Brittany Bromell
bwilliams@sog.unc.edu
UNC School of Government©

District Court Judges 2025 Fall Conference
Criminal Law Case Update
October 17, 2025

Cases covered include published opinions from the North Carolina appellate courts decided between May 21, 2025 and September 17, 2025. Summaries are prepared by School of Government faculty members. These summaries were originally posted on the North Carolina Criminal Law Blog.

(1) Hearsay statements properly admitted as excited utterances where the startling event was seeing an unexpected balance in a bank account; (2) motion to dismiss for insufficient evidence properly denied.

State v. Fraley, ___ N.C. App. ___ (June 18, 2025) (Rowan County). In 2016, the defendant and her husband began caring for her husband's mother and both became her power of attorney. At the time, the defendant's mother-in-law had been diagnosed with dementia and needed assistance managing medical appointments, finances, mail, and taxes. In September of 2017, the defendant's mother-in-law opened mail from her bank and exclaimed "someone is taking money out of my bank account;" "I want it back now;" and "[I] never told them nor gave permission to anyone to withdraw money from [my] account." The mother-in-law passed away in 2019. After an investigation by family and law enforcement, the defendant was indicted in 2020 for two counts of obtaining property valued at $100,000 or more by false pretenses, two counts of exploitation of an older adult of more than $100,000, one count of obtaining property valued at more than $20,000 or more by false pretenses, and one count of exploitation of an older adult of less than $20,000. During trial, the court determined the mother-in-law's statements were hearsay, and admitted them as excited utterances. The defendant was convicted of two counts of exploitation of an older adult of more than $100,000 and one count of exploitation of an older adult of less than $20,000. The defendant appealed, arguing the statements did not qualify as excited utterances and that the trial court erred by denying the defendant's motion to dismiss.

The Court first addressed the defendant's hearsay argument. Because the defendant did not challenge the spontaneity of the statements, the only question was whether the statements were caused by a sufficiently startling event. Relying on precedent that whether

an event is sufficiently startling to the declarant is primarily a subjective inquiry, the Court found that the context of the declarant's financial situation, the fact that the declarant discovered a large sum of money missing at once, and the declarant's visible emotion all demonstrated the suspension of her reflective thought. As a result, it met the standard for a sufficiently startling event. The Court next addressed the defendant's argument that the trial court improperly denied her motion to dismiss for insufficient evidence that she obtained the funds "knowingly, by deception." The Court pointed to the mother-in-law's statements, evidence that the defendant claimed she was filing taxes for the mother-in-law but had not done so, and the defendant's admission that she copied her mother-in-law's signature on withdrawal forms to conclude that the State presented sufficient evidence of knowing and deceptive conduct.

(1) The trial court had jurisdiction to revoke probation where the violation report mostly described criminal conduct; (2) the evidence was insufficient to establish a probation violation where the only evidence provided occurred two months after the alleged violation date and did not amount to a criminal offense.

State v. Gault, ___ N.C. App. ___ (June 18, 2025) (Surry County). The defendant pled guilty in July of 2022 to second-degree exploitation of a minor and disseminating obscenity. He was sentenced to 20 to 84 months imprisonment, suspended for 36 months of supervised probation. On March 21, 2023, the defendant's supervising probation officer filed a violation report, alleging that the defendant willfully violated "General Statute 15A-1343(b)(1) 'Commit no criminal offense in any jurisdiction' in that . . . DEFENDANT WAS CHARGED WITH A FAILURE TO REGISTER IN REGARDS TO HAVING SOCIAL MEDIA CITE (sic) NOT REGISTERED WITH THE SHERIFF'S DEPARTMENT ON 1/18/23. THIS IS A VIOLATION OF . . . DEFENDANT'S PROBATION." At the probation violation hearing, another probation officer testified that he and the defendant's probation officer visited the defendant "sometime in March" and found evidence that the defendant was using social media sites which the defendant had not disclosed to the sheriff's department. The criminal offense alleged in the violation report (G.S. 14-208.11(a)(10)) required the defendant to inform the sheriff of any new or changes to existing online identifiers within 10 days.

Addressing the defendant's first argument, the Court found that the violation report properly alleged a violation of the probation condition that the defendant commit no new criminal offense. This was based on the inclusion of the statutory reference to G.S. 15A-1343(b)(1), the freeform text included in the allegation, and the relaxed requirements for probation violation allegations. Addressing the defendant's second argument, the Court

agreed that there was insufficient evidence to show that the defendant committed a new criminal offense. The Court first found that it received no evidence about what occurred on January 18, 2023, because all the testimony was based on the interaction in March, and there were no efforts to reconcile the discrepancy. The Court further found that the use of social media sites, on its own, was insufficient to show that the defendant had failed to register any online identifiers with the sheriff within 10 days of creating or changing any identifiers without any information about the specific date of the observations by probation and when the 10 days would have started or ended. As a result, the Court reversed the trial court's judgment revoking the defendant's probation.

Evidence supported three separate counts of assault; trial court did not err by sentencing the defendant for each separate assault.

State v. French, No. COA24-704 (July 2, 2025) (Onslow County). On October 4, 2022, the defendant and his wife, Christine Riley, were at home when defendant began drinking alcohol. At Riley's request, the defendant went to a neighbor's house. Riley was awakened around 11:30 p.m. by the defendant banging on the back door, requesting his phone. When Riley tried to hand over the phone, the defendant forced his way into the house and attacked Riley, striking her in the head, ribs, and stomach, and strangling her with his hands. Riley called 911, and officers with the Jacksonville Police Department and EMS responded.

The defendant was arrested and charged with assault by strangulation, assault on a female, and assault with a dangerous weapon inflicting serious injury. The matter came on for trial by jury in December 2023. The defendant was convicted of assault by strangulation, assault on a female, and the lesser included offense of assault inflicting serious injury, and the trial court imposed three consecutive sentences. Defendant appealed.

Upon review, the Court of Appeals framed the issues as whether the trial court erred by (1) denying the defendant's motion to dismiss two of the three assault charges, and (2) sentencing the defendant separately and consecutively for the three assault convictions.

As to the first issue, the defendant argued that the assaults occurred during one continuous transaction, and the State failed to offer sufficient evidence of three separate assaults. The Court of Appeals cited State v. Dew, 379 N.C. 64 (2021), for the proposition that the State may charge a defendant with multiple assaults only when there is substantial evidence that a distinct interruption occurred between the assaults. Viewing the evidence

in the light most favorable to the State, the Court of Appeals concluded that the State presented sufficient evidence of three separate assaults.

As to the second issue, the defendant argued that the trial court erred by imposing separate and consecutive sentences for the three assaults contrary to legislative intent. Each of the relevant statutes here begins with the clause, "unless the conduct is covered under some other provision of law providing greater punishment." G.S. 14-31.4(b); 14-33(c)(1); 14-33(c)(2). The trial court may, however, sentence a defendant for multiple counts of assault when there is substantial evidence of a distinct interruption between assaults. State v. Harding, 258 N.C. App. 306, 316 (2018). Here, the State presented sufficient evidence of three separate assaults. The Court of Appeals concluded that the trial court did not err by imposing separate sentences for each of the three assaults.

Sufficient evidence of absconding; the trial court erred by failing to exercise its discretion in deciding whether absconding warranted revocation of probation.

State v. Johnson, No. COA24-1029 (July 2, 2025) (New Hanover County). The defendant pled guilty in July 2022 to obtaining property by false pretenses, and he was placed on supervised probation for 24 months. His probation was transferred to Virginia and then to West Virginia. The defendant later returned to Virginia but failed to notify his North Carolina probation officer of the move. In December 2023, his probation officer ordered the defendant to return to North Carolina, but the defendant refused. On 3 January 2024, the probation officer filed a violation report, alleging absconding, among other things.

The violation report came on for a hearing in May 2024. The trial court found that the defendant had absconded as alleged and – noting that the only alternative was to revoke probation – revoked the defendant's probation and activated his suspended sentence. The defendant appealed.

Before the Court of Appeals, the defendant argued the trial court erred by revoking his probation. By statute, the trial court "may only revoke probation" upon a finding of, among other things, absconding. G.S. 15A-1344(a). The Court of Appeals posited that the trial court may revoke probation only if it finds, among other things, absconding, citing State v. Williams, 243 N.C. App. 198 (2015). It said the trial court has discretion to revoke probation if reasonably satisfied that the defendant has violated a condition of probation, citing State v. Terry, 149 N.C. App. 434 (2002).

The Court of Appeals first determined that the relevant time frame was October 27, 2023, to January 3, 2024, as alleged in the violation report. Noting the defendant moved back to Virginia without applying for transfer of probation, failed to notify his probation officer of his

return to Virginia, and failed to return to North Carolina upon demand, it concluded the trial court did not err by finding the defendant absconded. Declaring the trial court "acted under a misapprehension of law" that it could only revoke probation upon a finding of absconding, however, the Court of Appeals vacated the order and remanded for the trial court to exercise its discretion in deciding whether to revoke probation.

Judge Griffin dissented in part, opining that the trial court's comment – that the only alternative was to revoke probation – did not indicate any abuse of discretion.

(1) No error in refusing to instruct on voluntary intoxication; (2) sufficient evidence of two separate assaults by strangulation; (3) no error in failing to distinguish the injuries caused by the two assaults by strangulation; (4) no error in failing to intervene ex mero motu in the prosecutor's closing argument, and (5) no abuse of discretion in imposing a fine of $25,000.

State v. Tadlock, No. COA24-459 (July 2, 2025) (Haywood County). On March 18, 2022, the defendant began drinking, and his wife, designated K.S., went to bed. Around 1:30 a.m., the defendant came into the bedroom screaming at K.S. When she ignored him, the defendant returned with a gun and pointed it at K.S. The defendant forced K.S. to retrieve a necklace she had given to her daughter and compelled her to destroy it with a hammer. The defendant then choked K.S. until she lost consciousness. When she regained consciousness, K.S. laid down with the defendant in bed and the defendant initiated sex with K.S.; K.S. complied out of fear of the defendant. When the defendant fell asleep, K.S. left the home and went to the hospital.

The defendant was charged with attempted first-degree murder, first-degree kidnapping, first-degree forcible rape, assault with a deadly weapon with intent to kill or inflict serious injury, and two counts of assault by strangulation. The matter came on for trial by jury in October 2023. During the charge conference, the trial court denied the defendant's request for an instruction on voluntary intoxication. During closing arguments, the prosecutor told the jury that alcoholics can still function, and that the evidence here showed that the defendant knew what he was doing. The defendant was convicted of first-degree kidnapping, first-degree forcible rape, assault with a deadly weapon inflicting serious injury, and two counts of assault by strangulation. The trial court's judgments included a fine of $25,000. The defendant appealed.

The Court of Appeals framed the issues on appeal as whether the trial court erred by (1) declining to instruct on voluntary intoxication, (2) denying the defendant's motion to dismiss one count of assault by strangulation, (3) failing to distinguish between the injuries

caused by each assault by strangulation, (4) failing to intervene ex mero motu in the prosecutor's closing argument, and (5) imposing a fine of $25,000.

Addressing the first issue, the Court of Appeals recognized a defendant may be entitled to an instruction on voluntary intoxication if he produces substantial evidence he was so intoxicated he could not form the requisite specific intent, citing State v. Mash, 323 N.C. 339 (1988). Here, the Court of Appeals noted there was no evidence the defendant had trouble speaking or walking; there was no evidence the defendant engaged in inexplicable behavior prior to attacking K.S.; and the evidence showed that the defendant apologized to K.S. after the attack. It concluded there was not substantial evidence the defendant was so intoxicated he could not form the intent required for kidnapping or rape, and the trial court did not err by declining to instruct on voluntary intoxication.

As for the second issue, the State may charge a defendant with multiple assaults only when there is substantial evidence that a distinct interruption occurred between the assaults, such as an intervening event, a lapse of time, an interruption in the momentum, a change in location, or some other break. State v. Dew, 379 N.C. 70 (2021). Here, the Court of Appeals said, there was sufficient evidence of a distinct interruption between one assault by strangulation and the next, evidenced by a change in location and different methods of attack. The trial court therefore did not err by denying the defendant's motion to dismiss one count of assault by strangulation.

As for the third issue, a conviction of assault by strangulation requires a showing of physical injury. G.S. 14-32.4(b). The Court of Appeals analogized this case to State v. Bates, 179 N.C. App. 628 (2006), and distinguished State v. Bowman, 292 N.C. App. 290 (2024), rev'd, 915 S.E.2d 134 (N.C. 2025). As in Bates, "the number of counts equals the number of incidents presented in evidence," the trial court instructed the jury once for each count, and the trial court instructed the jury that it could not reach a verdict by majority vote. Unlike in Bowman, the verdict sheets differentiated each offense. The Court of Appeals concluded that the trial court did not err by failing to distinguish the physical injuries for the jury.

As for the fourth issue, during closing argument an attorney may not make arguments based on matters outside of the record. G.S. 15A-1230(a). Arguments that fail to provoke timely objection are reviewed for gross impropriety, an exceedingly high bar. State v. Reber, 386 N.C. 153 (2024); State v. Jones, 355 N.C. 117 (2002). Here, the prosecutor's statements about alcoholics – that they can still function and they know right from wrong – were not so grossly improper that the trial court erred by failing to intervene ex mero motu. See State v. Cole, 343 N.C. 399 (1996).

As for the fifth issue, a person who has been convicted of a criminal offense may be ordered to pay a fine, and as to felony sentencing the amount of the fine is within the trial court's discretion. G.S. 15A-1340.17(b); 15A-1361. Here, the Court of Appeals rejected the defendant's argument that the trial court erred by failing to take his financial situation into consideration, explaining that G.S. 15A-1340.36 pertains to restitution, not fines. It also rejected the argument that the fine was unreasonable, explaining that G.S. 15A-1362(a) relates to the method of payment rather than its amount. The Court of Appeals concluded the defendant failed to show any abuse of discretion.

Judge Freeman dissented in part, opining that there was not sufficient evidence of a distinct interruption to support two separate convictions of assault by strangulation.

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

State v. Brinkley, No. COA24-681 (Sept. 17, 2025) (Pasquotank County). 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.

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 (Sept. 17, 2025) (Mecklenburg County). 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.

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 (Sept. 17, 2025) (Surry County). 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.