sniff of apartment door did not violate the defendant's reasonable expectation of privacy and did not amount to physical trespass of the defendant's curtilage**

U.S. v. Johnson, 148 F.4th 287 (Aug. 5, 2025). In this case from the District of Maryland, a local task force was working with the Drug Enforcement Administration to investigate drug trafficking. Through widespread surveillance and wiretap efforts, the task force believed that the defendant was distributing drugs from his apartment in Owning Mills, Maryland. Before obtaining a search warrant for the apartment, task force officers conducted a canine sniff of the defendant's apartment door at 3:00 a.m. The apartment was on the second floor of the apartment building. The apartment door was set back from the main hallway of the floor by about three and a half feet. Residents, maintenance workers, and others could all move freely past the apartment door. The canine alerted on the door, and police obtained a search warrant for the apartment based on the sniff and other information previously known by the officers. Inside, law enforcement found a heroin-fentanyl mixture, a gun, ammo, cash, and other evidence of drug distribution.

The defendant was indicted on various gun and drug offenses. He moved to suppress, arguing that the canine sniff of his apartment door violated his reasonable expectation of privacy and that the sniff amounted to an unlawful trespass into the curtilage of his residence. The district court rejected these arguments, finding that there was no reasonable expectation of privacy in the open air surrounding the apartment and that the defendant's apartment door did not qualify as curtilage. At trial, the defendant was convicted on all counts and was sentenced to 150 months in prison. He appealed, renewing his arguments for suppression.

In support of his argument that the canine sniff violated his reasonable expectation of privacy, the defendant pointed to *Kyllo v. U.S.*, 533 U.S. 27 (2001). In *Kyllo*, the Court held that the use of a specialized technological device not commonly used by the public (there, a thermal imaging device) to detect the interior of a home was a Fourth Amendment search. Here, the defendant argued that the use of a canine to detect the odors emanating from his apartment was akin to the imaging device in *Kyllo*. The Fourth Circuit squarely rejected this argument. "Because a dog sniff can only reveal the presence of contraband, and there is no reasonable expectation of privacy in contraband, a dog sniff is not a search—period." *Johnson* Slip op. at 9. Although Justice Kagan has opined in a concurrence that a canine sniff at the door of a residence could violate a reasonable expectation of privacy, the majority opinion decided that case on other grounds and did not adopt Justice Kagan's view. *Florida v. Jardines*, 569 U.S. 1, 12-16 (Kagan, J., concurring). Consistent with their decisions in prior unpublished cases, the Fourth Circuit affirmed that the canine sniff did not violate the defendant's reasonable expectation of privacy.

As to the defendant's trespass argument, the *Jardines* majority held that the use of a canine to sniff the front door of a home amounted to a Fourth Amendment search because it amounted to an unlawful intrusion into the protected curtilage of the home, going beyond a normal knock and talk. The four-factor test from *U.S. v. Dunn*, 480 U.S. 294, 301 (1987) is used to determine whether an area can be considered curtilage. Courts must examine "the proximity of the area claimed to be curtilage from the home, whether the area is included within an enclosure surrounding the home, the nature of the uses to which the area is put, and the steps taken by the resident to protect the area from observation by people passing by." *Id*. The essential question in the curtilage inquiry is whether the area is properly considered part of the residence. Here, the area in front of the apartment's front door could not be considered part of the curtilage.

The exterior of the door was in a common hallway frequented by other residents, guests, and building staff, who all had a right to be present in front of or around the defendant's front door. Relatedly, the defendant had no right to exclude anyone from the area in front of his door. Although the canine sniff was performed in very close proximity to the home, it was still done within a common area of the building. This distinguished the defendant's situation from the facts of *Jardines* and other cases where the claimed curtilage was near a stand-alone residence where the occupants "had a right to exclude others from the area immediately surrounding [the] dwelling." *Johnson* Slip op. at 12.

Many other courts have focused on the "right to exclude others" in the context of curtilage questions, and courts generally agree that common and shared areas of an apartment building will not typically count as curtilage. Nonetheless, the court acknowledged that a different apartment building layout could lead to a different result, depending on the specifics of the case. "We hold only that on the facts as found by the district court and disputed by neither party, the police did not intrude onto Fourth Amendment-protected curtilage when they conducted a dog sniff in the common hallway just outside Johnsons' apartment door." *Id*. at 15.

The judgment of the district court was therefore unanimously affirmed.

## Searches

**If the state constitution's search and seizure provisions imply any exclusionary rule at all, it is subject to a good faith exception; *State v. Carter* is overruled**

State v. Rogers, 377PA22, __ N.C. __ (Oct. 17, 2025). In this New Hanover County case, an officer investigating suspected drug trafficking sought a court order allowing him to access the defendant's cell site location information (CSLI). A superior court judge found that the officer's application was supported by probable cause and issued the order. The CSLI revealed that the defendant traveled to California and quickly returned to North Carolina, where he was apprehended with trafficking amounts of cocaine in his vehicle. The defendant was charged with drug offenses and moved to suppress the CSLI. A superior court judge denied the motion and the defendant pleaded guilty, reserving his right to appeal.

The Court of Appeals determined the court order was supported only by reasonable suspicion, not probable cause. It ruled that this violated the defendant's state and federal constitutional rights, and that at least as to the state constitution, no good faith exception was available in light of *State v. Carter*, 322 N.C. 709 (1988).

The Supreme Court seemingly accepted the Court of Appeals' determination that the order was supported only by reasonable suspicion and that probable cause was required. However, it ruled that suppression was not an appropriate remedy. As to any violation of the United States Constitution, the officer reasonably relied on the court order, so the good faith exception from *United States v. Leon*, 468 U.S. 897 (1984), rendered the federal exclusionary rule inapplicable.

Turning to the state constitution, the court noted that prior to *Mapp v. Ohio*, 367 U.S. 643 (1961) (holding that the exclusionary rule applicable to violations of the United States Constitution applies to the states), there was no exclusionary rule for violations of the state constitution. In decisions after *Mapp*, though, the Supreme Court of North Carolina "began to sow seeds of confusion into our constitutional criminal procedure jurisprudence," ultimately in *Carter* "proclaim[ing], without explanation," that violations of the state constitution's search and seizure provisions require suppression and that no good faith exception exists. The court viewed *Carter* as a confusing and analytically weak opinion that "did not evaluate Article I, Section 20's text, consider the historical context, or reconcile itself with precedents expressly disclaiming any exclusionary rule other than as provided by statute." Therefore, the Supreme Court overruled *Carter*. However, it did *not* rule that there is no exclusionary rule for violations of the state constitution. That issue was apparently not briefed by the parties and the court left it for another day. Instead, assuming *arguendo* that the state constitution does imply an exclusionary rule, the court ruled that any such exclusionary rule contains a good faith exception for the reasons set forth in *Leon*. Therefore, the state constitution also did not require the suppression of the CSLI in this case.

Justice Earls, joined by Justice Riggs, dissented. The dissenters would have reaffirmed *Carter*, the "majestic" conception of constitutional protections that it embodied, and the values of judicial integrity and constitutional legitimacy that it promoted. They also criticized the majority's decision not to decide

whether an exclusionary rule exists for violations of the state constitution but nonetheless to establish a good faith exception to the possible rule.

Joe Hyde blogged about the *Rogers* case, here.

**Trial court properly found that the defendant voluntarily consented to the search of his backpack after finding law enforcement returned his identification**

State v. Wright, No. 258PA23, __ N.C. __; 918 S.E.2d 623 (August 22, 2025). In this Mecklenburg County case, a confidential informant submitted a tip to law enforcement on the night of January 29, 2020. The informant reported that a man matching the description of the defendant was riding a bicycle and carrying an illegal firearm. Law enforcement officers located the defendant riding a bicycle on the same street named by the informant. The officers intercepted the defendant, asked for his identification, and asked him to step off his bicycle and remove his backpack. The defendant complied. With the defendant's permission, officers then conducted a pat-down. After the pat-down, officers asked for permission to search the defendant's backpack for weapons. The defendant agreed to the initial request, then declined multiple times, telling officers he was scared. After returning the defendant's identification, an officer asked the defendant to open his backpack so the officer could look inside, and the defendant agreed. The officer further asked the defendant to lower the backpack, at which point the officer could see the grip of a handgun. The officers placed the defendant in handcuffs and searched him, finding cocaine. The defendant was subsequently charged with possession with intent to sell cocaine, unlawfully carrying a concealed weapon, possession of a stolen firearm, possession of a firearm by a felon, and attaining the status of a habitual felon.

The defendant moved to suppress the evidence obtained during the search, arguing that the officers lacked reasonable suspicion and probable cause. The trial court denied the motion, finding the officers had reasonable suspicion and probable cause, and that the defendant consented to the search. The defendant pled guilty and appealed. At first, the Court of Appeals vacated and remanded for further findings of fact and conclusions of law related to whether the defendant was trespassing at the time of the encounter. The trial court entered an amended order denying the defendant's motion to suppress, finding again that the defendant voluntarily consented to the search and that the officers had reasonable suspicion and probable cause. A unanimous Court of Appeals panel then reversed the trial court, finding the officers did not have reasonable suspicion or probable cause and the defendant did not voluntarily consent. The State sought discretionary review with the Supreme Court. The Supreme Court allowed discretionary review, and reversed the Court of Appeals, finding that the trial court properly denied the defendant's motion to dismiss. The Court found that competent evidence supported the finding that law enforcement returned the defendant's identification before he complied with the officer's request to open his bag and lower it for better viewing. Other factors included that officers maintained a calm and conversational tone, that the defendant stated he was scared but did not explain why, and that he initially agreed to the search before withdrawing his consent. As a result, the Court concluded that his ensuing consent was voluntarily given, and that this permitted the search of the backpack. Because the Court found the defendant gave his consent, the Court did not address whether the officers had reasonable suspicion or probable cause.

Justice Earls, joined by Justice Dietz, dissented. The dissent noted that the question of consent is mixed question of law and fact and is not entirely dependent on factual findings made by the trial court. The dissent considered the characteristics of the accused, the details of the interrogation, and the psychological impact of the officers' conduct, as well as noting a lack of clarity regarding whether or

when the defendant's identification was in fact returned. As a result, the dissent would have concluded that the defendant's consent was the product of coercion rather than free will and would have suppressed the evidence obtained.

Justice Riggs did not participate in the consideration of the case.

**Search of the defendant's premises conducted solely pursuant to a general administrative tax warrant violated the Fourth Amendment and required suppression of seized evidence**

State v. Hickman, No. COA24-893, ___ N.C. App. ___ (Nov. 5, 2025). In 2022, the North Carolina Department of Revenue (DOR) issued a general administrative tax warrant against Johnnie Denise Hickman for unpaid taxes related to prior drug sales. Issued pursuant to G.S. 105-242, the tax warrant authorized the McDowell County Sheriff's Office to "levy upon and sell the real and personal property of the said taxpayer." DOR agents, accompanied by a sheriff's deputy, entered Hickman's residence pursuant to the tax warrant. They conducted a search, found methamphetamine and drug paraphernalia, and later obtained the defendant's written consent to search after detaining her. The defendant moved to suppress the evidence, arguing the search violated her Fourth Amendment rights. The trial court denied the motion, finding the tax warrant gave agents inherent authority to search her residence.

The Court of Appeals disagreed, citing *G.M. Leasing Corp. v. United States*, 429 U.S. 338 (1977) which held that searches for purposes of tax collection must be authorized by a search warrant if consent is not given. The court emphasized that while tax collection is a legitimate government interest, it does not override Fourth Amendment protections against unreasonable searches, and that the tax warrant does not confer the authority to search. It concluded that the search was unlawful, and the evidence must be suppressed, reversing the trial court's order and vacating the judgment.

**Motion to suppress was properly denied where information in search warrant affidavit was not stale, the information was obtained from reliable, named citizens rather than anonymous informants, and officers were able to corroborate the information through investigation**

State v. Stevens, No. COA24-584, ___ N.C. App. ___ (Aug. 6, 2025). Charles Mills was spending the night at his wife's residence on February 15, 2022. The two were separated, but he was staying there because she had recently broken up with her ex-boyfriend, the defendant. The defendant came to the door late at night and banged on the door, demanding entry. Mr. Mills and his wife refused, and the defendant left. Subsequently, Mr. Mills was driving away from the house and saw the defendant following him in a white Range Rover. The defendant shot three bullets at Mr. Mills's car, and a bullet entered the trunk liner. Mr. Mills texted his wife after the incident.

During the investigation of the crime, Mr. Mills's wife provided surveillance footage of the defendant violently kicking her front door just prior to the shooting while holding a shotgun.

Officers saw the defendant leaving his home in the white Range Rover nine days later, on February 24, 2022. Defendant's son was driving the car, and officers arrested the defendant after he was dropped off. Officers did not find a gun on the defendant. Meanwhile, the son returned to the defendant's house and pulled into the garage. Officers secured the scene and applied for a search warrant to search the house, the Range Rover, and a red Corvette parked at the house. Upon execution of the warrant, officers found

multiple weapons, drugs, and drug paraphernalia. The defendant was subsequently charged with multiple gun and drug offenses.

The defendant filed a motion to suppress the search of his home and two vehicles. After a pretrial hearing, the trial court denied the motion as to the house and the Range Rover but granted the motion as to the Corvette. A jury trial then began, but the defendant pled guilty three days later mid-trial. Pursuant to the guilty plea, the defendant gave notice to the State of his intent to appeal the trial court's ruling on his motion to suppress. The trial court entered judgment, and the defendant subsequently filed written notice of appeal

First, the Court addressed whether the defendant had properly preserved the denial of his motion to suppress for appellate review. The State contended he had not, as he did not object to the evidence when it was presented at trial, nor did he object to the final ruling. However, the Court concluded that there was no need for the defendant to object at trial, since the case was resolved with a guilty plea. The Court found that the defendant complied with the requirement under *State v. Tew* that he give notice to the State of his intent to appeal the denial of the motion to suppress by including language to that effect in the plea agreement. Thus, the issue was properly preserved.

The Court then addressed the merits of the motion to suppress. The defendant mainly argued that the nine-day delay between the incident and the application for a search warrant rendered the affidavit stale. The defendant also argued that there was an insufficient nexus between the shooting incident and the defendant's house and Range Rover.

The Court disagreed, concluding that the case differed significantly from cases cited by the defendant in which a confidential informant provided information serving as the basis for a search warrant, but the affidavit supporting the search warrant lacked information as to when the CI developed the information. In the present case, the lead detective was directly involved in the investigation of the shooting that culminated in the arrest and search, and the detective did not fail to state the date the information was obtained. The Court determined that probable cause was supported by the affidavit where (1) the detective was able to observe the defendant in possession of a firearm on the night of the shooting through surveillance footage; (2) Mr. Mills provided a first-hand account of the defendant shooting at him from the white Range Rover, and (3) the account was corroborated by Mr. Mills's text message to his wife and the bullet hole in his car. Furthermore, the Court found that the information was not stale given that the shooting incident took place nine days prior to the application for a search warrant, which was significantly less than the two- to three-month delay in a case where the affidavit was deemed stale. The Court concluded it was reasonable to expect that evidence of the crime would be found in the defendant's home or Range Rover, especially given that Mr. Mills's wife stated that the defendant was known to regularly carry a gun, and the defendant did not have a gun in his possession when he was arrested.

The Court also rejected the defendant's argument that the affidavit was inadequate because the information on which it was based did not come from known and reliable informants. The Court stressed that the information did not come from anonymous informants but rather from named individuals whose accounts were corroborated by video footage and physical evidence of the shooting. The detective was also able to corroborate the information through his investigation.

**Search warrant affidavit provided probable cause where it included underlying circumstances supporting the credibility and reliability of an informant. The 'continuous pattern' nature of the crime**

**supported a one to two week delay between the criminal activity observed and the issuance of the warrant**

State v. Clark, COA24-909,___ N.C. App. ___; 918 S.E.2d 225 (June 18, 2025). In May of 2022, a detective applied for a search warrant based on information obtained from a confidential informant. The search warrant affidavit specified that within the past 'one or two weeks,' the informant purchased schedule II-controlled substances multiple times from the defendant at the defendant's residence in Kannapolis, NC. Upon executing the search warrant at the defendant's residence, the defendant was indicted for felony trafficking in opium or heroin by possessing 28 grams or more of heroin (later superseded alleging fentanyl rather than heroin). The defendant moved to suppress the evidence collected on the basis that the search warrant affidavit was conclusory and stale. The trial court denied the motion, and the defendant pled guilty, preserving his right to appeal the denial of the suppression motion. The Court of Appeals first addressed whether the affidavit was conclusory. It found sufficient "underlying circumstances" were included, such as law enforcement personally verifying information provided by the informant, and multiple successful controlled buys. As a result, the statement in the affidavit that the informant was credible and reliable was not merely conclusory. The Court next addressed whether the affidavit was stale. The Court found due to the "continuous pattern" of drug deals between the defendant and informant, and that they all occurred at the same location, a delay of one to two weeks between the activity observed and the issuance of the warrant did not make the information stale. As a result, the search warrant was properly justified by probable cause.

**Evenly divided en banc court affirms per curiam panel decision that geofence warrant did not violate the Fourth Amendment**

U.S. v. Chatrie, 136 F.4th 100 (April 30, 2025) (en banc). The defendant was charged with offenses relating to a bank robbery in the Eastern District of Virginia. Police obtained a geofencing warrant for two hours of time relevant to the robbery for phones in the vicinity of the crime, which ultimately led to the defendant's apprehension. He moved to suppress, arguing that the geofencing warrant violated the Fourth Amendment. The district court denied the motion, finding that officers relied on the warrant in good faith. It declined to squarely address the Fourth Amendment argument. A divided panel of the Fourth Circuit affirmed, finding that the defendant voluntarily shared his location information with Google and applying the third-party doctrine to hold that the geofence warrant did not amount to a search (summarized here). On rehearing en banc, the full Fourth Circuit affirmed per curiam.

Chief Judge Diaz separately concurred in the judgment. He agreed that the district court's ruling should be affirmed but would have done so solely on the grounds that the *Leon* good-faith exception applied.

Judge Wilkinson separately concurred, joined by Judges Niemeyer, King, Agee, and Richardson. According to Judge Wilkinson, the use of the geofence warrant did not amount to a Fourth Amendment search and the suppression motion was properly denied as a straightforward application of the third-party doctrine. He praised geofencing warrants as a valuable investigative tool and cautioned against hamstringing law enforcement's use of such techniques. He also warned of the toll on society of extending the exclusionary rule in this context without legislative input.

Judge Niemeyer concurred separately in the judgment as well. He would have held that no search occurred, comparing the data obtained from the geofencing warrant to other, more traditional investigative leads like shoe prints, tire tracks, DNA markers, bank records, and video surveillance. "[T]he data, when limited to the time and place of the crime, were no different than any other marker left

behind by a perpetrator." *Chatrie* Slip op. at 31 (Niemeyer, J., concurring). Alternatively, Judge Niemeyer agreed that exclusion of the evidence was inappropriate in light of the officer's good-faith reliance on the search warrant.

In a separate concurrence, Judge King agreed with Judges Wilkinson and Richarson that no search occurred and agreed that the district court should be affirmed based on the good-faith exception.

Judge Wynn penned a separate concurrence, joined by Judges Thacker, Harris, Benjamin, and Berner, with Judge Gergory joining all but the first footnote of the opinion. Judge Wynn argued that the court was obligated to decide the Fourth Amendment issue on the merits rather than apply the good-faith exception. He believed the geofence warrant amounted to a Fourth Amendment search, while acknowledging in footnote one that the good-faith exception also applied on the facts of the case.

Judge Richardson concurred separately, joined by Judges Wilkinson, Niemeyer, King, Agee, Quattlebaum, and Rushing. He would have ruled that "obtaining just two hours of location information that was voluntarily exposed is not a Fourth Amendment search and therefore doesn't require a warrant at all." *Id*. at 64 (Richardson, J., concurring).

Judge Heytens concurred separately, joined by Judges Harris and Berner. Without deciding the merits of the Fourth Amendment issue, Judge Heytens would have affirmed the district court based on the good-faith exception. Because the legal landscape of geofencing warrants was unsettled and because the officer consulted with prosecutors in the past before obtaining prior geofencing warrants, it was objectively reasonable for the officer to believe that the geofencing warrant was legal. Thus, application of the exclusionary rule was unwarranted under the facts of the case.

Judge Berner wrote a separate concurrence as well, joined by Judges Gregory, Wynn, Thacker, and Benjamin. Judge Heytens joined the opinion only as to Parts I, II(A), and II(B). Judge Berner felt that the defendant lacked a reasonable expectation of privacy in his anonymized location history (the information Google provides at the first step of the geofencing process). The defendant had a reasonable expectation of privacy, however, in the subsequent non-anonymized data provided at the second and third steps of the geofencing process, because that data was likely to reveal his identity. Judge Berner argued that, because police lacked probable cause to search for a specific person at the time of the warrant request, the warrant was illegal and amounted to a Fourth Amendment violation.

Judge Gregory dissented. He believed that the geofencing warrant violated the Fourth Amendment and that application of the good-faith exception was inappropriate. He compared the geofencing warrant to a general warrant and that no reasonable officer would have believed that it was lawful, given its lack of particularity to any single individual.

[*Author's note*: Seven judges would have found that no search occurred, while seven other judges would have held that the geofencing warrant was a search. Judge Diaz expressed no view on the merits of the Fourth Amendment question.]

Jeff Welty blogged about the decision, here.

# Confrontation Clause

**(1) Jury instruction for second-degree rape containing an alternate element not present in the indictment was proper; (2) there was sufficient evidence the victim was incapable of consent and the defendant knew or should have known of such incapacity; (3) admission of lab results without testimony by the analyst conducting the testing did not violate defendant's confrontation rights; (4) any violation of the defendant's confrontation rights amounted to harmless error**

State v. Tate, COA24-450, ___ N.C. App. ___; 918 S.E.2d 886 (June 18, 2025). The defendant was charged with second-degree rape from a 2011 incident where the victim reported she was raped after attending a pool party. The victim reported she had been drinking that afternoon and could not remember portions of the day, and when she fully regained awareness a man was having sex with her. She was able to escape and went to the hospital, where a nurse gathered samples and evidence. The evidence was untested until 2017, when it was sent to Sorenson Labs, a private DNA testing facility in Utah. Sorenson's analysis was then sent to the North Carolina State Crime Lab in 2018. The State Crime Lab reviewed the data, extracted the male portion of the DNA, and entered it into the State's DNA database. In 2019 a detective was assigned to the case, and saw the defendant's DNA come back as an initial match. The detective obtained a search warrant for the defendant's DNA and obtained a cheek swab, blood, and urine samples from the defendant. After additional testing, the defendant was indicted for one count of second-degree rape in 2021. Trial began and the jury returned a guilty verdict in early 2023.

The defendant first argued the second-degree rape jury instruction violated his right to a unanimous jury verdict. The defendant's indictment indicated the "defendant knew that [the victim] was mentally incapacitated and physically helpless." The trial court instructed the jury "to find . . . Defendant guilty of this offense the State must prove . . . Defendant knew *or should have known* that the alleged victim was mentally incapacitated and/or physically helpless." The defendant argued that by including the constructive knowledge element in the jury instruction, the trial court violated his right to a unanimous verdict by allowing the jury to potentially convict him of an offense not included in the indictment. The Court disagreed, based on precedent upholding a second-degree rape conviction where an indictment did not specifically allege the element of knowledge (*State v. Singleton*, 386 N.C. 183 (2024)) and based on precedent that disjunctive instructions are permitted where the disjunctive elements are not separate criminal acts, but instead are alternative avenues to conclude the existence of a single element (*State v. Hartness*, 326 N.C. 561 (1990)).

The defendant also argued there was insufficient evidence the victim was mentally incapable of consent and insufficient evidence the defendant knew or should have known of her mental incapacity. The Court held that based on the victim's testimony, statements from the defendant to investigators describing the victim as intoxicated and the victim's alcohol levels collected by the hospital, there was sufficient evidence for a reasonable jury to find that the victim was incapable of consent. The Court further held that based on the defendant's statements to investigators describing the victim as "drunk" and "wasted" the night of the incident, there was sufficient evidence that the defendant knew or should have known about this mental incapacity.

The defendant's final argument was that the trial court violated his right to confrontation by improperly allowing the DNA results generated by Sorenson Labs into evidence without requiring testimony from the analyst who performed the testing. Two employees of the North Carolina State Crime Laboratory

testified, Cortney Cowan and Tricia Daniels. As to Ms. Cowan's testimony, the Court found the issue was not properly preserved for appellate review because the objections at trial lacked sufficiently specific grounds, and the defendant did not specifically and distinctly contend the alleged error constituted plain error. As to Ms. Daniels' testimony, the Court applied the two-step approach outlined by *Smith v. Arizona*, 602 U.S. 779 (2024) to determine whether the testimony implicated the Confrontation Clause: first, the testimony must be testimonial; second, it must be hearsay evidence. The Court addressed hearsay first, and found that Ms. Daniels' testimony on the DNA profile generated by Sorenson Labs was hearsay because it was offered for the truth of the results obtained. The Court then considered whether the evidence was testimonial based on a review of "the principle reason" the Sorenson test was made. The Sorenson Labs test was limited in scope to identify the presence of any DNA other than the victim's, rather than an attempt to identify a particular suspect. Therefore, the Court concluded the results were not generated solely to aid in the police investigation, and that the profile provided by Sorenson was not inherently inculpatory, but instead tended to exculpate all but one of the people in the world. As a result, the Court found that Ms. Daniels' testimony of the Sorenson results was not testimonial, and therefore did not implicate the Confrontation Clause. The Court further held that as a second and independent basis for their decision, if the defendant's confrontation rights were violated, it amounted to harmless error due to other competent overwhelming evidence of the defendant's guilt.

Shea Denning blogged about the confrontation aspect of the case, here. Joe Hyde blogged about the indictment issue in the case, here.

**The trial court did not violate the defendant's confrontation rights by precluding repetitive testimony about a witness's prior record**

State v. McClinton, No. COA24-1096, ___ N.C. App. ___ (Oct. 1, 2025). In this Guilford County case, the defendant was convicted in 2024 of first-degree murder, discharging a weapon into occupied property, and possession of firearm by a felon for a shooting at a Greensboro nightclub in 2021. He was sentenced to life without parole and other concurrent sentences. He argued in part on appeal that the trial erred by improperly limiting his ability to inquire into a witness's pending charges. The court of appeals found no error.

The defendant was permitted to cross-examine the witness about pending charges within the same prosecutorial district. The trial court did not permit the defendant to cross-examine the witness about the possibility that the witness would attain the status of a habitual felon if convicted of his pending charges. The court of appeals concluded that the defendant was able to elicit the information he sought about the witness's pending charges, and that the trial court did not err by precluding repetitive testimony.

## First Amendment

**(1) The First Amendment protected the silent display of a crude banner criticizing a county commissioner at a board meeting; (2) the defendant was entitled to resist an unlawful arrest where he used reasonable force**

State v. Barthel, No. COA25-159, ___ N.C. App. ___ (Nov. 5, 2025). In January of 2024, William Barthel attended an Avery County Board of Commissioners meeting. Shortly after the meeting began, Barthel stood against the back wall and, without blocking anyone's view, held up a banner with vulgar language

criticizing Commissioner Cindy Turbyfill. The banner contained a picture of the commissioner with the phrase "I'm no gynecologist but I know a c**t when I see one" (original uncensored). Law enforcement officers approached him and instructed him to put the banner down. He refused, arguing with law enforcement and pulling away from them. He was charged with disrupting an official meeting and resisting a public officer. He was convicted of both offenses after a jury trial and timely appealed.

The Court of Appeals held that the defendant's silent protest was protected speech. Although offensive, the banner did not meet the legal standard for "fighting words," which must be likely to provoke immediate violence. The Court emphasized that criticism of public officials is core political speech and receives heightened constitutional protection. The meeting was deemed a limited public forum, where content-based restrictions are allowed only if they are reasonable and viewpoint-neutral. The Court found that the defendant's removal was based on the offensive nature of his message, not any actual disruption. The disruption occurred only after law enforcement intervened, and the banner itself did not block views or interrupt proceedings. Therefore, the Court found the defendant did not disrupt the meeting and was engaged in protected speech. Regarding the resisting a public officer charge, the Court reaffirmed that individuals have the right to resist unlawful arrests using reasonable force. The defendant's resistance was mostly verbal and nonviolent. Because his arrest violated the First Amendment, his limited resistance to that arrest was justified and could not sustain a conviction for resisting a public officer.

**Trial court erred by revoking probation when evidence was insufficient to show that the defendant committed a new offense, communicating threats as prohibited by G.S. 14-277.1**

State v. Creed, No. COA25-184, ___ N.C. App. ___ (Sept. 17, 2025). On January 10, 2024, the defendant pled guilty to possession of a firearm by a felon and misdemeanor possession of marijuana. He was sentenced to a minimum 12, maximum 24 months; that sentence was suspended, and the defendant was placed on supervised probation for 36 months.

On June 30, 2024, the defendant met with Justin Potts. He made statements to Potts indicating he had a lot of animosity toward Judge Puckett, a superior court judge, and Detective Johnson of the Surry County Sheriff's Office. According to Detective Johnson, Potts told Detective Johnson that the defendant had threatened to kill Detective Johnson and Judge Puckett. Detective Johnson reported the matter to the district attorney's office.

In March and July of 2024, the defendant's probation officer filed violation reports alleging, among other things, that the defendant had committed new criminal offenses by making credible threats against Judge Puckett and Detective Johnson. The violation reports came on for a hearing in August 2024. The trial court ultimately found that the defendant violated his probation as alleged, revoked his probation, and activated his suspended sentence. The defendant appealed.

On appeal, the defendant argued the trial court erred by revoking his probation because the evidence was insufficient to show he communicated a threat as prohibited by G.S. 14-277.1.

The Court of Appeals recognized that G.S. 14-277.1 (communicating threats) incorporates the First Amendment requirement of a "true threat," that is, an objectively threatening statement communicated by a party who possessed the subjective intent to threaten a listener or identifiable group. Here, the Court of Appeals said, the evidence at the revocation hearing was insufficient to show

the subjective and objective components of a true threat. Considering only Potts's testimony, the Court of Appeals noted that Potts testified that the defendant did not say he was going to kill either Judge Puckett or Detective Brandon. The Court of Appeals concluded the evidence was not sufficient to satisfy a judge, in the exercise of his sound discretion, that the defendant's statement constituted a true threat outside of the protection of the First Amendment. It reversed the judgment.

## Second Amendment

**Statute criminalizing possession of a firearm by a felon not facially unconstitutional and not unconstitutional as applied to defendant; felons may be disarmed**

State v. Ducker, COA24-373, ___ N.C. App. ___; 917 S.E.2d 266 (May 7, 2025). In this Buncombe County case, the defendant appealed his conviction for possession of a firearm by a felon, arguing G.S. 14-415.1 was unconstitutional under the Second Amendment and Article I, § 30 of the North Carolina Constitution. The Court of Appeals found no error and affirmed the judgment.

The defendant was arrested in 2022 after the Buncombe County Sheriff's Department received a report that he was openly carrying a handgun despite a felony conviction. At trial in 2023, the defendant raised constitutional arguments, but the trial court denied his motion.

The Court of Appeals considered the defendant's issues in three parts, whether G.S. 14-415.1 was (1) facially unconstitutional under the Second Amendment, (2) unconstitutional as applied to the defendant under the Second Amendment, or (3) unconstitutional as applied to the defendant under the North Carolina Constitution. In (1), the court noted it had previously upheld G.S. 14-415.1 as constitutional under the analysis required by *N.Y. State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1 (2022), in the recent decision *State v. Nanes*, ___ N.C. App. ___, 912 S.E.2d 202 (2025). This previous decision, along with consistent federal court decisions, supported the court's holding that G.S. 14-415.1 "is facially constitutional under both the United States and the North Carolina Constitutions." Slip op. at 8.

In (2), the court explained *Nanes* did not control as the defendant in that case was convicted of a different predicate felony. However, the court rejected the idea that it would be required to conduct a felony-by-felony analysis, pointing to the decision in *State v. Fernandez*, 256 N.C. App. 539 (2017), that "as-applied challenges to Section 14-415.1 [are] universally unavailing because convicted felons fall outside of the protections of the Second Amendment." Slip op. at 9-10. The court noted that the Fourth Circuit had revisited this issue post-*Bruen* in *United States v. Hunt*, 123 F.4th 697 (2024), and reached the same conclusion. As a result, the court concluded "[b]ecause we agree with the Fourth Circuit . . . we are bound by our decision in *Fernandez* and continue to hold Section 14-415.1 regulates conduct outside of the Second Amendment's protections." Slip op. at 12.

Finally, in (3), the court explained that under *Britt v. State*, 363 N.C. 546 (2009), a five-factor analysis is required to "determine if a convicted felon can be constitutionally disarmed under [G.S.] 14-415.1." Slip op. at 13. After walking through the *Britt* factors in the defendant's case, the court concluded G.S. 14-415.1 was constitutional when applied to the defendant, as "[i]t is not unreasonable to disarm an individual who was convicted of a felony, subsequently violated a domestic violence protective order, and chose to continue to carry a firearm in violation of the law." *Id*. at 17-18.

Phil Dixon blogged about this case in part, here.

**The trial court erred in dismissing the charge of possession of a firearm by a felon under G.S. 14-415.1 as the statute was not unconstitutional as applied to the defendant under either the federal or state constitution**

State v. Williams, No. COA25-38 (N.C. Ct. App. Oct. 15, 2025). In this Forsyth County case, the Court of Appeals took up the State's appeal after the trial court dismissed a charge of possession of a firearm by a felon under G.S. 14-415.1 on the grounds that the statute was unconstitutional as applied to the defendant under both the federal and state constitutions.

The defendant was charged after authorities stopped his vehicle in 2023 and found a gun at the bottom of a bag, as well as a folded dollar bill in the defendant's pocket with trace amounts of cocaine. The defendant had previously been convicted of seven felonies between 2000 and 2005 relating to possession or sale of cocaine and possession of a firearm by a felon. In addition, the defendant had been convicted of seven misdemeanors between 2004 and 2014, including violation of a DV protective order and communicating threats.

The Court of Appeals first considered defendant's challenge under the United States Constitution. The court reviewed the history of various tests applied by the United States Supreme Court and the Fourth Circuit to determine whether a regulation unconstitutionally restricts conduct protected under the Second Amendment. The court began with *District of Columbia v. Heller*, 554 U.S. 570 (2008), and traced the evolution of the test through *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1 (2022), and *United States v. Rahimi*, 602 U.S. 680 (2024). *Bruen* established a test that originally derived from *Heller*: "When the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. The government must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation." The court also stressed language in cases such as *Heller*, *Rahimi*, and *Hamilton v. Pallozzi*, 848 F.3d 614 (4th Cir. 2017), supporting the proposition that felon in possession of firearm statutes are presumptively lawful without the need for case-by-case inquiry into whether a particular felon may be barred from possessing firearms. The court related the Fourth Circuit's reasoning in *United States v. Hunt*, 123 F.4th 697 (4th Cir. 2024), that the "pre-existing right codified in the Second Amendment protects firearms possessed by the law-abiding, not by felons." *Id.* at 705. *Hunt* (and *Rahimi*) also considered historical examples supporting "categorical disarmament" of people who committed felonies. *Id.* at 706.

After discussing the above series of federal cases as the "necessary superstructure" for analyzing a Second Amendment matter, the court proceeded to note a conflict between prior state cases addressing G.S. 14-415.1. The Court of Appeals in *State v. Fernandez*, 256 N.C. App. 539 (2017), determined that the defendant fell outside of the class of "law abiding, responsible citizen[s]" protected by the Second Amendment, *id.* at 546-47 (note that *Fernandez* applied a two-step analysis used by federal courts before *Bruen* was decided). In contrast, the Court of Appeals in *State v. Sanes*, 297 N.C. App. 863 (2025), held that the defendant's conduct was covered by the plain text of the Second Amendment as G.S. 14-415.1 revokes an individual's right to keep and bear arms following a felony conviction (the *Sanes* Court nonetheless determined that the defendant's challenge failed given the sufficient historical tradition of disarming felons and the defendant's history of violence).

The Court of Appeals resolved this conflict by reference to caselaw governing the "rare situation" in which "two lines of irreconcilable precedent develop independently- meaning the cases never acknowledge each other or their conflict." *See State v. Gonzalez*, 263 N.C. App. 527, 531 (2019). The court stated it was authorized by the Supreme Court to "follow the older of the two cases and reject the

more recent precedent." *Id.* The court thus concluded that the Second Amendment does not presumptively protect possession of firearms by felons and that the defendant was unable to establish that he is a "law-abiding citizen" protected by the Second Amendment. As the defendant could not pass the first step of the *Bruen* test, the court did not address the second step. The court concluded that the trial court erred in dismissing the charge as unconstitutional under the federal constitution as applied to the defendant.

The Court of Appeals next considered the defendant's challenge under the North Carolina Constitution (Art. I Sec. 30). The court set forth the five-factor test to guide analysis for such as-applied challenges under *Britt v. State*, 363 N.C. 546, 550 (2009): (1) the type of felony convictions, particularly whether they involved violence, (2) the remoteness in time of the felony convictions, (3) the felon's history of law-abiding conduct since the crime, (4) the felon's history of responsible, lawful firearm possession during a time period when possession of firearms was not prohibited, and (5) the felon's assiduous and proactive compliance with the 2004 amendment. The court distinguished between the defendant in *Britt*, who had been convicted of one felony count of possession with intent to sell and deliver a controlled substance 20 years prior, had no history of violence, and had a lengthy post-conviction history of respect for the law as well as 17 years of responsible, lawful firearm possession, with the defendant in *State v. Whitaker*, 201 N.C. App. 190, 206 (2009), who showed a "blatant disregard for the law" based on several misdemeanor convictions and three felony convictions, and who had acquired guns after the 2004 amendment that prohibited him from possessing them. The court reviewed the defendant's history and conduct in the case at bar and concluded that the facts were much closer to those in *Whitaker* rather than *Britt.* The court thus concluded that the trial court erred in dismissing the charge as unconstitutional under the state constitution as applied to the defendant.

Thus, the Court of Appeals vacated the trial court's order dismissing the charge and remanded the matter.

**Federal ban on possession of firearms by people adjudicated mentally defective or who have been involuntarily committed is facially constitutional**

U.S. v. Gould, 146 F.4th 421 (July 29, 2025). Between 2016 and 2019, the defendant was involuntarily committed to a facility for mental health treatment on four separate occasions. In 2022, authorities found the defendant in possession of a shotgun and indicted him in the Southern District of West Virginia for violating the federal ban on possession of firearms by a person who has been committed to a mental institution under 18 U.S.C. 922(g)(4). The defendant moved to dismiss, arguing that that 922(g)(4) was facially unconstitutional under the Second Amendment. The district court rejected the challenge, finding that the nation's historical tradition included disarming people who were dangerous to themselves or others. The defendant then pleaded guilty and appealed the denial of his motion to dismiss.

On appeal, the court noted that the U.S. Supreme Court has consistently and repeatedly observed in Second Amendment cases that limitations on the ability of the mentally ill to possess firearms are presumptively valid. However, the Court has not defined the term "mentally ill," and 922(g)(4) applies not only to people who are currently mentally ill, but also to someone who was committed involuntarily for mental illness who has since recovered. Thus, the statute could be applied to a person who is no longer mentally ill and otherwise a law-abiding, responsible citizen. Here, though, the defendant only raised a facial challenge to the statute. His burden for such a challenge is to demonstrate that the statute cannot be constitutionally applied to any defendant under any set of facts. The appellate court

agreed with the trial court that while federal law affects conduct protected by the Second Amendment, there is a historical tradition of disarming people who present a danger to themselves or the public, and that tradition includes disarming people who are dangerous due to mental illness. Early legislatures frequently limited the freedom of people suffering from mental illness, and the mentally ill would often be incarcerated if they had no friends or family to care for them. This practice developed in response to the perceived threat to public safety and order presented by the mentally ill. Early legislatures also frequently disarmed entire categories of individuals such as religious and racial minorities, based on the perception that a group was dangerous. This history presented an analogous historical tradition akin to 922(g)(4). In the words of the court:

In sum, history shows that legislatures had the authority, consistent with the understanding of the individual right to keep and bear arms, to disarm categories of people based on a belief that the class posed a threat of dangerousness. And when combined with the historical treatment of those who suffered mental illness, we perceive an unambiguous history and tradition of disarming and incarcerating those whose illness made them a danger to themselves or others. *Gould* Slip op. at 19.

In conclusion, the court stressed that its holding was narrow—922(g)(4) is facially constitutional because it may be constitutionally applied to at least some people within its reach. The court expressly declined to opine on potential as-applied challenges to the same law.

The district court was therefore unanimously affirmed.

**Federal ban on transporting a firearm in interstate commerce while under a felony indictment does not violate the Second Amendment**

U.S. v. Jackson, 152 F.4th 564 (Sept. 12, 2025). In this case from the District of Maryland, the defendant was charged with transporting a gun across state lines while under a state felony indictment pursuant to 18 U.S.C. 922(n). The defendant moved to dismiss the federal indictment, arguing it violated his Second Amendment rights. The district court rejected that motion and the defendant entered a conditional guilty plea, preserving his right to appeal the denial of his motion to dismiss. On appeal, the Fourth Circuit affirmed. The government argued that the defendant's challenge should fail because the conduct at issue was unprotected by the Second Amendment. The court disagreed. "By traveling with his gun, Jackon 'kept' it in the constitutional sense; he 'retained' it in his 'custody.' So the Second Amendment's plain text covers his conduct." *Jackson* Slip op. at 6. However, the court determined that there was a historic analogy tradition comparable to the challenged law. In *U.S. v. Rahimi*, 602 U.S. 680 (2024), the U.S. Supreme Court analogized surety law in existence at the time of the Founding used to disarm dangerous people to the federal ban on possession of firearms by a person under a domestic violence protective order. The Fourth Circuit has since gone even further, holding that felons may categorically be disarmed consistent with the Second Amendment. *U.S. v. Hunt*, 123 F.4th 697, 707 (4th Cir. 2024).

This partial restriction on the defendant's ability to travel with guns was akin to the surety laws discussed in *Rahimi*. A magistrate had to find "reasonable cause" to believe that the accused was likely to cause harm or a breach of the peace before requiring the accused to post a surety bond for their weapons, much like a grand jury had to find probable cause to believe that the defendant here had committed a felony offense. Like with surety bonds, which typically only lasted for six months, the prohibition on traveling with or receiving firearms across state lines while under indictment lasts only so long as the indictment does. Further, Section 922(g) only partially burdens a defendant's Second Amendment rights. A person under indictment may still possess any firearms already owned at the time;

they are only prohibited from traveling or receiving them across state lines while under indictment. Like common law surety rules, this temporary prohibition is aimed at prevention of crime and harm to the public. In the words of the court:

> The principles that underpin surety law, lead to a rule: just as legislatures have the power to disarm those who threaten physical harm to others, so too can they disarm those who possess dangerous weapons while under felony indictment. Section 922(n), as applied to Jackson, comports with that tradition and thus *Bruen*. *Jackson* Slip op. at 24. (cleaned up).

Alternatively, just as legislatures could disarm entire classes of people deemed to present a "risk of dangerousness," Congress could impose a "temporary and partial disarmament" on those under indictment consistent with the Second Amendment. In conclusion, the court observed: "Jackson's conduct is entitled to Second Amendment protection, but two different regulatory traditions permit the government to punish him all the same." *Id*. at 28.

The judgment of the district court was consequently affirmed by a unanimous court.

**Divided panel upholds federal age restriction on handgun purchases from licensed dealer against Second Amendment challenge**

McCoy v. ATF, 140 F.4th 568 (June 18, 2025). Under 18 U.S.C. 922(b)(1), a federally licensed firearms dealer is not permitted to sell handguns to any person under 21 years of age. Other firearms, like shotguns and rifles, may be sold to anyone 18 years old or older. The law does not prohibit people under 21 years old from possessing a handgun and does not impose any penalty on an underage buyer of a handgun, but the gun dealer can be fined and imprisoned for violations of the age restriction. The law also only applies to commercial firearms dealers—it does not regulate sales by private individuals or gifts of firearms. The plaintiffs were four individuals between 18 and 20 years old. They sued the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), arguing that the law violated the Second Amendment and seeking declaratory and injunctive relief against its application. The district court granted summary judgment to the plaintiffs, finding that no historical tradition of firearm regulation justified the age restriction on handgun purchases from gun dealers. On appeal, a divided panel of the Fourth Circuit reversed.

The court first determined that 922(b)(1) affected conduct protected by the Second Amendment. The court also assumed without deciding that 18–20-year-olds were among "the people" protected by the Second Amendment. Pointing to common law "infancy" rules, the court noted that contracts signed by people under 21 years of age were unenforceable at the time of the nation's founding. At that time, it was difficult or impossible for a minor under 21 years old to purchase a firearm, in part based on the credit-based economy in existence in the early days of American history. According to the court:

In sum, the infancy doctrine demonstrates that there was an early American tradition of burdening the ability of 18- to 20-year-olds to purchase goods, including firearms. We now hold that § 922(b)(1) fits comfortably within this tradition because it is analogous in both 'how' it burdens their Second Amendment rights and 'why.' *McCoy* Slip op. at 14.

The district court found that the Militia Act of 1792 supported the notion that the Second Amendment protected the rights of minors to purchase handguns from licensed dealers because the act required

that males 18 years old and older serve in the militia and provide himself a firearm within six months of enrollment. The court disagreed, noting that the Militia Act did not universally mandate militia service at age 18 and that its provisions did not conflict with the age limitation in 922(b)(1)—*providing* oneself with a firearm is not the same as *purchasing* a firearm.

Further, there was a widespread tradition among states to regulate firearms purchases by minors generally and handgun purchases by minors specifically from the mid-1850s forward. Prior to that time, handguns were not in common use. Further, many states continue to restrict handgun sales to minors under 21 to this day, demonstrating a "continuity of historical tradition" on the point. *Id*. at 19.

The ruling of the district court was therefore reversed, and the case was remanded with instructions to dismiss.

Judge Heytens concurred separately. According to him, the plaintiff's argument for handgun purchases by those 18 and older would apply in equal force to even younger categories of people. This was fatal to the plaintiffs' arguments, in his view.

Judge Quattelbaum dissented and would have affirmed the district court's ruling.

## Right to Counsel

**Defense counsel's *Harbison* error justified new trial**

State v. Meadows, COA24-149, ___ N.C. App. ___; 916 S.E.2d 578 (May 7, 2025); *temp. stay allowed*, ___ N.C. ___; 914 S.E.2d 836 (May 16, 2025). In this Duplin County case, the defendant appealed his convictions for first-degree murder and possession of a firearm by a felon, arguing ineffective assistance of counsel by conceding his guilt without permission. The Court of Appeals majority agreed, vacating the defendant's convictions and remanding for a new trial.

In July of 2016, officers responded to the report of a break-in and gunshot injuries. The defendant was indicted for the break-in and shooting of the victim and came to trial in March 2023. Before and during the trial, the defendant attempted to get new counsel three times, but each attempt was denied by the trial court. During trial, testimony from the defendant's former girlfriend focused on his gang connections and his motivations for the killing, including following orders from gang leaders so that he could move up in the organization. At the charge conference, the trial court denied the State's request for an instruction on acting in concert, but the prosecutor made arguments related to acting in concert anyway. When defense counsel gave closing arguments, he referenced the structure of the gang and conceded that the defendant was present at the scene of the crime and that he ran away afterwards, leaving his shoes outside the house. The defendant was subsequently convicted.

The Court of Appeals agreed with the defendant's argument that "his counsel impliedly admitted defendant's guilt when he stated during closing arguments that defendant went to the home of the victim with [two gang members] on the night of the incident." Slip op. at 10. The court explained this represented a violation of the defendant's rights under the Sixth Amendment as articulated in *State v. Harbison*, 315 N.C. 175 (1985). Here, there was no on-the-record *Harbison* inquiry except for the defendant's consent to the discussion of a prior conviction. There was "no evidence in the record to suggest that at any other point before or during trial defendant's counsel sought or obtained informed

consent from defendant to discuss his presence at the crime scene or his involvement with the gang the evening of the incident." Slip op. at 12. The court also highlighted defense counsel's statements that represented "an implied admission that although defendant was following orders, he was also a participant in the crime in question." *Id*. at 15-16. Defense counsel's *Harbison* error of impliedly admitting the defendant's guilt justified a new trial.

Judge Stading dissented, arguing defense counsel did not impliedly admit the defendant's guilt, and that even if he did admit guilt, the lack of record about the defendant's voluntary consent justified dismissing the appeal and allowing defendant to file a motion for appropriate relief.

## Contempt

**Trial court erred by conducting summary criminal contempt proceedings when the defendant's conduct constituted indirect criminal contempt**

State v. Brinkley, No. COA24-681, ___ N.C. App. ___ (Sept. 17, 2025). In April 2023, the defendant pled guilty to voluntary manslaughter and was sentenced to a minimum 58, maximum 82 months. The trial court ordered him to report to jail on June 12, 2023. The defendant failed to report to jail then, and the trial court issued an order for his arrest. He was arrested on January 2, 2024. On January 16, 2024, the trial court, pursuant to a summary contempt proceeding, held the defendant in direct criminal contempt and sentenced him to an additional thirty days.

The Court of Appeals granted the defendant's petition for certiorari to address the question of whether the trial court erred by holding him in direct criminal contempt. Summary contempt proceedings are permissible for direct criminal contempt. G.S. 5A-14(a). Direct criminal contempt occurs if the act is committed within the sight or hearing of the presiding judge and in, or in the immediate proximity to, the room where proceedings are being held before a court. G.S. 5A-13(a).

Here, the defendant's willful failure to comply with the trial court's order constituted an act of criminal contempt. But his failure to report occurred outside of the presence of the court. Hence, the defendant's conduct did not constitute direct criminal contempt (as the State conceded), and the trial court consequently erred by conducting summary contempt proceedings. The Court of Appeals vacated the trial court's order and remanded for further proceedings.

Shea Denning blogged about the case, here.

## Capacity to Proceed

**Trial court did not err by not instituting a competency hearing sua sponte; trial court did not err by finding that the defendant waived his right to be present at trial; trial court did not err by denying the defendant's request for substitute counsel**

State v. Chafen, No. COA24-1030, ___ N.C. App. ___ (Sept. 17, 2025). Around 11 p.m. on May 12, 2023, the defendant called 911 from the waiting room at Novant-Presbyterian Hospital, telling the 911 operator that he wanted to be taken to another hospital. Law enforcement officers responding to the scene found the defendant yelling, cursing, and being uncooperative. Around 1 a.m., police responded

to a second 911 call from the defendant's location. The defendant told officers he had been hit by a car, but officers concluded that nobody had actually been struck by a vehicle. Around 3 a.m., police responded to a third call from the defendant's location. This time, the hospital requested assistance with removing the defendant from the premises because he refused to leave. An officer attempted to arrest the defendant for trespassing, but he did not submit. Officers carried the defendant to a patrol vehicle, where the defendant kicked an officer in the head twice.

In December 2023, the defendant was convicted in district court of assault on a government official, resisting a public officer, second-degree trespass, and misuse of the 911 system. He appealed to the superior court. At his trial in superior court, which began on March 19, 2024, the State proceeded only on the assault charge. After a jury was empaneled, the defendant sought to discharge his court-appointed attorney and requested substitute counsel. The trial court refused to allow the defendant to discharge counsel, whereupon he refused to participate in his trial, and he was taken into custody under a secured bond. After the lunch recess, the defendant refused to return to the courtroom and refused to speak with defense counsel. The trial court found that the defendant waived his right to be present, and the State proceeded to introduce evidence. The defendant was convicted of assault on a government official and sentenced to 120 days. He appealed.

Before the Court of Appeals, the defendant argued the trial court erred by (1) failing to order a competency hearing, (2) ruling he waived his right to be present at trial, and (3) failing to conduct a sufficient inquiry into his request for substitute counsel.

Addressing the first issue, the Court of Appeals posited that the trial court has a constitutional duty to institute a competency hearing sua sponte when there is substantial evidence indicating the accused may be mentally incompetent. Here, the Court of Appeals found insufficient evidence to warrant the initiation of a competency hearing by the trial court. It noted that the defendant was able to consult with his lawyer and had a rational understanding of the proceedings against him. The Court of Appeals rejected the defendant's reliance on the following circumstances: the defendant was homeless; he said he did not care what happened to him; he informed the trial court at sentencing about previous mental health evaluations; and he volunteered information at sentencing about a prior conviction. The defendant's refusal, it said, "to participate in his trial or with his court-appointed attorney does not constitute substantial evidence requiring the trial court to institute a competency hearing on its own accord." Slip Op. p. 16.

Addressing the second issue, the Court of Appeals said that a defendant may waive the right to be present at his trial through his voluntary absence, so long as he is aware of the processes taking place and of his right and obligation to be present. Here, the defendant argued the trial court erred by finding he waived his right to be present because it failed first to determine whether he was competent to stand trial. But, as the Court of Appeals found insufficient evidence to warrant a sua sponte competency hearing, it likewise found the defendant's argument regarding waiver of his right to be present meritless. Further, it noted the defendant voluntarily absented himself from the courtroom, though he was aware of the processes taking place and his obligation to be present.

Addressing the third issue, the Court of Appeals declared that to warrant a substitution of counsel, the defendant must show good cause, such as a conflict of interest, a complete breakdown in communication, or an irreconcilable conflict. Given a request for substitute counsel, the trial court must make sufficient inquiry into the defendant's reasons to the extent necessary to determine whether the defendant will receive effective assistance of counsel. Here, the Court of Appeals said, the trial court

inquired into the defendant's request to the extent necessary to determine whether he would receive effective assistance. It noted that the trial court's conversation with the defendant upon his request for substitute counsel revealed that the nature of the conflict was not such as would render counsel ineffective. Once it became apparent that counsel was competent and the assistance of counsel was not ineffective, the trial court was not required to delve any further into the alleged conflict. Absent any constitutional violation, the trial court did not abuse its discretion by denying the defendant's request for substitute counsel.

## Discovery

**Criminal defendants may not subpoena body camera footage and other recordings in the custody of law enforcement agencies; they must use the procedures set forth in G.S. 132-1.4A**

State v. Chemuti, 282PA24, __ N.C. __ (Oct. 17, 2025). Mooresville officers arrested Charlotte Chemuti for resisting a public officer. Prior to trial, she served a subpoena on the police department for any pertinent BWC footage. The town responded in writing that it would not produce recordings except pursuant to the procedures set forth in G.S. 132-1.4A. A district court judge eventually ordered the town to produce any relevant recordings, reasoning that the procedure laid out in G.S. 132-1.4A provides one avenue for obtaining recordings but that a subpoena is also a valid means of compulsory process.

The town appealed. The Court of Appeals dismissed the appeal as premature. The town sought review in the Supreme Court of North Carolina, which determined that the appeal was timely.

On the merits, the Supreme Court ruled that the statutory procedure in G.S. 132-1.4A "supplants the use of a subpoena and is now the exclusive means to obtain [agency] recordings for use in a criminal case." Chemuti argued that a court-issued subpoena was a court order that satisfied the statute, but the Supreme Court said that in context, the only acceptable kind of order was one issued pursuant to G.S. 132-1.4A itself. Further, the court noted that the statute provides for the direct release of recordings to the district attorney and does *not* provide for comparable direct release to criminal defendants, supporting the idea that the legislature intended the defense to access recordings through the procedures set out in the statute.

The court next considered whether this reading of the statute compromised a defendant's right to present a defense through compulsory process. Relying on *Pennsylvania v. Ritchie*, 480 U.S. 39 (1987) (holding that it was permissible to require a defendant to seek judicial *in camera* review before obtaining the disclosure of exculpatory evidence contained in child abuse/neglect files), the court found no constitutional problem. It observed that the state has a "compelling interest in limiting access to [agency] recordings," which may reveal "places that are not open to public view [including] people's cars, their workplaces, even their bedrooms." Officers may also interact with "people at their lowest or most vulnerable points," including "victims and their suffering." Requiring defendants to go through the statutory process may be somewhat burdensome, but any burden is justified by the confidentiality concerns just noted. Furthermore, any constitutional concern is alleviated by the fact that superior court judges considering requests for access to recordings must rule on those requests "consistent with the defendant's constitutional rights to due process and compulsory process." Specifically, "if a defendant is constitutionally entitled to the records, then the superior court must enter an order for their release, regardless of whether the statute's criteria permit it."

Justice Riggs dissented, joined by Justice Earls. The dissenters would have held that the statutory procedure is not exclusive and that a subpoena is an appropriate way to seek video footage.

# Speedy Trial

**Three-year delay did not violate the defendant's right to a speedy trial in light of the valid reasons for the delay and the seriousness of the charges**

State v. McClinton, No. COA24-1096, ___ N.C. App. ___ (Oct. 1, 2025). In this Guilford County case, the defendant was convicted in 2024 of first-degree murder, discharging a weapon into occupied property, and possession of firearm by a felon for a shooting at a Greensboro nightclub in 2021. He was sentenced to life without parole and other concurrent sentences. On appeal, he argued in part that his speedy trial rights were violated. The court of appeals found no error.

The court noted that the delay beyond one year triggered an inquiry under *Barker v. Wingo*, 407 U.S. 514 (1972), but ultimately concluded that the delay here was for valid reasons—namely, the defendant's intervening service of an 18-month sentence for a federal supervised release violation, the four defense attorneys involved in the case, the fact that one of the detectives involved in the case was called for military duty, and the seriousness of the charges.

# Evidence

## Authentication

**A cell phone video was properly admitted for illustrative purposes despite a lack of evidence about who filmed it; the trial court did not err by declining to instruct the jury on an assault for a defendant charged with murder by a short form indictment**

State v. Ramsey, No. COA25-145, ___ N.C. App. ___ (Oct. 1, 2025). In this Mecklenburg County case, the defendant was convicted after jury trial of involuntary manslaughter. The charges resulted from a fight the defendant had with the victim. The defendant argued on appeal that the trial court erred by admitting video evidence without proper authentication, and by denying the defendant's motion for additional jury instructions on simple assault after the jury had started deliberations. The video evidence came from a cell phone that an officer found at the scene of the fight. The court of appeals concluded that the trial court did not err by admitting the video for illustrative purposes despite a lack of evidence about who filmed it. The trial court gave a limiting instruction and the State laid a proper foundation by eliciting testimony from a witness that the video fairly and accurately illustrated the fight. As to the request for an instruction on assault, the court of appeals cited binding precedent holding a jury instruction on simple assault improper for a defendant—like the defendant here—charged with a short form murder indictment. The court declined the defendant's request to reconsider that precedent in light of State v. Singleton, 386 N.C. 183 (2024).

## Lay and Expert Opinion

**Trial court erred by admitting drug recognition expert opinion that was based on procedures outside of DRE protocol, but the error was not prejudicial; no error to admit the defendant's driving record as evidence of malice to prove second-degree murder**

State v. Moore, No. COA24-899, ___ N.C. App. ___ (July 16, 2025). The defendant's car collided with a car in which the victim was riding, killing her. He was charged with second-degree murder, felony death by vehicle, and impaired driving, among other charges, after evidence showed that he was driving over 60 miles per hour in a 35 mile per hour zone, and that he was under the influence of impairing substances including amphetamines, benzodiazepines, and opiates. Multiple witnesses testified at trial, including a sergeant from the Sheriff's Office who testified as a drug recognition expert (DRE) that multiple drugs were causing defendant's impairment—though his testimony was based on video evidence and reports reviewed two years after the incident, not based on live interaction with the defendant at the time of the incident, as required by DRE protocol. The defendant asserted two arguments on appeal: first, that the trial court erred by allowing the DRE to testify without satisfying the reliability provisions of Rule of Evidence 702(a); and second, that the trial court erred by allowing the state to introduce the defendant's driving record without conducting a similarity analysis under Rule 404(b). The Court of Appeals concluded there was no prejudicial error.

As to the first argument, the Court of Appeals agreed that the trial court erred by allowing the DRE to express an expert opinion as to the defendant's impairment without having performed a standardized evaluation in accordance with certification procedures. The court rejected the State's argument that the "[n]otwithstanding any other provision of law" clause in Rule 702(a1) completely excused the DRE from the baseline reliability requirements of Rule 702(a), including the requirements that testimony be based on fact and in accordance with reliable principles and methods. The court nevertheless concluded that the trial court error was not prejudicial based on other overwhelming evidence of the defendant's impairment separate and apart from the DRE testimony, including witness observations, testimony from the treating physician, and toxicology tests.

As to the second argument, the Court of Appeals concluded that the trial court did weigh the similarity and temporal proximity of the defendant's prior traffic violations as required under cases interpreting Rule 404(b), and therefore did not err by admitting the driving record to prove malice. The trial court limited temporal proximity by disregarding citations prior to 2015. And the similarity between prior speeding citations and the instant crime, where the defendant was speeding at nearly twice the legal limit, was clear, even if the trial court did not explicitly verbalize it.

Belal Elrahal blogged about the case, here.

**Testimony from police officer and forensic expert that substance appeared to be marijuana was properly admitted and supported defendant's convictions, despite lack of testing confirming substance was not hemp**

State v. Ruffin, COA24-276, 298 N.C. App. 104 (March 5, 2025). In this Martin County case, the defendant appealed his convictions for trafficking in heroin offenses, sale of marijuana, and delivery of marijuana, arguing several errors related to the trial court's admission of testimony regarding the identification of marijuana and errors in sentencing. The Court of Appeals found no error.

In 2021, a confidential informant (CI) contacted the defendant, seeking to buy seven grams of fentanyl "and some marijuana." Slip op. at 3. The defendant quoted prices for both, and the CI paid defendant and received two bags of the substances. The defendant was arrested shortly after leaving the scene. At trial, the detective who worked with the CI testified based on his training and experience that the plant material appeared to be marijuana. A forensic scientist from the state crime lab also testified about the plant material, concluding it was "plant material belonging to the genus cannabis containing tetrahydrocannabinol [THC]." *Id*. at 4. However, she also testified that the lab lacked the ability to distinguish between marijuana and hemp, and that it was possible the plant material was hemp. The defendant requested and the trial court provided a jury instruction stating that the term marijuana does not include hemp or hemp products. The defendant was subsequently convicted and received consecutive sentences of 70 to 93 months for his offenses.

Taking up the defendant's arguments, the Court of Appeals first addressed whether it was error to allow the detective to testify that the plant material was marijuana as lay opinion testimony. Because the defendant did not object to the testimony at trial, the Court reviewed for plain error. Referencing previous case law, the court noted that a police officer experienced in the identification of marijuana may testify to his visual identification of evidence as marijuana. The defendant pointed to *State v. Ward*, 364 N.C. 133 (2010), to argue that an officer's visual identification is no longer reliable since the legalization of hemp. The Court distinguished *Ward*, noting "the standard for lay opinion testimony under Rule 701— including [the detective's] testimony—is unchanged in light of *Ward*." Slip op. at 9. Subsequent caselaw also supported that "law enforcement officers may still offer lay opinion testimony identifying a substance as marijuana." *Id*. As a result, the court found no error in admitting the testimony.

The court applied the same plain error analysis to the forensic expert's testimony, as the defendant did not object to her testimony either. Because she was testifying as an expert under Rule 702, the court looked to *State v. Abrams*, 248 N.C. App. 639 (2016), to determine if the expert followed reliable procedures for identifying the substance as marijuana. The court was satisfied that the expert followed acceptable procedures as established by previous caselaw, and found the testimony reliable under Rule 702, meaning it was not error to admit her testimony.

The defendant also argued that it was error to deny his motion to dismiss because the State did not provide adequate evidence the substance was marijuana not hemp. The court disagreed, pointing to the testimony of the detective and forensic expert discussed above, as "our courts have consistently affirmed that testimony identifying a substance as marijuana—from a law enforcement officer as well as a forensic expert—is sufficient to take the matter to the jury." *Id*. at 15.

Although the trial court used the appropriate pattern jury instruction, along with an alteration specifically requested by defendant, defendant argued it was error to omit instruction that "marijuana has a Delta-9 THC content in excess of 0.3%, while hemp has a Delta-9 THC content of 0.3% or less." *Id*. at 18. Applying the plain error standard again, the court found no error, as the court held that the instruction given was an accurate statement of the law.

Finally, the court reached the sentencing issues, where the defendant argued he was improperly sentenced for selling and delivering marijuana in the same transaction. The court concluded that any error if it existed was harmless, as "the trial court consolidated those convictions to run *concurrently* with the longer sentence for Trafficking in a Mixture Containing Heroin by Transportation." *Id*. at 20. The defendant also argued that the prosecutor offered improper information that influenced sentencing

considerations, as the prosecutor referenced a victim who died and a pending death by distribution charge against defendant. However, "the trial court here expressly rejected the prosecutor's arguments regarding the separate charges on the Record and affirmatively stated that other charges would be considered in separate proceedings," meaning there was no evidence that the defendant received a sentence based on improper information. *Id*. at 25.

Phil Dixon blogged about the case in part, here.

## Offers of Compromise

**Rule 408 did not bar admission of a letter the defendant wrote to law enforcement from the jail offering cooperation in a criminal case; the defendant's Second Amendment argument was unpreserved for appeal**

State v. Wilson, No. COA24-799, ___ N.C. App. ___(Oct. 1, 2025). In this Wayne County case, the defendant was convicted of attempted first-degree murder, possession of firearm by a felon, and other serious felonies and sentenced to a lengthy consecutive term of imprisonment. The trial court admitted a letter the defendant wrote to law enforcement from the jail in which the defendant wrote that he "shot a gang banger in Dollar General" and offered to help them "get some meth addicts" in exchange for help with his charges. At trial, the defendant objected to admission of the letter, arguing that it was an offer to compromise under Rule 408 of the Rules of Evidence. The court of appeals upheld the trial court's admission of the letter, concluding that Rule 408 does not apply in a criminal case in North Carolina. The court distinguished Federal Rule 408, which, unlike North Carolina's rule, was amended in 2006 and expressly made applicable to both civil and criminal proceedings.

The court of appeals declined to review the defendant's unpreserved Second Amendment argument.

# Self-Defense

**Trial court prejudicially erred when it failed to address the statutory circumstances of G.S. 14-51.2(c) that can rebut the presumption of reasonable fear created by G.S. 14-51.2(b) and failed to limit the instruction on excessive force to self-defense and defense of another**

State v. Thomas, No. COA24-770, ___ N.C. App. ___ (Sept. 17, 2025). In April 2020, the defendant's home in Mount Airy was accessible only by way of a dirt driveway easement on the property of his neighbor, Burt Wallace. On the evening of April 9, 2020, the defendant was driving up and down the easement on a four-wheeler, when Wallace came out of his garage and began videotaping him. Wallace's wife Danielle started a physical confrontation with the defendant's wife and stepmother, injuring his stepmother's wrist. The defendant saw Wallace coming up the driveway at him, thought Wallace was reaching for a gun, and shot Wallace twice.

On May 18, 2020, the defendant was charged with assault with a deadly weapon with intent to kill inflicting serious injury (ADWIKISI). The matter came on for trial in February 2024. The jury was instructed on self-defense, defense of another, and defense of habitation. The defendant was convicted of ADWIKISI. Judgement was entered and the defendant appealed.

On appeal, the defendant argued the trial court plainly erred (1) by denying him immunity under G.S. 14-51.2(c) and (2) in its jury instruction on self-defense under G.S. 14-51.3. The defendant also argued (3) he received ineffective assistance when counsel stipulated to the admission of a recorded interview, and (4) cumulative error deprived him of a fair trial.

The Court of Appeals found the second issue dispositive. Although the trial court delivered the instructions which the defendant requested, the Court of Appeals declined to apply the doctrine of invited error because counsel and the trial court did not, at the time of trial, have the benefit of *State v. Phillips*, 386 N.C. 513 (2024). Instead, the Court of Appeals reviewed for plain error.

Under *Phillips*, excessive force in defense of habitation is a legal impossibility. Here, the jury was instructed on excessive force twice: once in relation to self-defense and once to defense of another. N.C.P.I. – Crim. 308.45 (self-defense) & 308.50 (defense of another). The Court of Appeals concluded that the instructions were misleading, as the instructions did not clarify that the restriction on excessive force would not apply to defense of habitation. It noted that the prosecutor argued in closing that a defendant is never entitled to use excessive force. The Court of Appeals also said the instructions "conflated the requirements for common law defense of self or defense of a family member . . . and the statutory defense of habitation." It rejected the State's argument that the instruction was not erroneous because it complied with the Pattern Jury Instruction for Defense of Habitation or, alternatively, that the instruction should not have been given in any event.

Under *Phillips*, the presumption of reasonable fear created by G.S. 14-51.2(b) may be rebutted only by the circumstances listed at G.S. 14-51.2(c). Here, the jury was instructed that, absent evidence to the contrary, the lawful occupant of a home using deadly force is presumed to have held a reasonable fear of imminent death or great bodily harm if the victim was unlawfully and forcefully entering the premises and the defendant knew it. N.C.P.I. Crim. – 308.80. The Court of Appeals said the jury could have believed that the phase "absent evidence to the contrary" could refer to excessive force, which was "not a proper consideration under the defense of habitation." Given the misleading instruction and the prosecutor's argument, the Court of Appeals found "no practical difference" between the erroneous instructions in *Phillips* and those in this case.

In sum, the Court of Appeals held the trial court erred by (1) failing to address the statutory circumstances of G.S. 14-51.2(c) that may rebut the presumption created by G.S. 14-51.2(b) and (2) by failing to limit the instruction on excessive force to self-defense and defense of another. Further, given the conflicting evidence on whether Wallace had forcefully entered the defendant's property, the Court of Appeals concluded that the error had a probable effect on the outcome. The Court of Appeals vacated the defendant's conviction and remanded for a new trial.

# Crimes

## Assault Offenses

**Defendant, who was charged with assault with a deadly weapon with intent to kill inflicting serious injury, was entitled to instruction on lesser included offenses given evidence of his intoxication at the time of the assault**

State v. Powell, No. COA24-556, ___ N.C. App. ___ (Sept. 3, 2025). In this Robeson County case, the victim started an altercation with the defendant by threatening the defendant and his elderly mother and by punching the defendant in the face. The defendant, who was noticeably intoxicated, beat the victim unconscious with his fists and then stomped on his face. The assault was captured on video. As a result of the injuries, the victim lost his vision and his ability to care for himself. The defendant was charged with assault with a deadly weapon with intent to kill inflicting serious injury (AWDWIKISI) and tried before a jury. The trial court denied the defendant's request to submit lesser-included assault offenses to the jury. The jury, which initially indicated that it was deadlocked and was then provided a written *Allen* charge, convicted the defendant. The defendant appealed, arguing that (1) the trial court erred in denying his motion to dismiss based on the sufficiency of the evidence; (2) the trial court erred by allowing the State to question him about prior convictions that were more than ten years old; (3) after the jury began deliberating, the trial court erred by (a) responding to the jury's request for a definition of specific intent by instructing the jury on intent generally, (b) making statements tending to coerce the jury into reading a verdict, and (c) failing to give an *Allen* charge in open court; and (4) failing to instruct on lesser-included offenses, which did not require specific intent.

(1) The Court of Appeals held that the conviction was supported by sufficient evidence from which the jury could concluded that the defendant's hands and feet were deadly weapons that he used to assault the victim. And given the "violent nature and extent of Defendant's attack as Victim lay helpless" and the defendant's statement to a neighbor during the assault that he wanted to kill the victim, the court found the evidence sufficient for the jury to reasonably infer that the defendant had the specific intent to kill the victim.

(2) The Court of Appeals held that the trial court did not abuse its discretion under Rule 609 in allowing evidence during the State's cross examination of the defendant of defendant's 1994 conviction for financial fraud and his 2010 conviction for assaulting a government official. The court explained that the fraud conviction was probative of the defendant's trustworthiness and the conviction for assault was probative to rebut the defendant's testimony that he acted in self-defense; the court did not find that it was an abuse of discretion to admit them. The court further concluded that even if there was error, it was not prejudicial given the strength of the State's evidence.

(3) The jury began deliberating at 4 p.m. on the fourth day of trial. At 4:30 p.m., the jury asked the trial court to define "intent to kill" and "specific intent to kill." At that point, the trial court gave the patten instruction on intent generally. At 5 p.m., the jury notified the court that it was deadlocked. The court addressed the jurors in the courtroom, telling them, "[W]e've got four days invested in this case. . . . So I've got to give you an instruction and tell you to give your best efforts to try to settle it. And I'm going to give you, like, 30 minutes . . . [a]nd then have you come back in." After the jury returned to the deliberation room, the trial court told the bailiff to take a printed copy of the *Allen* charge instruction to the jury. At 5:45 p.m. the jury returned with a verdict of guilty.

Because the defendant did not object to the trial court's instructions, the Court of Appeals reviewed for plain error. The court concluded the defendant failed to show the jury probably would have reached a different verdict had the trial court instructed on specific intent or had it not told the jury about the "four days invested" and giving them "30 minutes." As to the latter statements, the court said it was not clear from the context whether the jury viewed those statements as a directive to reach a quick verdict or a statement that they would end for the day after 30 more minutes.

As to the trial court's failure to give the *Allen* charge in open court as required by G.S. 15A-1235, the Court of Appeals concluded that because the trial court had discretion about whether to give the charge at all, it was not reversible error for it to fail to give the written charge it provided to the jury in open court.

(4) The Court of Appeals explained that if there was evidence showing that the defendant was voluntarily intoxicated to the extent that he could not have formed a specific intent to kill, he was entitled to the instruction on lesser-included assault offenses (which required only general intent) that he requested. Viewing the evidence in the light most favorable to the defendant, the court found such evidence and concluded that the defendant was entitled to the instruction he requested as "there was a reasonable possibility that at least one juror could have decided to convict Defendant of a lesser included offense instead of the one charge presented to them." For that reason, the court vacated the defendant's conviction and remanded for a new trial.

Judge Wood concurred but wrote separately to state that she would have held that the trial court committed prejudicial error in its response to the jury's report that it was deadlocked.

## Driving Offenses

**Assault with a deadly weapon inflicting serious injury may serve as the predicate for felony murder when defendant acted with actual intent to commit the act forming the basis of the murder charge; G.S. 20-166 is ambiguous regarding the unit of prosecution, leading the court to apply the rule of lenity and conclude the unit is per crash, not per victim**

State v. Watlington, COA23-1106, ___ N.C. App. ___; 916 S.E.2d 34 (Apr. 16, 2025). In this Guilford County case, two defendants, Watlington and Felton, both appealed from judgments entered after a trial where the defendants were tried jointly. Watlington was convicted of first-degree murder and additional felonies related to her attempts to run over multiple people at a gas station after a fight. Felton was convicted of eleven counts of accessory after the fact to Watlington's convictions. The Court of Appeals arrested judgment on three of Watlington's convictions for hit and run and three of Felton's convictions for accessory after the fact to hit and run, but found no error with the other convictions, remanding for resentencing.

One early morning in October of 2019, Felton drove an SUV to a gas station in Greensboro, with Watlington as a passenger. After hitting a parked car, a confrontation ensued between Watlington, Felton, and the car's owner. The argument escalated into a brawl involving multiple people over the course of twenty-five minutes, and testimony showed Felton was the primary aggressor. Around thirty minutes after the confrontation began, Watlington got into the driver's seat of the SUV and backed over a group of people; it took her approximately ten seconds to completely run over the victims. After stopping completely clear of the victims and sitting for eight seconds, Watlington drove forward, running over the same group of people at full speed. Felton watched the entire incident without stopping Watlington, then stood over the victims yelling at them. One victim died at the scene, and several others sustained serious injuries. The two defendants drove away in the SUV but were apprehended nearby a short time later.

The Court of Appeals took up Watlington's arguments first, beginning with her argument that it was error for assault with a deadly weapon inflicting serious injury to be the predicate felony for her first-

degree murder conviction. In *State v. Jones*, 353 N.C. 159 (1994), the Supreme Court held that "[f]or assault with a deadly weapon inflicting serious injury to serve as the predicate felony for a felony murder conviction . . . the individual must have acted with a 'level of intent greater than culpable negligence.'" Slip Op. at 11 (quoting *Jones* at 167). Here, Watlington argued that *Jones* represented a "bright-line rule" that assault with a deadly weapon inflicting serious injury could never be a predicate felony, an argument the court rejected. *Id*. Instead, the court explained that "assault with a deadly weapon inflicting serious injury, as a matter of law, can serve as the predicate felony for a felony murder conviction when the defendant acts with the 'actual intent to commit the act that forms the basis of [the] first-degree murder charge.'" *Id*. at 13 (quoting *Jones* at 166). The trial court properly instructed the jury in this case, and the court noted that sufficient evidence supported the conclusion that Watlington acted intentionally when driving over the victims with the SUV. The court also rejected Watlington's challenge to the jury instruction for felony murder and the lack of an instruction on voluntary manslaughter, finding no errors in the instruction given and no evidence to support an additional voluntary manslaughter instruction.

The court next considered Watlington's argument regarding her multiple hit and run counts and agreed that the structure of the statute did not support all the convictions. G.S. 20-166 "does not clarify whether its unit of prosecution is the conduct of leaving the scene of a crash or the number of victims injured as a result of the crash," resulting in an ambiguity for the court to resolve. *Id*. at 18. Here the court applied the rule of lenity, interpreting the ambiguity in Watlington's favor. The court explained that there were five victims, but only two crashes, one when Watlington backed over the victims and the second when Watlington drove forward over the victims. As a result, Watlington could only be convicted twice, "one conviction for Watlington's conduct of leaving the scene of each crash," and the court arrested judgment on the other three hit and run convictions. *Id*. at 21.

Arriving at Felton's arguments, the court first dispensed with her argument that there was insufficient evidence to support her convictions for accessory after the fact. Here, evidence showed that Felton watched Watlington hit the victims with the SUV, then left the scene with her and took the keys to the SUV, concealing the identity of Watlington as the driver. The court found this evidence sufficient to support Felton's convictions. The court also rejected Felton's challenge to the language of her indictments, finding no fatal variance from the evidence at trial.

Felton argued that she should not be subject to multiple convictions for accessory after the fact; the court rejected this, explaining "the context of [G.S.] 14-7 clearly indicates that the legislature intended the allowable unit of prosecution to be each felony for which the principal committed and the accessory assisted after the fact." *Id*. at 27. The court then considered Felton's argument that she was convicted as accessory after the fact to hit and run for merely leaving the scene. Rejecting this argument, the court pointed to the many other aspects of Felton's culpability after the crashes, including taking the SUV's keys and concealing Watlington's identity as the driver. However, the court arrested judgment on three of Felton's convictions, as it had done for Watlington's hit and run convictions discussed above.

Felton then challenged the jury instructions, arguing they provided a theory of guilt not alleged in the indictments, specifically that she assisted Watlington in attempting to escape. The court noted the circumstantial evidence of Felton possessing the SUV keys and that this did not represent a stand-alone theory of guilt, rejecting Felton's argument. Finally, the court rejected Felton's challenge to the closing argument, noting that law enforcement body cam footage supported the inference that Felton and Watlington were together when apprehended.

Brittany Bromell and Belal Elrahal blogged about the case here and here.

## Drug Offenses

**Defendant's condition did not qualify as a drug-related overdose within the meaning of the Good Samaritan law; over a dissent, the defendant received the benefit of his bargain on the plea arrangement**

State v. Branham, No. COA24-927, ___ N.C. App. ___ (Oct. 1, 2025). In this Rowan County case, a person called 911 upon seeing the defendant unconscious in a running vehicle. Responding officers saw a needle and heroin in the car and charged the defendant with possession of a Schedule I controlled substance. The trial court denied the defendant's motion to dismiss under G.S. 90-96.2, the Good Samaritan Law. When the defendant pled guilty to felony possession of a schedule I controlled substance, habitual felon status, and related misdemeanors, he asked to preserve the issue of the trial court's denial of his pretrial motion for appeal—though no statute preserved his right to do so after a guilty plea.

The court of appeals exercised its discretion to consider the defendant's immunity argument by way of a writ of certiorari. The court reasoned that issuing the writ would head off later proceedings about whether the defendant's plea was the product of an informed choice and would also give the court an opportunity to shed light on the proper application of a relatively new statutory scheme. The court explicitly said, however, that it was not establishing a per se rule that all unappealable motions must be granted appellate review. Slip op. at 8.

On the merits of the defendant's motion under the Good Samaritan Law, the court concluded that the defendant's condition was not an "acute illness" sufficient to qualify as a drug-related overdose within the meaning of G.S. 90-96.2(b). Officers were able to awaken him quickly by tapping on his car window, and he was not "cyanotic, sweating, or clammy," indicating that he was unconscious, but not in the midst of an overdose.

As for the validity of the defendant's plea, which was conditioned on preserving the right to challenge the denial of his pretrial motion, the court concluded that its grant of certiorari provided him the benefit of his bargain.

In dissent, Judge Hampson wrote that he would have deemed the plea arrangement invalid and not the product of an informed choice. He would therefore have vacated it and remanded the matter to the trial court for trial or the negotiation of a new plea agreement.

**Trial court did not err by denying the defendant's motion to dismiss drug trafficking charges; trial court did not err by including "any mixture" language in jury instructions on drug trafficking; trial court did not err by imposing consecutive sentences for drug trafficking; and verdict and judgment forms were not fatally defective for failing to name fentanyl**

State v. Thomas, No. COA24-940, ___ N.C. App. ___ (Sept. 17, 2025). On January 10, 2023, the defendant was speeding down Interstate 85. Troopers with the highway patrol attempted to conduct a traffic stop, and the defendant led the troopers on a high-speed chase. After running over a tire deflation device, he began throwing bags of white powder from his car. Troopers eventually stopped the

defendant's car and arrested him. Officers recovered one of the bags thrown from the car. Inside the defendant's car, officers found two sandwich bags containing a white powdery substance. And in the ditch next to the defendant's car, officers found a cooler containing smaller baggies of white powder and a digital scale.

The defendant was indicted for numerous felonies. The matter came on for trial on April 8, 2024. At trial, a forensic analyst testified that the sandwich bag from the defendant's car contained a mixture of methamphetamine, fentanyl, and ANPP – a fentanyl precursor. The defendant was convicted by a jury of trafficking opium by possession of twenty-eight grams or more, trafficking opium by transportation of twenty-eight grams or more, trafficking methamphetamine by possession of between twenty-eight and 200 grams, trafficking methamphetamine by transportation of between twenty-eight and 200 grams, felony fleeing to elude arrest, driving while license revoked, speeding, and reckless driving. The defendant appealed.

Before the Court of Appeals, the defendant argued the trial court erred (1) by denying his motion to dismiss the trafficking charges, (2) by including the phrase "any mixture" in its jury instructions on drug trafficking, and (3) by imposing consecutive sentences for both trafficking offenses. He also argued (4) the verdict and judgment forms were fatally defective because they failed to identify fentanyl as the opium/opiate contained in the mixture seized from the defendant.

Addressing the first issue, the Court of Appeals observed that G.S. 90-95(h) provides that criminal liability for drug trafficking is based on the total weight of the mixture. Here, the substance seized from the defendant's car was a mixture of methamphetamine and fentanyl. The Court of Appeals concluded there was sufficient evidence to show the threshold weight of both methamphetamine and opium/opiates, though the total weight of the mixture was 36.37 grams.

Addressing the second issue, the Court of Appeals rejected the defendant's challenge to the jury instructions as "essentially an attempt to take another bite of the apple above." Here, the "any mixture" language in the instructions on trafficking was consistent with law. The Court of Appeals concluded the trial court did not err in its instructions on drug trafficking.

Addressing the third issue, the Court of Appeals posited that offenses are not the same for double jeopardy purposes if each requires proof of an additional fact that the other does not. Here, the offenses of trafficking in methamphetamine and trafficking in opium each require proof of an additional fact that the other does not, namely the particular substance. Trafficking does not require twenty-eight grams of pure methamphetamine or fentanyl but a mixture containing such substance. The Court of Appeals concluded the trial court did not err by imposing consecutive sentences.

As to the fourth issue, the Court of Appeals acknowledged that a verdict may be interpreted by reference to the allegations, the evidence, and the instructions. Here, though the verdict form referred to opium/opiates rather than fentanyl, the indictments named fentanyl; the forensic analyst who testified identified fentanyl; and the jury was instructed that fentanyl is opium. The Court of Appeals concluded from this that the verdict and judgment forms were not fatally defective.

**Defendant's admission that he lived in his parents' home, along with circumstantial evidence, supported conviction of keeping or maintaining a dwelling for controlled substances**

State v. Rowland, 298 N.C. App. 274 (March 19, 2025). In this Wake County case, the defendant appealed his convictions including keeping or maintaining a dwelling for the keeping or selling of controlled substances, arguing error in denying his motion to dismiss the keeping or maintaining a dwelling charge. The Court of Appeals disagreed, finding no error.

Raleigh Police received information that the defendant was selling bundles of heroin from his residence and began investigating, resulting in a 2021 search warrant for the home that turned up heroin, firearms, and drug paraphernalia. The residence was owned by the defendant's parents, and in an interview with police, the defendant told them he had lived at the residence "on and off since 2005." *Rowland* Slip op. at 2. At trial, the defendant moved to dismiss the charge, arguing the State did not demonstrate that the dwelling had been kept or maintained over time for the purpose of controlled substances, but the trial court denied the motion.

The Court of Appeals first noted that G.S. 90-108(a)(7) governed the crime in question, and "[w]hile mere *occupancy* of a property, without more, will not support the 'keeping or maintaining' element, 'evidence of *residency*, standing alone, is sufficient to support the element of maintaining.'" *Id*. at 5 (quoting *State v. Spencer*, 192 N.C. App. 143, 148 (2008)). Additionally, residency can be established by the defendant's admission and through circumstantial evidence, both of which were present here. The court concluded that the admission that the defendant resided at his parents' house along with the State's circumstantial evidence showing that the defendant resided in the home represented substantial evidence that the defendant kept or maintained a dwelling for controlled substances.

**Circumstances surrounding arrest and discovery of pipe supported conclusion that defendant intended to use the pipe for controlled substances other than marijuana**

State v. Bryant, COA24-436, ___ N.C. App. ___; 915 S.E.2d 277 (Apr. 16, 2025). In this Union County case, the defendant appealed his conviction for misdemeanor possession of drug paraphernalia, arguing there was insufficient evidence that he intended to use the paraphernalia, a pipe, for a controlled substance other than marijuana. The Court of Appeals disagreed, finding no error.

The defendant was arrested after an encounter in September 2021 where police officers thought the defendant and his two acquaintances were shoplifting from a local Belk. The officers did not find any store merchandise, but while searching one of the acquaintances, the officers found a medicine bottle with small baggies filled with a brown powder. The defendant ran from the officers, throwing a bottle that also contained the brown powdery substance. When he was detained, officers found a glass pipe, red straw, and plastic baggies containing power on his person. The brown substance was confirmed to be heroin after testing. The defendant came to trial on charges of felony trafficking in heroin by possession and transporting, as well as the misdemeanor charge. He moved to dismiss the misdemeanor, but the trial court denied the motion, and the defendant was subsequently convicted.

On appeal, the defendant pointed to G.S. 90-113.22, which makes it a misdemeanor offense to "knowingly use, or to possess with intent to use, drug paraphernalia to . . . inject, ingest, inhale, or otherwise introduce into the body a controlled substance *other than marijuana* which it would be unlawful to possess." *Bryant* Slip op. at 5. The defendant argued insufficient evidence to show he intended to use the pipe for a controlled substance other than marijuana. The Court of Appeals noted a lack of controlling authority, but looked to *State v. Gamble*, 218 N.C. App. 456, 2012 WL 380251 (2012) (unpublished), and *State v. Harlee*, 180 N.C. App. 692, 2006 WL 3718084 (2006) (unpublished), for guidance regarding circumstances that supported intent with paraphernalia like crack pipes. The court

found similar support here, as the pipe was found in the same pocket of the defendant's pants as the baggies of heroin, and the pipe was visibly charred, showing previous use.

## Firearms Offenses

**(1) Discharging a weapon into occupied property under 14-34.1 only required reasonable grounds to believe that property was occupied rather than actual knowledge, and thus motion to dismiss was properly denied; (2) each pull of the trigger constituted a separate act adequate to support a conviction under G.S. 14-34.1, and thus trial court did not err in submitting multiple counts to the jury**

State v. Leopard, No. COA24-749, ___ N.C. App. ___ (Aug. 6, 2025). The defendant made a complaint to 911 that he heard gunshots at his neighbor's house. Law enforcement came to the scene and found that the neighbor was shooting targets in a safe manner. About one hour later, the defendant fired multiple bullets into his neighbor's home. Officers subsequently arrested the defendant and retrieved a pistol and an AR-10 rifle from the defendant's home. Officers also located spent shell casings on the defendant's porch that appeared to come from the AR-10. The defendant was charged with four counts of discharging a firearm into occupied property and convicted of all four counts after a jury trial.

On appeal, the defendant argued that the trial court erred in denying his motion to dismiss, contending that the State needed to prove the defendant had actual knowledge that the home was occupied. The Court of Appeals rejected this argument, relying on precedent establishing that G.S. 14-34.1 only requires the State prove the defendant had reasonable grounds to believe that the property is occupied. The Court found adequate evidence of this element where the victim was using his gun range just an hour before shots were fired into his house and the light was on in the victim's kitchen, which was visible from the defendant's porch at the time of the shooting.

The Court also rejected the defendant's argument that the jury instructions were flawed, as the defendant did not object to the instructions at trial and did not allege plain error on appeal. The Court deemed the argument abandoned given that plain error must be specifically and distinctly argued where defendant does not object at trial.

Finally, the Court rejected defendant's argument that the trial court violated his Fifth and Sixth Amendment rights by engaging in judicial fact finding to determine that multiple shots were fired. The defendant specifically objected to the trial court's decision to submit four charges to the jury instead of one. The Court stated that the defendant's argument was a "creative but misguided" attempt to challenge the trial court's denial of the motion to dismiss. The Court then addressed the question of whether a quick succession of gunshots should be treated as one shot and one crime, or four distinct crimes. The Court stressed that the weapon at issue, an AR-10 rifle, was a semi-automatic weapon and that such a weapon required that the defendant employ his thought processes each time he pulled and released the trigger to shoot. The Court relied on precedent providing that each pull of the trigger constitutes a separate act supporting a conviction under G.S. 14-34.1. Finding sufficient evidence in the record to support four pulls of the trigger, the Court concluded that the trial court did not err by denying the defendant's motion to dismiss on the grounds of multiplicity.

**There was sufficient evidence of three predicate felonies presented in support of a felony murder prosecution; under binding precedent, discharging a firearm within an enclosure under G.S. 14-34.10**

**applies regardless of whether the victim is in the enclosure; the State's race-neutral explanation for striking a black juror was not pretextual**

State v. Hardaway, No. COA24-538 (N.C. Ct. App. Oct. 1, 2025). In this Alamance County case, the defendant was convicted after a jury trial of first-degree murder based on felony murder. After an argument, the defendant fired a gun from a moving vehicle, hitting the victim in his chest and killing him. At trial, the State presented three felonies in support of the felony murder theory: assault with a deadly weapon with intent to kill, firing into an occupied dwelling, and discharging a firearm within a motor vehicle. On appeal, the defendant argued that there was insufficient evidence of the three alleged predicate felonies to warrant instructing the jury on them. As to the assault with a deadly weapon with intent to kill and the firing into an occupied dwelling, the court rejected the defendant's argument that there was insufficient proof that the defendant fired "at" anyone or at the house. The court said the evidence was sufficient to submit the charges to the jury when witnesses saw the defendant holding the gun and saw it discharge, the victim was shot, and at least one bullet entered the house.

As to the discharging a firearm within a motor vehicle under G.S. 14-34.10, the defendant argued that there was insufficient evidence to establish that the defendant discharged a firearm "within" the car. He argued that the statute should be interpreted to mean an event happening entirely within the car, rather than emanating from it (which would be covered by other crimes). The court of appeals majority held that the issue was foreclosed by precedent, as another panel of the court of appeals recently concluded in *State v. Jenkins*, ___ N.C. App. ___ (No. COA24-889, 2025 WL 2232043 (N.C. Ct. App. Aug. 6, 2025), that G.S. 14-34.10 could be committed when a defendant fired within an enclosure, regardless of whether the victim was within the same enclosure.

The defendant also argued on appeal that the trial court erred by denying his *Batson* challenge when the State challenged the only black prospective juror on the panel. The court of appeals concluded that the trial court did not err by accepting the State's race-neutral explanation for the challenge: that the stricken juror was inattentive, uninterested, and seemed annoyed to be there. The defendant's comparison to a white juror who was not struck did not prove the State's explanation to be pretextual. That juror also gave one-word answers indicating he didn't want to be there, but there was no indication he was uninterested or inattentive.

Judge Hampson concurred *dubitante*, agreeing the court was bound by the prior panel's decision in *Jenkins*, but explaining why he believed that opinion was wrongly decided.

Judge Dillon concurred, expressing doubt that assault with a deadly weapon with intent to kill should serve as a predicate felony for felony murder.

## Impaired Driving

**(1) Sufficient evidence of impaired driving, (2) no error in admission of expert opinion re retrograde extrapolation of the defendant's BAC, (3) no error in trial court's failure to give entire civil pattern jury instruction on intervening negligence, (4) the defendant failed to show ineffective assistance of counsel.**

State v. Venable, No. COA24-707, ___ N.C. App. ____; 919 S.E.2d 343 (July 2, 2025). On August 2, 2021, defendant drove his red Kia Rio off Old Wake Forest Road in Raleigh and crashed into a tree, killing his wife, who was a passenger in the vehicle. Emerging from the vehicle, the defendant smelled of alcohol, his balance was poor, his speech was slurred, and he appeared disoriented. Police found five empty airplane bottles in the car. Two blood samples collected from the defendant revealed a blood alcohol content (BAC) of 0.0883 and 0.05 grams of alcohol per 100 milliliters of blood.

In November 2021, the defendant was charged with felony death by vehicle and driving while impaired. The matter came on for trial by jury in August 2023. At trial, a forensic chemist testified, based on a retrograde extrapolation analysis, that the defendant's BAC at the time of the accident was 0.1078. During the charge conference, the defendant requested a civil pattern jury instruction on intervening negligence, a part of which the trial court agreed to give. The defendant was convicted of felony death by vehicle and driving while impaired. The defendant appealed.

Upon review, the Court of Appeals identified the issues as whether the trial court erred by (1) denying the defendant's motion to dismiss, (2) admitting expert testimony of retrograde extrapolation, and (3) declining to give the entire civil pattern instruction on intervening negligence. The defendant also argued he received ineffective assistance of counsel.

As to the first issue, the defendant argued that Officer Daniel Egan's opinion that he was appreciably impaired at the time of the crash was unsupported by evidence. To convict a defendant of impaired driving, the State must prove that the defendant drove a vehicle (1) while appreciably impaired or (2) after having consumed sufficient alcohol that he has an alcohol concentration of 0.08 or more at any relevant time after driving. G.S. 20-138.1(a). An officer's opinion that a defendant is appreciably impaired is admissible when based on the officer's personal observation or other evidence of impairment. State v. Gregory, 154 N.C. App. 718 (2002).

Here, the Court of Appeals said, Officer Egan observed other evidence of impairment, including the collision scene, the bottles in the car, and the defendant's statements that he had been drinking. Therefore, sufficient evidence supported the opinion. Further, the Court of Appeals said, the evidence was not limited to Officer Egan's opinion. Other evidence indicated the defendant's balance was poor, his speech was slurred, he smelled of alcohol, and he appeared disoriented. In addition to this evidence of appreciable impairment, the State also presented evidence of the defendant's BAC at the time of the crash. The Court of Appeals concluded there was sufficient evidence of impaired driving, and the trial court did not err by denying the motion to dismiss.

As to the second issue, the defendant argued the trial court plainly erred by admitting expert testimony of retrograde extrapolation because the witness, Dr. Richard Waggoner, made critical assumptions unsupported by the record. When an expert witness offers a retrograde extrapolation opinion based on an assumption that the defendant is in a post-absorptive or post-peak state, that assumption must be based on some underlying facts. State v. Babich, 252 N.C. App. 165 (2017). Here, the Court of Appeals said, Dr. Waggoner based his analysis of a blood draw at the hospital, the defendant's statements, and the evidence found at the scene. The Court of Appeals concluded the trial court did not err by admitting Dr. Waggoner's testimony, and in any event the defendant failed to show sufficient prejudice to establish plain error.

As to the third issue, the defendant argued the trial court plainly erred by failing to give the entire civil pattern jury instruction on intervening negligence. To convict a defendant of felony death by vehicle, the

State must show, among other things, that the defendant's impairment was the proximate cause of death. G.S. 20-141.4(a1); State v. Bailey, 184 N.C. App. 746 (2007). Here, the trial court properly instructed the jury on proximate cause. The Court of Appeals concluded that the intervening negligence instruction sufficiently incorporated the necessary principles, and in any event, the defendant failed to show sufficient prejudice to establish plain error.

Finally, the defendant argued he received ineffective assistance when counsel failed to object to the testimony of Officer Egan and Dr. Waggoner and to the incomplete jury instruction. The Court of Appeals concluded, however, that the defendant failed to show deficient performance.

## Voting Offenses

**Former law criminalizing improper voting by felons violated equal protection principles and was properly enjoined**

Philip Randolf Institute v. North Carolina State Board of Elections, ___ F.4th ___; 2025 WL 2627027 (Sept. 12, 2025). People convicted of a felony are not permitted to vote in North Carolina until their citizenship rights have been restored. N.C. Const. art. VI, § 2(3). A convicted felon's citizenship rights are automatically restored by law once the person's sentence is complete. G.S. 13-1. Before 2024, North Carolina law imposed felony liability on a felon who improperly votes, regardless of whether the person knew they were ineligible to vote. G.S. 163-275(5) (2019). The plaintiffs, two advocacy groups, sued the North Carolina State Board of Elections and the district attorneys of the state, arguing that G.S. 163-275(5) violated equal protection and due process protections in the Fourteenth Amendment. The district court denied a motion to dismiss by the district attorneys, and the case proceeded to summary judgment. Before summary judgment was decided, the General Assembly amended the statute to add a knowledge element. As amended, G.S. 163-275(5) (2024) criminalizes the act of voting by a person convicted of a felony who knows that their citizenship rights have not yet been restored. After additional briefing in response to the legislative change, a magistrate judge recommended denying the plaintiffs' motion for summary judgment as moot and dismissing the matter. The district court disagreed with that recommendation and ruled that the risk of prosecutions under the older version of the law meant that the controversy was still live. The district court granted the plaintiffs summary judgment in full, finding the statute unconstitutional under the Fourteenth Amendment and enjoining its enforcement. The defendants appealed.

On appeal, a unanimous panel of the Fourth Circuit affirmed. The Board of Elections admitted that criminal prosecutions for violations of the statute occurring before the amendment were still a possibility. The plaintiffs successfully showed that such prosecutions would chill community participation in voter registration drives. They also demonstrated that confusion among community members about their eligibility to vote diverted the resources of the plaintiffs towards educating perspective voters about the law and away from their more typical voter registration and get-out-the-vote efforts. Finally, enforcement of the pre-2024 law could discourage eligible voters from participating in elections. This meant that the matter was not moot, according to the court. "Enjoining enforcement of the Challenged Statute would forestall these obstacles to the Institute's 'core mission' of 'increasing political participation by members of low income, minority communities." *A. Philip Randolf* Slip op. at 16 (internal citation omitted).

After an extensive review of the history of felon disenfranchisement in North Carolina, the court concluded that the law violated the Equal Protection Clause. The felony disenfranchisement was originally enacted in 1877 with discriminatory intent against Black North Carolinians. A subsequent version of the statute in 1899 was likewise motivated by racial animus against Black voters. The Board of Elections did not contest that the law continues to disproportionately impact Black North Carolinians. Despite the racial motivations of the original disenfranchisement laws, the defendants argued that North Carolina's ratification of a new constitution in 1971 purged the taint of the earlier versions of the law. The court rejected this argument, noting that the legislature did not fundamentally change the felony disenfranchisement law when adopting a new constitution (although the law's reach was broadened to apply to more offenses). "Put plainly, there has been no *direct*, substantive change to the Challenged Statute itself since 1899." *Id*. at 24 (emphasis in original). Because the enactment of the statute was "motivated by a desire to discriminate against Black North Carolinians and continues to this day to have that effect," it violated the Equal Protection Clause. *Id*. at 25 (cleaned up). Because the court agreed with the district court as to the equal protection argument, it declined to decide the due process issue.

The district court's judgment was therefore affirmed on equal protection grounds only.

## Jury Issues

**Provisions of G.S. 15A-1215(a) permitting a juror to be excused and replaced by an alternate after the jury has begun deliberations comports with state constitutional requirement for unanimous jury**

State v. Chambers, 387 N.C. 521 (May 23, 2025). In this Wake County case, the defendant, who was convicted of first-degree murder and a related felony assault, contended that the trial court's substitution of an alternate juror during deliberations pursuant to G.S. 15A-1215(a) violated his state constitutional right to a twelve-person jury. The North Carolina Supreme Court rejected the defendant's argument, determining that the substitution of an alternate juror pursuant to G.S. 15A-1215(a) did not violate the defendant's right under Article 1, Section 24 of the North Carolina Constitution to a unanimous verdict by a jury of twelve.

The charges arose from a shooting at a Raleigh motel in which a man was killed and a woman injured. The defendant represented himself at trial and chose to be absent from the courtroom after the trial court cut off his closing argument for failing to follow the trial court's instructions. He remained absent during the proceedings involving the excusal of one juror and the substitution of another.

The jury began its deliberations near the end of a workday. After less than 30 minutes of deliberation and minutes before the jury was set to be released for the day, one of the jurors asked to be excused for a medical appointment the next morning. The trial court released the jury for the day and excused the juror with the medical appointment. The next morning, the trial court substituted the first alternate juror and instructed the jury to restart its deliberations. Later that day, the jury returned guilty verdicts against the defendant.

The defendant petitioned for certiorari review, contending that the substitution of the alternate juror violated his state constitutional right to a twelve-person jury. The Court of Appeals granted the defendant's petition and agreed with his argument. The Court of Appeals held that notwithstanding statutory amendments to G.S. 15A-1215(a) enacted in 2021 to authorize the substitution of alternate

jurors after deliberations begin, Article I, Section 24 of the North Carolina Constitution, as interpreted *State v. Bunning*, 346 N.C. 253 (1997), forbids the substitution of alternate jurors after deliberations begin because such substitution results in juries of more than twelve persons determining a defendant's guilt or innocence. The North Carolina Supreme Court granted the State's petition for discretionary review and reversed the Court of Appeals.

The Court first determined that the defendant's failure to object to the substitution of the juror did not waive his right to challenge the constitutionality of G.S. 15A-1215(a) on appeal given the fundamental nature of the right to a properly constituted jury. Then, taking up the defendant's argument, the court rejected his claims that the substitution of the juror violated his rights under the state constitution.

The Court held that G.S. 15A-1215(a) provides two critical safeguards that secure a defendant's right to a unanimous verdict by a jury of twelve. First, the statute expressly states that no more than twelve jurors may participate in the jury's deliberations. Second, it requires trial courts to instruct a jury to begin deliberations anew upon the substitution of an alternate juror. Thus, the court reasoned, when a jury follows the trial court's instruction and restarts deliberations, there is no risk that the verdict will be rendered by more than twelve people. Because the trial court in *Chambers* so instructed the jury, the Court determined that the defendant's constitutional right to a jury of twelve was not violated.

The Court further explained that *Bunning*, which held that the substitution of an alternate juror in a capital sentencing proceeding after deliberations had begun resulted in a jury verdict reached by more than twelve persons, did not dictate a different result. The *Chambers* Court stated that though *Bunning* cited Article I, Section 24, its conclusion was founded not upon constitutional requirements but instead upon its analysis of the controlling statutes, which did not permit the substitution of jurors after deliberations had begun. In addition, *Bunning* involved the sentencing phase of defendant's capital trial, which was a different circumstance from the noncapital trial in *Chambers*.

The Court reversed the decision of the Court of Appeals and remanded the case for consideration of the remaining issues raised by the defendant below.

Justice Riggs, joined by Justice Earls, concurred in part and dissented in part. She agreed with the majority's holding that issues related to the structure of the jury are automatically preserved for appellate review, but would have held that allowing the substitution of an alternate juror during deliberations violates Article I, Section 24 of the North Carolina Constitution.

Shea Denning blogged about the decision, here.

**Where a trial court's decision to deny a defendant's motion for individual *voir dire* is a reasoned decision, the defendant must show the trial court abused its discretion in denying the motion**

State v. Johnson, No. COA24-1126, ___ N.C. App. ___ (Nov. 5, 2025). In this Anson County case, the defendant was tried on indictments alleging fourteen counts of sex-related crimes against a minor. Prior to trial, the defendant filed a written motion for individual or small group *voir dire* and orally moved for permission to give potential jurors a questionnaire at *voir dire*. The trial court denied both motions. The jury returned guilty verdicts on all charges. Following the trial, one the jurors came forward and disclosed that he voted "guilty" with the rest of the jury pool although he held a different opinion, asserting that "they 'would have gotten mad at [him]' if he has voted not guilty." Slip op. at 3. Defense

counsel timely filed a MAR on this issue, which the trial court denied. The defendant did not file a notice of appeal from the order denying the MAR. On appeal, the Court of Appeals found no error in the trial court's judgments, dismissed the defendant's purported appeal from the trial court's order denying his MAR, and denied the defendant's petition for writ of certiorari.

On appeal, the defendant first argued that the trial court violated his right to an impartial jury and abused its discretion by denying his request for individual or small group *voir dire* and a juror questionnaire. Citing relevant case law, the Court of Appeals noted that a trial judge has broad discretion to regulate jury *voir dire*, and for a defendant to show reversible error in the trial court's regulation of jury selection, the defendant must show that the court abused its discretion and that he was prejudiced thereby. In reviewing the record, the Court found that the trial court's decision to deny the defendant's motion for individual *voir dire* was a reasoned decision and thus concluded that the defendant failed to show the trial court abused its discretion in denying the motion. Additionally, because the defendant failed to obtain a ruling on the motion for small group *voir dire*, the issue was not preserved for appellate review.

The defendant also argued that the trial court abused its discretion by not allowing a juror questionnaire. The Court of Appeals noted that it was apparent from the transcript that the trial court made a reasoned decision to the defendant's request and concluded that the defendant failed to show that the court's ruling was manifestly unsupported by reason. The defendant next argued that the trial court erred by denying his MAR. However, the defendant failed to file a notice of appeal from the order denying the MAR. Consequently, the Court of Appeals did not have jurisdiction to review the defendant's challenge and dismissed that portion of the appeal. The defendant filed a petition for writ of certiorari asking the Court of Appeals to address the merits of his challenge to the denial of his MAR, but the Court concluded that the defendant failed to show merit or extraordinary circumstances to justify the issuing of a writ of certiorari.

**The Court of Appeals found no error where the jury was permitted to review evidence in the presence of seven non-jurors after deliberations had begun**

State v. Wilson, No. COA24-58, ___ N.C. App. ___ (Nov. 5, 2025). In this Nash county case, the defendant was on trial for four drug-related offenses and one charge of possession of a firearm by a felon. During jury deliberations, the jury asked to review a gun that had been admitted into evidence and published to the jury. The trial court dismissed counsel and the defendant from the courtroom while the jury reviewed the exhibit, and the trial judge left for a short period of time. The court reporter, some bailiffs, a probation officer, and the courtroom clerks remained present. The jury ultimately returned verdicts finding the defendant guilty of all charges. On appeal, the defendant challenged the constitutionality of the jury deliberations. The Court of Appeals concluded that the defendant received a fair trial, free from error.

The defendant's sole argument on appeal was whether the trial court violated the North Carolina Constitution and committed reversible error when it instructed the jury to deliberate on the record with at least seven non-jurors present, including the judge. The Court of Appeals noted that although the trial court mistakenly referred to the review as part of the jury's deliberations, the court complied with the applicable statutory directives for a jury's review of evidence after it has begun deliberations. The defendant contended that reversible constitutional error occurred when the trial court permitted the jury's review of the gun to occur in the presence of non-jurors. The Court of Appeals disagreed,

concluding that the non-jurors did not participate in the deliberative process, nor was there any other violation of the sanctity of the jury deliberations.

## Sentencing, Probation, and Parole

**The trial court had no authority to order a civil judgment for a fine immediately at sentencing**

State v. Santana, No. COA24-946, ___ N.C. App. ___ (Oct. 1, 2025). In this Burke County case, the defendant was convicted after a jury trial of drug trafficking and other offenses. In addition to the mandatory active sentence, the trial court ordered a $250,000 fine—in the form of a civil judgment. The trial court also ordered $1,615 in costs and attorney fees as civil judgments. Through a petition for writ of certiorari, the defendant challenged the civil judgments for the fine and costs, arguing that the trial court had no authority to impose them immediately at sentencing. The court of appeals agreed. Under G.S. 15A-1365, a judge may docket costs or a fine when a defendant has defaulted, but there is no authority to do so without first determining that Defendant had defaulted in payment. The court noted that the defendant was prejudiced by the premature entry of the judgment, as over $17,000 in interest had accrued on the civil judgment in the year since its entry. The court vacated the judgments. The court also remanded the matter for correction of a clerical error as to the offense classification.

Jamie Markham blogged about this case, here.

**(1) Where the trial court did not indicate that probation would begin after completion of an active sentence, the probation period ran concurrently with the defendant's imprisonment; (2) a probation violation report that does not explicitly identify "absconding" may sufficiently allege facts that put the defendant on notice of an absconding violation and revocation; (3) willfully leaving a residential treatment facility and not contacting probation for nine days until being arrested constituted absconding**

State v. Stephens, No. COA24-590, ___ N.C. App. ___ (Nov. 5, 2025). In July of 2017, Jerry Stephens pled no contest to various crimes involving drug use, breaking and entering, and larceny after breaking and entering. The trial court sentenced the defendant to an active sentence in some of the cases and suspended the defendant's sentence for 36 months of supervised probation in the others. When the defendant was on supervised probation after serving the active sentences, the State filed probation violation reports in Dare County, the first of which was dated 4 October 2021. The trial court found that the defendant willfully violated his probation and revoked his probation for absconding from supervision in ten cases. The defendant timely appealed.

The Court first held that the trial court lacked jurisdiction to revoke probation in nine of the ten cases because the probationary periods had expired before the revocation judgments were entered. In those nine cases, the trial court did not indicate that probation would begin after the defendant served his active sentence. As a result, the Court found that those probation periods ran concurrently with the defendant's active sentence and expired in July of 2020, well before the first violation report in October of 2021. In the final case that the defendant appealed, the trial court did check the box that probation would begin after the defendant served his active sentence. The Court rejected the defendant's argument in that case that he lacked notice of the absconding violation where the violation report did not explicitly identify "absconding" as grounds for violation. Because the defendant was on notice that absconding would be a violation of his probation, and the violation report included the actions the

defendant took, the Court found the defendant was sufficiently on notice. The Court upheld the absconding finding where the defendant left a mandated residential treatment program in violation of his probation conditions and did not make his whereabouts known or contact his probation officer for nine days between his unauthorized departure and his arrest. Finally, the Court declined to review the defendant's challenge to an anticipatory bond condition imposed in a separate, unappealed June 2023 order.

**Although the trial court misstated the possible range of punishment to defendant when advising him before proceeding pro se, the trial court informed defendant that he effectively faced a life sentence, satisfying the statutory requirement**

State v. Fenner, 387 N.C. 330 (Mar. 21, 2025). In this Wake County case, the Supreme Court affirmed and modified the unpublished Court of Appeals decision finding no error with the defendant's sentence despite the trial court's failure to accurately advise him of the full sentencing range he faced if he were convicted.

Before going on trial for various felonies in 2022, the defendant told the trial court he wished to waive his right to counsel and proceed pro se, and the trial court followed G.S. 15A-1242 by providing the defendant with the required colloquy, including the range of permissible punishments he faced. Unfortunately, the trial court miscalculated, informing the defendant he faced "75 to 175 years in prison" when he was actually sentenced after his conviction to "121 to 178 years in prison." Slip op. at 2. On appeal, the Court of Appeals rejected the defendant's argument that this was error, explaining that he understood he was subject to a life sentence. The defendant petitioned for discretionary review, arguing the Court of Appeals' precedent on this issue conflicted with the Supreme Court's interpretation of G.S. 15A-1242, leading to the current case.

The Supreme Court explained the issue as the practical consideration of how long a defendant could be imprisoned, as "the 'range of permissible punishments' described in [G.S.] 15A-1242 contains a ceiling equivalent to the defendant's natural life." *Id*. at 8. Here the trial court made a miscalculation, but if "the miscalculation and the actual range are tantamount to the remainder of the defendant's life, the trial court complies with the statute." *Id*. Put more simply, the defendant was informed "if convicted, he could spend the rest of his life in prison," and "[t]hat accurately conveyed the sentencing range that [defendant] faced in this case and therefore confirmed that [defendant] comprehended the range of permissible punishments." *Id*. at 9.

The Court dispensed with the defendant's other issues with the Court of Appeals decision, but modified the decision to the extent that it did not call for the trial court to advise the defendant of all the charges against him. Although the Court did not interpret the Court of Appeals decision to say this, the Court provided the following guidance to trial courts:

> When calculating the permissible range of punishments, the best practice is for trial courts to use the checklist of inquiries we articulated in *State v. Moore*, 362 N.C. 319, 327–28 (2008). This includes informing the defendant of all charges in the case and the minimum and maximum possible sentence the defendant faces if convicted of all those charges. *Id*. at 11.

**Trial court's failure to consider stipulated mitigating factor justified remand for resentencing**

State v. Curtis, 297 N.C. App. 826 (Feb. 19, 2025). In this Wake County case, the defendant appealed after pleading guilty to felony death by vehicle, felony serious injury by vehicle, and driving while impaired, challenging the sentencing he received for his convictions. The Court of Appeals vacated and remanded for resentencing.

In January of 2022, the defendant caused a head-on collision that killed two passengers in the other vehicle and injured several more. Officers found used nitrous oxide containers in the vehicle, and the defendant admitted to also using alcohol and marijuana the evening of the collision. The defendant pleaded guilty pursuant to an agreement that avoided second-degree murder; the State stipulated to a mitigating factor that the defendant "has accepted responsibility for [his] criminal conduct." *Curtis* Slip op. at 3. The defendant waived his right to appeal in the plea agreement. However, along with his appeal in this case, the defendant filed a writ of certiorari, which the Court of Appeals granted to consider this case. The State did not oppose the defendant's writ and conceded that an error was committed.

The defendant argued on appeal that the trial court failed to consider his mitigating factor that he and the State stipulated to in the plea agreement. The Court of Appeals agreed, quoting *State v. Albert*, 312 N.C. 567, 579 (1985), for the proposition that "when the State stipulates to the facts supporting the finding of a mitigating factor, 'the trial court err[s] in failing to find this fact in mitigation.'" *Curtis* Slip op. at 7. The defendant also argued he was entitled to a different trial judge on remand. The court disagreed on that point, noting that the trial judge was not exposed to any prejudicial information beyond the plea agreement, and that the defendant could not demonstrate a risk to his bargained-for agreement if the case was remanded to the same judge. Thus, the court vacated and remanded to the trial court for resentencing.

**The State did not give sufficient notice of its intent to prove an aggravating factor, but the defendant waived the right to notice and was not prejudiced by any error related to it; in the absence of any prejudice the defendant did not receive ineffective assistance of counsel**

State v. Hooks, No. COA24-217 (N.C. Ct. App. Oct. 1, 2025). In this Pitt County case, the defendant was charged with interference with an electronic monitoring device and attaining habitual felon status. The State gave the defendant notice on February 15, 2023, that it intended to pursue aggravating factor (12a), that the defendant had a prior probation violation within the past 10 years. The defendant's trial began 28 days later on March 15, 2023. The defendant was convicted and sentenced in the aggravated range. On appeal, the defendant argued that he did not receive the requisite 30-day notice under G.S. 15A-1340.16(a6), and that he received ineffective assistance of counsel. As to notice of the aggravating factor, the court of appeals agreed, but nonetheless concluded that the defendant waived his right to notice when he raised no objection to the evidence or jury instructions related to the factor. The court also noted that the defendant was not prejudiced by the lack of notice, as the factor was established by undisputable evidence. As to the ineffective assistance claim, the court likewise noted the lack of prejudice and thus concluded that the claim was without merit.

**Trial court was not required to hold a hearing or make findings of fact when considering the record and making a recommendation on life without parole sentence under G.S. 15A-1380.5**

State v. Walker, COA 24-615, ___ N.C. App. ___; 916 S.E.2d 54 (Apr. 16, 2025). In this Wake County case, the defendant appealed the order determining that his sentence of life without parole should not be

altered under G.S. 15A-1380.5. The Court of Appeals found no abuse of discretion or error and affirmed the trial court's order.

The defendant was found guilty of first-degree murder in 1999 and received the sentence of life without the possibility of parole. In September of 2023, the defendant requested review of his sentence under G.S. 15A-1380.5. After the trial court reviewed the trial record, the defendant's record from the Department of Corrections, the degree of risk posed to society, and other issues, the trial court determined that the defendant's sentence should not be altered. The defendant subsequently filed a petition for writ of certiorari to appeal this decision, and the Court of Appeals granted certiorari in April 2024.

The defendant argued three issues on appeal: (1) abuse of discretion in failing to make findings of fact to support the denial, (2) error in failing to consider the trial record, and (3) abuse of discretion by not holding a hearing. The Court of Appeals looked to the text of G.S. 15A-1380.5 and caselaw interpreting it to determine the applicable requirements. The court first dispensed with the hearing issue (3), explaining "[o]ur Supreme Court has held that [G.S.] 15A-1380.5 'guarantees no hearing, no notice, and no procedural rights.'" *Walker* Slip op. at 5 (quoting *State v. Young*, 369 N.C. 118, 124 (2016)). Next the court moved to (1), noting the structure of G.S. 15A-1380.5 did not call for an "order" with findings of fact and conclusions of law, but instead called for a "recommendation," and "[h]ad the legislature intended for findings of fact and conclusions of law to be required it could have chosen to require the reviewing judge to issue orders, rather than recommendations." *Id*. at 6. Finally, the court noted in (2) that the trial court clearly stated it had considered the record, and the court determined the record supported the trial court's conclusion.

## Appeals & Post-Conviction

**No error in denial of motion for post-conviction discovery when evidence was potentially favorable but not material in light of the ample evidence presented at trial.**

State v. Cataldo, No. COA24-855, ___ N.C. App. ___; 919 S.E.2d 536 (July 16, 2025). In 2013, the defendant was convicted after a jury trial of two counts of statutory sexual offense and one count of statutory rape. That conviction was affirmed on direct appeal. State v. Cataldo, 234 N.C. App. 329 (2014) (*Cataldo* I). In 2015, he filed a motion for post-conviction discovery pursuant to *Pennsylvania v. Ritchie*, 480 U.S. 39 (1987), which was denied. In an unpublished decision, the Court of Appeals reversed that denial and ordered the trial court to conduct an in camera review of Department of Social Services (DSS) records regarding the victim's allegations of prior abuse, to determine whether they contained material evidence and whether their exclusion prejudiced the defendant's case. State v. Cataldo, 261 N.C. App. 538 (2018) (unpublished) (*Cataldo II*). The trial court gathered the pertinent DSS records and concluded that the defendant was not entitled to them because there was not a reasonable probability that the outcome of his trial would have been different had he been able to access them. The defendant appealed and the Court of Appeals again reversed, holding that the trial court's review was impermissibly narrow as to relevant times and persons. State v. Cataldo, 281 N.C. App. 425 (2022) (*Cataldo III*). After another in camera review of the records—the subject of this appeal—the trial court again denied the motion for post-conviction discovery. The trial court concluded that the records may have been favorable to the defendant in that they potentially adversely affected the victim's credibility, but they were not material, in that there was no reasonable probability that the outcome of the trial would have been different even had he been allowed access.

After granting the defendant's petition for writ of certiorari, the Court of Appeals found no error in the trial court's denial of the motion for post-conviction discovery. The appellate court conducted a de novo review of all the sealed records and concluded that there was "a single instance which potentially may have tended to impeach the credibility of [the victim]." Slip op. at 7. However, the court went on to conclude that there was no reasonable probability that anything in the records would, even if disclosed to the defendant, have changed the result of the proceedings in light of the ample evidence of the defendant's guilt presented at trial. The records were therefore not "material," and therefore did not require disclosure under *Ritchie*, which only requires disclosure of evidence that is both favorable and material to the defendant's guilt or punishment.

## Sex Offender Issues

**The law of the other state governs whether a juvenile adjudication from that state is a final conviction that requires registration in North Carolina**

State v. Jackson, No. COA24-731, ___ N.C. App. ___ (July 16, 2025). [This summary was updated August 4, 2025, after the opinion was reissued.] The defendant was placed on Delaware's sex offender registry in 2008, when he was 15 years old, based on a juvenile adjudication of delinquency for first-degree rape. When he moved to North Carolina in 2022, he was notified that he was required to register as a sex offender. He filed a Petition for Judicial Determination of Sex Offender Registration under G.S. 14-208.12B. He argued that the Delaware adjudication did not qualify as a reportable conviction, because he would not be required to register on the adult registry for a comparable North Carolina juvenile adjudication. The trial court disagreed. It found that the Delaware juvenile adjudication was substantially similar to first-degree statutory sexual offense in North Carolina and ordered registration on North Carolina's adult registry.

The Court of Appeals affirmed the trial court's order, holding that the defendant was required to register pursuant to G.S. 14-208.6(4)(b), which states that a person must register in North Carolina for a "final conviction in another state of an offense that requires registration under the sex offender registration statutes of that state." The court read that statute to require application of the law of the other state, Delaware, to determine whether the defendant's adjudication qualified as a "final conviction." Because a juvenile adjudication is included within the term "conviction" under Delaware law (which the court concluded overrides North Carolina G.S. 7B-2412, barring juvenile adjudications from being treated as convictions), it requires registration in North Carolina under G.S .14-208.6(4)(b).

The court declined to apply the rule from *State v. Melton*, 371 N.C. 750 (2018), rejecting reliance on other states' laws to resolve interpretive disputes, because the question here is not one of interpretive disparity, but rather one of which state's law applies. Finally, the court rejected the defendant's appeal to the rule of lenity, concluding that the text of G.S. 14-208.6(4) is unambiguous, and the rule of lenity therefore does not apply.

**(1) Federal exploitation of a minor (18 U.S.C. 2252(a)(4)(A)) is substantially similar to state sexual exploitation of a minor (G.S.14-190.17A) requiring registration as a sex offender; (2) the State must show substantial similarity with an offense in effect at the time of the hearing; (3) the test for determining substantial similarity is not unconstitutionally vague**

State v. Alcantara, No. COA25-98, ___ N.C. App. ___ (Nov. 5, 2025). In 2003, Enoc Alcantara pled guilty in federal court to possessing material depicting minors engaged in sexually explicit conduct. In 2021, the Guilford County Sheriff's Office notified him of the requirement to register as a sex offender, prompting him to petition for judicial review. The Court of Appeals noted that Mr. Alcantara refers to himself and the courts have used the term defendant, and that this is not accurate, as he is a petitioner in a civil proceeding. The trial court initially ruled in favor of registration, but the Court of Appeals vacated that decision in 2023, finding the State failed to present the correct version of the federal statute. On remand, the State introduced the 2003 version of the federal statute and the 2023 version of the North Carolina statute criminalizing third-degree sexual exploitation of a minor (G.S. 14-190.17A). The trial court then concluded the statutes were substantially similar and ordered registration.

The petitioner argued the trial court's order lacked required conclusions of law, relied on the wrong version of the state statute, and that the statutes were not substantially similar. He also challenged the constitutionality of the "substantial similarity" test. Addressing the petitioner's first argument, the Court found the trial court's order contained the required conclusions of law. The Court also found that the version of the North Carolina statute that the State must show has substantial similarity with the conviction offense is the version in effect at the time of the hearing on the petition, and that the 2023 version of G.S. 14-190.17A was the correct version for the trial court to consider. After finding the statutes criminalized substantially similar conduct, the Court found that the substantial similarity test provides a reasonable opportunity to know what is prohibited and prescribes "boundaries sufficiently distinct for judges and juries to interpret and administer it fairly." As a result, the Court found the substantial similarity test was not unconstitutionally vague.