

# Criminal Case Update

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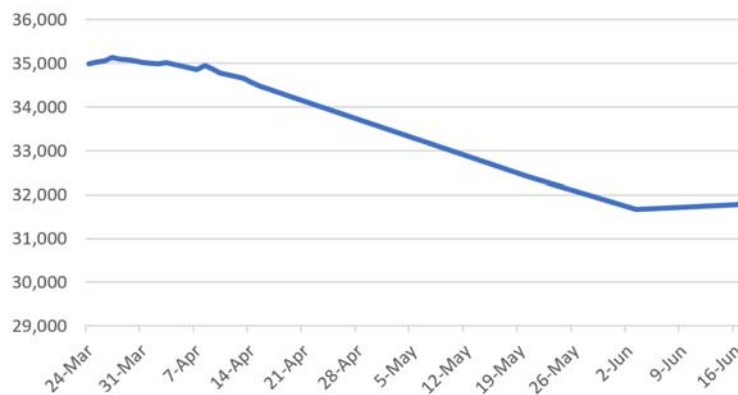


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Prison Inmates



- Over 1,500 jail backlog inmates
- Expansion of sentence credits
- Extended Limits of Confinement
- Litigation limits transfers

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## North Carolina Criminal Law

A UNC School of Government Blog



### An Update on Prisons and Jails as the Courts Expand Operations


Posted on [Jun. 3, 2020, 5:19 pm](#) by [Jamie Markham](#) • [0 comment](#)





As the court system expands operations this week, people have questions about the current status of the correctional system. Today's post covers some of the things we know.

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ADMINISTRATION OF JUSTICE BULLETIN

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## Securing the Release of People in Custody in North Carolina During the COVID-19 Pandemic

Ian A. Mance

This bulletin analyzes five potential remedies for securing the release of people in custody in North Carolina during the COVID-19 pandemic:

- federal habeas,
- state habeas,
- appeal bonds,
- joint motions for appropriate relief (MARs), and
- parole reviews "in the interests of justice."

<https://www.sog.unc.edu/sites/www.sog.unc.edu/files/reports/2020-06-15a%2020200241%20AOJB%20202-02.pdf>

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## Racial Justice Act

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## Racial Justice Act

- State v. Ramseur, N.C. (June 5, 2020), page 126
  - Retroactive amendment and repeal of RJA violate the prohibition on ex post facto laws

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## Racial Justice Act (2009)

- “No person shall be subject to or given a sentence of death or shall be executed pursuant to any judgment that was sought or obtained on the basis of race.”
- “A finding that race was the basis of the decision to seek or impose a death sentence may be established if the court finds that race was a significant factor in decisions to seek or impose the sentence of death in the county, the prosecutorial district, the judicial division, or the State at the time the death sentence was sought or imposed.”
- Defendant may succeed by showing: (1) Death sentences were sought or imposed significantly more frequently upon persons of one race than upon persons of another race. (2) Death sentences were sought or imposed significantly more frequently as punishment for capital offenses against persons of one race than as punishment of capital offenses against persons of another race. (3) Race was a significant factor in decisions to exercise peremptory challenges during jury selection.

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## Racial Justice Act

- Amended in 2012
  - Eliminated automatic evidentiary hearing requirement
  - Amended evidentiary rules
    - Limited scope of geographic review to “county or prosecutorial district”
    - Defined the relevant time frame to 10 years prior to offense – 2 years after sentencing
    - Substance of claim limited to (1) race of defendant being a significant factor or (2) race being a significant factor in peremptory challenges
    - Mandated that statistical evidence alone is insufficient
  - Required defendant to waive any objection to LWOP as a condition for filing an RJA motion

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## Racial Justice Act

- Repealed June 13, 2013
  - Retroactive effective date applied to any MAR filed pursuant to the RJA prior to that date; that all such motions “are void”

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## Racial Justice Act

- State v. Ramseur, N.C. (June 5, 2020), page 126
  - 2007: Offenses committed
  - 2009: RJA enacted
  - 2010: Death sentences imposed
  - 2010: RJA motion filed under original RJA
  - 2012: RJA Amended
  - 2012: Amended RJA motion filed
  - 2013: RJA repealed
  - 2014: MAR dismissed as void

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## Racial Justice Act

- State v. Ramseur, N.C. (June 5, 2020)
  - 2013 repeal is ex post facto
    - 2009 RJA applied to defendant's 2007 offense
    - 2013 repeal therefore "inflicts a greater punishment" than the law applicable to the defendant's offense
  - Portions of 2012 amendment also ex post facto
    - Limits on geography, time, and use of statistics implemented a more stringent standard of proof
  - Remand for evidentiary hearing, with discovery, applying portions of pre-2012 version of RJA

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## Racial Justice Act

- State v. Burke, N.C. (June 5, 2020), page 127
  - Retroactive amendment and repeal of RJA violates the prohibition on ex post facto laws
  - RJA MAR not procedurally barred by earlier MAR
  - Trial court erred by dismissing the RJA claims without a hearing

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## Batson

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## Batson

- State v. Bennett, N.C. (June 5, 2020), p. 31
  - Trial court erred by concluding that defendant had not established a prima facie case
- State v. Hobbs, N.C. (May 1, 2020), p. 32
  - Trial court improperly considered *defendant's* use of peremptory challenges when evaluating the *State's* intentions
  - Trial court failed to consider all evidence of discriminatory intent, including historical patterns within the county
  - Trial court did not conduct a comparative analysis of jurors' answers to questions

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## Traffic Stops

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## Traffic Stops

- Kansas v. Glover, U.S. (Apr. 6, 2020), page 85
  - Deputy initiated traffic stop when license plate check revealed that the truck's registered owner had a revoked license
  - In the absence of "negating information," the commonsense inference that the owner of a vehicle was the likely driver provided reasonable suspicion for an investigative traffic stop
- What happens when there is "negating information"?
  - State v. Myers McNeil, N.C. App. (2018)

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## Traffic Stops

- State v. Wiles, N.C. App. (Mar. 17, 2020), p. 84
  - Stop was justified by officer's objectively reasonable mistake of fact (apparent seat belt violation)
  - Extension of stop justified when officer "instantaneously" smelled alcohol and developed reasonable suspicion of DWI

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## Crimes

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## Crimes: “Sexual Act”

- State v. Alonzo
- Definition of (now 14-27.2 sexual act un

Page 1 of 2  
N.C.P.I.—Criminal 239.55B  
FELONIOUS CHILD ABUSE BY A SEXUAL ACT BY A [PARENT] [LEGAL  
GUARDIAN]. CLASS H FELONY.  
GENERAL CRIMINAL VOLUME  
REPLACEMENT JUNE 2019  
N.C. Gen. Stat. § 14-318.4(a2)

239.55B FELONIOUS CHILD ABUSE BY A SEXUAL ACT BY A [PARENT]  
[LEGAL GUARDIAN]. FELONY.

(4) Sexual act. – Cunnilingus, analingus, or anal intercourse not include vaginal intercourse also means the penetration, slight, by any object into the anal opening of another person.

The defendant has been charged with felonious child abuse by a sexual act by a [parent] [legal guardian].

For you to find the defendant guilty of this offense, the State must prove three things beyond a reasonable doubt:

First, that the defendant was the [parent of] [legal guardian of] the child.<sup>1</sup>

Second, that at the time that child had not yet reached *his or her* sixteenth birthday.

And Third, that the defendant [committed] [allowed the commission of] a sexual act upon that child. A sexual act means cunnilingus, fellatio, analingus, or anal intercourse, but does not include vaginal intercourse.

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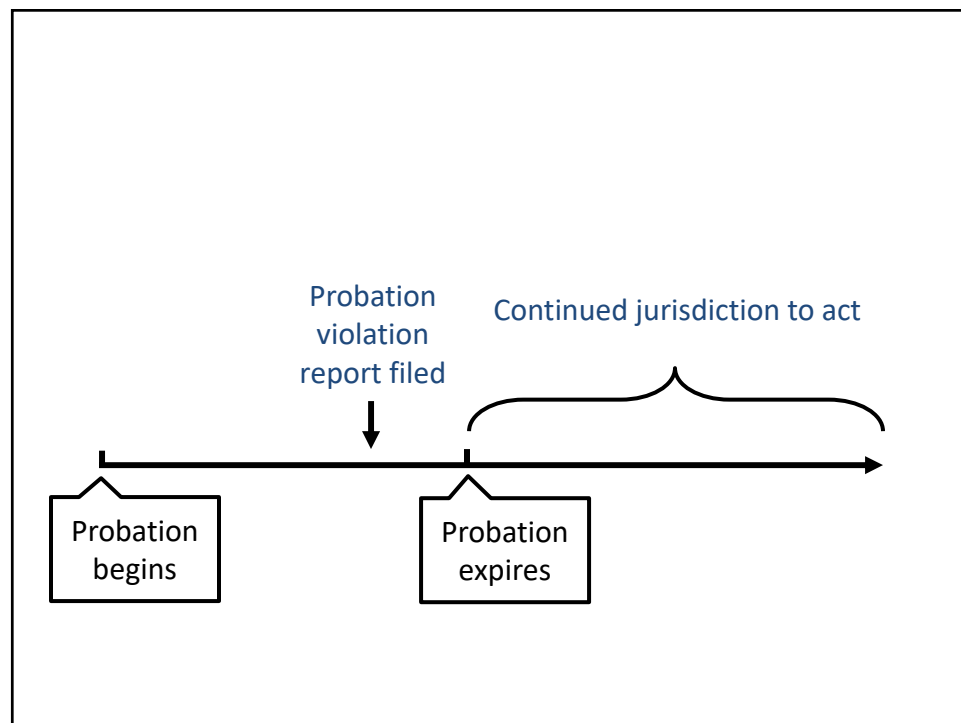
## Probation

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## Hearings after Expiration

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(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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## State v. Morgan (N.C., 2019)

- Probation Violations
  - To preserve jurisdiction to act on a case after it has expired, the court must make a finding of **“good cause shown and stated”**

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## Hearings After Expiration

- State v. Sasek, N.C. App. (May 19, 2020), page 75
  - Revocation after expiration vacated for lack of finding of “good cause shown and stated”

4. Other:

The Court recommends:

☐ 1. Substance abuse treatment. ☐ 2. Psychiatric and/or psychological counseling. ☐ 3. Work release ☐ should ☐ should not be granted.

☐ 4. Payment as a condition of post-release supervision or from work release earnings, if applicable, of the "Total Amount Due" set out above.

☐ but the Court **does not recommend** restitution be paid ☐ as a condition of post-release supervision. ☐ from work release earnings.

☒ 5. Other:

**THE COURT FINDS GOOD CAUSE FOR REVOCATION AFTER EXPIRATION AS THE DEFENDANT CONSENTED TO THE DELAY UNTIL PENDING CHARGES COULD BE RESOLVED**

**FINDINGS**

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:

1. The defendant is charged with having violated specified conditions of the defendant's probation as alleged in the:

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## Absconding

- State v. Rucker, N.C. App. (May 5, 2020), page 50
  - Absconding proper when defendant was absent for several months, officer attempted 6 home visits, and defendant failed to respond to door tag
- State v. Crompton, N.C. App. (Mar. 17, 2020), page 57
  - Absconding proper when officer visited residence twice, tried all contact numbers, and defendant missed two office meetings and never contacted officer
- State v. Mills, N.C. App. (Feb. 18, 2020), page 58
  - Absconding proper when defendant failed to report to his officer for 20 days after his release from custody and could not be found at the listed address

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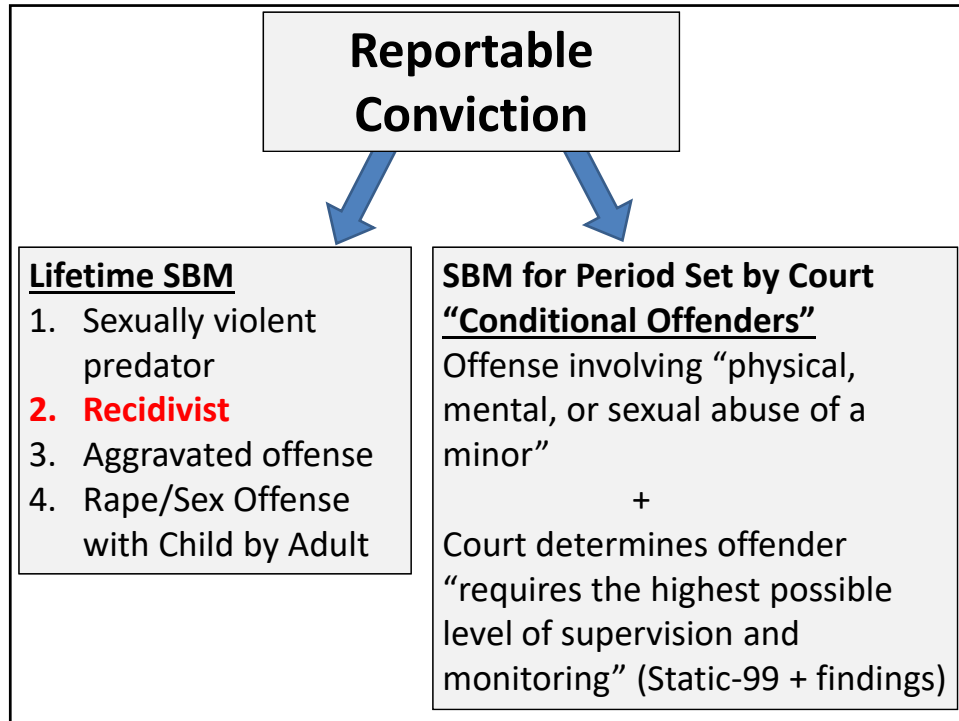
## **Satellite-Based Monitoring**

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### **State v. Grady (N.C., 2019)**

- Satellite-Based Monitoring (SBM) is facially unconstitutional for all recidivists once supervision (probation/parole/PRS) ends

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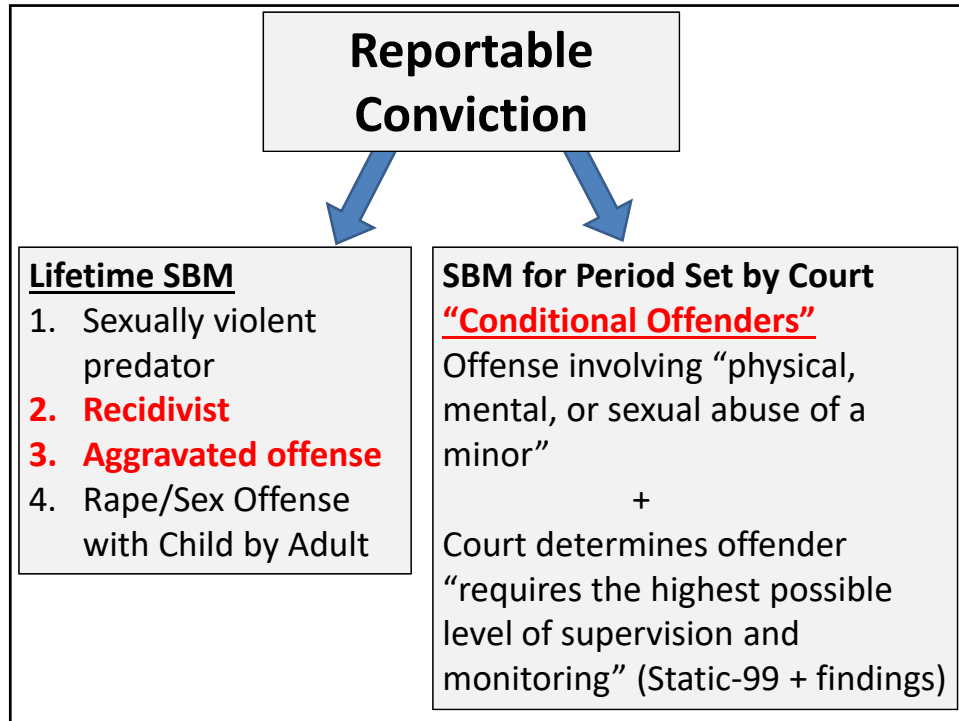
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## Satellite-Based Monitoring

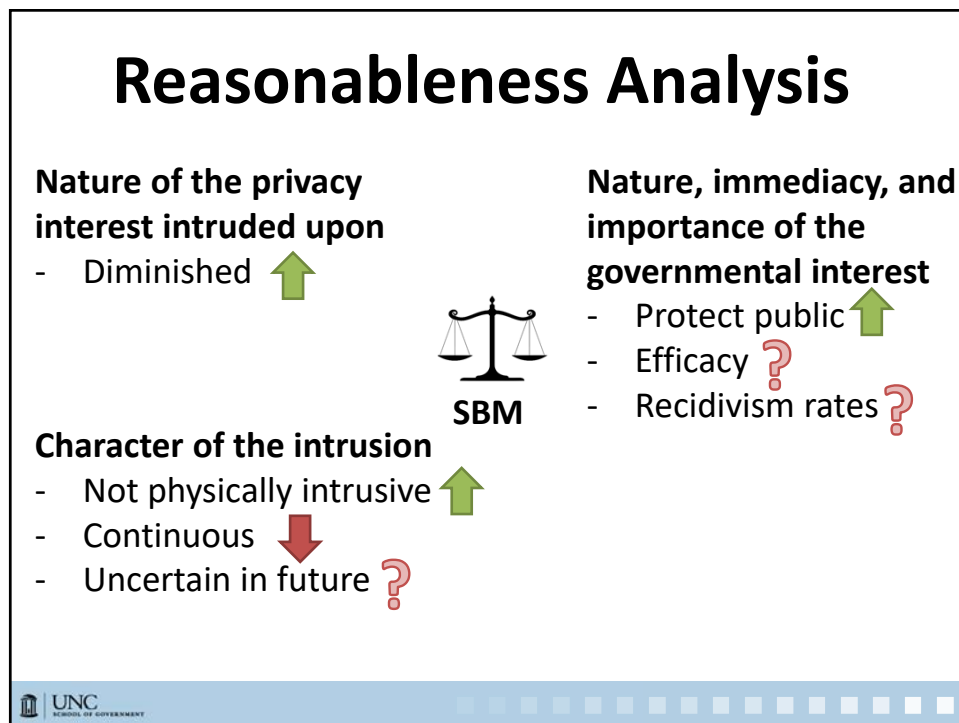
- State v. Hilton, N.C. App. (May 19, 2020), p. 59
  - In the absence of information about efficacy, SBM "for life" unconstitutional for an aggravated offender once PRS ends (but OK during PRS)
- State v. Gordon, N.C. App. (Mar. 17, 2020), p. 60
  - In the absence of information about the nature and efficacy of SBM 15-20 years from now, SBM an unreasonable search for an aggravated offender
- State v. Griffin, N.C. App. (Mar. 6, 2020), p. 61
  - In the absence of evidence about the efficacy of SBM, it is an unreasonable search for a "conditional offender" ordered to enroll for 30 years

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## Closing Argument

## Closing Argument

STATE: "Might I ask why would [Defendant] plead not guilty? I contend to you that the defendant is just continuing to do what he's done all along, refuse to take responsibility for any of his actions. That's what he does."



## Closing Argument

- State v. Goins, N.C. App. (Feb. 4, 2020), p. 36
  - Argument about defendant’s decision to plead not guilty was so grossly improper that the trial court erred in failing to intervene ex mero motu. New trial.

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## Closing Argument

STATE: “I told you I was going to mention a North Carolina Court of Appeals case, it’s State v. Haynesworth . . . .”

[Describes that case’s facts and conclusion that the defendant acted with premeditation and deliberation.]

“I raise that case because I contend it is much weaker than ours.”

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## Closing Argument

- State v. Goins, N.C. App. (Feb. 4, 2020), p. 36
  - Reference to previous appellate decision: Counsel cannot state the facts and decision of another case as “premises leading to the conclusion that the jury should return a verdict favorable to his [side].”

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## Closing Argument

- State v. Copley, N.C. (Apr. 3, 2020), p. 37
  - Murder trial of white defendant who shot a black victim who crossed a corner of his yard after he and his friends had shouted back and forth with the defendant
  - At closing, in reference to defendant’s self-defense argument, the prosecutor addressed “the elephant in the room” regarding the reasonableness of the defendant’s fear.

“You’ve heard all the evidence. Is it reasonable that he’s afraid of them because they’re a black male outside wearing a baseball cap that happens to be red? . . . Now, reasonableness and that fear, a fear based out of hatred or a fear based out of race is not a reasonable fear, I would submit to you.”

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## Closing Argument

- State v. Copley, N.C. (Apr. 3, 2020), p. 37
  - Trial court overruled defendant’s objections to the prosecutor’s statement. COA said the trial court erred by overruling them and ordered a new trial.
  - Supreme Court reversed
    - Assumed without deciding that the comments were improper
    - Concluded that the error was not prejudicial

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## Closing Argument

- State v. Copley, N.C. (Apr. 3, 2020), p. 37
  - Earls, J., concurring

“We should not assume a statement is improper when the propriety of the statement is the very heart of what matters to the administration of criminal justice and the jurisprudence of this State.”

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## Closing Argument

### Impermissible references to race:

- Direct racial slurs
- Indirect appeals to racial animus
- Invoking a jury's racial biases to obtain a conviction

### Permissible references to race:

- Non-derogatory
- Race is material to issues at trial

"The record in this case shows that the prosecutor's references to race in his closing argument were non-derogatory, and that they were intended to ensure that the jury did not allow implicit stereotypes about the dangerousness of young black men to infect their determination of whether defendant established that he had a reasonable fear and acted lawfully in self-defense. In these circumstances, the statements were proper."

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"Making race salient or calling attention to the operation of racial stereotypes encourages individuals to suppress what would otherwise be automatic, stereotype-congruent responses and instead act in a more egalitarian manner. [W]hen race is made salient, individuals tend to treat White and Black defendants the same."

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