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District Court Judges 2025 Summer Conference
Criminal Law Case Update
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Cases covered include published opinions from the North Carolina appellate courts decided between September 17, 2024 and May 21, 2025. Summaries are prepared by Alex Phipps, Senior Legal Research Associate at the School of Government. These summaries were originally posted on the North Carolina Criminal Law Blog. You may search all of the summaries in the Criminal Case Compendium. To obtain the summaries automatically by email, sign up for the Criminal Law Listserv.

Arrest, Search, and Investigation

Totality of circumstances justified *Terry* frisk of defendant, and odor of marijuana supported probable cause to search defendant's vehicle.

State v. Rowdy, COA24-64, ___ N.C. App. ___ (Oct. 15, 2024). In this Forsyth County case, defendant appealed his conviction for carrying a concealed weapon, arguing error in denying his motion to suppress a search of his vehicle because the officers lacked probable cause. The Court of Appeals disagreed, finding no error.

In July of 2020, a Forsyth County sheriff's deputy observed defendant commit a traffic violation by driving into the oncoming traffic lane to go around another car waiting in a left turn lane. The deputy followed defendant and activated his lights and siren, but defendant did not immediately pull over. Defendant eventually stopped in an apartment complex known to be a high crime area, and the deputy initiated a traffic stop. During the stop, the deputy, along with another deputy who arrived to assist, smelled marijuana coming from defendant's vehicle, and they asked defendant to step out of the vehicle. The deputies began questioning defendant about the smell of marijuana, and defendant "bladed" his body away from the officers and eventually stopped answering questions, at which point the deputies detained defendant. One of the deputies conducted a *Terry* frisk of defendant and felt an object in his pocket that turned out to be a blunt. After discovering the blunt, the deputies searched the vehicle and found the firearm giving rise to the charge. Before trial, defendant filed a motion to suppress, arguing that due to the legalization of hemp, the deputies did not have probable cause to frisk him or search his vehicle. The trial court denied the motion, and defendant was subsequently convicted.

The Court of Appeals approached the issue by first considering defendant's challenged findings of fact, which all related to the odor of marijuana and the blunt discovered after

the frisk. Defendant argued that there was no evidence the substance was marijuana, but the court noted his argument "[was] misplaced because the legalization of hemp does not eliminate the significance of the officer's detection of an odor of marijuana for the purposes of determining probable cause." Slip Op. at 8. The court turned to two recent decisions, *State v. Little*, COA23-410 (N.C. App. Sept. 3, 2024), and *State v. Dobson*, COA23-568 (N.C. App. April 16, 2024), to support the conclusion that the odor of marijuana could still support probable cause for a search, especially where the defendant did not claim he possessed legal hemp such as the current case. Additionally, the court noted defendant's arguments were focused on "policy" and did not question the competency of the evidence before the court. Slip Op. at 10-11.

The court moved next to the *Terry* frisk of defendant and rejected defendant's argument that the deputies lacked reasonable suspicion he was armed and dangerous. Here, the court considered the different factors identified by the trial court to find reasonable suspicion: (i) defendant failed to pull over when the deputy first activated his lights and siren and pulled into an apartment complex known as a high crime area; (ii) defendant had previous convictions for narcotics and carrying a concealed gun; and (iii) defendant's body language when "blading" away from deputies. Under the "totality of the circumstances" standard, the court determined the factors were sufficient to support reasonable suspicion. *Id*. at 16.

Finally the court rejected defendant's argument that the deputies lacked probable cause for the search of his vehicle after finding the blunt, explaining the search "was lawful and supported by probable cause without the discovery of the blunt[] [because the] odor of marijuana emanating from the vehicle provided probable cause." *Id*. at 17. Similar to the analysis above, the court "follow[ed] well-established precedent" supporting the position that "the odor of marijuana, alone, is sufficient to establish probable cause to search a vehicle." *Id*. at 19. Here, the deputies smelling marijuana represented sufficient evidence for probable cause, regardless of whether the substance was actually hemp or marijuana.

Judge Arrowood concurred by separate opinion to urge the Supreme Court of North Carolina to consider and address the issues presented by the legalization of hemp.

Totality of circumstances, including odor of marijuana, supported probable cause to search defendant's vehicle; Court of Appeals panel rejected argument that "odor alone" doctrine was invalid.

State v. Schiene, COA23-682, ___ N.C. App. ___ (Oct. 1, 2024). In this Mecklenburg County case, defendant appealed after entering a guilty plea to possession of a firearm by a felon and felonious possession of a stolen firearm, arguing error in denying his motion to suppress evidence seized from his vehicle due to the indistinguishable odor of legal hemp and marijuana. In a per curiam opinion, the Court of Appeals affirmed the denial of defendant's motion.

In September of 2020, police officers were on routine patrol around an inn known for drug investigations near the airport in Charlotte. The officers saw two people inside an SUV and approached the vehicle; as they approached, they smelled marijuana. When the officers approached, defendant was in the driver's seat, and his nephew was in the passenger seat. As defendant's nephew rolled down the window to speak to the officers, they noticed the smell of marijuana became stronger. The officers detained both men while searching the SUV, where they discovered a firearm, unburned marijuana in mason jars, digital scales, and defendant's ID. At trial, defendant moved to suppress the physical evidence seized from the vehicle and statements he made prior to receiving a *Miranda* warning; the trial court denied the motion to suppress in part for the physical evidence but granted it in part as to the statements. After the trial court's ruling, defendant pleaded guilty and gave notice of appeal.

Defendant's argument on appeal was that the warrantless search of his vehicle was not supported by probable cause because the officer approaching the vehicle could not differentiate between the smell of illegal marijuana and legal hemp. The Court of Appeals first noted the applicable Fourth Amendment standard and the motor vehicle exception that permits a search if an officer has "reasonable belief" based on the circumstances that a vehicle contains contraband. Slip Op. at 7. The court explained that for the motor vehicle exception, the "probable cause analysis is based upon the 'totality of the circumstances.'" *Id*. Here, the State offered other facts beyond the odor of marijuana supporting the search of the vehicle. The vehicle was parked in a manner that "could indicate illegal activity, particularly at night" and also "was positioned to provide a quick escape [and] was distant from most other vehicles in the far corner" of the parking lot. *Id*. at 7-8. When combined with the officers' drug identification training and the odor of marijuana near the vehicle, the court concluded that "[t]hese factors are sufficient to support a 'reasonable belief' the automobile contained contraband materials." *Id*. at 8. In turn, this supported the conclusion that "[u]nder the totality of the circumstances" the officers had probable cause to search defendant's vehicle. *Id*.

The court then moved on to consider defendant's argument against the validity of the "odor alone" doctrine from *State v. Greenwood*, 301 N.C. 705 (1981). Defendant's argument focused on the precedential value of the opinion, arguing that the odor of marijuana alone supporting probable cause to search a vehicle was "not binding authority" from the opinion. Slip Op. at 10. The court disagreed, first noting defendant's argument "that odor alone cannot justify probable cause is not rooted in any federal or state authority, as no binding authority has upheld any such argument." *Id*. The court examined relevant portions of *Greenwood* and noted "[i]t is clear our Supreme Court agrees the odor of marijuana is sufficient for probable cause." *Id*. at 11. Moving to more recent precedent, the court pointed to *State v. Little*, COA23-410, ___ N.C. App. ___ (Sept. 3, 2024), and other recent cases supporting the odor of marijuana giving probable cause to search a vehicle. The court concluded defendant could not show error or prejudice under this argument.

Judge Murphy concurred in the result only, and wrote separately to discuss the use of "high crime area" as a legitimate factor for probable cause. *Id*. at 14.

Trial court's finding that defendant consented to the search of her vehicle did not clearly extend to search of her wallet outside the vehicle, justifying remand.

State v. Peters, COA24-475, ___ N.C. App. ___ (Apr. 16, 2025). In this McDowell County case, defendant appealed after pleading guilty to possession of methamphetamine, arguing error in denying her motion to suppress the evidence found during a warrantless search. The Court of Appeals agreed, vacating and remanding for consideration of whether defendant clearly and unequivocally consented to the search of her wallet.

In July of 2022, defendant and a man were living in a camp near Pisgah National Forest when they were approached by Wildlife Resource Commission officers. The officers asked for proof that defendant owned the vehicle in the camp, and she provided proof of title. The officers then asked if they could check out the car, to which the man residing with defendant said yes; this man had been the driver of the vehicle as defendant did not have a valid license. Due to circumstances unknown, defendant's wallet ended up on the roof of the vehicle and the officers searched her wallet while looking through the vehicle, finding a bag of methamphetamine. Nothing legally significant was found inside the vehicle, and defendant came to trial on a charge of possession based on the methamphetamine found in her wallet. At trial, defendant moved to suppress, arguing that the search of her wallet was unconstitutional, but the trial court denied the motion. Defendant pleaded guilty, reserving her right to appeal the issue.

The Court of Appeals first established that defendant impliedly consented to the search of her vehicle, based on her failure to object to the search when a third party gave consent, and her actions attempting to facilitate the search by cleaning an area of the vehicle. However, the court noted the distinction between consent to search the inside of the vehicle and consent to search defendant's wallet, as "[t]he wallet was neither inside nor otherwise attached to the vehicle." Slip Op. at 6. Because the trial court did not make a determination as to whether defendant consented to the search of her wallet, "the trial court's findings cannot support its order denying Defendant's motion to suppress." *Id*. at 7. The court then reasoned through the appropriate remedy, concluding that the trial court must determine based on the evidence whether the officer objectively believed that defendant placing her wallet on the roof represented "giving her clear and unequivocal consent to the officer's search of her wallet." *Id*. at 9.

Officers observing dogs in distress from defendant's driveway did not represent unreasonable search of defendant's property.

State v. Johnson, COA24-336, ___ N.C. App. ___ (Dec. 17, 2024). In this Carteret County case, defendant appealed his convictions for felony and misdemeanor cruelty to animals, arguing error in denying his motion to suppress the results of a warrantless search of his home's curtilage. The Court of Appeals found no error.

An animal control officer received a report about a strong smell, possibly a dead dog, coming from defendant's property. When the officer looked up defendant he learned that defendant was on probation for cruelty to animals, and was required to allow reasonable searches of his home and yard concerning animals on his property. The officer called defendant but was unable to reach him and left a voicemail. When the animal control officer and a sheriff's deputy arrived at defendant's property, they smelled a strong odor of ammonia and feces, and observed overgrown brush and trash. The officers walked up the driveway to defendant's home, observing many dogs in the yard and inside the house in terrible physical condition, many lacking food or water, and large piles of feces. The officers applied for and obtained a search warrant based on photographs of the animals they observed. Twenty-one dogs were seized from defendant's property; the majority of the dogs needed veterinary assistance, and two were euthanized based on veterinary recommendation. The trial court denied defendant's motion to suppress the results of the warrantless search after concluding that the search was reasonable based on exigent circumstances.

The Court of Appeals first explained that as the officers walked up defendant's driveway, they were in a place "where the public is allowed to be," meaning no unreasonable search had taken place at that point. Slip Op. at 10. While still in the driveway, the officers observed many signs of dogs in distress, and "the circumstances abundantly supported a reasonable belief that the dogs on the property needed immediate aid to prevent further serious injury or death such that exigent circumstances justified [the officer's] warrantless entry." *Id*. Additionally, seizing the dogs for emergency treatment to prevent further suffering was reasonable under the circumstances. The court also noted that the inevitable discovery doctrine applied to the dogs in the backyard. Likewise, because the search of the curtilage was not unconstitutional, the warrant to search defendant's house was not based on an unconstitutional search. The court concluded that because there was no unreasonable search, the trial court did not err in denying defendant's motion to suppress.

Search warrant was not invalid due to photographs of wrong property because it referenced correct address to be searched; edits made to warrant after issuance to remove references to photographs did not render it invalid.

State v. Ellison, COA24-30, ___ N.C. App. ___ (Oct. 15, 2024). In this Watauga County case, defendant appealed after pleading guilty to larceny and breaking and entering, arguing error in denying his motion to suppress the results of a search of his property. The Court of Appeals found no error.

In December of 2022, a caller reported two chainsaws were stolen from his property and provided law enforcement with trail camera footage of two men taking the chainsaws away in a wagon. Officers identified defendant as one of the men and prepared a search warrant for his property at 303 Tanner Road, including a photograph from the front of the property, an aerial photograph, and a description of a single wide mobile home with white siding. When executing the warrant, law enforcement officers realized they had provided photographs of the wrong property, which were of 310 Tanner Road. The officers went to the magistrate, who marked out the warrant's reference to the attached photographs and initialed changes on the search warrant. The officers then searched the property, finding the chainsaws. Defendant subsequently confessed to stealing the chainsaws during an interview.

Defendant first argued that the search warrant failed to identify the property with reasonable certainty. The Court of Appeals disagreed, explaining that while G.S. 15A-246 requires a search warrant to "contain a designation sufficient to establish with reasonable certainty the premises," a search warrant is not invalid simply because the address given differs from the address searched. Slip Op. at 9. The court explained the confusion of the two properties was understandable as they were both in the same area and had similar white mobile homes, concluding that the search warrant provided reasonable certainty because it referenced the correct street address to be searched.

Defendant next challenged the probable cause to search his home. The court explained that defendant's address was taken from his driver's license which was given during a recent traffic stop, and the address was within two miles of the location of the crime. Defendant was caught on the trail camera wearing the same hat he was wearing during the traffic stop, and he was transporting the chainsaws in a child's wagon, indicating he did not travel far. These facts supported probable cause to search the residence. The court denied defendant's challenge to the descriptions of the stolen property, noting they were adequate to identify the property based on the information provided by the victim.

The court also rejected defendant's argument that the search warrant was improperly amended. The court acknowledged that G.S. Chapter 15A did not address amending warrants, then looked to *Franks v. Delaware*, 438 U.S. 154 (1978), and *State v. Jackson*, 220 N.C. App. 1 (2012), concluding "intentional falsehoods made by law enforcement" may render a warrant invalid, but no intentional falsehood was present here and the warrant still contained the correct address to be searched, regardless of the incorrect photographs. Slip Op. at 21.

Finally, the court dispensed with defendant's argument that the warrant was not signed at the time of issuance, noting that G.S. 15A-246 required the date and time of issuance above the issuing official's signature. The court considered this section in conjunction with G.S. 15A-248, concluding "the purpose of section 15A-246(1) is to provide a record of the time of issuance against which the forty-eight-hour time limit for execution contained in

section 15A-248 may be measured against." *Id*. at 23. The court likewise rejected defendant's argument that the amendments to the search warrant contained information not taken under oath. Here the additional information was "simply that the photographs depicted the wrong address, a fact not bearing on whether probable cause existed to issue the warrant in the first place." *Id*. at 24.

Criminal Procedure

Defendant's actions waived statutory right to court-ordered competency evaluation under G.S. 15A-1002.

State v. Wilkins, 44A23, ___ N.C. ___ (Dec. 13, 2024). In this Caswell County case, the Supreme Court majority affirmed the Court of Appeals decision that defendant's convictions were valid even though he never received the competency evaluation ordered by the trial court under G.S. 15A-1002. The Court concluded that defendant waived his statutory right to the competency hearing.

Defendant was arrested in 2018 for a scheme that involved cutting open footballs and filling them with drugs, then throwing the footballs over the wall to a prison yard. While defendant was in the Caswell County Jail awaiting trial, he was involved in assaulting a detention officer and was charged with assaulting a government employee and communicating threats. Defense counsel filed a motion questioning defendant's competency for trial, and the trial court granted the request to have a competency evaluation. However, after the order was entered, defendant posted bond and was released. Throughout the trial proceedings, the competency evaluation was not raised again. After defendant was convicted, he raised the competency evaluation issue at the Court of Appeals, where the majority held that under *State v. Young*, 291 N.C. 562 (1977), defendant waived his statutory right to the hearing. Defendant appealed based on the dissent, which looked to *State v. Sides*, 376 N.C. 449 (2020), concluding the lack of a hearing violated defendant's constitutional rights and justified a new trial.

Taking up the competency issue, the Supreme Court explained that the source of defendant's right was statutory under G.S. 15A-1002, as he had "disclaimed a constitutional challenge at the Court of Appeals . . . and did so again before this Court." Slip Op. at 7, n.2. This was significant as the right to a competency hearing under the United States Constitution is distinct from the statutory right under G.S. 15A-1002, and "the constitutional right to a competency hearing cannot be waived." *Id*. at 11.

The Court explained that defendant "had several chances—over several years, with several attorneys, and in several procedural contexts—to assert the [statutory] right, but never did so." *Id*. at 8. Even while out on bond, defendant could have pursued the competency evaluation, but the Court noted he did not do so. During the proceedings, defendant

"squarely indicated that he was competent and ready to move forward with trial." *Id*. at 10. Considering defendant's argument that *Sides* overruled *Young* and required the trial court to enforce the competency evaluation order, the Court disagreed, explaining *Sides* did not concern the statutory aspect in question here, as "*Sides*—a case decided on purely constitutional grounds—did not overrule *Young*, which addressed both the constitutional and statutory standards." *Id*. at 12. Here, *Young* controlled, and the Court held that defendant waived his statutory right by failing to pursue the competency evaluation or raise the competency issue at trial.

Justice Earls, joined by Justice Riggs, dissented and would have held that defendant's right to a competency evaluation was preserved and the trial court was obligated to enforce compliance with the order.

Failure to lay proper foundation for breath test by establishing two results that differed by 0.02 or less entitled defendant to new trial on DWI.

State v. Vaughn, COA23-297, ___ N.C. App. ___ (Dec. 3, 2024). In this Pitt County case, defendant appealed his convictions for driving while impaired and speeding, arguing several errors including (1) admitting evidence of the speed results of the radar, (2) admitting video evidence of the advisement of his *Miranda* rights, (3) denying his motion to suppress, and (4) admitting evidence of the Intoxilyzer EC/IR II breath test result. The Court of Appeals found no error in (1)-(3), but because the State did not lay the proper foundation in (4), defendant was granted a new trial.

In June of 2019, defendant was pulled over late at night for speeding. The officer smelled the odor of alcohol on defendant, and defendant admitted he had consumed an alcoholic drink before driving. The officer asked defendant to get out of the vehicle and conducted HGN and VGN tests, as well as a portable breath test. Based on his admission of drinking and the officer's observations, defendant was arrested, read his *Miranda* rights, and taken to the detention center for an Intoxilyzer EC/IR II breath test. When defendant reached trial, video of the stop and evidence of the breath test results were admitted over defendant's objections.

Beginning with (1), defendant argued error because "the State failed to elicit the exact name of the agency that approved the radar model, issued the operator's certificate, and inspected the device." Slip Op at 5. The Court of Appeals first noted that the North Carolina Criminal Justice Education and Training Standards Commission certified and approved the use of radar and other speed-measuring instruments, and then rejected defendant's argument that the officer was required to specifically identify the commission's training and approval when testifying. The court explained that "there is no essential talismanic phrase" and "when the witness provides sufficiently specific testimony permitting the trial court to logically conclude compliance" there is no error in admitting the testimony. *Id*. at 10.

Moving to (2), defendant argued that admitting video of the advisement of his *Miranda* rights violated his Fifth Amendment rights. The court noted that the video was admitted to show professionalism and proper procedures after defense counsel questioned portions of the field sobriety test, and that the video was cut off immediately after advisement of the rights. Establishing that "nothing in our precedents indicates that the admission of the reading of *Miranda* rights, standing alone, constitutes error," the court concluded that the State did not use the video to use defendant's silence against him and that admission of the video was not error. *Id*. at 12.

Reaching (3), the court first explored the HGN test administration. Defendant argued the test was inadmissible because the officer did not follow the NHTSA Manual's administration instructions. The court found no error, looking to the questioning by the State and the actual requirements of the manual and finding no issues. The court then considered whether the totality of the circumstances supported probable cause for arrest, concluding "the trial court's order detailed sufficient findings to support the trooper's reasonable belief that Defendant consumed alcohol, drove in a faulty manner, and displayed other indicia of impairment." *Id*. at 17. The court also found no error in allowing video of a portable breath test even though the results were excluded from evidence, as the trial court instructed the jury to only consider the video for defendant's "demeanor and behavior." *Id*. at 18.

Finally in (4), the court concluded it was error to allow the State to introduce evidence of defendant's Intoxilyzer breath test without showing the two consecutively collected breath samples complied with the applicable rules for administering the test. While the State elicited testimony from the officer about the breath test procedures, the record did not show compliance with the applicable North Carolina DHHS rules found in the N.C. Administrative Code. The court explained that "noticeably absent from the record is any evidence from which the trial court could have gleaned the foundational requirement that the two consecutively collected breath samples do not differ from each other by an alcohol concentration greater than 0.02." *Id*. at 20-21. The court observed that "[t]estimony simply noting the test is performed in accordance with the rules of DHHS could have met this requirement; yet the record is completely devoid of such evidence." *Id*. at 21. Because the record lacked this evidence, the breath test lacked proper foundation and admitting it was error. The State argued that whiting out the second test result was done at defendant's request and that this represented invited error. The court disagreed, explaining that nothing in the record showed the trial court's knowledge of the second test or that it complied with DHHS requirements, meaning "the State simply did not meet the minimal requirements of [G.S.] 20-139.1(b)." *Id*. at 22.

Evidence of defendant's DWI offense supported revoking probation without testimony from arresting officer; trial court improperly assessed attorney appointment fee twice in proceedings.

State v. McCullough, COA 24-361, ___ N.C. App. ___ (Dec. 17, 2024). In this Cabarrus County case, defendant appealed the revocation of his probation, arguing error in determining defendant committed a new criminal offense and assessing fees. The Court of Appeals affirmed the order revoking defendant's probation, but vacated the portion of the order charging defendant a duplicate attorney appointment fee, remanding for recalculation of the judgment and correction of a clerical error.

Defendant was charged with DWI and driving while license revoked in May of 2023. Defendant's probation officer filed a violation report with the superior court alleging defendant had violated the terms of his probation by (1) committing new criminal offenses and (2) failing to pay court and supervision fees. Defendant's probation expired on November 14, 2023, but the trial court scheduled a hearing on November 16, 2023, finding good cause to retain jurisdiction as the hearing was conducted during the same session of court as the expiration of probation. At the revocation hearing, defendant's probation officer testified about the offenses charged against defendant, and the State introduced the warrant, an officer's affidavit, and intoxilyzer result form from defendant's arrest. Defense counsel objected to the probation officer testifying about the content of these items instead of the arresting officer, but the trial court overruled the objection. After revoking defendant's probation, the trial court ordered a civil judgment for $325.00 in attorney fees as well as a $75.00 attorney appointment fee.

The Court of Appeals first dispensed with the defendant's argument that there was insufficient evidence to show he committed a new criminal offense, looking to *State v. Singletary*, 290 N.C. App. 540 (2023). The court explained that "[a]lthough the arrest warrant is not sufficient . . . the charging officer's affidavit and the intoxilyzer report were sufficient to allow the trial court to independently determine Defendant probably had committed the offenses of driving while impaired." Slip Op. at 8. Considering defendant's argument that the arresting officer's testimony was necessary and it was error to denying defendant the ability to cross-examine him without good cause, the court again turned to *Singletary*, explaining that "[e]ven without the arresting officer's affidavit or testimony, the trial court had sufficient evidence to independently determine a new offense of driving while impaired had been committed." Id. at 9. Because this additional testimony would have been "merely extraneous," the trial court did not err in failing to make a finding of good cause. *Id*.

Reviewing the "Judgment and Commitment Upon Revocation of Probation form," the court determined that the trial court incorrectly checked box four, even though defendant's failure to pay the fees alleged in the violation report was not a sufficient basis for revoking his probation. Id. at 10. The court looked to the transcript and determined that this was just a clerical error because the trial court clearly identified the new criminal conduct as the basis for revoking defendant's probation. The court also noted that the $75 appointment fee authorized by G.S. 7A-455.1 was improperly charged twice, once during sentencing and

again at the probation revocation hearing. The court remanded for the correction of the errors and recalculation of the judgment.

Second trial judge did not have authority to enter order denying motion to dismiss when hearing was held and ruling was rendered by previous trial judge who retired before entry of the order.

State v. Fearns, COA23-650, ___ N.C. App. ___ (March 5, 2025). For more in-depth discussion of this case, see this post by Prof. Shea Denning. In this Granville County case, defendant appealed her conviction for embezzlement, arguing that the trial court lacked authority to enter the order denying her motion to dismiss because it was not issued by the superior court judge who held the hearing. The Court of Appeals vacated the trial court's order denying Defendant's motion and remanded the matter for a new hearing on the motion.

In 2008, police began investigating defendant, an employee of a law firm, for allegedly embezzling approximately $50,000 from client trust funds. Due to various complications, including personnel changes and difficulty obtaining records, charges were not brought until January 2019. Defendant moved to dismiss, alleging the delay prejudiced her due to the unavailability of key documents. The trial judge who presided over the motion hearing in January 2020 orally denied it and asked the State to draft the order. This trial judge retired in October 2020. In September 2021, a new trial judge signed the order denying the motion to dismiss, with a notation that the order was issued by the previous trial judge and a citation to Rule 63 of the Rules of Civil Procedure. Defendant was subsequently convicted, and appealed.

The Court of Appeals concluded the second trial judge did not have the authority to sign the order denying defendant's motion to dismiss. Because Rule 63, which allows a judge to perform the duties of another judge under certain circumstances, applies only to civil cases, "this issue is not governed by Rule 63." Slip Op. at 10. The court also noted that "[t]he Rules of Criminal Procedure do not address the authority of one judge to enter an order on behalf of another judge in this context," and the State did not provide any other authority in support. *Id*. at 11. Looking to *State v. Bartlett*, 368 N.C. 309 (2015), the court applied the principle that "the judge who presided at the hearing must make the findings of fact." Slip Op. at 12. Because the second trial judge here did not have authority to enter the order denying defendant's motion, the court vacated her conviction and remanded for a new hearing on the motion.

Judge Stading concurred by separate opinion, emphasizing "a tempered application of *State v. Bartlett*" as that case focused specifically on motion to suppress statutes. *Id*. at 14.

Trial court erred by not informing defendant he could withdraw his plea when the court imposed a sentence greater than the plea agreement.

State v. Latta, COA24-407, ___ N.C. App. ___ (May 21, 2025). In this Durham County case, defendant appealed the denial of his motion to withdraw his plea agreement to robbery and kidnapping charges. The Court of Appeals vacated and remanded for a new sentencing hearing.

In 2002, defendant entered a plea agreement conditioned on his testimony against a co-defendant, receiving an active sentence of 61 to 83 months as a prior record level I. However, defendant failed to appear at the sentencing hearing, and disappeared from North Carolina for 20 years, picking up several criminal convictions in other states during the interim. Defendant was subsequently arrested in Vance County in 2022 for possession of a controlled substance, and transferred back to Durham County, where his previous charges were reinstated. At trial, defendant filed a motion to set aside his plea agreement, which the trial court denied, and defendant was sentenced as a prior record level IV in the mitigated range of 71 to 95 months.

The Court of Appeals considered whether it was error to deny defendant's motion before the trial court pronounced a sentence, and whether defendant should have had an opportunity to withdraw his plea after the trial court imposed a sentence greater than defendant had agreed to in the original plea. The court concluded that there was no error beforehand, as "there is no evidence to indicate that Defendant ever asserted legal innocence, nor was there evidence of incompetent counsel or misunderstanding of what a guilty plea entails." Slip Op. at 4. However, afterwards there was error, as G.S. 15A-1024 allows a defendant to withdraw a plea as a matter of right when a trial court imposes a sentence greater than agreed to by the defendant. The court explained that "[a]lthough the sentencing occurred during the same hearing that Defendant separately moved to withdraw the guilty plea, the trial judge did not inform Defendant that he may withdraw his plea because the sentencing would be different than that which he agreed to." *Id*. at 6. On remand, the court directed that the defendant either be sentenced to a term within his original plea agreement, or be afforded the opportunity to withdraw his plea if the trial court determined a greater sentence was warranted.

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

State v. Curtis, COA24-204, ___ N.C. App. ___ (Feb. 19, 2025). In this Wake County case, defendant appealed after pleading guilty to felony death by vehicle, felony serious injury by vehicle, and driving while impaired, challenging the sentencing he received for his convictions. The Court of Appeals vacated and remanded for resentencing.

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

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

Defendant's failure to appear at probation office and failure to update his residence with probation officer represented violation of probation conditions and absconding.

State v. Tanner, COA24-166, ___ N.C. App. ___ (Oct. 15, 2024). In this Guilford County case, defendant petitioned for a writ of certiorari to review the revocation of his probation and activation of his suspended sentence for willfully absconding from supervision. The Court of Appeals allowed the petition but affirmed the trial court's judgment.

In December of 2022, defendant was placed on supervised probation and ordered to report to the probation office within 48 hours. Defendant did not report, but called his probation officer, who urged him to appear in person the next day. After several more phone calls and failures to appear in-person, the probation officer visited defendant's address on file, which was an apartment, and left a hang tag. Based on information from defense counsel, defendant's wife had secured a G.S. 50B domestic violence prevention order against him, and he was not in the apartment but living in a hotel. At one point defendant told a probation officer that he was in Winston-Salem, although he had not reported traveling outside the area prior to leaving. In March of 2023, the probation officer filed violation reports and the trial court entered a judgment revoking defendant's probation and activating his sentence.

Looking at the evidence, the Court of Appeals noted that "failed to give his probation officer his new physical address or the name and address of the hotel he was purportedly

staying in" and the trial court could reasonably conclude defendant had absconded. Slip Op. at 5. The court also noted that there was some confusion about the form AOC-CR-607 Judgment and Commitment, as it was possibly unclear whether the trial court determined that defendant either (a) admitted to violating the conditions of his probation, or (b) committed a new criminal offense. The court concluded the record was sufficient to show the trial court's conclusion that defendant absconded under G.S. 15A-1343(b)(3a).

Chief Judge Dillon dissented, and wrote to emphasize that he did not believe the State met its burden to show defendant absconded based on the conduct in the probation reports.

Evidence

Computer-generated phone records were not testimonial in nature and did not implicate the Confrontation Clause

State v. Lester, 293PA23-2, ___ N.C. ___ (Jan. 31, 2025). In this Wake County case, the Supreme Court reversed the Court of Appeals decision holding the State violated the Confrontation Clause and hearsay rules by admitting exhibits of Verizon phone records. The Supreme Court held that if the records were truly machine generated, they were not hearsay or testimonial in nature, and remanded the case for the consideration of defendant's remaining issues.

In 2022, defendant came to trial for statutory rape of a child fifteen years or younger. During the State's case, two detectives testified about their investigation into defendant, and they referenced exhibits of phone records provided by Verizon. The two exhibits in question were a list of "the time, date, and connecting phone number for all calls to and from [defendant's] phone between May and July 2019" and a cover letter stating the records were "true and accurate copies of the records created from the information maintained by Verizon in the actual course of business." Slip Op. at 6. Defendant objected to the exhibits, and the State argued the records were admissible under Rule of Evidence 803(6) as business records. The trial court did not admit the records under Rule 803(6), but instead under Rule 803(24), the residual exception, as the trial court felt the State did not lay a proper foundation for business records. In *State v. Lester*, 291 N.C. App. 480 (2023), the Court of Appeals reversed defendant's conviction, holding that admitting the records was a violation of defendant's Confrontation Clause rights and the error was prejudicial, justifying a new trial.

Taking up the arguments, the Court explained that the purpose of the Confrontation Clause was to protect against the unreliable nature of out-of-court testimonial statements made by humans, specifically "*ex parte* examinations" offered against the accused. Slip Op. at 11. Here, the evidence in question was computer-generated data, and the Court noted this was not the type of evidence contemplated by the Confrontation Clause. After

explaining the unique nature of machine-generated data and why it was more reliable that a human witness's out-of-court statement, the Court held that 'machine-generated raw data, if truly machine-generated,' are 'neither hearsay nor testimonial' under the Confrontation Clause." *Id*. at 17 (quoting *State v. Ortiz-Zape*, 367 N.C. 1, 10 (2013)). The Court emphasized that "we focus here on data produced entirely by the internal operations of a computer or other machine, free from human input or intervention" in contrast to "(1) computer-stored evidence, and (2) human interpretations of computer-produced data." *Id*. at 18. Because the machine-generated data did not implicate the Confrontation Clause in the same way that human interpretations of the data would, the Court determined the Court of Appeals improperly analyzed the admissibility of the exhibits in the current case.

Substitute analyst's opinion testimony based on "testimonial hearsay" in lab report implicated defendant's Confrontation Clause rights under *Smith v. Arizona*.

State v. Clark, COA23-1133, ___ N.C. App. ___ (Dec. 3, 2024). In this Avery County case, defendant appealed his conviction for possession with intent to sell and deliver methamphetamine, arguing his Confrontation Clause rights were implicated because a testifying expert relied on another analyst's statements in a lab report when stating his opinions. The Court of Appeals concluded it was error to allow the opinion testimony, and vacated defendant's judgment, remanding for a new trial.

In August of 2020, defendant was searched as a condition of his probation, and officers seized a crystalline substance. The substance was tested by a forensic analyst who determined it was methamphetamine, and the analyst created a lab report for the State. When defendant came for trial, the original analyst was not available to testify, so the State offered a substitute analyst who based his opinions on the lab report. The substitute analyst did not perform any testing on the crystalline substance himself.

On appeal, defendant argued that his Confrontation Clause rights were violated because he was unable to cross-examine the original analyst whose lab report formed the foundation of the case against him. The Court of Appeals referenced the recent decision *Smith v. Arizona*, 602 U.S. 779 (2024), where the Supreme Court held that "opinion testimony of a surrogate expert who relies upon the 'testimonial hearsay' statements contained in a lab report or notes prepared by another analyst who tested the substance in question implicates a defendant's right under the Confrontation Clause." Slip Op. at 4. The court noted the applicability to the current case, as the substitute analyst relied on lab reports created solely for the trial that were testimonial in nature under *State v. Craven*, 367 N.C. 51 (2013). Slip Op. at 8. Because the substitute analyst did not independently test the substance and relied upon the lab report's statements that were "hearsay and testimonial in nature," defendant's rights under the Confrontation Clause were implicated. *Id*. at 9.

Facebook messages were properly authenticated as business records by certificate signed by custodian of records under penalty of perjury; messages were nontestimonial business records not subject to the Confrontation Clause.

State v. Graves, COA24-308, ___ N.C. App. ___ (Nov. 5, 2024). In this Cabarrus County case, defendant appealed his conviction for first-degree murder, arguing error in admitting Facebook messages as business records without an affidavit sworn before a notary. The Court of Appeals found no error.

In April of 2021, the victim was shot outside a convenience store by someone in a red vehicle. At trial, the State presented evidence that tied defendant to the red vehicle and the convenience store. The State also presented evidence that defendant blamed his recent arrest on the victim and her sister, including Facebook messages saying the victim was responsible for the arrest. These Facebook messages were offered as business records with a "Certificate of Authenticity of Domestic Records of Regularly Conducted Activity" signed by a "Custodian of Records," but the certificate did not include a notarized signature. Slip Op. at 3. Instead, the certificate had a declaration signed by the custodian under penalty of perjury. Defense counsel objected to the admission of the messages without a sworn affidavit, but the trial court overruled all objections.

On appeal, defendant argued that the messages were hearsay not properly authenticated as business records, and that admitting the records violated his Confrontation Clause protections. The Court of Appeals walked through defendant's objections, dismissing both in turn. Considering the hearsay argument, the court looked to *State v. Hollis*, COA 23-838, 905 S.E.2d 265 (N.C. App. 2024), for the proposition that "an affidavit is valid and authenticated when it is submitted under penalty of perjury" even when the affidavit is not sworn before a notary. Slip Op. at 9. The court explained that "[t]he certificate under penalty of perjury fulfills the purpose of authentication." The court then considered the Confrontation Clause issue, holding that "[t]he trial court's decision comports with the general rule that business records are nontestimonial in nature." *Id*. at 13. Because the records were nontestimonial, "[t]he Confrontation Clause does not apply." *Id*. at 14.

Officer's testimony about whether the accident was intentional was improperly admitted where he did not observe the accident and was not an expert in accident reconstruction.

State v. Hunt, COA23-890, ___ N.C. App. ___ (Oct. 15, 2024). In this Robeson County case, defendant appealed his convictions for assault with a deadly weapon inflicting serious injury without intent to kill and injury to personal property, arguing the admission of expert testimony by a lay witness represented plain error. The Court of Appeals majority agreed, vacating and remanding for a new trial.

Defendant and the alleged victim, his neighbor, had a contentious relationship due to the victim riding his 4-wheeler on defendant's property without permission and throwing beer cans in defendant's yard. In January of 2019, defendant was driving home and struck the victim on his 4-wheeler; testimony differed on whether the victim was riding his 4-wheeler on his own property and whether defendant intentionally hit the victim. At trial, the law enforcement officer who responded to the accident testified about the scene, and then was asked by the State if he had formed an opinion about whether the act of hitting the victim was intentional. The officer testified that it was his opinion that the act was intentional. Defendant was subsequently convicted and appealed.

The Court of Appeals explained that defense counsel failed to object to the officer's opinion testimony at trial, meaning the review was for plain error. The court then noted that an officer who does not witness an accident is "permitted to testify about physical facts observed at the scene, including the condition of the vehicles after the accident and their positioning," but is not qualified to offer conclusions from those facts. Slip Op. at 4. In this case, the State did not present the officer as an expert witness in accident reconstruction, and it was error to allow him to testify about his opinion on the intentional nature of the accident. The court then found that allowing the officer to testify about the central dispute in the case "had a probable impact on the jury" and represented plain error, justifying a new trial. *Id*. at 7.

Judge Stading dissented, and would not have found plain error, exploring the other arguments made by defendant and recommending a remand to remedy habitual felon and restitution issues.

Criminal Offenses

Court rejected defendant's argument that "serious injury" requires medical attention beyond an examination.

State v. Reaves, COA24-663, ___ N.C. App. ___ (Feb. 19, 2025). In this Durham County case, defendant appealed his convictions for assault with a deadly weapon inflicting serious injury, arguing error in denying his motion to dismiss because the victim's injuries were not "serious" under G.S. 14-32(b). The Court of Appeals found no error.

In 2022, defendant and the victim, defendant's on-and-off girlfriend, rekindled their relationship and the victim moved into defendant's apartment. Their relationship soured and defendant became abusive towards the victim, culminating in September 2022 when defendant punched and kicked the victim and hit her with a curtain rod and the butt of his handgun. The victim eventually escaped by jumping from the balcony and running to a nearby mail carrier for help. At the hospital, an examination documented bruising, swelling, and tenderness on the victim's body. At trial, the State called law enforcement,

EMS, and a nurse from the hospital to testify to the victim's injuries, and admitted photographs of her injuries and hospital reports.

On appeal, defendant argued that the State provided insufficient evidence of the severity of the victim's injuries, pointing to *State v. Brunson*, 180 N.C. App. 188 (2006), and *State v. Ramseur*, 338 N.C. 502 (1994), and arguing "*Brunson* and *Ramseur* stand for the proposition that a serious injury, at a minimum, requires medical attention that goes beyond a mere cursory examination." Slip Op. at 10. The Court of Appeals rejected defendant's argument, explaining that North Carolina courts have declined to establish a threshold for serious injury, and to accept his argument here "would be to adopt a threshold requirement contrary to longstanding case law." *Id*. After reviewing the record in this case, the court held that "[t]he State presented sufficient evidence to allow the jury to decide whether Defendant inflicted serious injury upon [the victim]." *Id*. at 11.

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

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

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

Taking up defendant's arguments, the Court of Appeals first addressed whether it was error to allow the detective to testify that the plant material was marijuana as lay opinion testimony. Because defendant did not object to the testimony at trial, the Court reviewed for plain error. Referencing previous case law, the court noted that a police officer experienced in the identification of marijuana may testify to his visual identification of evidence as marijuana. Defendant pointed to *State v. Ward*, 364 N.C. 133 (2010), to argue

that an officer's visual identification is no longer reliable since the legalization of hemp. The Court distinguished *Ward*, noting "the standard for lay opinion testimony under Rule 701— including [the detective's] testimony—is unchanged in light of *Ward*." Slip Op. at 9. Subsequent caselaw also supported that "law enforcement officers may still offer lay opinion testimony identifying a substance as marijuana." *Id*. As a result, the court found no error in admitting the testimony.

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

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

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

Finally, the court reached the sentencing issues, where defendant argued he was improperly sentenced for selling and delivering marijuana in the same transaction. The court concluded that any error if it existed was harmless, as "the trial court consolidated those convictions to run *concurrently* with the longer sentence for Trafficking in a Mixture Containing Heroin by Transportation." *Id*. at 20. Defendant also argued that the prosecutor offered improper information that influenced sentencing considerations, as the prosecutor referenced a victim who died and a pending death by distribution charge against defendant. However, "the trial court here expressly rejected the prosecutor's arguments regarding the separate charges on the Record and affirmatively stated that other charges would be considered in separate proceedings," meaning there was no evidence that defendant received a sentence based on improper information. *Id*. at 25.

Assault with a deadly weapon inflicting serious injury may serve as the predicate for felony murder when defendant acted with actual intent to commit the act forming the

basis of the murder charge; G.S. 20-166 is ambiguous regarding the unit of prosecution, leading the court to apply the rule of lenity and conclude the unit is per crash, not per victim.

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

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

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

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

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

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

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

Single-taking rule justified reversal of three larceny counts against defendant.

State v. Wilson, COA24-27, ___ N.C. App. ___ (Dec. 3, 2024). In this Rutherford County case, defendant appealed her convictions for three counts of larceny of a firearm and one count of larceny after breaking or entering, arguing error in denying her motion to dismiss the larceny of a firearm charges under the single-taking rule. The Court of Appeals agreed, reversing the three counts of larceny of a firearm, vacating and remanding for resentencing.

Defendant and two acquaintances stole several items, including three firearms, from a nearby property in 2019. While being interviewed by detectives, defendant said that the three made two trips to the property to take items; the detectives found many of the stolen goods on defendant's porch, but the firearms were never recovered. Defendant moved to dismiss the charges at trial but the trial court denied the motion.

The Court of Appeals first explained "[i]t is the State's burden to present evidence that the stolen items were taken as part of multiple acts or transactions in order to support multiple convictions." Slip Op. at 8. Absent this evidence, the single-taking rule "prevents a defendant from being . . . convicted multiple times for a single continuous act or transaction." *Id*. (quoting *State v. White*, 289 N.C. App. 93 (2023)). Here the State's evidence did not show multiple acts or transactions, meaning defendant "could only properly be convicted of and sentenced for one larceny offense." *Id*. at 9.

Two separate outbursts of profanity in the same hearing justified two counts of direct criminal contempt.

State v. Lancaster, COA24-152, ___ N.C. App. ___ (Nov. 19, 2024). In this Craven County case, defendant appealed the adjudication of two counts of direct criminal contempt, arguing error as only one count was warranted. The Court of Appeals found no error.

In September of 2023, defendant appeared at a pre-trial hearing, where defense counsel asked the trial court to examine defendant about proceeding pro se. Defendant told the court he was dissatisfied with his attorney but wanted to proceed with counsel. Defendant then requested a trial date in October, although defense counsel had not yet received discovery from the State. The trial court set a trial date in November, at which point defendant began arguing with the trial court about the delay, using profanity to address the court. The trial court found him in contempt, at which point defendant again used profanity, leading to a second finding of contempt.

On appeal, defendant argued that "his repeated use of profanity within a short period of time 'could reasonably be interpreted as one episode of contempt.'" Slip Op. at 4. The Court of Appeals disagreed, noting that G.S. 5A-11 was not ambiguous about what constituted "behavior" for an episode of contempt. Instead, the court concluded "[e]ach of Defendant's outbursts were separate episodes of behavior delineated by separate adjudications of contempt under [G.S.] 5A-11(a)." *Id*. at 7.

Trial court erred when holding defendant in direct criminal contempt for testing positive for a controlled substance before entering a plea.

State v. Aspiote, COA24-298, ___ N.C. App. ___ (May 21, 2025). In this Carteret County case, defendant appealed the order holding him in direct criminal contempt, arguing error by the trial court. The Court of Appeals agreed, reversing and remanding for further proceedings.

In July 2023, defendant appeared in Superior Court to plead guilty to charges from a 2022 crime. Defendant answered "yes" to the question asking if he was using or consuming alcohol or drugs, telling the trial court he consumed some that morning before the hearing, but that his mind was clear. Defendant never told the trial court the type of substance he consumed. The trial court ordered defendant to take a urine test, and the test returned a positive for methamphetamine. At that point, the trial court declared it would not accept defendant's plea and held defendant in direct criminal contempt for delaying the proceedings.

The Court of Appeals noted that while the trial court's order was predicated on defendant's delay of the proceedings because he tested positive, "nowhere in the record does it show that Defendant ever represented to the trial judge he would not test positive for a controlling substance." Slip Op. at 5. Additionally, "the record does not show *the type* of substance Defendant ingested *on the morning of the hearing*." *Id*. at 6. Since there was no evidence of delay in the trial court's presence, defendant's actions could not form the basis of *direct* criminal contempt. The court also specifically noted that delay waiting for defendant to take the urine sample could not support direct contempt "as Defendant's act in providing the sample took place outside the presence of the court." *Id*.

Defendant knowingly violated domestic violence prevention order by showing up at restaurant where wife worked and yelling at her, then placing a photograph on her car in the parking lot.

State v. Washington, COA23-1095, ___ N.C. App. ___ (Oct. 1, 2024). In this New Hanover County case, defendant appealed the judgment finding him guilty of violating a domestic violence prevention order, arguing error in denying his motion to dismiss for insufficient evidence. The Court of Appeals disagreed, finding no error.

In March of 2020, defendant's wife applied for a domestic violence prevention order; defendant consented to the order and it was entered in New Hanover County District Court. In December of 2020, defendant entered the restaurant where his wife worked and began yelling at her, despite the order requiring him to stay away from her. Defendant

willingly left the restaurant after being confronted by the manager, but when leaving, he left a polaroid photograph on his wife's vehicle in the parking lot.

On appeal, defendant argued there was insufficient evidence he "knowingly" went to the restaurant where his wife worked. The Court of Appeals rejected this argument, distinguishing the circumstances of a case relied on by defendant, *State v. Williams*, 226 N.C. App. 393 (2013), from the current case. In *Williams*, the defendant was walking in a parking structure near a public mall where the victim worked, as opposed to the current case, where defendant entered, and proceeded to yell at, his wife in the restaurant where she worked. The court explained that "defendant did *actually* observe, communicate with, and allegedly, harass, [the victim]." Slip Op. at 5. The court concluded that the State's evidence demonstrated defendant knowingly violated the order.