UNC SCHOOL OF GOVERNMENT

Current Developments in Criminal Law

February 20, 2026 / 1:30 p.m. – 3:00 p.m.

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

School of Government faculty members, Phil Dixon, Jr., and Danny Spiegel, will discuss state and federal appellate court decisions and other recent criminal law developments.

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.

Danny 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.

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Current Developments in Criminal Law Webinar
Case Update Paper
Feb. 20, 2026

Cases covered include published criminal and related decisions from the North Carolina appellate courts and the Fourth Circuit Court of Appeals decided between October 1, 2025, and February 4, 2026. State cases were summarized by SOG criminal law faculty 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

Emergency aid exception to the warrant requirement is satisfied when an officer has an objectively reasonable basis to believe an occupant needs urgent help or is at imminent risk of harm

Case v. Montana, 607 U.S. ____ (Jan. 14, 2026). Jeff Welty summarized this case in a blog post, here.

Trial court did not err in determining that good faith exception applied and evidence was admissible despite unlawful search

State v. Julius, COA25-277; ___ N.C. App. ___ (Feb. 4, 2026). On May 20, 2018, police responded to the scene of a single-vehicle wreck, finding a vehicle immobilized in a ditch. The defendant, who had been a passenger, told police that the vehicle belonged to her parents and a man named Kyle had been driving. Kyle fled the scene, allegedly because he had outstanding warrants. Without a warrant, police searched the vehicle for Kyle's identification and found illegal drugs and drug paraphernalia. They arrested the defendant and found more drugs in her backpack.

The defendant was charged with various drug offenses, including trafficking in methamphetamine. She filed a motion to suppress, contending the search was unconstitutional. The trial court denied the motion, and a jury convicted the defendant of trafficking in methamphetamine and possession with intent to manufacture, sell, or deliver. The defendant appealed. Upon review, the Court of Appeals upheld the trial court's denial of the motion to suppress (opinion summarized here), and the defendant appealed to the Supreme Court. The Supreme Court concluded the warrantless search was unconstitutional under the Fourth Amendment but remanded for a determination of whether the evidence should be suppressed under the exclusionary rule (opinion summarized here).

On remand, the trial court determined that probable cause existed and that the good faith exception applied such that the evidence was not subject to the exclusionary rule. The defendant gave notice of appeal. Before the Court of Appeals, she argued there was not probable cause for the search and, in any event, the trial court erred by concluding the good faith exception applied. Upon review, the Court of Appeals upheld the order. Chief Judge Dillon, writing the lead opinion, noted that the concurring judge disagreed with much of the analysis, limiting the precedential effect of the ruling.

Addressing the trial court's finding that police had probable cause for a search, Chief Judge Dillon agreed with the trial court that the trooper had probable cause to search the vehicle for evidence of Kyle's identity. As for the good faith exception, Chief Judge Dillon stated the exclusionary rule does not apply when officers act in objectively reasonable reliance on binding precedent. Prior to the North Carolina Supreme Court's 2023 opinion in this case (holding the automobile exception did not apply to an immobilized vehicle), binding precedent indicated the automobile exception applied though the vehicle was undriveable. Based on its prior opinion in *State v. Corpening*, 109 N.C. App. 586 (1993), opinions from the United States Supreme Court, and opinions from several federal circuit courts, Chief Judge Dillon concluded the trooper here acted in good faith reliance on binding precedent, and the trial court did not err in denying the defendant's motion to suppress.

Concurring in the result only, Judge Stroud agreed the trial court did not err by denying the motion to suppress because the good faith exception applies, but she rejected the reasoning of both the trial court and the lead opinion. Judge Stroud said the exclusionary rule is applied when the benefit of deterring police misconduct outweighs the costs. Here, there was no evidence police engaged in deliberate, reckless, or grossly negligent disregard for Fourth Amendment rights. Rather, the trooper was mistaken about whether the fleeing driver created an exigency sufficient to conduct a warrantless search of the vehicle. His belief was not culpable but was the type of objectively reasonable good-faith belief that does not warrant exclusion. Because suppressing the evidence would not serve any deterrent purpose, the trial court did not err by denying exclusion. Judge Stoud faulted the trial court and the lead opinion for considering probable cause when "[p]robable cause is irrelevant to the good-faith exception." As for the officer's reliance on binding precedent, Judge Stroud believed the automobile exception, both before and after the Supreme Court's 2023 opinion in this case, would not authorize a warrantless search absent some exigency. Absent a change in law, she concluded, there could be no good faith reliance on prior binding precedent.

Judge Tyson dissented. According to Judge Tyson, the good-faith exception applies when officers reasonably rely upon (1) a warrant later determined to be deficient, (2) subsequently invalidated statutes, (3) erroneous arrest warrant information, or (4) binding appellate precedent. In his view, none of these exceptions are appliable here. Judge Tyson accused the lead and concurring opinions of expanding the good faith exception to include situations where police neither sought nor obtained a warrant. He said the State failed to prove the good faith exception applied to these facts. Judge Tyson concluded that the trial court erred by denying the defendant's motion to suppress.

Shea Denning blogged about the case, here.

The trial court did not err in denying the defendant's motion to suppress when the defendant abandoned any expectation of privacy his bag

State v. Pardo, COA24-1036; ___ N.C. App. ___; 922 S.E.2d 206 (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.

Drug investigation stemming from traffic stop was not supported by reasonable suspicion of a drug offense; denial of motion to suppress reversed

U.S. v. Hawkins, 161 F.4th 242 (Dec. 11, 2025). One afternoon, drug task force officers were patrolling a high crime area known for illegal drug activity. They spotted a car with expired tags, tinted windows, and a broken taillight. The officers knew the car was owned by a man who was currently on federal supervised release for a 2015 drug conviction. That man was driving the car and another person, also familiar to the officers as someone formerly involved with drugs, was in the passenger seat. The officers followed the car to an apartment building. The car parked in the parking lot and a man in a red jacket walked up to the car, briefly reached inside, and spoke with the two occupants. While officers did not observe any items change hands, they believed that the men had conducted a drug sale. The man in the red jacket left the car after around two minutes. Soon thereafter, the defendant approached the car and sat in the back seat. The car then left the parking lot. The task force officers radioed to a traffic patrol officer and relayed what they had seen in the parking lot, and the patrol officer stopped the car based on traffic violations and suspicion of drug activity. The officer separated the occupants of the car and questioned them individually about where they were coming from and whether they had met anyone at the apartment building. The driver stated they were coming from the apartment building and had not met with anyone. When pressed about the man in the red jacket who approached the car, the driver admitted that the man had asked for a cigarette. The front seat passenger also confirmed that they had been at the apartment building and stated that the man who approached the car was the defendant's uncle, who was looking for employment. The patrol officer contacted a K9 unit, and the canine ultimately alerted on the car. All three men were frisked, and officers discovered a gun on the defendant (although no drugs were found). The defendant admitted that he was not allowed to possess the weapon due to a prior domestic violence conviction. He was indicted in the Northern District of West Virginia for illegal possession of a firearm. The defendant moved to suppress, arguing that the officers unlawfully extended the traffic stop without reasonable suspicion. The district court denied the motion and the defendant entered a conditional guilty plea, preserving his right to appeal the denial of his suppression motion. On appeal, a unanimous panel of the Fourth Circuit reversed.

When a car is stopped for a suspected traffic violation, police are authorized to investigate the suspected violation. *Rodriguez v. United States*, 575 U.S. 348, 354. During such a stop, the officer is justified in performing the normal incidents of a traffic stop, such as checking the driver's license, ensuring the driver has insurance, and looking for any outstanding arrest warrants. Once these steps are complete, the stop may not be extended unless the driver consents or the officer develops reasonable suspicion of another crime. *U.S. v. Branch*, 537 F.3d 328, 336 (4th Cir. 2008).

Here, the government argued that the officer developed reasonable suspicion of a drug offense based on the defendant's presence in a high-crime area associated with drug activity, the fact that the driver of the car had a 2015 drug conviction, the interaction at the apartment building before the defendant entered the car, and the alleged differences between the driver's and passenger's statements to the stopping officer. The Fourth Circuit has consistently treated a suspect's presence in a high crime area as "a weak and generic factor," and one incapable of creating reasonable suspicion on its own. *Hawkins* Slip op. at 8. Moreover, despite the general area being identified as a high crime area, the apartment building itself was not. Similarly, the fact that the driver of the car had a prior criminal record could not, on its own, create reasonable suspicion. "There is no evidence that [the driver] has not been compliant

with the terms and conditions of his release or that [he] is involved in any criminal activity." *Id*. This factor too was entitled to "little weight in the totality of circumstances." *Id*. As to the officers' observations of an interaction between the occupants of the car and another man in the parking lot of the apartment building, the government offered nothing to show that the interaction was a drug deal instead of a normal conversation between acquaintances. According to the court:

The officers never witnessed a handshake or any items change hands in the car. [The man visiting the car] remained near the vehicle and spoke with [the occupants] for approximately two minutes, which is less suggestive of a drug transaction than an abrupt handshake not accompanied by any conversation. And when he did leave the car, the officers never saw [the man] holding anything in his hands or placing anything in his pockets. Nor did the officers witness multiple people approaching and interacting with the car. . . The officers essentially said, 'I know it when I see it.' These facts cannot amount to a reasonable, particularized suspicion and deserve little weight in the totality of circumstances. *Id*. at 9-10.

Finally, the minor differences between the driver's and passenger's statements to the patrol officer also failed to establish reasonable suspicion. To the extent the statements varied from each other, those differences were "minor and reconcilable." *Id*. at 10. Even when each of these factors are weighed together, they failed to establish reasonable suspicion that the occupants of the car were committing a crime. Thus, the motion to suppress should have been granted. The district court's order to the contrary was reversed and the matter was remanded for additional proceedings.

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, 388 N.C. 453 (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.

The defendant lacked standing to challenge the court order authorizing law enforcement to obtain real-time cell-site location information where he showed only "mere possession" of the tracked cell phone rather than ownership or a possessory interest and law enforcement gathered less than one hour's worth of data

State v. Escalante, COA25-64; ___ N.C. App. ___ (Dec. 17, 2025). The defendant was convicted of first degree murder at trial. On appeal, he challenged the denial of his motion to suppress. At issue was whether law enforcement violated the defendant's Fourth Amendment rights in obtaining one hour's worth of real-time cell-site location information ("CSLI") in order to find the defendant and arrest him. Authorities determined that the defendant was using a particular cell phone to contact family and friends in the aftermath of the murder. They applied for a court order to obtain the CSLI. Upon locating and arresting the defendant at a residence, authorities found five other cell phones in the home. As to the phone that was the subject of the order, the court concluded that the defendant had not carried his burden of establishing standing to challenge the search. Relying on *State v. Stitt*, 201 N.C. App. 233, 241 (2009), the court declined to "assume ownership or a possessory interest" based on the defendant's "mere possession" of the cell phone. The court noted that the defendant only stated he had used the phone and did not offer evidence that he had a possessory interest in it. The court also emphasized the difference between obtaining one hour's worth of real-time CSLI and obtaining four months of historical CSLI, which was found to be an unreasonable search in *Carpenter v. United States*, 585 U.S. 296 (2018). The Court of Appeals thus affirmed the trial court's order denying the defendant's motion to suppress.

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, COA24-893; ___ N.C. App. ___; 924 S.E.2d 50 (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.

Discovery & Investigation

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, 388 N.C. 412 (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.

Shea Denning blogged about the Chemuti decision, here.

Evidence

Authentication

Videos of the defendant sexually assaulting his unconscious wife were authenticated by her testimony that (a) she recognized herself and the defendant's anatomy in the videos, and (b) she found the videos in his email account

State v. Leggett, COA25-2; __ N.C. App. __ (Jan. 7, 2026). The State's evidence showed that the defendant repeatedly drugged his wife, had sex with her while she was unconscious, and recorded it. She discovered the recordings on one of his devices and emailed them to herself, then contacted police. He was charged with, and convicted of, rape and other offenses. (1) The recordings were sufficiently authenticated and properly admitted. Under N.C. R. Evid. 901(b)(4), evidence may be authenticated by its "appearance" and "distinctive characteristics." Here, the victim recognized the appearance and characteristics of herself, the defendant's hands and penis, and the room in which the sexual assaults took place. Further, she discovered the videos in the defendant's email account. Although there was no testimony about the accuracy or functioning of the recording device, such testimony is not the only way to authenticate a recording. Further, although some questions arose at trial about the exact time at which the videos were transferred to a police drive, and about the security of the chain of custody, the defendant provided no reason to believe that the recordings had been altered or were inaccurate. The questions therefore went to weight, not admissibility.

A recording of a voicemail was authenticated by the recipient's testimony that the recording was accurate and by a forensic analyst's testimony that the recording was the entire voicemail, despite the recipient's testimony that she thought the voicemail had been longer

State v. Oakes, COA25-2; __ N.C. App. __ (Jan. 7, 2026). The defendant was charged with, and convicted of, the first-degree murder of his mother. A voicemail of the defendant threatening his mother just before the murder was sufficiently authenticated and properly admitted. The voice mail was left on the defendant's sister's phone as a result of an inadvertent call placed by the mother. The sister testified that she had recently reviewed the voice mail; that although she thought the message had been longer, the recording was accurate; and that she recognized her brother's and mother's voices. A forensic data analyst testified to the extraction of the message from the sister's phone and stated that the full recording had been retrieved. This was sufficient to authenticate the recording. Any doubts about completeness went to weight, not admissibility.

Confrontation Clause

State v. Robinson, COA25-199; ___ N.C. App. ___ (Jan. 21, 2026). The defendant was convicted of death by distribution, possession with intent to sell or deliver a controlled substance, maintaining a dwelling to keep controlled substance, and possession of drug paraphernalia after a jury trial in Alamance County arising out of a fentanyl sale and ensuing overdose. The evidence included witness testimony, police investigation, the defendant's admissions during an interview, and items recovered during a search warrant at the defendant's home. Dr. Justin Brower, a forensic toxicologist and expert in forensic toxicology, approved the toxicology report of the overdose decedent. The toxicology report was produced by other forensic chemists using machine-generated data, and showed the decedent had used methamphetamine, cocaine, and fentanyl prior to his death. On appeal, the defendant argued that the trial court prejudicially erred by admitting the toxicology report, among other arguments.

The court held the confrontation argument was waived because it was not raised at trial. However, the court further explained that because the challenged toxicology output was machine-generated and Dr. Brower independently analyzed that machine-produced data, the testimony did not rest on testimonial statements of non-testifying analysts, and that admitting it did not violate the defendant's confrontation rights.

Expert Testimony

Trial court did not err by admitting expert testimony on historical cell-site handoff analysis; Defendants failed to preserve an objection to an alleged discovery violation; and Defendants failed to show ineffective assistance of counsel in not objecting to the expert testimony

State v. Allen & Rush, COA25-336; ___ N.C. App. ___; 942 S.E.2d 569 (Dec. 3, 2025). On March 25, 2022, Defendants Allen and Rush committed a drive-by shooting at Kermit's Hot Dog restaurant ("Kermit's") in Winston-Salem, injuring three victims. At trial, FBI Agent Harrison Putman testified as an expert in historical cell site analysis. Though his initial written report indicated that neither of Defendants' phones had initiated cell site service in the area around Kermit's on the day of the shooting, Agent Putman testified at trial that around 2 p.m., Defendant Rush's phone had used the cell tower site next to Kermit's, which he described as "handoff" data stored by the cell service providers. Agent Putman based this opinion on voluminous data from the cell service providers. Both Defendants were convicted of two counts of assault with a deadly weapon with intent to kill inflicting serious injury, one count of assault with a deadly weapon with intent to kill, and seven counts of discharging a firearm into occupied property. Both Defendants appealed.

Before the Court of Appeals, both Defendants argued that (1) the trial court erred by admitting Agent Putman's expert testimony on historical cell-site "handoff" analysis, (2) the trial court erred in failing to find a discovery violation, and (3) they received ineffective assistance of counsel.

Addressing the first issue, the Court of Appeals found Defendant Allen failed to preserve the issue for appellate review, but that neither Defendant was entitled to relief on this basis. Under Evidence Rule 702, a witness qualified as an expert may testify in the form of an opinion if: (1) the testimony is based on sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case. N.C. R. Evid. 702(a). Here, the Court of Appeals said, Agent Putman's testimony was grounded in sufficient facts or data and

reliable principles and methods. Further, the trial court had ample basis to conclude Agent Putman's methodology was reliable and properly applied. Finally, assuming error, any such error was harmless given the "overwhelming independent evidence."

As for the second issue, both Defendant's argued the trial court erred by failing to exclude the expert opinion when the State failed to disclose it until the night before the witness testified. The Court of Appeals noted that, though Defendant Rush raised a discovery objection at trial, upon further research Defendant Rush confirmed that he had in fact received the data in discovery. As neither Defendant objected to this testimony, both failed to preserve the issue for appellate review.

As for the third issue, both Defendants argued that counsel was ineffective for failing to object to the alleged discovery violation, to object to Agent Putman's surprise testimony, or to hire an expert in historical cell site analysis. Under *Strickland*, to establish ineffective assistance of counsel, a defendant must show (1) deficient performance and (2) resulting prejudice. Here, the Court of Appeals said, both defense attorneys demonstrated command of cell-site methodology during their examinations of Agent Putman, reflecting familiarity with the field and targeting weaknesses in the State's presentation. Their decision not to object fell within permissible trial strategy, not deficient performance. Assuming any deficiency existed, Defendants could not show prejudice.

Impeachment

(1) Impeachment by prior inconsistent statements and bias did not constitute an attack on the complainant's character for truthfulness under Rule 608(a)(2); (2) admitting multiple witnesses in turn to bolster the complainant's character for truthfulness was an abuse of discretion; (3) in a credibility-centered case, the error was prejudicial and required a new trial

State v. Braswell, COA25-286; ___ N.C. App. ___ (Jan. 21, 2026). The defendant was tried in Johnston County for taking indecent liberties with a child. The trial was based primarily on the complainant's testimony describing inappropriate touching that occurred when she was alone with the defendant at his RV park, followed by a delayed disclosure to friends and family and subsequent law-enforcement/forensic interviews. At trial, defense counsel cross examined the complainant on alleged inconsistencies across her trial testimony, interviews, and written narrative. Defense counsel also suggested a possible bias based on the defendant's having reported the complainant's mother for drug use. Over the defendant's objection, the trial court permitted the State to then call five witnesses to testify that the complainant had a strong reputation for truthfulness. These witnesses were the defendant's daughter, the defendant's wife, the complainant's friend, and two church leaders. The jury convicted the defendant, and he was sentenced to between twenty and thirty-three months in prison.

The Court held the defense's impeachment of the complainant by prior inconsistent statements and bias did not open the door to truthful character rehabilitation under Rule 608(a)(2). The Court drew a distinction between impeachment that suggests a witness is lying or mistaken in the instant case versus impeachment that portrays the witness as untruthful in general (with only the latter opening the door for truthful character rehabilitation). Applying that framework, the Court concluded the trial court abused its discretion by admitting the truthful character rehabilitation testimony. Because there was no physical evidence and the case primarily turned on the complainant's credibility, the court found a reasonable possibility of a different result absent the bolstering testimony. Finding the defendant was prejudiced by the error, the Court vacated and remanded for a new trial.

Trial court erred by admitting evidence of prior conviction more than ten years old absent sufficient findings of fact, but error was harmless; trial court did not err by substituting an alternate juror after jury deliberations had begun

State v. Toomer, COA24-1102; ___ N.C. App. ___ (Feb. 4, 2026). On September 23, 2023, the defendant and Starnasia Shaw finished their shift at Taco Bell around 1:00 a.m. and Shaw got into the defendant's car. Shaw testified that the defendant beat her, prevented her from leaving by driving around, and, when she managed to exit the vehicle, dragged her back to the car. Shaw testified that the defendant also threatened her with a knife, cutting her hand in the process.

The defendant was charged with, among other things, second-degree kidnapping, assault on a female, and habitual felon status. At trial, the trial court permitted the prosecutor to ask the defendant about his 1996 convictions for second-degree kidnapping and armed robbery. After jury deliberations began, the trial court replaced a sitting juror with an alternate juror, advising the jury to begin deliberations anew. The defendant was convicted by the jury of felonious restraint and assault on a female, and he pled guilty to habitual felon status. The defendant appealed. Before the Court of Appeals, the defendant argued the trial court erred by: (1) admitting evidence of his 1996 convictions, and (2) allowing the substitution of an alternate juror after deliberations had begun.

Addressing the first issue, the Court of Appeals noted that Rule 609 governs the admissibility of prior convictions to attack a witness's credibility. Evidence of a conviction more than 10 years old is inadmissible unless (1) the proponent of the evidence gives sufficient notice, and (2) the trial court determines that the probative value of the conviction substantially outweighs its prejudicial effect. N.C. R. Evid. 609(b). The trial court must make findings addressing the impeachment value of the prior crime, its remoteness, and the centrality of the defendant's credibility to the case. Here, the trial court ruled that the 1996 convictions were admissible because they were substantially similar to the offenses for which the defendant was on trial. The Court of Appeals found the trial court's findings of fact were inadequate, and the trial court abused its discretion by admitting evidence of the defendant's 1996 convictions. Given the overwhelming evidence of guilt, however, the Court of Appeals concluded that the defendant failed to show the error was prejudicial.

As to the second issue, the Court of Appeals cited G.S. 15A-1215(a) for the proposition that the judge may permit the seating of one or more alternate jurors. If an alternate juror replaces a juror after deliberations have begun, the trial court must instruct the jury to begin its deliberations anew. G.S. 15A-1215(a). In State v. Chambers, 387 N.C. 521 (2025), the North Carolina Supreme Court upheld the constitutionality of G.S. 15A-1215(a). Here, the trial court instructed the jury to begin deliberations anew when it substituted an alternate juror. The Court of Appeals concluded that, under *Chambers*, the trial court did not violate the defendant's state constitutional right to a jury.

Joe Hyde blogged about the Toomer and Braswell decisions, 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, COA24-799; ___ N.C. App. ___; 921 S.E.2d 888 (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.

Relevance

Trial judge's statement that impeachment evidence offered by the defense in a statutory rape case was "more prejudicial than probative" misstated the law under Rule 403; exclusion of the evidence was prejudicial error requiring a new trial

State v. Lail, 388 N.C. 431 (Oct. 17, 2025) (per curiam). This Catawba County case arose when a 13-year-old girl reported that the defendant, apparently an older family member of some kind, had sexually abused her. A nurse practitioner examined the girl and found a scar on her hymen consistent with blunt force trauma. The defendant was charged with statutory rape, incest, and other offenses.

The case went to trial. The girl testified to the sexual abuse. The defendant testified and denied it. During the girl's testimony, the defendant sought to introduce on cross examination a note the girl admitted was in her handwriting. It read in part, "I looked out my open window to see my boyfriend Larry in his car. . . . I quickly got in his car." On voir dire, the girl said that she did not remember writing the note and had never met "Larry" in person, but that the note could have been a fictional story "or it could have been a dream I had or anything really."

The parties disputed the admissibility of the note, with the defense seemingly contending that the note undermined the girl's credibility and perhaps suggested an alternate explanation for the damage to her hymen. The State apparently asserted that the note was likely fictional and risked confusing the jury. The trial judge sided with the State and excluded the note, stating that "[a]t best it might be fanciful or fantasy," and that "I also think it's more prejudicial than probative."

A divided panel of the Court of Appeals ruled that the trial judge erred in excluding the note and ordered a new trial. The majority reasoned that the trial judge applied the wrong legal standard: the judge said that the note was "more prejudicial than probative," but Rule 403 allows the exclusion of evidence when "its probative value is *substantially* outweighed by the danger of unfair prejudice" or other harms. (Emphasis supplied.) Under the correct standard, the note should have been admitted because "[t]he contradictions within the Note and created by the Note are highly probative of Complainant's credibility." The reference to "Larry" could have referenced an "actual encounter" and cast doubt on the girl's testimony that she did not have a boyfriend at the time. The dissenting judge would have ruled that the admissibility of the note was not preserved and that the trial judge did not err.

The Supreme Court then reviewed the case. The per curiam opinion (representing four Justices' views, as three Justices dissented) affirmed the Court of Appeals. The opinion states that (1) the defendant's objection was preserved, (2) the trial court applied the wrong standard when applying Rule 403, rendering the ruling an abuse of discretion, and (3) that there was a reasonable possibility that exclusion of the evidence would have changed the outcome of the case given the "potential impact of that evidence on the key witness's credibility."

Chief Justice Newby, joined by Justice Allen, dissented in part, agreeing on points (1) and (2) but not (3); they would have reversed the court of appeals on the issue of prejudice. Justice Riggs agreed on point (1) but would have ruled that the trial judge's reference to "more prejudicial than probative" was "unfortunate phrasing" but did not indicate a misapprehension of the correct legal standard. She therefore would have held that the trial court properly exercised its discretion and would have reversed the Court of Appeals.

[Editor's note: This summary draws on both appellate opinions to provide a fuller presentation of the facts and legal arguments of the parties.]

Right to Counsel

The trial court properly concluded that the defendant forfeited his right to counsel

State v. Jacobs, COA24-1081; ___ N.C. App. ___ (Dec. 17, 2025). The defendant was charged with resisting a public officer, failure to heed light or siren, reckless driving, and speeding based on an incident in which the defendant did not pull over for several minutes after being blue-lighted by law enforcement. In district court, two attorneys withdrew from the representation and the court found that the defendant had forfeited his right to counsel. The defendant was convicted of all charges and appealed. In superior court, the defendant's third attorney moved to withdraw, citing disagreement with the defendant as to whether certain motions should be filed. At a hearing on forfeiture of the right to counsel, the defendant questioned the jurisdiction of the court and the court found that the defendant was "insisting" that his lawyer file frivolous motions unsupported by facts or law. The court concluded that the defendant had forfeited his right to counsel. Defendant was subsequently convicted of all charged at trial.

The court concluded that the defendant willfully delayed and obstructed court proceedings, causing three different attorneys to withdraw from representation. The court stressed the defendant's demands that counsel file "baseless motions" and "causes of action improper under the law." The defendant also interrupted and disrupted proceedings during the forfeiture hearing. The Court of Appeals held that the trial court properly concluded that the defendant had forfeited his right to counsel.

Crimes

Contempt

The trial court erred in holding the defendant in direct criminal contempt where the defendant was not given a summary opportunity to respond the day he was held in contempt; though he was given

an opportunity to respond the following day, summary proceedings were no longer appropriate and plenary proceedings should have been initiated

State v. Jacobs, COA24-1081; ___ N.C. App. ___ (Dec. 17, 2025). The defendant was charged with resisting a public officer, failure to heed light or siren, reckless driving, and speeding based on an incident in which the defendant did not pull over for several minutes after being blue-lighted by law enforcement. The defendant was convicted of all charges. At sentencing, the defendant expressed his desire to appeal and requested transcripts of the proceedings. He then stated to the court, "I'll see you in federal court, bucko." The court deemed the statement a threat and imposed a 30-day sentence for contempt of court. A back-and-forth ensued with the defendant responding, "add it up, bro," and asking for "more," and the court imposing five additional consecutive 30-day sentences for direct contempt. The court revisited the matter the following day while correcting a sentencing error arising from the trial convictions. The court stated that it had not "decided in final" how to handle the contempt matter and was giving the defendant an opportunity to be heard. The defendant stated he did not intend to threaten the court and was just trying to exercise his right to appeal. However, the trial court concluded that the six consecutive sentences for contempt were justified based on the defendant's willfully interrupting court proceedings and disrespecting the authority of the court. Approximately one month later, the court *sua sponte* modified the contempt sentences, consolidating the six sentences into one 30-day sentence.

The appellate court agreed with the defendant that the trial court did not give him an adequate opportunity to be heard in response to the finding of direct criminal contempt as required by G.S. 5A-14(b). Though only a "summary" opportunity to respond is required by statute, the appellate court found that the brief protestations in the back-and-forth between the court and the defendant did not amount to an adequate opportunity. This was error even though the defendant was given a "full opportunity" to respond the following day, since summary proceedings were no longer appropriate after the unnecessary delay. Rather, plenary proceedings under G.S. 5A-15 should have been initiated after the trial court deferred adjudication and sentencing for one day (plenary proceedings would require the drafting and service of an order to show cause). As the appellate court found error in the lack of opportunity to respond, the court did not reach the question of whether the defendant's behavior warranted a finding of direct criminal contempt.

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, COA24-927; ___ N.C. App. ___; 922 S.E.2d 181 (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.

Phil Dixon blogged about this case, here.

Sale and/or delivery of a controlled substance is not a lesser included offense of death by distribution, and the court did not err in sentencing both offenses; counsel was not ineffective for failing to object to the defendant being sentenced for both offenses

State v. Robinson, COA25-199; ___ N.C. App. ___ (Jan. 21, 2026). The defendant was convicted of death by distribution, possession with intent to sell or deliver a controlled substance, maintaining a dwelling to keep controlled substance, and possession of drug paraphernalia after a jury trial in Alamance County arising out of a fentanyl sale and ensuing overdose. Among other arguments, The defendant also argued that she received ineffective assistance of counsel because her counsel did not object to her being sentenced for both death by distribution and sale and/or delivery of a controlled substance.

The Court rejected the defendant's double jeopardy argument, finding again that it was not raised at trial, and went on to find that because sale and/or delivery of a controlled substance is not a lesser included offense of death by distribution, the trial court did not violate the defendant's double jeopardy rights by sentencing her for both offenses. The court also denied the defendant's claim of ineffective assistance of counsel for not objecting to the defendant being sentenced for both death by distribution and sale and/or delivery of a controlled substance (because it was not error to be sentenced for both). As a result, the Court found no prejudicial error by the trial court.

In defendant's trial for possession with intent to manufacture, sell, or deliver methamphetamine, (1) the trial court did not err by refusing to instruct the jury about the different isomers of methamphetamine or that the State must prove the presence of a controlled substance by a scientifically valid chemical analysis; (2) The trial court did not err by denying defendant's motion to dismiss on the basis that the State failed to present sufficient evidence of a controlled substance

State v. Dean, COA24-654; ___ N.C. App. ___; 924 S.E.2d 403 (Nov. 19, 2025). The defendant in this Johnston County case was convicted in a jury trial of possession with intent to manufacture, sell, or deliver methamphetamine and possession of drug paraphernalia. The jury further found the defendant had obtained habitual felon status. After entering a defective notice of appeal, the defendant petitioned the court of appeals for certiorari review, which it granted. The defendant argued that the trial court erred by (1) declining to deliver the special jury instructions distinguishing among different isomers of methamphetamine and specifying that the State had to prove the presence of a controlled substance by a "'[s]cientifically valid analysis'" and (2) denying his motion to dismiss the charge of possession with intent to sell and deliver methamphetamine "as the State failed 'to produce evidence that the seized substance contained an illegal isomer . . . as opposed to a legal isomer.'" (Slip op. at 4. 7.)

(1) The court of appeals found no error in the trial court's refusal to instruct the jury that "[m]ethamphetamine-D is a controlled dangerous substance under Chapter 90 of North Carolina General Statutes" while "[m]ethamphetamine-L is not a controlled dangerous substance under Chapter 90 of North Carolina General Statutes." (Slip op. at 4.) The defendant's request followed testimony by a defense expert that methamphetamine exists in two isomer forms, D-isomer and L-isomer, and that the isomers have different effects on the body. The State and defense drug chemistry experts agreed that the testing performed by the State did not differentiate between isomers.

The court of appeals characterized the issue of whether the State must discern between isomers of methamphetamine when instructing the jury as an issue of first impression. The North Carolina Controlled Substances Act classifies methamphetamine as a Schedule II controlled substance and defines it to include "'its salts, isomers, and salts of isomers.'" (Slip op. at 9-10 (quoting G.S. 90-90(3)(c)). The term "isomer" is defined to mean "'the optical isomer, unless otherwise specified.'" (Slip op. at 10 (quoting G.S. 90-87(14a)). The court cited research stating that D- and L-methamphetamine are optical isomers. Thus, the court concluded that both isomers of methamphetamine are controlled substances. For this reason, the court found that the pattern instructions delivered by the trial court appropriately addressed whether the substance was methamphetamine and the instruction that the defendant requested regarding methamphetamine-L was incorrect in law.

The court of appeals likewise found that the trial court did not err by refusing to instruct the jury that the State must prove the presence of a controlled substance by a scientifically valid chemical analysis. The appellate court noted that the pattern jury instructions delivered by the trial court informed the jury that they must be satisfied beyond a reasonable doubt as to every element of the offense, including the identification of the controlled substance. The trial court further instructed the jury that they were the sole judge of the weight and credibility of the evidence, including testimony from the State and defense experts. The court of appeals stated that these instructions captured the essential substance of the law and therefore the trial court did not err in declining the defendant's request for this special instruction.

Finally, the court of appeals concluded that even if it assumed error in the trial court's denial of the defendant's request for special instructions, the defendant had failed to show prejudice as there was no reasonable possibility that the jury would have reached a different result had the instructions he requested been given.

(2) The court of appeals rejected the defendant's argument that the trial court erred in denying his motion to dismiss the charge of possession with intent to sell or deliver methamphetamine on the ground that the State failed to present sufficient evidence of a controlled substance. The defendant based his argument on the State's failure to differentiate between the isomers of methamphetamine.

The court noted that a forensic scientist with the State Crime Laboratory testified that she performed testing on the substance seized from the defendant and determined that it was methamphetamine. She further testified that she reviewed the report prepared by the defendant's expert witness who testified at trial that methamphetamine exists in two isomer forms that have different effects on the body and that the testing done by the State could not differentiate between the isomers. The State's expert stated that this report did not change her scientific opinion as to the identity of the substance, testifying: "'It is still identified as methamphetamine.'" (Slip op. at 17.) The court of appeals concluded that the evidence supported a reasonable inference that the defendant possessed a controlled substance—methamphetamine.

Firearm Offenses

(1) Sufficient evidence supported the defendant's convictions–in connection with the defendant's attempt to purchase a firearm from a pawn shop–for attempted possession of a firearm by a felon and providing materially false information; (2) The trial court committed prejudicial error when it failed to accurately instruct the jury on attempt

State v. Vaughn, COA24-1089; ___ N.C. App. ___; 923 S.E.2d 881 (Nov. 19, 2025). In this New Hanover County case, the defendant, who had been convicted of felony possession of cocaine 20 years earlier, put a shotgun on layaway at a pawn shop in November 2022. The defendant returned to the pawnshop in January to pay off the balance. At that time, he completed a federal application to purchase the firearm (ATF form 4473), answering no to the question of whether he had ever been convicted of a felony. The defendant's application was denied, but the clerk was unable to explain to the defendant why. A detective at the Wilmington Police Department was notified of the defendant's failed attempted purchase and procured warrants for the defendant's arrest for possession of a firearm by a felon and providing false information to a firearms dealer. More than a month later, police surrounded the defendant's home with guns drawn. The defendant came to the door confused. When the officers told him what he was charged with, he said, "I've never had a gun."

The defendant was tried before a jury in April 2024 and testified in his defense. He testified that in 2013 he attended an expunction clinic and met with an attorney to have his felony conviction expunged. The defendant said he provided the attorney with details about his conviction and the attorney told him he had all he needed and the defendant did not need to return. The defendant believed his conviction had been expunged as he went on to hold jobs that required background checks.

The trial court denied the defendant's motion to dismiss the charges for insufficient evidence. The trial court also denied the defendant's request for instructions on attempt, including an instruction that attempt is a specific intent crime. The jury acquitted the defendant of possession of a firearm by a felon and convicted him of attempted possession of a firearm by a felon and providing materially false information. The defendant appealed, arguing that (1) the trial court erred by denying his motion to dismiss the providing false information charge and the attempted possession charge; (2) the trial court prejudicially erred when it failed to instruct the jury on the elements of attempt; and (3) G.S. 14-415.2 (prohibiting the possession of a firearm by a felon) is unconstitutional.

(1) Viewing the evidence in the light most favorable to the State, the court of appeals found ample evidence to support the charges. That evidence included proof of the defendant's prior felony conviction, evidence of the defendant's transactions at the pawn shop, which included holding the

firearm and placing it on layaway, and the defendant's completion of ATF form 4473 on which he stated that he had never been convicted of a felony. Though the defendant testified that he believed his felony conviction had been expunged and thus he was legally allowed to answer no to the prior conviction question on the form, his credibility was for the jury to determine. Therefore, the appellate court concluded that the trial court did not err in denying the defendant's motion to dismiss.

(2) The court of appeals agreed with the defendant that the trial court erred when it failed to accurately instruct the jury on attempt and that error was likely to mislead the jury. Notwithstanding a request from the defendant and the State to instruct the jury on attempt, the trial court did not inform the jury that, to find attempt, the jury had to find that the defendant completed an overt act going beyond mere preparation and that the defendant specifically intended to commit the substantive offense. The court rejected the State's argument that the defendant's handling of the firearm and placing it on layaway established the overt act. The court that the jury acquitted the defendant of possession and explained that without being instructed on the distinction between preparation and overt acts, the jury could have considered the layaway mere preparation for a possession that never occurred. As to intent, the State argued that because the jury found the defendant guilty of providing materially false information, it must have determined that the defendant knew he was a felon when he attempted to purchase the firearm. The court of appeals stated this "may have been a valid argument" absent the State's "blatant misstatements of law during closing arguments." (Slip op. at 15.) During those arguments, the prosecutor told the jury that "'[e]ven if you think the defendant's statement was credible, even if you believe every single word he said on the stand,'" his answer of no to the question of whether he had been convicted of a felony constituted making a statement he knew to be false. (Slip op. at 15-16.) The court said it could not conclude that the jury "determined the necessary intent for attempted possession in light of the State's egregious statement," as the jury may have reached its verdict based on reliance on this misstatement of law. (Slip op. at 17.) The court of appeals reasoned that the trial court's failure to address these misstatements significantly increased the likelihood that the failure to instruct on specific intent for attempted possession misled the jury. For that reason, the court remanded for a new trial on the charge of attempted possession of a firearm by a felon.

The defendant requested the court of appeals to invoke Rule 2 to address the constitutionality of G.S. 14-415.1, an argument he had not raised below. The court declined to do so, reasoning that inconsistent application of Rule 2 itself leads to injustice when some similarly situated litigants benefit and others do not. The court stated that the defendant failed to differentiate his case from every other person convicted of possession of firearm by a felon, when the predicate felony conviction was for a single non-violent offense, who failed to preserve a constitutional argument at trial.

Impaired Driving

A motor vehicle checkpoint operated under a template prepared by the Governor's Highway Safety Program met statutory and constitutional standards; officers had probable cause to search a vehicle based on the odor of marijuana

State v. White, COA 25-4; __ N.C. App. __ (Jan. 7, 2026). The defendant was stopped at a motor vehicle checkpoint (or checking station) run by the Saint Pauls Police Department. His vehicle smelled of marijuana, so officers ordered him out of his vehicle. He said he had a gun in the car. Officers seized it and charged him with being a felon in possession of a firearm. He moved to suppress, arguing that the checkpoint was unlawful and that the odor of marijuana did not provide probable cause because it was

indistinguishable from the odor of legal hemp. The trial judge denied the motions and the defendant pled guilty, reserving his right to appeal. (1) The checkpoint was lawful. The reviewing court rejected several challenges to the trial judge's factual findings, determining that the checkpoint was approved in advance, in writing, by the Chief of Police, who signed an authorization form, and concluding that although the Saint Pauls Police Department did not have its own checkpoint policy, it operated under a template promulgated by the Governor's Highway Safety Program. This arrangement satisfied G.S. 20-16.3A, which requires police checkpoints to "[o]perate under a written policy." Furthermore, the checkpoint was constitutional because it served the legitimate primary purpose of detecting traffic violations, and because it satisfied the balancing test set forth in *Brown v. Texas*, 443 U.S. 47 (1979), with the public interest in traffic safety outweighing the checkpoint's limited intrusion into individual liberty. (2) Following several of its own recent cases, the reviewing court rejected the defendant's argument that the odor of marijuana does not provide probable cause to search because it cannot be distinguished from the odor of legal hemp. The court additionally noted that in conversation with officers, the defendant did not claim to possess legal hemp.

Sex Crimes

(1) Trial courts should apply the "distinct interruption" test for determining the number of counts of indecent liberties resulting from multiple acts, regardless of the type of acts in question; (2) six to seven minutes was a sufficiently distinct interruption between two kisses to support multiple charges

State v. Calderon, 238A23; ___ N.C. ___; 923 S.E.2d 530 (Dec. 12, 2025). The defendant was found guilty after a jury trial of three counts of taking indecent liberties with a child based on three acts occurring on the same day: kissing the victim on the neck outside a van, kissing the victim on the mouth inside the van, and kissing the victim on the mouth again inside the van approximately six to seven minutes later. On appeal, the Court of Appeals reversed the judgment in part, concluding over a dissent that the kisses inside the van were "touchings" and not "sexual acts," and that they were not sufficiently distinct under a test for such acts established in State v. Sellers, 253 P.3d 20 (Kan. 2011), a Kansas case. The dissent would have found that the defendant committed three separate and distinct acts, and that he was thus properly convicted and sentenced for all three.

The Supreme Court reversed the Court of Appeals. First, the court concluded that the Court of Appeals erred in its threshold inquiry of whether the defendant committed a touching or a sexual act. The distinction is not supported by G.S. 14-202.1, and in fact neither type of act is required to convict a defendant of indecent liberties with a child. Second, the court concluded that the Court of Appeals erred by applying its four-factor *Sellers* test for determining the number of counts of indecent liberties applicable to a series of non-sexual acts. The court explained that the proper test—regardless of the particular acts in question—is the "distinct interruptions" test set out in State v. Dew, 379 N.C. 64 (2021). Applying that test, the court held that the trial court did not err by imposing sentences for three convictions. The six-to-seven-minute gap between the two kisses inside the van was a sufficiently distinct interruption to give the defendant an opportunity to reconsider and choose not to offend and thus supported one conviction for each act.

Shea Denning blogged about the *Calderon* case, here.

Sufficient evidence of penetration supported Defendant's conviction for statutory sex offense with a child by an adult

State v. Cruz, COA25-456; ___ N.C. App. ___ (Dec. 3, 2025). In mid-August 2020, Defendant molested his daughter-in-law's brother's four-year-old daughter "Sarah." In May 2021, Defendant was indicted for statutory sex offense with a child by an adult and indecent liberties with a child. The matter came on for trial in February 2024. Sarah testified at trial that her cousins' grandfather touched her inappropriate part. Sarah's father testified that Sarah told him she went to the bathroom to wipe herself off and there was blood on the toilet paper. A registered nurse testified that Sarah told her that her cousins' grandfather put his fingers in her "colis," and it hurt. ("Colis" was the word Sarah used to describe her vagina.) The nurse conducted a physical exam of Sarah and found a 0.25 millimeter laceration at the bottom of Sarah's labia minora. A forensic interviewer also testified that Sarah told her that her cousins' grandfather had put his whole finger into her colis. Defendant's DNA was found on Sarah's underwear. Defendant was convicted of statutory sex offense with a child and indecent liberties with a child and appealed.

Before the Court of Appeals, Defendant argued the State presented insufficient evidence of penetration to support a conviction of statutory sex offense with a child by an adult. A person is guilty of statutory sex offense with a child by an adult if the person, among other things, engages in a sexual act with a victim. G.S. 14-27.28(a). "Sexual act" is defined as the penetration, however slight, of any object (such as a finger) into the genital or anal opening of another person's body. G.S. 14-27.20(4). Here, the Court of Appeals said, the State presented substantial evidence supporting the element of penetration, including Sarah's own testimony that Defendant touched her vagina and the testimony of a registered nurse that she found a laceration on Sarah's labia.

Evidence was insufficient to show Defendant aided and abetted statutory rape of a child by an adult and statutory sex offense of a child by adult; evidence was insufficient to show Defendant allowed the commission of a sexual act upon a child; no plain error in permitting expert to testify that the absence of injury does not lessen any concern for sexual abuse

State v. Kleist & Lipscomb, COA24-677; ___ N.C. App. ___ (Dec. 3, 2025). In December 2020, Defendant Lipscomb and her two children "Val," age seven, and "Luke," age nine, lived with her boyfriend Defendant Kleist. At some point, Defendant Kleist molested the children. In particular, he forced Luke to touch his penis, performed oral sex on him, and anally penetrated him. Defendant Kleist also penetrated Val's vagina and anus with his penis, penetrated her anus with his finger and a bottle, forced her to perform oral sex on him, and performed oral sex on her. Both Defendants were indicted on multiple charges arising from the sexual abuse.

The matter came on for trial in July 2023. Luke and Val testified about Defendant Kleist's actions. Val testified that she told Defendant Lipscomb what Defendant Kleist had been doing to her, but Defendant Kleist continued to abuse her after she had informed Defendant Lipscomb. Nurse Liana Hill, admitted as an expert in forensic sexual assault examinations, testified that the children's physical examinations were normal, but that this does not rule out sexual assault. She testified, consistent with her written report, that given the overwhelming fact that the majority of children who disclose sexual abuse have normal genital exams, the absence of injury on the examinations in no way lessens any concern for sexual abuse. Defendant Kleist was convicted of statutory rape of a child by an adult and two counts of statutory sexual offense with a child by an adult. Defendant Lipscomb was convicted of aiding and abetting those crimes and two counts of felony child abuse by sexual act. Both Defendants appealed.

Before the Court of Appeals, Defendant Lipscomb argued the trial court erred by: (1) denying her motion to dismiss for insufficient evidence (1A) the charges of aiding and abetting statutory rape and statutory

sexual offense and (1B) felony child abuse, (2) failing to instruct the jury on the intent requirement for aiding and abetting, and (3) imposing an unconstitutional sentence. Both Defendants argued the trial court erred by (4) admitting nurse Hill's testimony that the absence of physical injuries should in no way lessen any concern for sexual abuse. Given its disposition of these arguments, the Court of Appeals addressed only issues one and four.

As for aiding and abetting (Issue 1A), to prove aiding and abetting the State must show (1) another person committed a crime, (2) the defendant knowingly advised, instigated, encouraged, procured, or aided that person to commit the crime, and (3) the defendant's actions or statements caused or contributed to the crime's commission. Here, the Court of Appeals found no evidence Defendant Lipscomb aided, actively encouraged, or communicated an intent to assist Defendant Kleist in committing statutory rape of a child by an adult or statutory sexual offense of a child by an adult. As for Luke, it also found no evidence that Defendant Lipscomb knew that Defendant Kleist was abusing him. The Court of Appeals distinguished the State's caselaw as involving a parent who was present and witnessed the abuse but failed to intervene.

As for felony child abuse (Issue 1B), any parent of a child less than 16 who allows the commission of any sexual act upon the child is guilty of a Class D felony. G.S. 14-318.3(a2). Construing the term "allows," the Court of Appeals said that to allow something is to refrain from stopping it. Thus, a parent allows the commission of a sexual act when she: (1) knows that a sexual act has occurred or is occurring, (2) has the capacity to prevent further acts, and (3) fails to take action to protect her child. Her presence during the act is not required. Here, the Court of Appeals found substantial evidence that Defendant Lipscomb allowed the commission of a sexual act upon Val: Val told Defendant Lipscomb about Kleist's conduct, Defendant Lipscombe could have prevented the abuse, but Defendant Lipscomb took action to protect Val. As for Luke, however, the Court of Appeals found no evidence Defendant Lipscomb allowed the commission of a sexual act upon him because the State failed to prove Defendant Lipscomb knew about the sexual acts upon Luke.

As for the expert testimony (Issue 4), in a child sex case, absent physical evidence of sexual abuse, the trial court should not admit an expert opinion that sexual abuse has in fact occurred. *State v. Stancil*, 355 N.C. 266 (2002). Here, the Court of Appeals found no violation of *Stancil* in the admission of Nurse Hill's testimony that the absence of injuries does not rule out sexual assault. It distinguished Defendants' caselaw in which experts more clearly vouched for child victims. Further, given the children's testimony, corroborated by "their outcries to family members and behavioral changes observed by multiple witnesses," Defendants could not show that, but for the admission of Nurse Hill's testimony, the jury probably would have reached a different result.

Threats Offenses

(1) The trial court erred in denying the defendant's motion to dismiss a charge of communicating threats as the State presented no evidence that the officer the defendant threatened believe the alleged threat; (2) The defendant failed to show that he was prejudiced by the trial court's delivery of a jury instruction regarding false, contradictory, or conflicting statements

State v. Matthews, COA24-961; ___ N.C. App. ___; 924 S.E.2d 92 (Nov. 19, 2025). The defendant in this Moore County case was convicted in a jury trial of possession of methamphetamine, carrying a concealed gun, and two counts each of resisting a public officer and communicating threats. The drug

and gun charges arose from evidence discovered during a traffic stop; the remaining charges arose from defendant's actions when two officers arrested him for those offenses. On appeal, the defendant argued that the trial court erred by (1) denying his motion to dismiss one of the charges of communicating threats and (2) delivering Pattern Jury Instruction 105.21, which informs the jury that it may consider false, contradictory, or conflicting statements by a defendant as a circumstance tending to reflect the mental process of a person with a guilty conscience.

(1) The court of appeals agreed with the defendant that the trial court erred in denying the defendant's motion to dismiss the charge of communicating threats against one of the two officers as the State presented no evidence that the officer believed the defendant's alleged threats. Noting that an element of the offense of communicating threats under G.S. 14-277.1(a) is that the person threatened believes the threat will be carried out, the court found no evidence to support that element. The officer to whom this threat was directed did not testify and the officer who did testify did not testify about the other officer's belief. For this reason, the court reversed one of the defendant's convictions for communicating threats.

(2) Assuming for the sake of argument that the trial court erred in instructing the jury pursuant to Pattern Instruction 105.21 regarding false, contradictory, or conflicting statements, the court of appeals determined that the defendant could not show that he was prejudiced by the trial court's inclusion of the instruction. The court noted that the instruction left it up to the jury as to whether the defendant made statement of this ilk and that the trial court told the jury that such statements did not create a presumption of guilt and were not, standing alone, sufficient to establish evidence of guilt.

Defenses

The trial court committed plain error by instructing the jury that the castle doctrine's presumption of reasonable fear of imminent death or bodily harm could be overcome by substantial evidence beyond the five grounds set in G.S. 14-51.2(c), and by failing to instruct that the curtilage is part of the home for defense of habitation purposes

State v. Allison, 103PA24; ___ N.C. ___; 923 S.E.2d 485 (Dec. 12, 2025). The defendant was convicted of second-degree murder based on the killing of Brandon Adams. After an argument related to Adams's girlfriend, Adams followed the defendant to the defendant's house. After they parked their cars, the defendant quickly entered his house, but Adams stuck his hand and foot inside the door, preventing the defendant from closing it. The defendant retrieved a shotgun and returned to the front door to show it to Adams, who remained on the front porch. The defendant warned Adams not to cross the threshold and asked him to leave so the defendant could take care of his mother, who suffered from Alzheimer's and lived with him. Adams did not leave. The defendant turned to look back at his mother, and when he turned back toward the front porch, he saw Adams make a forward move toward the house. The defendant shot him. Adams later died from the wound.

At trial, the defendant presented a castle doctrine argument. The State argued that the defendant was not entitled to the castle doctrine defense because Adams did not physically enter his home. The trial court gave the instruction, but included language indicating the possibility that the State could present evidence to overcome the presumption that the defendant reasonably feared imminent death or serious bodily injury. The court also did not instruct the jury that the curtilage of the home constitutes

part of the home for defense of habitation purposes. The defendant appealed, arguing that the instruction was deficient.

The Court of Appeals rejected the defendant's jury instruction argument, concluding that the State presented substantial evidence that the defendant "did not have a reasonable fear of imminent death or bodily harm, thus overcoming the reasonableness presumption and creating a question of fact for the jury to decide."

The Supreme Court granted discretionary review to review the single issue of whether the statutory presumption of reasonableness in G.S. 14-51.2(c) can, in addition to the five statutorily-enumerated rebuttal circumstances, also be rebutted when the State presents substantial evidence from which a reasonable juror could conclude that the defendant did not have a reasonable fear of imminent death or serious bodily harm.

The Supreme Court concluded that under *State v. Phillips*, 386 N.C. 513 (2024), the castle doctrine's statutory presumption of reasonable fear may only be rebutted by the five circumstances contained in G.S. 14-51.2(c). Thus, the Court of Appeals erred by allowing the presumption to be rebutted based on a non-statutory grounds. Additionally, the trial court erred by not instructing the jury that a home's curtilage is protected under the language of G.S. 14-51.2.

After determining that the instructions were erroneous, the Supreme Court concluded that the defendant established all three prongs needed to demonstrate plain error. First, the instructional errors were fundamental in that they deprived him of his entitlement to a complete self-defense instruction. Second, he showed that those fundamental errors had a probable impact on the trial's outcome, because, the court said, the jury "would almost *certainly* return a different verdict" if properly instructed. Finally, the defendant established that the error is an exceptional case warranting plain error review in that the erroneous instructions likely led to a conviction based on conduct the General Assembly deemed justifiable and legal. The court thus reversed the Court of Appeals and remanded the matter for a new trial.

Justice Riggs, joined by Justice Earls, dissented, writing that, properly understood, *State v. Phillips* allows the State to rebut the castle doctrine's presumption of reasonableness through evidence beyond the five circumstances set out in G.S. 14-52.1(c), and that the State did so here.

The trial judge was not required to instruct the jury about lack of justification or excuse when there was no evidence of any justification or excuse for the assault in question

State v. Phillips, COA25-275; ___ N.C. App. ___ (Jan. 7, 2026). The defendant was convicted of stalking with a court order in effect (based on his repeated harassment of his neighbors), assault with a firearm on a law enforcement officer (as a result of pointing a gun at a deputy who approached the defendant while investigating the stalking), and other charges.

The trial properly declined to include, in the jury instructions for the assault charge, the phrase "without justification or excuse." Such instruction must be given only when there is some evidence of justification or excuse, and there was none here. Defendant contended on appeal that "he could have been asleep and thus reacted involuntarily" when the deputy approached his vehicle, but the evidence at trial showed that his eyes were open and that the deputy loudly announced his approach.

First Amendment Issues

(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, COA25-159; ___ N.C. App. ___; 924 S.E.2d 74 (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.

Statute prohibiting knowingly teaching bombmaking to a person who intends to commit a violent crime is not facially overbroad; motion to dismiss properly denied

U.S. v. Arthur, 160 F.4th 597 (Dec. 3, 2025). Under 18 U.S.C. 842(p)(2)(B), it is a crime to teach another person how to create or use "explosives, destructive devices, or weapons of mass destruction, knowing that such person intends to use that teaching, demonstration, or information for, or in furtherance of, an activity that constitutes a Federal crime of violence." (cleaned up). The defendant ran a business that sold military equipment and offered training for people to help defend themselves "against a tyrannical government of our own or an invading tyrannical government." *Arthur* Slip op. at 4. After one of the defendant's customers was involved in a "fatal incident," the FBI searched the customer's home and discovered numerous manuals authored by the defendant, along with 14 functional pipe bombs that matched explosive devices described in the manuals. The FBI arranged for an undercover informant to contact the defendant and engage his training services. When the two met in person, the informant told the defendant that federal agents had been to his home, were probably going to return, and that he wanted to be prepared for their return. In response, the defendant told the informant that his choices were to either "stand and fight" the agents or flee. When the informant indicated he was not willing to flee, the defendant explained to the informant how to protect his property from federal agents. This included advice on how to use grenades, improvised explosive devices (IEDs), guns capable of being fired

remotely, and more. The defendant also showed the informant how to create a detonator and how to modify a shotgun so that it could fire grenades. Federal agents later arrested the defendant and searched his property, finding multiple IEDs and guns. In addition to the 18 U.S.C. 842 charge, the defendant was charged with several other counts relating to possession of illegal guns and bombs.

The defendant moved to dismiss pretrial, arguing that 18 U.S.C. 842(p)(2)(B) was facially overbroad. The district court denied the motion, finding that the statute did not limit protected speech and that the knowledge requirement of the law narrowed its scope to something akin to an aiding and abetting statute. The district court noted that the conduct covered by the statute went far beyond "abstract advocacy" of violence. *Arthur* Slip op. at 8. Following a jury trial, the defendant was convicted of all counts and sentenced to 300 months in prison. The defendant appealed, and a divided panel of the Fourth Circuit affirmed.

A law is facially overbroad under the First Amendment when it "criminalizes a substantial amount of protected expressive activity." *Id.* at 12 (internal citation omitted). A court considering an overbreadth challenge must first analyze the scope of the challenged law and determine whether it may be read narrowly to avoid a constitutional issue. Next, the court must examine the breadth of protected speech criminalized by the statute. The challenger has the burden to show that the law substantially burdens protected expression compared to its legitimate reach. The court must also consider whether the speech affected by the statute is among the categories of unprotected speech. If the court determines that the statute is constitutionally overbroad, the court must then examine whether the overbroad part of the law is severable from the rest of the law.

Here, Congress substantially narrowed the reach of 18 U.S.C. 842(p)(2)(B) by including a knowledge requirement—the law only applies to those who teach or distribute knowledge about the creation of or use of explosives while knowing the recipient of the information intends to use it for illegal purposes. The law does not sweep in an undue amount of protected expressive activity, because it only applies to speech integral to criminal conduct, one of the categories of unprotected speech. 18 U.S.C. 942(p)(2)(b) only applies to someone who is effectively assisting in the commission of a crime by another. According to the court:

> [S]omeone violating § 842(p)(2)(B) is aiding—i.e., facilitating—the underlying crime by intentionally sharing the specified information with someone that they know intends to use it to commit a proscribed crime. And because that sort of facilitation is undoubtedly 'integral' to the underlying crime, it is unprotected speech. *Id*. at 18-19.

Even if the statute could theoretically be applied to protected speech, the defendant here failed to show that the statute sweeps in a substantial amount of protected speech compared to its lawful applications. Thus, the district court correctly denied the motion to dismiss.

Generalized encouragement to conduct jihad did not rise to the level of incitement or speech integral to criminal conduct and was protected speech under the First Amendment

U.S. v. Al-Timimi, 164 F.4th 292 (Jan. 9, 2026). The defendant was the founder of an Islamic Center in the Eastern District of Virginia. He was a frequent lecturer at the center and was a leader among the Muslim community. A group of young men connected with each other through the center and began planning to engage in combat jihad. This planning began around 2000 and included playing paintball together as a

form of combat training. The defendant was not a part of the group. When members of the group informed the defendant of their activities, he neither approved nor disapproved. At some point, an FBI agent approached a member of the group. When the defendant learned of this, he reprimanded the group members for making their plans too obvious to outsiders and advised them to be more discreet. Several group members began collecting firearms, and some began planning travel to Pakistan to be trained in combat by an Islamic militant group there. Some members of the group had already trained with that organization.

After the attacks on the World Trade Center on September 11, 2001, the defendant convened members of the center. He advised them that he expected anti-Muslim sentiment would be on the rise in America and to be careful. He also told one individual to "gather some brothers and come up with a . . . contingency plan," to address the potential for "mass hostility towards Muslims in America." *Al-Timimi Slip* op. at 5. At a later meeting with select members of the center (which included some members of the paintball group), the defendant advised the men to repent their sins, leave the U.S., and join the fight in Afghanistan. He told the men that, should they stay in the U.S., they would be complicit in the U.S. fight against Muslims by paying U.S. taxes. He also mentioned the Pakistani militant organization and suggested that the men get trained by them, because members of that group were on "the correct path" of religion. *Id*. at 6. This discussion had an impact on some of the group members, and several members travelled to Pakistan and were trained in combat tactics (although none of the men ever actually fought in Afghanistan).

In October of 2001, the defendant held another meeting at his home with adherents of the center. Some of the same men from the earlier meeting were present. The defendant advised the group to "support [the Muslims in Pakistan and Afghanistan] physically, [and] if you can't support them financially, support them through speaking good of them or telling the good of what they are doing, and if you can't do that, then at least pray from them." *Id*. at 9.

By early 2003, law enforcement began investigating members of the Islamic center. They obtained search warrants for the homes of the defendant and others, interviewed members, and began recording their phone calls. Eleven members of the group, including the defendant, were indicted for various charges in June 2003, all relating to their alleged conspiracy to engage in combat against the U.S. The defendant spoke to law enforcement several times, acknowledging many of his prior remarks, but denying that he specifically encouraged people to get combat training or wage jihad. A superseding indictment later charged the defendant with a host of serious terrorism-related crimes, including conspiring to levy war against the U.S., soliciting and inducing others to do so, contributing services to the Taliban, and inducing others to illegally use firearms. The defendant pleaded not guilty, but the jury convicted on all counts. The defendant was sentenced to life plus a number of long consecutive sentences. Procedural wrangling relating to certain secret government surveillance programs relevant to the prosecution that came to light in 2005 delayed the appeal of that verdict until 2014. More new information relating to government surveillance was discovered around that time. The U.S. Supreme Court also decided the *Johnson* case, which impacted the defendant's appeal. *See U.S. v. Johnson*, 576 U.S. 591 (2015) (finding the definition of "violent felony" in 18 U.S.C. 924(e) unconstitutional). These developments led to multiple remands to the district court before resolution of the appeal. Several of the defendant's convictions were vacated in 2024 due to the *Johnson* decision. Between the time he served and the convictions that were ultimately vacated, the defendant had served a large portion of his sentence, but still faced an additional 360 months imprisonment.

On appeal, the defendant argued that his convictions violated the First Amendment because the language that formed the basis of his convictions was protected speech. The Fourth Circuit unanimously agreed. "Abstract 'advocacy of lawlessness' is protected speech. 'Mere encouragement' of unlawful activity is 'quintessential protected advocacy.'" *Al-Timimi* Slip op. at 14. Only speech that incites or produces imminent lawlessness and is likely to cause such conduct is unprotected. *Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969). Similarly, speech that facilitates, solicits, or abets the commission of crime is unprotected as speech integral to criminal conduct. *Giboney v. Empire Storage & Ice Co.*, 336 U.S. 490, 498 (1949). Here, the defendant's speech did not fall within either category of unprotected speech. "Al-Timimi's speech was neither sufficiently imminent or sufficiently definite to lose First Amendment protection under *Brandenburg*." *Al-Timimi* Slip op. at 20. Likewise, the defendant "did not help anyone to commit crimes. To be sure, he encouraged them. But the most he did to further the commission of these crimes was to advise individuals—in quite general terms—on how to react to the Sept. 11 attacks . . ." *Id*. at 28.

The convictions were all therefore vacated and the case was remanded to the district court for it to enter judgments of acquittal.

Sentencing

Resentencing hearings are *de novo* unless otherwise limited by the mandate of the reviewing court

State v. Kelliher, 442PA20-2; ___ N.C. ___; 923 S.E.2d 510 (Dec. 12, 2025). The defendant in this case was convicted of two counts of first-degree murder for offenses that occurred when he was seventeen years old. In 2013, he initially received consecutive sentences of life without parole, with concurrent sentences for robbery with a dangerous weapon and conspiracy to commit robbery with a dangerous weapon. After mandatory life sentences for juvenile defendants were deemed unconstitutional in *Miller v. Alabama*, 567 U.S. 460 (2012), the defendant was resentenced to consecutive sentences of life with the possibility of parole. He appealed the new sentence, arguing that an aggregate 50-year parole eligibility date constituted a de facto sentence of life without parole. The supreme court agreed, establishing a rule that any sentence that requires a juvenile offender to serve more than 40 years before becoming eligible for parole is a de facto sentence of life without parole under the North Carolina Constitution. State v. Kelliher (Kelliher I), 381 N.C. 558 (2022). The court in *Kelliher I* remanded the case to the trial court with instructions to enter concurrent sentences of life with the possibility of parole. It gave no instructions as to the robbery sentences.

On remand, the trial court judge sentenced the defendant to two concurrent terms of life with the possibility of parole to run at the expiration of two consecutive terms of 64–86 months for the robberies—a total sentence that would leave the defendant eligible for parole after 36 to 39 years. The defendant again appealed, arguing that the trial court went beyond the *Kelliher I* mandate from the Supreme Court, which mentioned only the murder sentences and was silent as to the robberies. The Court of Appeals agreed with the defendant.

The Supreme Court reversed the Court of Appeals and reinstated the trial court's sentence. The court reasoned that when a case is remanded for resentencing, that hearing should be conducted *de novo* unless otherwise limited by the reviewing court. Here, in the absence of limiting language in the Supreme Court's mandate in *Kelliher I*, the trial court had authority at the *de novo* sentencing hearing to

order the murder sentences to run consecutively to the robbery sentences, even though the robberies had been concurrent in the original judgment.

Post-Conviction and Appeals

Where defense counsel stated his *intention* to enter notice of appeal at the appropriate time, but the defendant then physically attacked his lawyer during entry of judgment, oral notice of appeal was in violation of Rule 4; appeal dismissed and petition for writ of certiorari denied

State v. Jordan, COA25-107; ___ N.C. App. ___ (Dec. 17, 2025). The defendant was convicted at trial of assault with a deadly weapon with intent to kill and possession of a firearm by a felon. After the defendant was sentenced for the first conviction, defense counsel stated, "At the appropriate time, we would be entering notice of… appeal." However, as the court pronounced the second judgment, the defendant attacked his attorney and knocked him to the ground. The bailiffs intervened in the "melee" and removed the defendant from the courtroom. While defense counsel received medical attention in the judge's chambers, the judge resumed court, noted the circumstances, and stated: defense counsel "does give[ ] notice of appeal on behalf of his client." No written notice of appeal was filed.

The Court of Appeals pointed to cases where defense counsel's statement of an *intention* to give oral notice of appeal was found to be premature and in violation of Rule 4. The court concluded that it lacked jurisdiction to hear the appeal and dismissed it. The court also declined to exercise its discretion to consider the matter and denied the defendant's petition for writ of certiorari.

(1) A second MAR raising a forfeiture of counsel argument was procedurally barred where the defendant was in a position to raise the relevant change in law in an earlier MAR but did not; (2) "good cause" did not excuse the procedural bar where the failure to raise the claim earlier was attributable to counsel's omission rather than true unavailability; (3) defendant's claim that a fundamental miscarriage of justice excuses the procedural bar was abandoned where it was not supported by argument

State v. Haizlip, COA25-469; ___ N.C. App. ___ (Jan. 21, 2026). This post-conviction appeal arose from a 2013 Guilford County trial in which the defendant ultimately proceeded pro se after discharging retained counsel, declining appointed counsel, and later appearing for trial with a private attorney who sought (and was denied) a continuance. The defendant was convicted of cocaine trafficking-related offenses and attaining habitual felon status. On direct appeal, the Court of Appeals upheld the trial court's denial of the motion to continue and the defendant's forfeiture of counsel under then-existing caselaw. The defendant filed a first MAR in 2020 arguing the continuance denial unfairly deprived him of counsel. The trial court denied it as having been previously determined on the merits on direct appeal, and the defendant did not seek review. The defendant later filed a second MAR in 2023 based on caselaw from the North Carolina Supreme Court that narrowed forfeiture of counsel to "egregious misconduct." The trial court denied the defendant's second MAR, finding that the merits had been previously determined and that the defendant was barred from reasserting them. The Court of Appeals granted certiorari to review the denial.

The Court of Appeals affirmed solely on procedural bar grounds, concluding the defendant was "in a position to adequately raise" the changed forfeiture theory in his first MAR. This is because the first case narrowing forfeiture of counsel (*State v. Simpkins*, 373 N.C. 530 2020)) had been decided months before

he filed his first MAR. The Court also rejected the defendant's attempt to fit within statutory exceptions to the procedural bar. The Court first explained that "good cause" requires genuine unavailability beyond counsel's control, and that the record reflected omission of the changed law argument in the first MAR, rather than unavailability. The Court also addressed the defendant's claim that a fundamental miscarriage of justice would occur if the Court did not address his forfeiture of counsel argument. The Court found that the defendant did not support this claim with an argument that a different result would have been reached, and as a result the Court held the argument to be abandoned. Finally, the Court noted that its holding in this case is narrow and decided solely on the procedural bar, and as a result it does not address the merits of whether the defendant forfeited counsel under the new standard announced in *Simpkins*.

Sex Offender Registration and Satellite-Based Monitoring

Trial court reversibly erred by ordering SBM when presented with low-risk Static 99 evaluation and no other evidence showed that the defendant required the highest level of monitoring and supervision

State v. Leggett, COA25-2; ___ N.C. App. ___ (Jan. 7, 2026). The State's evidence showed that the defendant repeatedly drugged his wife, had sex with her while she was unconscious, and recorded it. She discovered the recordings on one of his devices and emailed them to herself, then contacted police. He was charged with, and convicted of, rape and other offenses.

The trial judge erred in placing the defendant on satellite-based monitoring (SBM) for life. The defendant was found guilty of an aggravated offense. He was given a Static-99 risk assessment, and scored 0, or "below average risk." The State presented no additional evidence concerning the need for SBM. Under prior precedent, if a defendant does not receive a "high risk" score on the Static-99 and the State presents no additional evidence, the trial court may not conclude that the defendant "requires the highest possible level of supervision and monitoring," G.S. 14-208.40A(c1), a finding that is required to order lifetime SBM.

(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, COA25-98; ___ N.C. App. ___; 924 S.E.2d 64 (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.