



Criminal Case Law Update

Shea Denning & Jamie Markham
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1

attempt to

What we will cover



- First Amendment
- Search and Seizure
- Jury Selection
- Confrontation Clause
- Crimes and Elements
- Right to Counsel
- Sentencing
- Sex Offender Registration
- Jurisdiction
- Self-Defense

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2



First Amendment

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3

State v. Smathers, __ N.C. App. __ (2026), p. 4



- Facial First Amendment challenge to G.S. 14-208.11—failure to register an online identifier (Class F)
- Defendant did not report his Snapchat username to the sheriff
 - **Online identifier**—Email address, instant message screen name, user ID, chat or other internet communication name



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4

State v. Smathers, __ N.C. App. __ (2026), p. 4



- Content-neutral restriction → **Intermediate scrutiny**
 1. Justified by an important purpose
 2. Narrowly tailored
 3. Leaves open ample alternatives for communication
- Court of Appeals upheld the conviction
 - This restriction is narrower than the outright ban on social media access deemed unconstitutional in *Packingham v. North Carolina*, 582 U.S. 98 (2017)

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5

State v. Barthel, __ N.C. App. __ (2025), p. 6



- At a commission meeting, defendant silently displayed a vulgar banner depicting a commissioner
 - “I’m not a gynecologist, but I know a c**t when I see one!!
Cindy Turbyfill, Avery County’s Most Unprofessional Employee.”
- Convicted of Disrupting an Official Meeting (G.S. 143-318.17) and Resisting officers (G.S. 14-223)
 - Trial court denied motion to dismiss under First Amendment
 - Distinguished *Cohen v. California*, 403 U.S. 15 (1971), saying this was a “personal insult,” not a general protest



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6

State v. Barthel, __ N.C. App. __ (2025), p. 6



- Speech was protected under the First Amendment
- Distasteful, but not “fighting words”
 - Fighting words is a high bar—found only once by NC Supreme Court. *In re Spivey*, 345 N.C. 404 (1997) (repeated use of the n-word, intending to provoke confrontation)
 - Here, no confrontation; not historically violence-inducing
- Not a reasonable restriction—even in a limited public forum like a commission meeting
 - No actual disruption from the banner itself
- Resisting conviction also overturned

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7

Search and Seizure



8



Pop Quiz!

9

Which of the following is correct?



1. An officer may enter a home without a warrant to perform a community caretaking function if it is (1) unrelated to an ongoing criminal investigation, (2) reasonable, and (3) part of sound police procedure. No ongoing emergency is required.
2. Officers may enter a home without a warrant if they have an objectively reasonable basis for believing that an occupant faces serious danger.
3. An officer must have probable cause to believe that an occupant of a home is in need of emergency aid to enter a home without a warrant.

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10

Which of the following is correct?



1. An officer may enter a home without a warrant to perform a community caretaking function if it is (1) unrelated to an ongoing criminal investigation, (2) reasonable, and (3) part of sound police procedure. No ongoing emergency is required.
2. Officers may enter a home without a warrant if they have an objectively reasonable basis for believing that an occupant faces serious danger. *Case v. Montana*, p. 7.
3. An officer must have probable cause to believe that an occupant of a home is in need of emergency aid to enter a home without a warrant.

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11

State v. Hickman, __ N.C. App. __, p. 7



School of Government BLOG

Home > It's Tax Season... For Drugs

North Carolina Criminal Law Blog

February 12, 2019

It's Tax Season... For Drugs

Jonathan Holbrook

I spent a few years working on drug cases when I was a prosecutor, so I was generally aware that North Carolina has a set of laws that impose taxes on "unauthorized substances." See [G.S. §§ 90-73.005 - 90-73.009](#). Just like cigarettes, cars, or dog pens, these unauthorized substances are commodities that people buy and sell, so they are subject to taxation by the state.

I was also aware that, not surprisingly, virtually no one pays these taxes or obtains the appropriate "tax stamp" to put on their drugs and marijuana. Instead, the laws are used primarily as a mechanism to pursue civil forfeiture of a defendant's assets after he or she is convicted of a drug offense.

But recently, I began to wonder - are these laws purely theoretical? Is it even possible for drug

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12

[P]ursuant to G.S. 105-242, you are hereby ordered and ordered and commanded to levy upon and sell the real and personal property of the said taxpayer found within your county[.]

[illegible][illegible]

State v. Hickman, __N.C. App. __, p. 7

- Application of G.S. 105-242 to intrude into a person's residence and conduct a warrantless search violates the Fourth Amendment.

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[illegible]

Jury Selection

[illegible]

15

Pitchford v. Cain, 608 U.S. ____ (2026), p. 14



- There are three steps under *Batson*.
 1. Defendant must make a prima facie showing.
 2. Prosecutor must provide a race-neutral reason.
 3. Defendant must be given an opportunity to rebut the prosecutor's reason as pretextual, and the court must decide whether the race-neutral reason was pretextual.
- Where the trial court did not conduct the third step of the *Batson* inquiry the Mississippi Supreme Court's determination that the defendant waived his opportunity to rebut the prosecutor's reasons was unreasonable.

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16

Confrontation Clause



17

Confrontation Clause and Substitute Analysts



- What we know:
 - The Confrontation Clause of the Sixth Amendment bars the State from introducing **testimonial hearsay by a witness who does not testify at trial** unless the witness is unavailable and the defendant had a prior opportunity to cross-examine the witness.
 - A substitute analyst cannot testify to testimonial statements in a non-testifying analyst's report to support the testifying analyst's opinion. *Smith v. Arizona*, 602 U.S. 779 (2024).
 - Machine-generated data created by an automated process is not testimonial and is not hearsay. *State v. Lester*, 387 N.C. 90 (2025) (so holding in the context of phone records).

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18



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Pop Quiz!

19

Which of the following testimony (if any) is permissible under the Confrontation Clause?


1. Testimony from supervising analyst as to results of toxicology testing that she did not herself perform. Testifying analyst certified reports that contained machine-generated analyses of the samples.
2. Testimony from analyst regarding results of blood testing that he did not perform. Testifying analyst signed off on reports containing results of gas chromatograph. Testifying analyst performed his own calculations before signing testing analyst's report.
3. Testimony from SANE who reviewed and signed off on another SANE's report that included photographs. Testifying expert testified to her conclusion that the victim had been strangled based on that review.

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20

Which of the following testimony (if any) is permissible under the Confrontation Clause?


1. Testimony from supervising analyst as to results of toxicology testing that she did not herself perform. Testifying analyst signed off on reports that contained machine-generated analyses of the samples. *State v. Wise*, p.17.
2. Testimony from analyst regarding results of blood testing that he did not perform. Testifying analyst signed off on reports containing results of gas chromatograph. Testifying analyst performed his own calculations before signing testing analyst's report. *State v. Holt*, p. 18.
3. Testimony from SANE who reviewed and signed off on another SANE's report that included photographs. Testifying expert testified to her conclusion that the victim had been strangled based on that review. *State v. Phillips*, p. 19.

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21

Crimes and Elements



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22

State v. Calderon, ___ N.C. ___ (2025), p. 26



- Trial: Three indecent liberties convictions for acts on the same day
 - Kissing the victim on the neck outside a van
 - Kissing the victim on the mouth inside a van
 - Kissing the victim on the mouth again inside the van 6 minutes later
- Court of Appeals: Reversed in part—only two offenses
 - Distinguished between “touchings” and “sexual acts”
 - Applied four-prong “*Sellers* test” for touchings
 - (1) same time
 - (2) same location
 - (3) intervening events
 - (4) fresh impulse

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23

State v. Calderon, ___ N.C. ___ (2025), p. 26



- Supreme Court: Reversed COA (upheld three convictions)
- No statutory basis for the “touching”/“sexual act” distinction
- The proper test is the “distinct interruption” test from *State v. Dew*, 379 N.C. 64 (2021)
 - “a distinct interruption may take the form of an intervening event, a lapse of time in which a reasonable person could calm down, an interruption in the momentum of the attack, a change in location, or some other clear break delineating the end of one assault and the beginning of another.”
- Here, inside/outside van was change in location; 6 minutes was a lapse in time

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24

State v. Horton, __ N.C. App. __ (2026), p. 24



- Defendant pepper sprayed a male locksmith, incidentally spraying his daughter, too
 - Convicted of assault on a female
- Defendant argued that he lacked the requisite specific intent; he didn't even know the daughter was there
- Court of Appeals:
 - Assault on a female is a general intent crime
 - Intent to assault *someone* suffices
 - Conviction affirmed

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25

Right to Counsel



26

State v. Nunnally, __ N.C. __ (2026), p. 31



- Under *Harbison*, defense counsel must obtain the informed consent of the defendant before conceding guilt.
 - Rationale: Right to plead not guilty is the defendant's right.
 - When counsel concedes a defendant's guilt without consent, prejudice is presumed and the defendant is not required to demonstrate any specific harm.
- *McAllister* extended *Harbison* to implied concessions of guilt.
 - In *McAllister*, counsel attested to accuracy of admissions made by the defendant, expressed his opinion that the defendant did wrong, and asked the jury to find the defendant not guilty of more serious offenses but conspicuously omitted mention of misdemeanor charge.

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27

State v. Nunnally, __ N.C. __ (2026), p. 31



- Defendant consented on the record to defense counsel's concessions to the jury.
- In addition, counsel did not explicitly or implicitly concede guilt or exceed the scope of the defendant's stipulations.
 - Counsel merely commented on the witness's testimony
 - Used hypothetical language and rhetoric to argue that it is possible for a person to point a gun in the direction of another without having intent to kill
- "We decline to extend *Harbison* in a way that perverts its intended protections by hindering the ability of defense counsel to effectively advocate for their clients and advance arguments in accord with their client's stipulations."

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28

State v. Mercer, __ N.C. App. __, p. 32



- During closing arguments, defense counsel contended that the State failed to meet its burden as to first-degree kidnapping.
- Defense counsel told the jury:
 - "Your choices would be guilty of first-degree kidnapping, guilty of second-degree kidnapping, guilty of felonious restraint, guilty of false imprisonment, or not guilty. I would suggest to you that you have two choices. You can find Defendant guilty of false imprisonment, which is a misdemeanor. Or you can get a not guilty in this case."

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29

State v. Webber, __ N.C. App. __, p. 28



- After the fifth attorney withdrew and the defendant appeared without counsel, the court reviewed the case file, listened to argument from both sides, and took the matter under advisement over lunch.
- The court then recited extensive findings of fact and concluded that the defendant had forfeited counsel and waived counsel by conduct.
- Court explained that defendant's conduct had delayed the proceedings for more than five years.
- The court also noted that the defendant had been warned on more than one occasion that he would lose the right to counsel if he continue to engage in dilatory tactics.
- COA: Defendant's actions totally undermined the right to counsel by making representation impossible and seeking to prevent a trial from happening at all.

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30

State v. Jacobs, ___ N.C. App. ___ (2025), p. 29



- The trial court found that the defendant forfeited his right to counsel “due to his misconduct and his insisting upon counsel filing frivolous actions or motions not supported by either fact or law.”
- Defendant was convicted and sentenced.
- The defendant entered notice of appeal, telling the trial court: “I’ll see you in federal court, bucko.”

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31

State v. Jacobs, ___ N.C. App. ___ (2025), p. 29



- [Trial Court]: I'm going to hold you in contempt for that threat. I'm going to add 30 days
- [Defendant]: Add it up, bro.
- [Trial Court]: And then I'm going to add another 30 to that.
- [Defendant]: Add some more.
- [Trial Court]: That's 90.
- [Defendant]: And more.
- [Trial Court]: 120.
- [Defendant]: Let me get more.
- [Trial Court]: 150.
- [Defendant]: More.
- [Trial Court]: 180. That's . . . six for each threat or response, and that's going to run consecutively. 180, that's six contempts.

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32

State v. Jacobs, ___ N.C. App. ___ (2025), p. 29



1. Did trial court err by concluding that D had forfeited right to counsel?
 - a) Defendant obstructed and delayed court proceedings.
 - b) Insisted on pursuing improper actions and baseless motions
 - c) Made improper comments and disrupted forfeiture of counsel hearingNo error as D's conduct effectively undermined purpose of right to counsel.
2. Did trial court err by holding the defendant in direct criminal contempt?

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33

Sentencing & Probation



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34

State v. Kelliher, ___ N.C. ___ (2025), p. 38



- Defendant convicted of two counts of first-degree murder and robberies for offenses that occurred when he was 17
- 2013: Consecutive life without parole; concurrent robberies
- Resentencing required after *Miller v. Alabama*
- Resentenced to consecutive life with parole after 25 years
- Deemed “de facto life without parole” in *State v. Kelliher*, 381 N.C. 558 (2022) (Kelliher I)
 - Parole eligibility must come by 40 years or it’s de facto LWOP
 - Remand for resentencing

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35

State v. Kelliher, ___ N.C. ___ (2025), p. 38



- “Accordingly, we remand to the trial court with instructions to enter two concurrent sentences of life with parole.”
- What about the robbery sentences?
 - Defendant argued they weren’t even before the resentencing court

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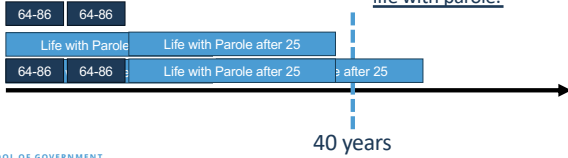
36

State v. Kelliher, ___ N.C. ___ (2025), p. 38



- First-degree murder x 2
- Armed robbery x 2

“Accordingly, we remand to the trial court with instructions to enter two concurrent sentences of life with parole.”



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37

State v. Kelliher, ___ N.C. ___ (2025), p. 38



- “A sentencing court is presumptively afforded de novo sentencing authority. This authority may be limited by statute or in circumstances where a reviewing court’s mandate cabins that discretion as to particular issues. . . . Accordingly, a resentencing court retains its de novo authority as to the issues a mandate leaves unaddressed.”
- Sentence affirmed

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38

State v. Thomas, ___ N.C. ___ (2026), p. 37



- **G.S. 15A-1335. Resentencing after appellate review**
 - When a conviction or sentence imposed in superior court has been set aside on direct review or collateral attack, the court may not impose a new sentence for the same offense, or for a different offense based on the same conduct, which is more severe than the prior sentence less the portion of the prior sentence previously served. This section shall not apply when a defendant, on direct review or collateral attack, succeeds in having a plea of guilty vacated.
- Exception: When a higher sentence is required by law

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39

State v. Thomas, ___ N.C. ___ (2026), p. 37



- 2019: Defendant sentenced for B/E motor vehicle
 - 9 prior record points, PRL III 26-44 months
- Appealed on separate issue; new trial
- 2022: Sentenced again for B/E motor vehicle
 - This time, additional point for “same elements” properly applied
 - 10 prior record points, PRL IV 30-48 months
- Issue: Does G.S. 15A-1335 prohibit the court from giving a harsher sentence?

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40

State v. Thomas, ___ N.C. ___ (2026), p. 37



- Supreme Court: No.
 - Mandatory sentence under Structured Sentencing overrides G.S. 15A-1335
 - “A different ruling could effectively authorize—indeed, require—the trial court to enter a second illegal sentence if it made so much as an inadvertent counting error in the first.”
- Another common scenario: Additional prior convictions arising between sentencing and resentencing

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41

Probation Extensions



- **“Special purpose extensions”** under G.S. 15A-1342(a): court may extend by up to 36 months if:
 - Probationer consents
 - In last six months of original period of probation
 - For restitution or medical/psychiatric treatment
- **“Ordinary extensions”** under G.S. 15A-1344(d): extend up to 60-month limit “after notice and hearing and for good cause shown”

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42

Probation Extensions



Ordinary

OTHER MODIFICATIONS OF PROBATION

☐ 1. The defendant's term of probation is extended for a period of _____

☐ a. for good cause shown, pursuant to G.S. 15A-1344(f). (NOTE: The total of the original period of probation plus all extensions under G.S. 15A-1344(f) may not exceed five years.)

☐ b. with the defendant's consent, pursuant to G.S. 15A-1342(a) or G.S. 15A-1343.2(b). (NOTE: The extension must be for the purpose of allowing the defendant to complete a program of restitution or continue medical or psychiatric treatment ordered as a condition of probation. The extension may be ordered only during the last six months of the original, unextended period of probation and may not exceed three years beyond the original period of probation.)

☐ 2. The defendant's assignment to intensive supervision is modified to _____

☐ 3. The defendant's assignment to intensive supervision is modified to _____

☐ 4. The defendant's assignment to intensive supervision is modified to _____

☐ 5. The defendant's assignment to intensive supervision is modified to _____

☐ 6. The defendant's assignment to intensive supervision is modified to _____

☐ 7. The defendant's assignment to intensive supervision is modified to _____

☐ 8. The defendant's assignment to intensive supervision is modified to _____

☐ 9. The defendant's assignment to intensive supervision is modified to _____

☐ 10. The defendant's assignment to intensive supervision is modified to _____

ORDER OF COMMITMENT/RELEASE

☐ 1. The defendant is committed to the custody of the _____

☐ 2. The defendant is committed to the custody of the _____

☐ 3. The defendant is committed to the custody of the _____

☐ 4. The defendant is committed to the custody of the _____

☐ 5. The defendant is committed to the custody of the _____

☐ 6. The defendant is committed to the custody of the _____

☐ 7. The defendant is committed to the custody of the _____

☐ 8. The defendant is committed to the custody of the _____

☐ 9. The defendant is committed to the custody of the _____

☐ 10. The defendant is committed to the custody of the _____

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43

State v. Smith, No. COA25-713, ___ N.C. App. ___ (May 20, 2026)



- Nov. 2020: Defendant placed on 36 months probation (expires 11/2023)
- April 2022: Probation extended by 24 months (expires 11/2025)
- 2025: Revoked for absconding
- Court of Appeals:
 - Not “special purpose” (too early)
 - Improper “ordinary” (no “good cause”)
 - Without proper extension, no jurisdiction to revoke in 2025.
 - Vacated

☒ 1. The defendant's term of probation is extended for a period of _____

☐ a. for good cause shown, pursuant to G.S. 15A-1344(f). (NOTE: The total of the original period of probation plus all extensions under G.S. 15A-1344(f) may not exceed five years.)

☐ b. with the defendant's consent, pursuant to G.S. 15A-1342(a) or G.S. 15A-1343.2(b). (NOTE: The extension must be for the purpose of allowing the defendant to complete a program of restitution or continue medical or psychiatric treatment ordered as a condition of probation. The extension may be ordered only during the last six months of the original, unextended period of probation and may not exceed three years beyond the original period of probation.)

☐ 2. The defendant's assignment to intensive supervision is modified to _____

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☐ 7. The defendant's assignment to intensive supervision is modified to _____

☐ 8. The defendant's assignment to intensive supervision is modified to _____

☐ 9. The defendant's assignment to intensive supervision is modified to _____

☐ 10. The defendant's assignment to intensive supervision is modified to _____

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44

Good Cause in “Discontinued Cases”



G.S. 15A-1344(f). Extension, Modification, or Revocation after Period of Probation. – The court may extend, modify, or revoke probation **after the expiration** of the period of probation if all of the following apply:

- (1) Before the expiration of the period of probation the State has filed a written violation report with the clerk indicating its intent to conduct a hearing on one or more violations of one or more conditions of probation.
- (2) The court finds that the probationer did violate one or more conditions of probation prior to the expiration of the period of probation.
- (3) The court finds for **good cause shown and stated that the probation should be extended, modified, or revoked.**

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45

State v. Jessup, ___ N.C. App. ___ (2026), p. 41



- Jan. 2021: 36-month original probation period (expires Jan. 2024)
- Aug. 2023: 36-month extension (expires Jan. 2027)
- Jan. 2025: Revoked for absconding
- COA: "Ordinary extension" is void (too long); revocation vacated

OT	
☒	1. The defendant's term of probation is extended
☒	a. for good cause shown, pursuant to G.S. 15A-1302, may not exceed five years.)
☐	b. with the defendant's consent, pursuant to defendant to complete a program of restitution only during the last six months of the original
☐	2. The defendant's assignment to intensive supervision
☐	3. The defendant is transferred to ☐ unsupervised
☐	4. The defendant is allowed until

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46

State v. Mayfield, ___ N.C. App. ___ (2026), p. 42



After considering the record contained in the files numbered above, together with the evidence presented by the parties and the statements made on behalf of the State and the defendant, the Court finds:

FINDINGS	
☒	1. The defendant is charged with having violated specified conditions of the defendant's probation, as alleged in the:
☒	2. Each violation is, in and of itself, a sufficient basis upon which this court should revoke probation and activate the suspended sentence."
☐	3. Each violation is, in and of itself, a sufficient basis
☒	4. Each violation is, in and of itself, a sufficient basis

47

State v. Mayfield, ___ N.C. App. ___ (2026), p. 42



- "We note the erroneous selection of finding of fact box 4 on the Judgment and Commitment Upon Revocation of Probation form has become a repetitive error reviewed by this Court. We take this opportunity to admonish the trial courts to be mindful of the statutory limitations as to the grounds on which a defendant's probation may be revoked and to be careful in its selection of the appropriate finding of fact box on the preprinted form."

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48

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- Defendant convicted of second-degree rape
 - Drugged his wife and video recorded sex acts
- Static-99 was LOW

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The Court, having entered judgment in the above-captioned action, which is incorporated herein by reference, finds that, in addition to the above, the defendant has been convicted of a repeat conviction under G.S. 14-208.6, specifically (check all that apply)

☐ a sexual offense against a minor under G.S. 14-208.6(c), or an attempt, solicitation, or conspiracy to commit such offense, and defendant is not the parent of the victim, G.S. 14-208.6(d); *NOTE: See also 14-208.6(e) and felonious restraint, G.S. 14-43.4.*

☒ a sexual offense against a minor under G.S. 14-208.6(b) as an attempt, solicitation, or conspiracy to commit such offense, and defendant is not the parent of the victim, G.S. 14-208.6(d); *NOTE: See also 14-208.6(e) and felonious restraint, G.S. 14-43.4.*

☐ aiding and abetting an offense against a minor or a sexually violent offense, other than an offense under G.S. 14-272.1 or G.S. 14-272.28, and the defendant's registration will further the purposes of G.S. 14-208.6.

☐ a sexual offense against a child, G.S. 14-202(a), or aiding and abetting a sexual offense against a child, G.S. 14-202(b), by aiding and abetting, and the defendant's registration will further the purposes of G.S. 14-208.6. *(NOTE: For attempt, solicitation, or conspiracy to commit offense, check box 1A above.)*

☐ a violation of G.S. 14-222(d), (e), (f), (g), (h), or (i), or a second or subsequent violation of subsection (a), (a)(1) or (c) of that section, or a violation of G.S. 14-43.4, the defendant is a danger to the community, and higher registration will further the purposes of G.S. 14-208.6.

☐ a completed or attempted sexual offense against a minor under G.S. 14-208.6(a), (b), or (c), or aiding and abetting a sexual offense against a minor by aiding and abetting, and the defendant's registration will further the purposes of G.S. 14-208.6, said offense having been committed against a child (check if not) _____ who is not more than 16 years old _____ person with the intent that they be held in sexual servitude.

☐ The defendant _____ is a sex offender as defined by G.S. 14-208.6(a) or (b) _____ is a sex offender as defined by G.S. 14-208.6(b)(2).

☐ The defendant _____ is a sex offender as defined by G.S. 14-208.6(a)(4) or (c), _____ is a sex offender of a crime listed in G.S. 14-208.40A(d)(3), _____ is a sex offender of a crime listed in G.S. 14-208.40A(d)(4).

☐ The defendant _____ is a sex offender as defined by G.S. 14-208.6(b).

☐ The defendant _____ has been classified as a sexually violent predator pursuant to G.S. 14-208.20 (sexually violent offenses only).

☐ The offense(s) of conviction _____ is/are not an aggravated offense(s), G.S. 14-208.6(a).

☐ The defendant _____ did not commit the offense(s) _____ involving the physical, mental, or sexual abuse of a minor.

(NOTE: See Finding No. 9 on ACC-008-001, or Finding No. 5 on ACC-008-002, Side One.)

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51

State v. Leggett, __ N.C. App. __ (2026), p. 21

ORDER - SATELLITE-BASED MONITORING

Based on the risk assessment by the Department of Adult Correction, all relevant evidence, and the additional findings on the attached

☐ AOC-CR-618

☒ 1. that the defendant requires the highest possible level of supervision and monitoring, and SBM constitutes a reasonable search of the defendant in this case. The Court therefore ORDERS that upon release from imprisonment, the defendant shall enroll in SBM for the period of:
☐ a. (If Finding No. 1.d. or 3.a. found, or No. 4 or 5 found in the affirmative) his/her natural life,
☐ b. (If Finding No. 6.a. found and either No. 2.b. or 3.c. found, and Nos. 4 and 5 found in the negative, specify a period not to exceed 50 years) _____
unless monitoring is terminated or modified pursuant to G.S. 14-208.43.
The Court further orders that the defendant pay the fee prescribed by G.S. 14-208.45 ☐ in addition to the monetary obligations set out in the judgment as set out in the modified judgment, incorporated herein by reference.
☐ 2. that the defendant should not be required to enroll in SBM and therefore ORDERS that the defendant not be so enrolled, because: (check all that apply)
☐ a. the defendant does not require the highest possible level of supervision and monitoring.
☐ b. SBM would constitute an unreasonable search of the defendant in this case.
☐ c. Other: _____
☐ 3. Other: _____

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52

State v. Leggett, __ N.C. App. __ (2026), p. 21

- Lifetime SBM reversed
- If Static-99 is not high, other findings must support “highest possible level of supervision and monitoring”
 - Things not already included in Static-99 score
 - Very young victim
 - Escalating aggressiveness
 - Homelessness
 - Uncertain location

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53

Jurisdiction

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54

State v. Gibbon, ___ N.C. App. ___ (2026), p. 2



§ 15A-641. Indictment and related instruments; definitions of indictment, information, and presentment.

(c) A presentment is a written accusation by a grand jury, made on its own motion and filed with a superior court, charging a person, or two or more persons jointly, with the commission of one or more criminal offenses. A presentment does not institute criminal proceedings against any person, but the district attorney is obligated to investigate the factual background of every presentment returned in his district and to submit bills of indictment to the grand jury dealing with the subject matter of any presentments when it is appropriate to do so.

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55

State v. Gibbon, ___ N.C. App. ___ (2026), p. 2



- G.S. 15A-641(c)'s investigation requires a prosecutor to formally examine the facts of a case. While this *may* entail the gathering of any additional facts that is not required.
- Purpose of statute was to protect against overzealous grand juries.
- General Assembly did not intend to prevent a situation where a prosecutor properly investigates a potential misdemeanor, initiates and seeks out a presentment, reviews the file, and then secures an indictment.

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56

State v. Myers, ___ N.C. App. ___ (2026)



- Defendant convicted of felony flee to elude arrest and misdemeanor resisting a public officer.
- Defendant found responsible for infractions of failure to signal a lane change and failure to carry a valid driver's license.
- Defendant appealed.
- COA: Superior court lacked jurisdiction to enter judgment for the infractions.

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57



§ 7A-271. Jurisdiction of superior court.

(d) The criminal jurisdiction of the superior court includes the jurisdiction to dispose of infractions only in the following circumstances:

- (1) If the infraction is a lesser-included violation of a criminal action properly before the court, the court must submit the infraction for the jury's consideration in factually appropriate cases.
- (2) If the infraction is a lesser-included violation of a criminal action properly before the court, or if it is a related charge, the court may accept admissions of responsibility for the infraction. A proper pleading for the criminal action is sufficient to support a finding of responsibility for the lesser-included infraction.

58

Self-Defense

59



"[A] person who unlawfully and by force enters or attempts to enter a person's home is presumed to be doing so with the intent to commit an unlawful act involving force or violence. In addition, **absent evidence to the contrary**, the lawful occupant of a home is presumed to have held a reasonable fear of imminent death or serious bodily harm to himself or another when using defensive force that is intended or likely to cause death or serious bodily harm to another if both of the following apply:"

60

G.S. 14-51.2(c)



(c) The presumption set forth in subsection (b) of this section shall be rebuttable and does not apply in any of the following circumstances:

- (1) The person against whom the defensive force is used has the right to be in or is a lawful resident of the home
- (2) The person sought to be removed from the home . . . is a child or grandchild or is otherwise in the lawful custody . . . of the person against whom the defensive force is used.
- (3) The person who uses defensive force is engaged in, attempting to escape from, or using the home . . . to further any criminal offense that involves the use or threat of physical force or violence against any individual.
- (4) The person against whom the defensive force is used is a law enforcement officer or bail bondsman who enters or attempts to enter a home . . . in the lawful performance of his or her official duties
- (5) The person against whom the defensive force is used (i) has discontinued all efforts to unlawfully and forcefully enter the home . . . and (ii) has exited the home

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61

State v. Allison, __ N.C. __ (2025), p. 33

When the General Assembly enacted the castle doctrine statute, particularly N.C.G.S. § 14-51.2(c)—which identifies five circumstances where the presumption of reasonableness can be rebutted, whether § 14-51.2(c) contains an unwritten sixth exception that states the reasonableness presumption can also be rebutted if:

- The State presents substantial evidence from which a reasonable juror could conclude that a defendant did not have a reasonable fear of imminent death or serious bodily harm, the State can overcome the presumption and create a fact question for the jury.

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62

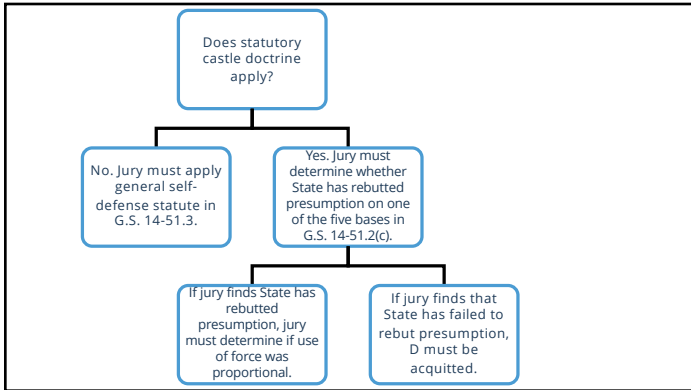
State v. Allison, __ N.C. __ (2025), p. 33



- Castle doctrine does not require the lawful occupant of a home who uses deadly force against an intruder to demonstrate his or her reasonable belief that such force was necessary to prevent imminent death or great bodily harm.
 - A lawful occupant is presumed to have held that reasonable fear.
 - That presumption is rebuttable only under one of the five scenarios set forth in G.S. 14-51.2(c).

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63



64

State v. Hague, ___ N.C. ___ (2026), p. 22

- In a self-defense case, the trial court erred by excluding evidence of the victim's prior felony convictions.
- "Mr. Hague knew that Mr. Cass had prior felony convictions and used firearms despite being prohibited from doing so. His awareness of the felony convictions informed his state of mind at the time he killed Mr. Cass and provided the evidence of Mr. Hague's understanding of a character trait of Mr. Cass—the willingness to break the law by illegally possessing a firearm. Therefore, even though he did not know the specific felony convictions, the fact that Mr. Hague knew about the convictions and weapons possession made the prior convictions still sufficiently relevant to his state of mind to be admissible under Rule 404(b)."

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65

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66