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Criminal Case Update Paper
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Cases covered include published criminal and related decisions from the North Carolina appellate courts and the Fourth Circuit Court of Appeals decided between February 19, 2025, and October 1, 2025. State cases were summarized by Alex Phipps, juvenile delinquency cases were summarized by Jacqui Greene, Fourth Circuit cases were summarized by Phil Dixon, and U.S. Supreme Court cases were summarized by Jeff Welty and Phil Dixon. To view all of the case summaries, go the Criminal Case Compendium. 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

The trial court did not err in denying the defendant's motion to suppress evidence found in his bag when competent evidence supported the court's conclusion that the defendant abandoned his reasonable expectation of privacy in it

State v. Pardo, No. COA24-1036, ___ N.C. App. ___ (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.

Canine sniff of apartment door did not violate the defendant's reasonable expectation of privacy and did not amount to physical trespass of the defendant's curtilage

U.S. v. Johnson, 148 F.4th 287 (Aug. 5, 2025). In this case from the District of Maryland, a local task force was working with the Drug Enforcement Administration to investigate drug trafficking. Through widespread surveillance and wiretap efforts, the task force believed that the defendant was distributing drugs from his apartment in Owning Mills, Maryland. Before obtaining a search warrant for the apartment, task force officers conducted a canine sniff of the defendant's apartment door at 3:00 a.m. The apartment was on the second floor of the apartment building. The apartment door was set back from the main hallway of the floor by about three and a half feet. Residents, maintenance workers, and others could all move freely past the apartment door. The canine alerted on the door, and police obtained a search warrant for the apartment based on the sniff and other information previously known by the officers. Inside, law enforcement found a heroin-fentanyl mixture, a gun, ammo, cash, and other evidence of drug distribution.

The defendant was indicted on various gun and drug offenses. He moved to suppress, arguing that the canine sniff of his apartment door violated his reasonable expectation of privacy and that the sniff amounted to an unlawful trespass into the curtilage of his residence. The district court rejected these arguments, finding that there was no reasonable expectation of privacy in the open air surrounding the apartment and that the defendant's apartment door did not qualify as curtilage. At trial, the defendant was convicted on all counts and was sentenced to 150 months in prison. He appealed, renewing his arguments for suppression.

In support of his argument that the canine sniff violated his reasonable expectation of privacy, the defendant pointed to *Kyllo v. U.S.*, 533 U.S. 27 (2001). In *Kyllo*, the Court held that the use of a specialized technological device not commonly used by the public (there, a thermal imaging device) to detect the interior of a home was a Fourth Amendment search. Here, the defendant argued that the use of a canine to detect the odors emanating from his apartment was akin to the imaging device in *Kyllo*. The Fourth Circuit squarely rejected this argument. "Because a dog sniff can only reveal the presence of contraband, and there is no reasonable expectation of privacy in contraband, a dog sniff is not a search—period." *Johnson* Slip op. at 9. Although Justice Kagan has opined in a concurrence that a canine sniff at the door of a residence could violate a reasonable expectation of privacy, the majority opinion decided that case on other grounds and did not adopt Justice Kagan's view. *Florida v. Jardines*, 569 U.S. 1, 12-16 (Kagan, J., concurring). Consistent with their decisions in prior unpublished cases, the Fourth Circuit affirmed that the canine sniff did not violate the defendant's reasonable expectation of privacy.

As to the defendant's trespass argument, the *Jardines* majority held that the use of a canine to sniff the front door of a home amounted to a Fourth Amendment search because it amounted to an unlawful intrusion into the protected curtilage of the home, going beyond a normal knock and talk. The four-factor test from *U.S. v. Dunn*, 480 U.S. 294, 301 (1987) is used to determine whether an area can be considered curtilage. Courts must examine "the proximity of the area claimed to be curtilage from the home, whether the area is included within an enclosure surrounding the home, the nature of the uses to which the area is put, and the steps taken by the resident to protect the area from observation by people passing by." *Id*. The essential question in the curtilage inquiry is whether the area is properly considered part of the residence. Here, the area in front of the apartment's front door could not be considered part of the curtilage.

The exterior of the door was in a common hallway frequented by other residents, guests, and building staff, who all had a right to be present in front of or around the defendant's front door. Relatedly, the defendant had no right to exclude anyone from the area in front of his door. Although the canine sniff was performed in very close proximity to the home, it was still done within a common area of the building. This distinguished the defendant's situation from the facts of *Jardines* and other cases where the claimed curtilage was near a stand-alone residence where the occupants "had a right to exclude others from the area immediately surrounding [the] dwelling." *Johnson* Slip op. at 12.

Many other courts have focused on the "right to exclude others" in the context of curtilage questions, and courts generally agree that common and shared areas of an apartment building will not typically count as curtilage. Nonetheless, the court acknowledged that a different apartment building layout could lead to a different result, depending on the specifics of the case. "We hold only that on the facts as found by the district court and disputed by neither party, the police did not intrude onto Fourth Amendment-protected curtilage when they conducted a dog sniff in the common hallway just outside Johnsons' apartment door." *Id*. at 15.

The judgment of the district court was therefore unanimously affirmed.

Searches

Trial court properly found that the defendant voluntarily consented to the search of his backpack after finding law enforcement returned his identification

State v. Wright, No. 258PA23, __ N.C. __; 918 S.E.2d 623 (August 22, 2025) (Newby). In this Mecklenburg County case, a confidential informant submitted a tip to law enforcement on the night of January 29, 2020. The informant reported that a man matching the description of the defendant was riding a bicycle and carrying an illegal firearm. Law enforcement officers located the defendant riding a bicycle on the same street named by the informant. The officers intercepted the defendant, asked for his identification, and asked him to step off his bicycle and remove his backpack. The defendant complied. With the defendant's permission, officers then conducted a pat-down. After the pat-down, officers asked for permission to search the defendant's backpack for weapons. The defendant agreed to the initial request, then declined multiple times, telling officers he was scared. After returning the defendant's identification, an officer asked the defendant to open his backpack so the officer could look inside, and the defendant agreed. The officer further asked the defendant to lower the backpack, at which point the officer could see the grip of a handgun. The officers placed the defendant in handcuffs and searched him, finding cocaine. The defendant was subsequently charged with possession with intent to sell cocaine, unlawfully carrying a concealed weapon, possession of a stolen firearm, possession of a firearm by a felon, and attaining the status of a habitual felon.

The defendant moved to suppress the evidence obtained during the search, arguing that the officers lacked reasonable suspicion and probable cause. The trial court denied the motion, finding the officers had reasonable suspicion and probable cause, and that the defendant consented to the search. The defendant pled guilty and appealed. At first, the Court of Appeals vacated and remanded for further findings of fact and conclusions of law related to whether the defendant was trespassing at the time of the encounter. The trial court entered an amended order denying the defendant's motion to suppress, finding again that the defendant voluntarily consented to the search and that the officers had reasonable suspicion and probable cause. A unanimous Court of Appeals panel then reversed the trial court, finding the officers did not have reasonable suspicion or probable cause and the defendant did not voluntarily consent. The State sought discretionary review with the Supreme Court. The Supreme Court allowed discretionary review, and reversed the Court of Appeals, finding that the trial court properly denied the defendant's motion to dismiss. The Court found that competent evidence supported the finding that law enforcement returned the defendant's identification before he complied with the officer's request to open his bag and lower it for better viewing. Other factors included that officers maintained a calm and conversational tone, that the defendant stated he was scared but did not explain why, and that he initially agreed to the search before withdrawing his consent. As a result, the Court concluded that his ensuing consent was voluntarily given, and that this permitted the search of the backpack. Because the Court found the defendant gave his consent, the Court did not address whether the officers had reasonable suspicion or probable cause.

Justice Earls, joined by Justice Dietz, dissented. The dissent noted that the question of consent is mixed question of law and fact and is not entirely dependent on factual findings made by the trial court. The dissent considered the characteristics of the accused, the details of the interrogation, and the psychological impact of the officers' conduct, as well as noting a lack of clarity regarding whether or

when the defendant's identification was in fact returned. As a result, the dissent would have concluded that the defendant's consent was the product of coercion rather than free will and would have suppressed the evidence obtained.

Justice Riggs did not participate in the consideration of the case.

Motion to suppress was properly denied where information in search warrant affidavit was not stale, the information was obtained from reliable, named citizens rather than anonymous informants, and officers were able to corroborate the information through investigation

State v. Stevens, No. COA24-584, ___ N.C. App. ___ (Aug. 6, 2025). Charles Mills was spending the night at his wife's residence on February 15, 2022. The two were separated, but he was staying there because she had recently broken up with her ex-boyfriend, the defendant. The defendant came to the door late at night and banged on the door, demanding entry. Mr. Mills and his wife refused, and the defendant left. Subsequently, Mr. Mills was driving away from the house and saw the defendant following him in a white Range Rover. The defendant shot three bullets at Mr. Mills's car, and a bullet entered the trunk liner. Mr. Mills texted his wife after the incident.

During the investigation of the crime, Mr. Mills's wife provided surveillance footage of the defendant violently kicking her front door just prior to the shooting while holding a shotgun.

Officers saw the defendant leaving his home in the white Range Rover nine days later, on February 24, 2022. Defendant's son was driving the car, and officers arrested the defendant after he was dropped off. Officers did not find a gun on the defendant. Meanwhile, the son returned to the defendant's house and pulled into the garage. Officers secured the scene and applied for a search warrant to search the house, the Range Rover, and a red Corvette parked at the house. Upon execution of the warrant, officers found multiple weapons, drugs, and drug paraphernalia. The defendant was subsequently charged with multiple gun and drug offenses.

The defendant filed a motion to suppress the search of his home and two vehicles. After a pretrial hearing, the trial court denied the motion as to the house and the Range Rover, but granted the motion as to the Corvette. A jury trial then began, but the defendant pled guilty three days later mid-trial. Pursuant to the guilty plea, the defendant gave notice to the State of his intent to appeal the trial court's ruling on his motion to suppress. The trial court entered judgments and the defendant subsequently filed written notice of appeal

First, the Court addressed whether the defendant had properly preserved the denial of his motion to suppress for appellate review. The State contended he had not, as he did not object to the evidence when it was presented at trial, nor did he object to the final ruling. However, the Court concluded that there was no need for the defendant to object at trial, since the case was resolved with a guilty plea. The Court found that the defendant complied with the requirement under *State v. Tew* that he give notice to the State of his intent to appeal the denial of the motion to suppress by including language to that effect in the plea agreement. Thus, the issue was properly preserved.

The Court then addressed the merits of the motion to suppress. The defendant mainly argued that the nine-day delay between the incident and the application for a search warrant rendered the affidavit

stale. The defendant also argued that there was an insufficient nexus between the shooting incident and the defendant's house and Range Rover.

The Court disagreed, concluding that the case differed significantly from cases cited by the defendant in which a confidential informant provided information serving as the basis for a search warrant, but the affidavit supporting the search warrant lacked information as to when the CI developed the information. In the present case, the lead detective was directly involved in the investigation of the shooting that culminated in the arrest and search, and the detective did not fail to state the date the information was obtained. The Court determined that probable cause was supported by the affidavit where (1) the detective was able to observe the defendant in possession of a firearm on the night of the shooting through surveillance footage; (2) Mr. Mills provided a first-hand account of the defendant shooting at him from the white Range Rover, and (3) the account was corroborated by Mr. Mills's text message to his wife and the bullet hole in his car. Furthermore, the Court found that the information was not stale given that the shooting incident took place nine days prior to the application for a search warrant, which was significantly less than the two- to three-month delay in a case where the affidavit was deemed stale. The Court concluded it was reasonable to expect that evidence of the crime would be found in the defendant's home or Range Rover, especially given that Mr. Mills's wife stated that the defendant was known to regularly carry a gun, and the defendant did not have a gun in his possession when he was arrested.

The Court also rejected the defendant's argument that the affidavit was inadequate because the information on which it was based did not come from known and reliable informants. The Court stressed that the information did not come from anonymous informants but rather from named individuals whose accounts were corroborated by video footage and physical evidence of the shooting. The detective was also able to corroborate the information through his investigation.

Search warrant affidavit provided probable cause where it included underlying circumstances supporting the credibility and reliability of an informant. The 'continuous pattern' nature of the crime supported a one to two week delay between the criminal activity observed and the issuance of the warrant

State v. Clark, COA24-909,___ N.C. App. ___; 918 S.E.2d 225 (June 18, 2025). In May of 2022, a detective applied for a search warrant based on information obtained from a confidential informant. The search warrant affidavit specified that within the past 'one or two weeks,' the informant purchased schedule II-controlled substances multiple times from the defendant at the defendant's residence in Kannapolis, NC. Upon executing the search warrant at the defendant's residence, the defendant was indicted for felony trafficking in opium or heroin by possessing 28 grams or more of heroin (later superseded alleging fentanyl rather than heroin). The defendant moved to suppress the evidence collected on the basis that the search warrant affidavit was conclusory and stale. The trial court denied the motion, and the defendant pled guilty, preserving his right to appeal the denial of the suppression motion. The Court of Appeals first addressed whether the affidavit was conclusory. It found sufficient "underlying circumstances" were included, such as law enforcement personally verifying information provided by the informant, and multiple successful controlled buys. As a result, the statement in the affidavit that the informant was credible and reliable was not merely conclusory. The Court next addressed whether the affidavit was stale. The Court found due to the "continuous pattern" of drug deals between the defendant and informant, and that they all occurred at the same location, a delay of one to two weeks between the activity observed and the issuance of the warrant did not make the information stale. As a result, the search warrant was properly justified by probable cause.

Evenly divided en banc court affirms per curiam panel decision that geofence warrant did not violate the Fourth Amendment

U.S. v. Chatrie, 136 F.4th 100 (April 30, 2025) (en banc). The defendant was charged with offenses relating to a bank robbery in the Eastern District of Virginia. Police obtained a geofencing warrant for two hours of time relevant to the robbery for phones in the vicinity of the crime, which ultimately led to the defendant's apprehension. He moved to suppress, arguing that the geofencing warrant violated the Fourth Amendment. The district court denied the motion, finding that officers relied on the warrant in good faith. It declined to squarely address the Fourth Amendment argument. A divided panel of the Fourth Circuit affirmed, finding that the defendant voluntarily shared his location information with Google and applying the third-party doctrine to hold that the geofence warrant did not amount to a search (summarized here). On rehearing en banc, the full Fourth Circuit affirmed per curiam.

Chief Judge Diaz separately concurred in the judgment. He agreed that the district court's ruling should be affirmed but would have done so solely on the grounds that the *Leon* good-faith exception applied.

Judge Wilkinson separately concurred, joined by Judges Niemeyer, King, Agee, and Richardson. According to Judge Wilkinson, the use of the geofence warrant did not amount to a Fourth Amendment search and the suppression motion was properly denied as a straightforward application of the third-party doctrine. He praised geofencing warrants as a valuable investigative tool and cautioned against hamstringing law enforcement's use of such techniques. He also warned of the toll on society of extending the exclusionary rule in this context without legislative input.

Judge Niemeyer concurred separately in the judgment as well. He would have held that no search occurred, comparing the data obtained from the geofencing warrant to other, more traditional investigative leads like shoe prints, tire tracks, DNA markers, bank records, and video surveillance. "[T]he data, when limited to the time and place of the crime, were no different than any other marker left behind by a perpetrator." *Chatrie* Slip op. at 31 (Niemeyer, J., concurring). Alternatively, Judge Niemeyer agreed that exclusion of the evidence was inappropriate in light of the officer's good-faith reliance on the search warrant.

In a separate concurrence, Judge King agreed with Judges Wilkinson and Richarson that no search occurred and agreed that the district court should be affirmed based on the good-faith exception.

Judge Wynn penned a separate concurrence, joined by Judges Thacker, Harris, Benjamin, and Berner, with Judge Gergory joining all but the first footnote of the opinion. Judge Wynn argued that the court was obligated to decide the Fourth Amendment issue on the merits rather than apply the good-faith exception. He believed the geofence warrant amounted to a Fourth Amendment search, while acknowledging in footnote one that the good-faith exception also applied on the facts of the case.

Judge Richardson concurred separately, joined by Judges Wilkinson, Niemeyer, King, Agee, Quattlebaum, and Rushing. He would have ruled that "obtaining just two hours of location information that was voluntarily exposed is not a Fourth Amendment search and therefore doesn't require a warrant at all." *Id*. at 64 (Richardson, J., concurring).

Judge Heytens concurred separately, joined by Judges Harris and Berner. Without deciding the merits of the Fourth Amendment issue, Judge Heytens would have affirmed the district court based on the good-

faith exception. Because the legal landscape of geofencing warrants was unsettled and because the officer consulted with prosecutors in the past before obtaining prior geofencing warrants, it was objectively reasonable for the officer to believe that the geofencing warrant was legal. Thus, application of the exclusionary rule was unwarranted under the facts of the case.

Judge Berner wrote a separate concurrence as well, joined by Judges Gregory, Wynn, Thacker, and Benjamin. Judge Heytens joined the opinion only as to Parts I, II(A), and II(B). Judge Berner felt that the defendant lacked a reasonable expectation of privacy in his anonymized location history (the information Google provides at the first step of the geofencing process). The defendant had a reasonable expectation of privacy, however, in the subsequent non-anonymized data provided at the second and third steps of the geofencing process, because that data was likely to reveal his identity. Judge Berner argued that, because police lacked probable cause to search for a specific person at the time of the warrant request, the warrant was illegal and amounted to a Fourth Amendment violation.

Judge Gregory dissented. He believed that the geofencing warrant violated the Fourth Amendment and that application of the good-faith exception was inappropriate. He compared the geofencing warrant to a general warrant and that no reasonable officer would have believed that it was lawful, given its lack of particularity to any single individual.

[*Author's note*: Seven judges would have found that no search occurred, while seven other judges would have held that the geofencing warrant was a search. Judge Diaz expressed no view on the merits of the Fourth Amendment question.]

Jeff Welty blogged about the decision, here.

Confrontation Clause

(1) Jury instruction for second-degree rape containing an alternate element not present in the indictment was proper; (2) there was sufficient evidence the victim was incapable of consent and the defendant knew or should have known of such incapacity; (3) admission of lab results without testimony by the analyst conducting the testing did not violate defendant's confrontation rights; (4) any violation of the defendant's confrontation rights amounted to harmless error

State v. Tate, COA24-450, ___ N.C. App. ___; 918 S.E.2d 886 (June 18, 2025). The defendant was charged with second-degree rape from a 2011 incident where the victim reported she was raped after attending a pool party. The victim reported she had been drinking that afternoon and could not remember portions of the day, and when she fully regained awareness a man was having sex with her. She was able to escape and went to the hospital, where a nurse gathered samples and evidence. The evidence was untested until 2017, when it was sent to Sorenson Labs, a private DNA testing facility in Utah. Sorenson's analysis was then sent to the North Carolina State Crime Lab in 2018. The State Crime Lab reviewed the data, extracted the male portion of the DNA, and entered it into the State's DNA database. In 2019 a detective was assigned to the case, and saw the defendant's DNA come back as an initial match. The detective obtained a search warrant for the defendant's DNA and obtained a cheek swab, blood, and urine samples from the defendant. After additional testing, the defendant was indicted for one count of second-degree rape in 2021. Trial began and the jury returned a guilty verdict in early 2023.

The defendant first argued the second-degree rape jury instruction violated his right to a unanimous jury verdict. The defendant's indictment indicated the "defendant knew that [the victim] was mentally incapacitated and physically helpless." The trial court instructed the jury "to find . . . Defendant guilty of this offense the State must prove . . . Defendant knew *or should have known* that the alleged victim was mentally incapacitated and/or physically helpless." The defendant argued that by including the constructive knowledge element in the jury instruction, the trial court violated his right to a unanimous verdict by allowing the jury to potentially convict him of an offense not included in the indictment. The Court disagreed, based on precedent upholding a second-degree rape conviction where an indictment did not specifically allege the element of knowledge (*State v. Singleton*, 386 N.C. 183 (2024)) and based on precedent that disjunctive instructions are permitted where the disjunctive elements are not separate criminal acts, but instead are alternative avenues to conclude the existence of a single element (*State v. Hartness*, 326 N.C. 561 (1990)).

The defendant also argued there was insufficient evidence the victim was mentally incapable of consent and insufficient evidence the defendant knew or should have known of her mental incapacity. The Court held that based on the victim's testimony, statements from the defendant to investigators describing the victim as intoxicated and the victim's alcohol levels collected by the hospital, there was sufficient evidence for a reasonable jury to find that the victim was incapable of consent. The Court further held that based on the defendant's statements to investigators describing the victim as "drunk" and "wasted" the night of the incident, there was sufficient evidence that the defendant knew or should have known about this mental incapacity.

The defendant's final argument was that the trial court violated his right to confrontation by improperly allowing the DNA results generated by Sorenson Labs into evidence without requiring testimony from the analyst who performed the testing. Two employees of the North Carolina State Crime Laboratory testified, Cortney Cowan and Tricia Daniels. As to Ms. Cowan's testimony, the Court found the issue was not properly preserved for appellate review because the objections at trial lacked sufficiently specific grounds, and the defendant did not specifically and distinctly contend the alleged error constituted plain error. As to Ms. Daniels' testimony, the Court applied the two-step approach outlined by *Smith v. Arizona*, 602 U.S. 779 (2024) to determine whether the testimony implicated the Confrontation Clause: first, the testimony must be testimonial; second, it must be hearsay evidence. The Court addressed hearsay first, and found that Ms. Daniels' testimony on the DNA profile generated by Sorenson Labs was hearsay because it was offered for the truth of the results obtained. The Court then considered whether the evidence was testimonial based on a review of "the principle reason" the Sorenson test was made. The Sorenson Labs test was limited in scope to identify the presence of any DNA other than the victim's, rather than an attempt to identify a particular suspect. Therefore, the Court concluded the results were not generated solely to aid in the police investigation, and that the profile provided by Sorenson was not inherently inculpatory, but instead tended to exculpate all but one of the people in the world. As a result, the Court found that Ms. Daniels' testimony of the Sorenson results was not testimonial, and therefore did not implicate the Confrontation Clause. The Court further held that as a second and independent basis for their decision, if the defendant's confrontation rights were violated, it amounted to harmless error due to other competent overwhelming evidence of the defendant's guilt.

Shea Denning blogged about the confrontation aspect of the case, here. Joe Hyde blogged about the indictment issue in the case, here.

The trial court did not violate the defendant's confrontation rights by precluding repetitive testimony about a witness's prior record

State v. McClinton, No. COA24-1096, ___ N.C. App. ___ (Oct. 1, 2025). In this Guilford County case, the defendant was convicted in 2024 of first-degree murder, discharging a weapon into occupied property, and possession of firearm by a felon for a shooting at a Greensboro nightclub in 2021. He was sentenced to life without parole and other concurrent sentences. He argued in part on appeal that the trial erred by improperly limiting his ability to inquire into a witness's pending charges. The court of appeals found no error.

The defendant was permitted to cross-examine the witness about pending charges within the same prosecutorial district. The trial court did not permit the defendant to cross-examine the witness about the possibility that the witness would attain the status of a habitual felon if convicted of his pending charges. The court of appeals concluded that the defendant was able to elicit the information he sought about the witness's pending charges, and that the trial court did not err by precluding repetitive testimony.

First Amendment

Trial court erred by revoking probation when evidence was insufficient to show that the defendant committed a new offense, communicating threats as prohibited by G.S. 14-277.1

State v. Creed, No. COA25-184, ___ N.C. App. ___ (Sept. 17, 2025). On January 10, 2024, the defendant pled guilty to possession of a firearm by a felon and misdemeanor possession of marijuana. He was sentenced to a minimum 12, maximum 24 months; that sentence was suspended, and the defendant was placed on supervised probation for 36 months.

On June 30, 2024, the defendant met with Justin Potts. He made statements to Potts indicating he had a lot of animosity toward Judge Puckett, a superior court judge, and Detective Johnson of the Surry County Sheriff's Office. According to Detective Johnson, Potts told Detective Johnson that the defendant had threatened to kill Detective Johnson and Judge Puckett. Detective Johnson reported the matter to the district attorney's office.

In March and July of 2024, the defendant's probation officer filed violation reports alleging, among other things, that the defendant had committed new criminal offenses by making credible threats against Judge Puckett and Detective Johnson. The violation reports came on for a hearing in August 2024. The trial court ultimately found that the defendant violated his probation as alleged, revoked his probation, and activated his suspended sentence. The defendant appealed.

On appeal, the defendant argued the trial court erred by revoking his probation because the evidence was insufficient to show he communicated a threat as prohibited by G.S. 14-277.1.

The Court of Appeals recognized that G.S. 14-277.1 (communicating threats) incorporates the First Amendment requirement of a "true threat," that is, an objectively threatening statement communicated by a party who possessed the subjective intent to threaten a listener or identifiable group. Here, the Court of Appeals said, the evidence at the revocation hearing was insufficient to show the subjective and objective components of a true threat. Considering only Potts's testimony, the Court of Appeals noted that Potts testified that the defendant did not say he was going to kill either Judge Puckett or Detective Brandon. The Court of Appeals concluded the evidence was not sufficient to satisfy

a judge, in the exercise of his sound discretion, that the defendant's statement constituted a true threat outside of the protection of the First Amendment. It reversed the judgment.

Second Amendment

Statute criminalizing possession of a firearm by a felon not facially unconstitutional and not unconstitutional as applied to defendant; felons may be disarmed

State v. Ducker, COA24-373, ___ N.C. App. ___; 917 S.E.2d 266 (May 7, 2025). In this Buncombe County case, the defendant appealed his conviction for possession of a firearm by a felon, arguing G.S. 14-415.1 was unconstitutional under the Second Amendment and Article I, § 30 of the North Carolina Constitution. The Court of Appeals found no error and affirmed the judgment.

The defendant was arrested in 2022 after the Buncombe County Sheriff's Department received a report that he was openly carrying a handgun despite a felony conviction. At trial in 2023, the defendant raised constitutional arguments, but the trial court denied his motion.

The Court of Appeals considered the defendant's issues in three parts, whether G.S. 14-415.1 was (1) facially unconstitutional under the Second Amendment, (2) unconstitutional as applied to the defendant under the Second Amendment, or (3) unconstitutional as applied to the defendant under the North Carolina Constitution. In (1), the court noted it had previously upheld G.S. 14-415.1 as constitutional under the analysis required by *N.Y. State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1 (2022), in the recent decision *State v. Nanes*, ___ N.C. App. ___, 912 S.E.2d 202 (2025). This previous decision, along with consistent federal court decisions, supported the court's holding that G.S. 14-415.1 "is facially constitutional under both the United States and the North Carolina Constitutions." Slip op. at 8.

In (2), the court explained *Nanes* did not control as the defendant in that case was convicted of a different predicate felony. However, the court rejected the idea that it would be required to conduct a felony-by-felony analysis, pointing to the decision in *State v. Fernandez*, 256 N.C. App. 539 (2017), that "as-applied challenges to Section 14-415.1 [are] universally unavailing because convicted felons fall outside of the protections of the Second Amendment." Slip op. at 9-10. The court noted that the Fourth Circuit had revisited this issue post-*Bruen* in *United States v. Hunt*, 123 F.4th 697 (2024), and reached the same conclusion. As a result, the court concluded "[b]ecause we agree with the Fourth Circuit . . . we are bound by our decision in *Fernandez* and continue to hold Section 14-415.1 regulates conduct outside of the Second Amendment's protections." Slip op. at 12.

Finally, in (3), the court explained that under *Britt v. State*, 363 N.C. 546 (2009), a five-factor analysis is required to "determine if a convicted felon can be constitutionally disarmed under [G.S.] 14-415.1." Slip op. at 13. After walking through the *Britt* factors in the defendant's case, the court concluded G.S. 14-415.1 was constitutional when applied to the defendant, as "[i]t is not unreasonable to disarm an individual who was convicted of a felony, subsequently violated a domestic violence protective order, and chose to continue to carry a firearm in violation of the law." *Id*. at 17-18.

Phil Dixon blogged about this case in part, here.

Relying on pre-*Bruen* precedent, Fourth Circuit panel rejects case-by-case determination of as-applied Second Amendment challenges to 18 U.S.C. 922(g)(1)

U.S. v. Hunt, 123 F.4th 697 (Dec. 18, 2024). The defendant was convicted of possession of firearm by felon under 18 U.S.C. 922(g)(1) in the Southern District of West Virginia. The defendant's predicate felony was a state conviction for breaking and entering in 2017. On appeal, he argued that the statute violated the Second Amendment, both facially and as applied to the facts of his case. The Fourth Circuit recently rejected the argument that 18 U.S.C. 922(g)(1) was facially unconstitutional, while leaving the question of the possibility of successful as-applied challenges unresolved. *U.S. v. Canada ("Canada II")*, 123 F.4th 159 (4th Cir. 2024) (summarized above). Circuit precedent predating the U.S. Supreme Court's decision in *New York Rifle and Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1 (2022), held that an as-applied Second Amendment challenge to 18 U.S.C. 922(g)(1) could only succeed if the underlying felony conviction at issue had been pardoned or if the statute of conviction had been deemed "unconstitutional or otherwise unlawful." *Hunt* Slip op. at 2 (citing *Hamilton v. Pallozzi*, 848 F.3d 614, 626 (4th Cir. 2017)). Nothing in *Bruen* or *U.S. v. Rahimi*, 144 S. Ct. 1889 (2024), specifically overruled this earlier circuit precedent, and the court determined that its earlier decision remained good law. In the words of the court:

A panel of this court is bound by prior precedent from other panels and may not overturn prior panel decisions unless there is contrary law from an en banc or Supreme Court decision. We do not lightly presume that the law of the circuit has been overturned. Instead, a Supreme Court decision overrules or abrogates our prior precedent only if our precedent is *impossible* to reconcile with that decision. If it is possible to read our precedent harmoniously with Supreme Court precedent, we must do so. *Hunt* Slip op. at 7 (emphasis in original) (cleaned up).

In the alternative, the court found that the challenge failed on the merits. Under *Bruen* and *Rahimi*, a court must determine whether a challenged law impacts conduct protected by the Second Amendment. If so, the court must determine whether the regulation is "consistent with this Nation's historical tradition of firearm regulation." *Bruen* at 18. The defendant's challenge failed at both steps of the analysis. U.S. Supreme Court case law has stated that Second Amendment protections extend to "law-abiding citizens," and that restrictions on possession of firearms by felons are "presumptively lawful." *District of Columbia v. Heller*, 554 U.S. 570, 626, 627 n.26 (2008). The Court's subsequent decisions in *Bruen* and *Rahimi* reaffirmed this limitation on Second Amendment rights. Thus, possession of firearms by convicted felons is not conduct protected by the Second Amendment.

Assuming for the sake of argument that 18 U.S.C. 922(g)(1) does affect conduct protected by the Second Amendment, there has been a consistent historical tradition disarming both those who act inconsistent with legal norms and those who present a risk of harming others. That tradition covers people who have been convicted of felony offenses. Permanently disarming a felon is a much lesser sanction than the penalties of death and forfeiture that existed at the time of the founding for felony convictions, and those more severe penalties necessarily included disarmament. Colonial laws often required the forfeiture of guns for violations of hunting regulations. Many early legislatures prohibited entire groups of people from firearm possession based on a determination that members of the group acted outside of the norms of the day, such as "non-Anglican Protestants," and those who refused to swear oaths of allegiance. Early laws also categorically banned firearm possession by whole groups of people when members of the group were found to present a risk of danger, such as "religious minorities . . . Catholics, or Native Americans . . ." *Hunt* Slip op. at 16. It was therefore within Congress's power to determine that felons, as a category, were not entitled to possess firearms. Joining the Eighth Circuit on the point, the court further rejected the idea that as-applied Second Amendment challenges to 18 U.S.C. 922(g)(1) must be determined on a case-by-case basis. According to the unanimous court:

> This history demonstrates that there is no requirement for an individualized determination of dangerousness as to each person in a class of prohibited persons. Instead, as here, past conduct (like committing a felony) can warrant keeping firearms away from persons who might be expected to misuse them. *Id*. (citing *U.S. v. Jackson*, 110 F.4th 1120, 1129 (8th Cir 2024)) (cleaned up).

A challenge to a sentencing enhancement was similarly rejected, and the judgment of the district court was affirmed in full.

Federal ban on possession of firearms by people adjudicated mentally defective or who have been involuntarily committed is facially constitutional

U.S. v. Gould, 146 F.4th 421 (July 29, 2025). Between 2016 and 2019, the defendant was involuntarily committed to a facility for mental health treatment on four separate occasions. In 2022, authorities found the defendant in possession of a shotgun and indicted him in the Southern District of West Virginia for violating the federal ban on possession of firearms by a person who has been committed to a mental institution under 18 U.S.C. 922(g)(4). The defendant moved to dismiss, arguing that that 922(g)(4) was facially unconstitutional under the Second Amendment. The district court rejected the challenge, finding that the nation's historical tradition included disarming people who were dangerous to themselves or others. The defendant then pleaded guilty and appealed the denial of his motion to dismiss.

On appeal, the court noted that the U.S. Supreme Court has consistently and repeatedly observed in Second Amendment cases that limitations on the ability of the mentally ill to possess firearms are presumptively valid. However, the Court has not defined the term "mentally ill," and 922(g)(4) applies not only to people who are currently mentally ill, but also to someone who was committed involuntarily for mental illness who has since recovered. Thus, the statute could be applied to a person who is no longer mentally ill and otherwise a law-abiding, responsible citizen. Here, though, the defendant only raised a facial challenge to the statute. His burden for such a challenge is to demonstrate that the statute cannot be constitutionally applied to any defendant under any set of facts. The appellate court agreed with the trial court that while federal law affects conduct protected by the Second Amendment, there is a historical tradition of disarming people who present a danger to themselves or the public, and that tradition includes disarming people who are dangerous due to mental illness. Early legislatures frequently limited the freedom of people suffering from mental illness, and the mentally ill would often be incarcerated if they had no friends or family to care for them. This practice developed in response to the perceived threat to public safety and order presented by the mentally ill. Early legislatures also frequently disarmed entire categories of individuals such as religious and racial minorities, based on the perception that a group was dangerous. This history presented an analogous historical tradition akin to 922(g)(4). In the words of the court:

In sum, history shows that legislatures had the authority, consistent with the understanding of the individual right to keep and bear arms, to disarm categories of people based on a belief that the class posed a threat of dangerousness. And when combined with the historical treatment of those who suffered mental illness, we perceive an unambiguous history and tradition of disarming and incarcerating those whose illness made them a danger to themselves or others. *Gould* Slip op. at 19.

In conclusion, the court stressed that its holding was narrow—922(g)(4) is facially constitutional because it may be constitutionally applied to at least some people within its reach. The court expressly declined to opine on potential as-applied challenges to the same law.

The district court was therefore unanimously affirmed.

Divided panel upholds federal age restriction on handgun purchases from licensed dealer against Second Amendment challenge

McCoy v. ATF, 140 F.4th 568 (June 18, 2025). Under 18 U.S.C. 922(b)(1), a federally licensed firearms dealer is not permitted to sell handguns to any person under 21 years of age. Other firearms, like shotguns and rifles, may be sold to anyone 18 years old or older. The law does not prohibit people under 21 years old from possessing a handgun and does not impose any penalty on an underage buyer of a handgun, but the gun dealer can be fined and imprisoned for violations of the age restriction. The law also only applies to commercial firearms dealers—it does not regulate sales by private individuals or gifts of firearms. The plaintiffs were four individuals between 18 and 20 years old. They sued the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), arguing that the law violated the Second Amendment and seeking declaratory and injunctive relief against its application. The district court granted summary judgment to the plaintiffs, finding that no historical tradition of firearm regulation justified the age restriction on handgun purchases from gun dealers. On appeal, a divided panel of the Fourth Circuit reversed.

The court first determined that 922(b)(1) affected conduct protected by the Second Amendment. The court also assumed without deciding that 18–20-year-olds were among "the people" protected by the Second Amendment. Pointing to common law "infancy" rules, the court noted that contracts signed by people under 21 years of age were unenforceable at the time of the nation's founding. At that time, it was difficult or impossible for a minor under 21 years old to purchase a firearm, in part based on the credit-based economy in existence in the early days of American history. According to the court:

In sum, the infancy doctrine demonstrates that there was an early American tradition of burdening the ability of 18- to 20-year-olds to purchase goods, including firearms. We now hold that § 922(b)(1) fits comfortably within this tradition because it is analogous in both 'how' it burdens their Second Amendment rights and 'why.' *McCoy* Slip op. at 14.

The district court found that the Militia Act of 1792 supported the notion that the Second Amendment protected the rights of minors to purchase handguns from licensed dealers because the act required that males 18 years old and older serve in the militia and provide himself a firearm within six months of enrollment. The court disagreed, noting that the Militia Act did not universally mandate militia service at age 18 and that its provisions did not conflict with the age limitation in 922(b)(1)—*providing* oneself with a firearm is not the same as *purchasing* a firearm.

Further, there was a widespread tradition among states to regulate firearms purchases by minors generally and handgun purchases by minors specifically from the mid-1850s forward. Prior to that time, handguns were not in common use. Further, many states continue to restrict handgun sales to minors under 21 to this day, demonstrating a "continuity of historical tradition" on the point. *Id*. at 19.

The ruling of the district court was therefore reversed, and the case was remanded with instructions to dismiss.

Judge Heytens concurred separately. According to him, the plaintiff's argument for handgun purchases by those 18 and older would apply in equal force to even younger categories of people. This was fatal to the plaintiffs' arguments, in his view.

Judge Quattelbaum dissented and would have affirmed the district court's ruling.

Right to Counsel

Defense counsel's *Harbison* error justified new trial

State v. Meadows, COA24-149, ___ N.C. App. ___; 916 S.E.2d 578 (May 7, 2025); *temp. stay allowed*, ___ N.C. ___; 914 S.E.2d 836 (May 16, 2025). In this Duplin County case, the defendant appealed his convictions for first-degree murder and possession of a firearm by a felon, arguing ineffective assistance of counsel by conceding his guilt without permission. The Court of Appeals majority agreed, vacating the defendant's convictions and remanding for a new trial.

In July of 2016, officers responded to the report of a break-in and gunshot injuries. The defendant was indicted for the break-in and shooting of the victim and came to trial in March 2023. Before and during the trial, the defendant attempted to get new counsel three times, but each attempt was denied by the trial court. During trial, testimony from the defendant's former girlfriend focused on his gang connections and his motivations for the killing, including following orders from gang leaders so that he could move up in the organization. At the charge conference, the trial court denied the State's request for an instruction on acting in concert, but the prosecutor made arguments related to acting in concert anyway. When defense counsel gave closing arguments, he referenced the structure of the gang and conceded that the defendant was present at the scene of the crime and that he ran away afterwards, leaving his shoes outside the house. The defendant was subsequently convicted.

The Court of Appeals agreed with the defendant's argument that "his counsel impliedly admitted defendant's guilt when he stated during closing arguments that defendant went to the home of the victim with [two gang members] on the night of the incident." Slip op. at 10. The court explained this represented a violation of the defendant's rights under the Sixth Amendment as articulated in *State v. Harbison*, 315 N.C. 175 (1985). Here, there was no on-the-record *Harbison* inquiry except for the defendant's consent to the discussion of a prior conviction. There was "no evidence in the record to suggest that at any other point before or during trial defendant's counsel sought or obtained informed consent from defendant to discuss his presence at the crime scene or his involvement with the gang the evening of the incident." Slip op. at 12. The court also highlighted defense counsel's statements that represented "an implied admission that although defendant was following orders, he was also a participant in the crime in question." *Id*. at 15-16. Defense counsel's *Harbison* error of impliedly admitting the defendant's guilt justified a new trial.

Judge Stading dissented, arguing defense counsel did not impliedly admit the defendant's guilt, and that even if he did admit guilt, the lack of record about the defendant's voluntary consent justified dismissing the appeal and allowing defendant to file a motion for appropriate relief.

Contempt

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

State v. Brinkley, No. COA24-681, ___ N.C. App. ___ (Sept. 17, 2025). In April 2023, the defendant pled guilty to voluntary manslaughter and was sentenced to a minimum 58, maximum 82 months. The trial court ordered him to report to jail on June 12, 2023. The defendant failed to report to jail then, and the trial court issued an order for his arrest. He was arrested on January 2, 2024. On January 16, 2024, the trial court, pursuant to a summary contempt proceeding, held the defendant in direct criminal contempt and sentenced him to an additional thirty days.

The Court of Appeals granted the defendant's petition for certiorari to address the question of whether the trial court erred by holding him in direct criminal contempt. Summary contempt proceedings are permissible for direct criminal contempt. G.S. 5A-14(a). Direct criminal contempt occurs if the act is committed within the sight or hearing of the presiding judge and in, or in the immediate proximity to, the room where proceedings are being held before a court. G.S. 5A-13(a).

Here, the defendant's willful failure to comply with the trial court's order constituted an act of criminal contempt. But his failure to report occurred outside of the presence of the court. Hence, the defendant's conduct did not constitute direct criminal contempt (as the State conceded), and the trial court consequently erred by conducting summary contempt proceedings. The Court of Appeals vacated the trial court's order and remanded for further proceedings.

Shea Denning blogged about the case, here.

Capacity to Proceed

Trial court did not err by not instituting a competency hearing sua sponte; trial court did not err by finding that the defendant waived his right to be present at trial; trial court did not err by denying the defendant's request for substitute counsel

State v. Chafen, No. COA24-1030, ___ N.C. App. ___ (Sept. 17, 2025). Around 11 p.m. on May 12, 2023, the defendant called 911 from the waiting room at Novant-Presbyterian Hospital, telling the 911 operator that he wanted to be taken to another hospital. Law enforcement officers responding to the scene found the defendant yelling, cursing, and being uncooperative. Around 1 a.m., police responded to a second 911 call from the defendant's location. The defendant told officers he had been hit by a car, but officers concluded that nobody had actually been struck by a vehicle. Around 3 a.m., police responded to a third call from the defendant's location. This time, the hospital requested assistance with removing the defendant from the premises because he refused to leave. An officer attempted to arrest the defendant for trespassing, but he did not submit. Officers carried the defendant to a patrol vehicle, where the defendant kicked an officer in the head twice.

In December 2023, the defendant was convicted in district court of assault on a government official, resisting a public officer, second-degree trespass, and misuse of the 911 system. He appealed to the superior court. At his trial in superior court, which began on March 19, 2024, the State proceeded only

on the assault charge. After a jury was empaneled, the defendant sought to discharge his court-appointed attorney and requested substitute counsel. The trial court refused to allow the defendant to discharge counsel, whereupon he refused to participate in his trial, and he was taken into custody under a secured bond. After the lunch recess, the defendant refused to return to the courtroom and refused to speak with defense counsel. The trial court found that the defendant waived his right to be present, and the State proceeded to introduce evidence. The defendant was convicted of assault on a government official and sentenced to 120 days. He appealed.

Before the Court of Appeals, the defendant argued the trial court erred by (1) failing to order a competency hearing, (2) ruling he waived his right to be present at trial, and (3) failing to conduct a sufficient inquiry into his request for substitute counsel.

Addressing the first issue, the Court of Appeals posited that the trial court has a constitutional duty to institute a competency hearing sua sponte when there is substantial evidence indicating the accused may be mentally incompetent. Here, the Court of Appeals found insufficient evidence to warrant the initiation of a competency hearing by the trial court. It noted that the defendant was able to consult with his lawyer and had a rational understanding of the proceedings against him. The Court of Appeals rejected the defendant's reliance on the following circumstances: the defendant was homeless; he said he did not care what happened to him; he informed the trial court at sentencing about previous mental health evaluations; and he volunteered information at sentencing about a prior conviction. The defendant's refusal, it said, "to participate in his trial or with his court-appointed attorney does not constitute substantial evidence requiring the trial court to institute a competency hearing on its own accord." Slip Op. p. 16.

Addressing the second issue, the Court of Appeals said that a defendant may waive the right to be present at his trial through his voluntary absence, so long as he is aware of the processes taking place and of his right and obligation to be present. Here, the defendant argued the trial court erred by finding he waived his right to be present because it failed first to determine whether he was competent to stand trial. But, as the Court of Appeals found insufficient evidence to warrant a sua sponte competency hearing, it likewise found the defendant's argument regarding waiver of his right to be present meritless. Further, it noted the defendant voluntarily absented himself from the courtroom, though he was aware of the processes taking place and his obligation to be present.

Addressing the third issue, the Court of Appeals declared that to warrant a substitution of counsel, the defendant must show good cause, such as a conflict of interest, a complete breakdown in communication, or an irreconcilable conflict. Given a request for substitute counsel, the trial court must make sufficient inquiry into the defendant's reasons to the extent necessary to determine whether the defendant will receive effective assistance of counsel. Here, the Court of Appeals said, the trial court inquired into the defendant's request to the extent necessary to determine whether he would receive effective assistance. It noted that the trial court's conversation with the defendant upon his request for substitute counsel revealed that the nature of the conflict was not such as would render counsel ineffective. Once it became apparent that counsel was competent and the assistance of counsel was not ineffective, the trial court was not required to delve any further into the alleged conflict. Absent any constitutional violation, the trial court did not abuse its discretion by denying the defendant's request for substitute counsel.

Speedy Trial

Three-year delay did not violate the defendant's right to a speedy trial in light of the valid reasons for the delay and the seriousness of the charges

State v. McClinton, No. COA24-1096, ___ N.C. App. ___ (Oct. 1, 2025). In this Guilford County case, the defendant was convicted in 2024 of first-degree murder, discharging a weapon into occupied property, and possession of firearm by a felon for a shooting at a Greensboro nightclub in 2021. He was sentenced to life without parole and other concurrent sentences. On appeal, he argued in part that his speedy trial rights were violated. The court of appeals found no error.

The court noted that the delay beyond one year triggered an inquiry under *Barker v. Wingo*, 407 U.S. 514 (1972), but ultimately concluded that the delay here was for valid reasons—namely, the defendant's intervening service of an 18-month sentence for a federal supervised release violation, the four defense attorneys involved in the case, the fact that one of the detectives involved in the case was called for military duty, and the seriousness of the charges.

Evidence

Authentication

A cell phone video was properly admitted for illustrative purposes despite a lack of evidence about who filmed it; the trial court did not err by declining to instruct the jury on an assault for a defendant charged with murder by a short form indictment

State v. Ramsey, No. COA25-145, ___ N.C. App. ___ (Oct. 1, 2025). In this Mecklenburg County case, the defendant was convicted after jury trial of involuntary manslaughter. The charges resulted from a fight the defendant had with the victim. The defendant argued on appeal that the trial court erred by admitting video evidence without proper authentication, and by denying the defendant's motion for additional jury instructions on simple assault after the jury had started deliberations. The video evidence came from a cell phone that an officer found at the scene of the fight. The court of appeals concluded that the trial court did not err by admitting the video for illustrative purposes despite a lack of evidence about who filmed it. The trial court gave a limiting instruction and the State laid a proper foundation by eliciting testimony from a witness that the video fairly and accurately illustrated the fight. As to the request for an instruction on assault, the court of appeals cited binding precedent holding a jury instruction on simple assault improper for a defendant—like the defendant here—charged with a short form murder indictment. The court declined the defendant's request to reconsider that precedent in light of State v. Singleton, 386 N.C. 183 (2024).

Lay and Expert Opinion

Trial court erred by admitting drug recognition expert opinion that was based on procedures outside of DRE protocol, but the error was not prejudicial; no error to admit the defendant's driving record as evidence of malice to prove second-degree murder

State v. Moore, No. COA24-899, ___ N.C. App. ___ (July 16, 2025). The defendant's car collided with a car in which the victim was riding, killing her. He was charged with second-degree murder, felony death by vehicle, and impaired driving, among other charges, after evidence showed that he was driving over 60 miles per hour in a 35 mile per hour zone, and that he was under the influence of impairing substances including amphetamines, benzodiazepines, and opiates. Multiple witnesses testified at trial, including a sergeant from the Sheriff's Office who testified as a drug recognition expert (DRE) that multiple drugs were causing defendant's impairment—though his testimony was based on video evidence and reports reviewed two years after the incident, not based on live interaction with the defendant at the time of the incident, as required by DRE protocol. The defendant asserted two arguments on appeal: first, that the trial court erred by allowing the DRE to testify without satisfying the reliability provisions of Rule of Evidence 702(a); and second, that the trial court erred by allowing the state to introduce the defendant's driving record without conducting a similarity analysis under Rule 404(b). The Court of Appeals concluded there was no prejudicial error.

As to the first argument, the Court of Appeals agreed that the trial court erred by allowing the DRE to express an expert opinion as to the defendant's impairment without having performed a standardized evaluation in accordance with certification procedures. The court rejected the State's argument that the "[n]otwithstanding any other provision of law" clause in Rule 702(a1) completely excused the DRE from the baseline reliability requirements of Rule 702(a), including the requirements that testimony be based on fact and in accordance with reliable principles and methods. The court nevertheless concluded that the trial court error was not prejudicial based on other overwhelming evidence of the defendant's impairment separate and apart from the DRE testimony, including witness observations, testimony from the treating physician, and toxicology tests.

As to the second argument, the Court of Appeals concluded that the trial court did weigh the similarity and temporal proximity of the defendant's prior traffic violations as required under cases interpreting Rule 404(b), and therefore did not err by admitting the driving record to prove malice. The trial court limited temporal proximity by disregarding citations prior to 2015. And the similarity between prior speeding citations and the instant crime, where the defendant was speeding at nearly twice the legal limit, was clear, even if the trial court did not explicitly verbalize it.

Belal Elrahal blogged about the case, here.

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, 298 N.C. App. 104 (March 5, 2025). In this Martin County case, the 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 the defendant, seeking to buy seven grams of fentanyl "and some marijuana." Slip op. at 3. The defendant quoted prices for both, and the CI paid defendant and received two bags of the substances. The 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. The defendant requested and the trial court provided a jury instruction stating that the term marijuana does not include hemp or hemp products. The defendant was subsequently convicted and received consecutive sentences of 70 to 93 months for his offenses.

Taking up the 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 the 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. The 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 the 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.

The 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 the 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. The 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 the defendant received a sentence based on improper information. *Id*. at 25.

Phil Dixon blogged about the case in part, 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, No. COA24-799, ___ N.C. App. ___(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.

Self-Defense

Trial court prejudicially erred when it failed to address the statutory circumstances of G.S. 14-51.2(c) that can rebut the presumption of reasonable fear created by G.S. 14-51.2(b) and failed to limit the instruction on excessive force to self-defense and defense of another

State v. Thomas, No. COA24-770, ___ N.C. App. ___ (Sept. 17, 2025). In April 2020, the defendant's home in Mount Airy was accessible only by way of a dirt driveway easement on the property of his neighbor, Burt Wallace. On the evening of April 9, 2020, the defendant was driving up and down the easement on a four-wheeler, when Wallace came out of his garage and began videotaping him. Wallace's wife Danielle started a physical confrontation with the defendant's wife and stepmother, injuring his stepmother's wrist. The defendant saw Wallace coming up the driveway at him, thought Wallace was reaching for a gun, and shot Wallace twice.

On May 18, 2020, the defendant was charged with assault with a deadly weapon with intent to kill inflicting serious injury (ADWIKISI). The matter came on for trial in February 2024. The jury was instructed on self-defense, defense of another, and defense of habitation. The defendant was convicted of ADWIKISI. Judgement was entered and the defendant appealed.

On appeal, the defendant argued the trial court plainly erred (1) by denying him immunity under G.S. 14-51.2(c) and (2) in its jury instruction on self-defense under G.S. 14-51.3. The defendant also argued (3) he received ineffective assistance when counsel stipulated to the admission of a recorded interview, and (4) cumulative error deprived him of a fair trial.

The Court of Appeals found the second issue dispositive. Although the trial court delivered the instructions which the defendant requested, the Court of Appeals declined to apply the doctrine of invited error because counsel and the trial court did not, at the time of trial, have the benefit of *State v. Phillips*, 386 N.C. 513 (2024). Instead, the Court of Appeals reviewed for plain error.

Under *Phillips*, excessive force in defense of habitation is a legal impossibility. Here, the jury was instructed on excessive force twice: once in relation to self-defense and once to defense of another. N.C.P.I. – Crim. 308.45 (self-defense) & 308.50 (defense of another). The Court of Appeals concluded that the instructions were misleading, as the instructions did not clarify that the restriction on excessive force would not apply to defense of habitation. It noted that the prosecutor argued in closing that a defendant is never entitled to use excessive force. The Court of Appeals also said the instructions "conflated the requirements for common law defense of self or defense of a family member . . . and the statutory defense of habitation." It rejected the State's argument that the instruction was not erroneous because it complied with the Pattern Jury Instruction for Defense of Habitation or, alternatively, that the instruction should not have been given in any event.

Under *Phillips*, the presumption of reasonable fear created by G.S. 14-51.2(b) may be rebutted only by the circumstances listed at G.S. 14-51.2(c). Here, the jury was instructed that, absent evidence to the contrary, the lawful occupant of a home using deadly force is presumed to have held a reasonable fear of imminent death or great bodily harm if the victim was unlawfully and forcefully entering the premises and the defendant knew it. N.C.P.I. Crim. – 308.80. The Court of Appeals said the jury could have believed that the phase "absent evidence to the contrary" could refer to excessive force, which was "not a proper consideration under the defense of habitation." Given the misleading instruction and the prosecutor's argument, the Court of Appeals found "no practical difference" between the erroneous instructions in *Phillips* and those in this case.

In sum, the Court of Appeals held the trial court erred by (1) failing to address the statutory circumstances of G.S. 14-51.2(c) that may rebut the presumption created by G.S. 14-51.2(b) and (2) by failing to limit the instruction on excessive force to self-defense and defense of another. Further, given the conflicting evidence on whether Wallace had forcefully entered the defendant's property, the Court of Appeals concluded that the error had a probable effect on the outcome. The Court of Appeals vacated the defendant's conviction and remanded for a new trial.

Crimes

Assault Offenses

Defendant, who was charged with assault with a deadly weapon with intent to kill inflicting serious injury, was entitled to instruction on lesser included offenses given evidence of his intoxication at the time of the assault

State v. Powell, No. COA24-556, ___ N.C. App. ___ (Sept. 3, 2025). In this Robeson County case, the victim started an altercation with the defendant by threatening the defendant and his elderly mother and by punching the defendant in the face. The defendant, who was noticeably intoxicated, beat the victim unconscious with his fists and then stomped on his face. The assault was captured on video. As a result of the injuries, the victim lost his vision and his ability to care for himself. The defendant was charged with assault with a deadly weapon with intent to kill inflicting serious injury (AWDWIKISI) and

tried before a jury. The trial court denied the defendant's request to submit lesser-included assault offenses to the jury. The jury, which initially indicated that it was deadlocked and was then provided a written *Allen* charge, convicted the defendant. The defendant appealed, arguing that (1) the trial court erred in denying his motion to dismiss based on the sufficiency of the evidence; (2) the trial court erred by allowing the State to question him about prior convictions that were more than ten years old; (3) after the jury began deliberating, the trial court erred by (a) responding to the jury's request for a definition of specific intent by instructing the jury on intent generally, (b) making statements tending to coerce the jury into reading a verdict, and (c) failing to give an *Allen* charge in open court; and (4) failing to instruct on lesser-included offenses, which did not require specific intent.

(1) The Court of Appeals held that the conviction was supported by sufficient evidence from which the jury could concluded that the defendant's hands and feet were deadly weapons that he used to assault the victim. And given the "violent nature and extent of Defendant's attack as Victim lay helpless" and the defendant's statement to a neighbor during the assault that he wanted to kill the victim, the court found the evidence sufficient for the jury to reasonably infer that the defendant had the specific intent to kill the victim.

(2) The Court of Appeals held that the trial court did not abuse its discretion under Rule 609 in allowing evidence during the State's cross examination of the defendant of defendant's 1994 conviction for financial fraud and his 2010 conviction for assaulting a government official. The court explained that the fraud conviction was probative of the defendant's trustworthiness and the conviction for assault was probative to rebut the defendant's testimony that he acted in self-defense; the court did not find that it was an abuse of discretion to admit them. The court further concluded that even if there was error, it was not prejudicial given the strength of the State's evidence.

(3) The jury began deliberating at 4 p.m. on the fourth day of trial. At 4:30 p.m., the jury asked the trial court to define "intent to kill" and "specific intent to kill." At that point, the trial court gave the patten instruction on intent generally. At 5 p.m., the jury notified the court that it was deadlocked. The court addressed the jurors in the courtroom, telling them, "[W]e've got four days invested in this case. . . . So I've got to give you an instruction and tell you to give your best efforts to try to settle it. And I'm going to give you, like, 30 minutes . . . [a]nd then have you come back in." After the jury returned to the deliberation room, the trial court told the bailiff to take a printed copy of the *Allen* charge instruction to the jury. At 5:45 p.m. the jury returned with a verdict of guilty.

Because the defendant did not object to the trial court's instructions, the Court of Appeals reviewed for plain error. The court concluded the defendant failed to show the jury probably would have reached a different verdict had the trial court instructed on specific intent or had it not told the jury about the "four days invested" and giving them "30 minutes." As to the latter statements, the court said it was not clear from the context whether the jury viewed those statements as a directive to reach a quick verdict or a statement that they would end for the day after 30 more minutes.

As to the trial court's failure to give the *Allen* charge in open court as required by G.S. 15A-1235, the Court of Appeals concluded that because the trial court had discretion about whether to give the charge at all, it was not reversible error for it to fail to give the written charge it provided to the jury in open court.

(4) The Court of Appeals explained that if there was evidence showing that the defendant was voluntarily intoxicated to the extent that he could not have formed a specific intent to kill, he was

entitled to the instruction on lesser-included assault offenses (which required only general intent) that he requested. Viewing the evidence in the light most favorable to the defendant, the court found such evidence and concluded that the defendant was entitled to the instruction he requested as "there was a reasonable possibility that at least one juror could have decided to convict Defendant of a lesser included offense instead of the one charge presented to them." For that reason, the court vacated the defendant's conviction and remanded for a new trial.

Judge Wood concurred but wrote separately to state that she would have held that the trial court committed prejudicial error in its response to the jury's report that it was deadlocked.

Driving Offenses

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. ___; 916 S.E.2d 34 (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.

Brittany Bromell and Belal Elrahal blogged about the case here and here.

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, No. COA24-927, ___ N.C. App. ___ (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.

Trial court did not err by denying the defendant's motion to dismiss drug trafficking charges; trial court did not err by including "any mixture" language in jury instructions on drug trafficking; trial court did not err by imposing consecutive sentences for drug trafficking; and verdict and judgment forms were not fatally defective for failing to name fentanyl

State v. Thomas, No. COA24-940, ___ N.C. App. ___ (Sept. 17, 2025). On January 10, 2023, the defendant was speeding down Interstate 85. Troopers with the highway patrol attempted to conduct a traffic stop, and the defendant led the troopers on a high-speed chase. After running over a tire deflation device, he began throwing bags of white powder from his car. Troopers eventually stopped the defendant's car and arrested him. Officers recovered one of the bags thrown from the car. Inside the defendant's car, officers found two sandwich bags containing a white powdery substance. And in the ditch next to the defendant's car, officers found a cooler containing smaller baggies of white powder and a digital scale.

The defendant was indicted for numerous felonies. The matter came on for trial on April 8, 2024. At trial, a forensic analyst testified that the sandwich bag from the defendant's car contained a mixture of methamphetamine, fentanyl, and ANPP – a fentanyl precursor. The defendant was convicted by a jury of trafficking opium by possession of twenty-eight grams or more, trafficking opium by transportation of twenty-eight grams or more, trafficking methamphetamine by possession of between twenty-eight and 200 grams, trafficking methamphetamine by transportation of between twenty-eight and 200 grams, felony fleeing to elude arrest, driving while license revoked, speeding, and reckless driving. The defendant appealed.

Before the Court of Appeals, the defendant argued the trial court erred (1) by denying his motion to dismiss the trafficking charges, (2) by including the phrase "any mixture" in its jury instructions on drug trafficking, and (3) by imposing consecutive sentences for both trafficking offenses. He also argued (4) the verdict and judgment forms were fatally defective because they failed to identify fentanyl as the opium/opiate contained in the mixture seized from the defendant.

Addressing the first issue, the Court of Appeals observed that G.S. 90-95(h) provides that criminal liability for drug trafficking is based on the total weight of the mixture. Here, the substance seized from the defendant's car was a mixture of methamphetamine and fentanyl. The Court of Appeals concluded there was sufficient evidence to show the threshold weight of both methamphetamine and opium/opiates, though the total weight of the mixture was 36.37 grams.

Addressing the second issue, the Court of Appeals rejected the defendant's challenge to the jury instructions as "essentially an attempt to take another bite of the apple above." Here, the "any mixture" language in the instructions on trafficking was consistent with law. The Court of Appeals concluded the trial court did not err in its instructions on drug trafficking.

Addressing the third issue, the Court of Appeals posited that offenses are not the same for double jeopardy purposes if each requires proof of an additional fact that the other does not. Here, the offenses of trafficking in methamphetamine and trafficking in opium each require proof of an additional fact that the other does not, namely the particular substance. Trafficking does not require twenty-eight grams of pure methamphetamine or fentanyl but a mixture containing such substance. The Court of Appeals concluded the trial court did not err by imposing consecutive sentences.

As to the fourth issue, the Court of Appeals acknowledged that a verdict may be interpreted by reference to the allegations, the evidence, and the instructions. Here, though the verdict form referred to opium/opiates rather than fentanyl, the indictments named fentanyl; the forensic analyst who testified identified fentanyl; and the jury was instructed that fentanyl is opium. The Court of Appeals concluded from this that the verdict and judgment forms were not fatally defective.

Defendant's admission that he lived in his parents' home, along with circumstantial evidence, supported conviction of keeping or maintaining a dwelling for controlled substances

State v. Rowland, 298 N.C. App. 274 (March 19, 2025). In this Wake County case, the defendant appealed his convictions including keeping or maintaining a dwelling for the keeping or selling of controlled substances, arguing error in denying his motion to dismiss the keeping or maintaining a dwelling charge. The Court of Appeals disagreed, finding no error.

Raleigh Police received information that the defendant was selling bundles of heroin from his residence and began investigating, resulting in a 2021 search warrant for the home that turned up heroin, firearms, and drug paraphernalia. The residence was owned by the defendant's parents, and in an interview with police, the defendant told them he had lived at the residence "on and off since 2005." *Rowland* Slip op. at 2. At trial, the defendant moved to dismiss the charge, arguing the State did not demonstrate that the dwelling had been kept or maintained over time for the purpose of controlled substances, but the trial court denied the motion.

The Court of Appeals first noted that G.S. 90-108(a)(7) governed the crime in question, and "[w]hile mere *occupancy* of a property, without more, will not support the 'keeping or maintaining' element, 'evidence of *residency*, standing alone, is sufficient to support the element of maintaining.'" *Id*. at 5 (quoting *State v. Spencer*, 192 N.C. App. 143, 148 (2008)). Additionally, residency can be established by the defendant's admission and through circumstantial evidence, both of which were present here. The court concluded that the admission that the defendant resided at his parents' house along with the State's circumstantial evidence showing that the defendant resided in the home represented substantial evidence that the defendant kept or maintained a dwelling for controlled substances.

Circumstances surrounding arrest and discovery of pipe supported conclusion that defendant intended to use the pipe for controlled substances other than marijuana

State v. Bryant, COA24-436, ___ N.C. App. ___; 915 S.E.2d 277 (Apr. 16, 2025). In this Union County case, the defendant appealed his conviction for misdemeanor possession of drug paraphernalia, arguing there was insufficient evidence that he intended to use the paraphernalia, a pipe, for a controlled substance other than marijuana. The Court of Appeals disagreed, finding no error.

The defendant was arrested after an encounter in September 2021 where police officers thought the defendant and his two acquaintances were shoplifting from a local Belk. The officers did not find any store merchandise, but while searching one of the acquaintances, the officers found a medicine bottle with small baggies filled with a brown powder. The defendant ran from the officers, throwing a bottle that also contained the brown powdery substance. When he was detained, officers found a glass pipe, red straw, and plastic baggies containing power on his person. The brown substance was confirmed to be heroin after testing. The defendant came to trial on charges of felony trafficking in heroin by possession and transporting, as well as the misdemeanor charge. He moved to dismiss the misdemeanor, but the trial court denied the motion, and the defendant was subsequently convicted.

On appeal, the defendant pointed to G.S. 90-113.22, which makes it a misdemeanor offense to "knowingly use, or to possess with intent to use, drug paraphernalia to . . . inject, ingest, inhale, or otherwise introduce into the body a controlled substance *other than marijuana* which it would be unlawful to possess." *Bryant* Slip op. at 5. The defendant argued insufficient evidence to show he intended to use the pipe for a controlled substance other than marijuana. The Court of Appeals noted a lack of controlling authority, but looked to *State v. Gamble*, 218 N.C. App. 456, 2012 WL 380251 (2012) (unpublished), and *State v. Harlee*, 180 N.C. App. 692, 2006 WL 3718084 (2006) (unpublished), for guidance regarding circumstances that supported intent with paraphernalia like crack pipes. The court found similar support here, as the pipe was found in the same pocket of the defendant's pants as the baggies of heroin, and the pipe was visibly charred, showing previous use.

Firearms Offenses

Statute criminalizing possession of a firearm by a felon not facially unconstitutional and not unconstitutional as applied to defendant

State v. Ducker, COA24-373, ___ N.C. App. ___ (May 7, 2025); *temp. stay allowed*, ___ N.C. ___; 915 S.E.2d 37 (May 20, 2025). In this Buncombe County case, the defendant appealed his conviction for possession of a firearm by a felon, arguing G.S. 14-415.1 was unconstitutional under the Second Amendment and Article I, § 30 of the North Carolina Constitution. The Court of Appeals found no error and affirmed the judgment.

The defendant was arrested in 2022 after the Buncombe County Sheriff's Department received a report that he was openly carrying a handgun despite a felony conviction. At trial in 2023, the defendant raised constitutional arguments, but the trial court denied his motion.

The Court of Appeals considered the defendant's issues in three parts, whether G.S. 14-415.1 was (1) facially unconstitutional under the Second Amendment, (2) unconstitutional as applied to the defendant under the Second Amendment, or (3) unconstitutional as applied to the defendant under the North Carolina Constitution. In (1), the court noted it had previously upheld G.S. 14-415.1 as constitutional under the analysis required by *N.Y. State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1 (2022), in the recent decision *State v. Nanes*, 297 N.C. App. 863 (2025). This previous decision, along with consistent federal court decisions, supported the court's holding that G.S. 14-415.1 "is facially constitutional under both the United States and the North Carolina Constitutions." Slip op. at 8.

In (2), the court explained *Nanes* did not control as the defendant in that case was convicted of a different predicate felony. However, the court rejected the idea that it would be required to conduct a felony-by-felony analysis, pointing to the decision in *State v. Fernandez*, 256 N.C. App. 539 (2017), that "as-applied challenges to Section 14-415.1 [are] universally unavailing because convicted felons fall outside of the protections of the Second Amendment." Slip op. at 9-10. The court noted that the Fourth Circuit had revisited this issue post-*Bruen* in *United States v. Hunt*, 123 F.4th 697 (2024), and reached the same conclusion. As a result, the court concluded "[b]ecause we agree with the Fourth Circuit . . . we are bound by our decision in *Fernandez* and continue to hold Section 14-415.1 regulates conduct outside of the Second Amendment's protections." Slip Op. at 12.

Finally, in (3), the court explained that under *Britt v. State*, 363 N.C. 546 (2009), a five-factor analysis is required to "determine if a convicted felon can be constitutionally disarmed under [G.S.] 14-415.1." Slip Op. at 13. After walking through the *Britt* factors in the defendant's case, the court concluded G.S. 14-415.1 was constitutional when applied to the defendant, as "[i]t is not unreasonable to disarm an individual who was convicted of a felony, subsequently violated a domestic violence protective order, and chose to continue to carry a firearm in violation of the law." *Id*. at 17-18.

Phil Dixon blogged about the case, here.

(1) Discharging a weapon into occupied property under 14-34.1 only required reasonable grounds to believe that property was occupied rather than actual knowledge, and thus motion to dismiss was properly denied; (2) each pull of the trigger constituted a separate act adequate to support a conviction under G.S. 14-34.1, and thus trial court did not err in submitting multiple counts to the jury

State v. Leopard, No. COA24-749, ___ N.C. App. ___ (Aug. 6, 2025). The defendant made a complaint to 911 that he heard gunshots at his neighbor's house. Law enforcement came to the scene and found that the neighbor was shooting targets in a safe manner. About one hour later, the defendant fired multiple bullets into his neighbor's home. Officers subsequently arrested the defendant and retrieved a pistol and an AR-10 rifle from the defendant's home. Officers also located spent shell casings on the defendant's porch that appeared to come from the AR-10. The defendant was charged with four counts of discharging a firearm into occupied property and convicted of all four counts after a jury trial.

On appeal, the defendant argued that the trial court erred in denying his motion to dismiss, contending that the State needed to prove the defendant had actual knowledge that the home was occupied. The Court of Appeals rejected this argument, relying on precedent establishing that G.S. 14-34.1 only requires the State prove the defendant had reasonable grounds to believe that the property is occupied. The Court found adequate evidence of this element where the victim was using his gun range just an hour before shots were fired into his house and the light was on in the victim's kitchen, which was visible from the defendant's porch at the time of the shooting.

The Court also rejected the defendant's argument that the jury instructions were flawed, as the defendant did not object to the instructions at trial and did not allege plain error on appeal. The Court deemed the argument abandoned given that plain error must be specifically and distinctly argued where defendant does not object at trial.

Finally, the Court rejected defendant's argument that the trial court violated his Fifth and Sixth Amendment rights by engaging in judicial fact finding to determine that multiple shots were fired. The defendant specifically objected to the trial court's decision to submit four charges to the jury instead of one. The Court stated that the defendant's argument was a "creative but misguided" attempt to challenge the trial court's denial of the motion to dismiss. The Court then addressed the question of whether a quick succession of gunshots should be treated as one shot and one crime, or four distinct crimes. The Court stressed that the weapon at issue, an AR-10 rifle, was a semi-automatic weapon and that such a weapon required that the defendant employ his thought processes each time he pulled and released the trigger to shoot. The Court relied on precedent providing that each pull of the trigger constitutes a separate act supporting a conviction under G.S. 14-34.1. Finding sufficient evidence in the record to support four pulls of the trigger, the Court concluded that the trial court did not err by denying the defendant's motion to dismiss on the grounds of multiplicity.

Impaired Driving

(1) Sufficient evidence of impaired driving, (2) no error in admission of expert opinion re retrograde extrapolation of the defendant's BAC, (3) no error in trial court's failure to give entire civil pattern jury instruction on intervening negligence, (4) the defendant failed to show ineffective assistance of counsel.

State v. Venable, No. COA24-707, ___ N.C. App. ____; 919 S.E.2d 343 (July 2, 2025). On August 2, 2021, defendant drove his red Kia Rio off Old Wake Forest Road in Raleigh and crashed into a tree, killing his wife, who was a passenger in the vehicle. Emerging from the vehicle, the defendant smelled of alcohol, his balance was poor, his speech was slurred, and he appeared disoriented. Police found five empty airplane bottles in the car. Two blood samples collected from the defendant revealed a blood alcohol content (BAC) of 0.0883 and 0.05 grams of alcohol per 100 milliliters of blood.

In November 2021, the defendant was charged with felony death by vehicle and driving while impaired. The matter came on for trial by jury in August 2023. At trial, a forensic chemist testified, based on a retrograde extrapolation analysis, that the defendant's BAC at the time of the accident was 0.1078. During the charge conference, the defendant requested a civil pattern jury instruction on intervening negligence, a part of which the trial court agreed to give. The defendant was convicted of felony death by vehicle and driving while impaired. The defendant appealed.

Upon review, the Court of Appeals identified the issues as whether the trial court erred by (1) denying the defendant's motion to dismiss, (2) admitting expert testimony of retrograde extrapolation, and (3) declining to give the entire civil pattern instruction on intervening negligence. The defendant also argued he received ineffective assistance of counsel.

As to the first issue, the defendant argued that Officer Daniel Egan's opinion that he was appreciably impaired at the time of the crash was unsupported by evidence. To convict a defendant of impaired driving, the State must prove that the defendant drove a vehicle (1) while appreciably impaired or (2) after having consumed sufficient alcohol that he has an alcohol concentration of 0.08 or more at any relevant time after driving. G.S. 20-138.1(a). An officer's opinion that a defendant is appreciably impaired is admissible when based on the officer's personal observation or other evidence of impairment. State v. Gregory, 154 N.C. App. 718 (2002).

Here, the Court of Appeals said, Officer Egan observed other evidence of impairment, including the collision scene, the bottles in the car, and the defendant's statements that he had been drinking. Therefore, sufficient evidence supported the opinion. Further, the Court of Appeals said, the evidence was not limited to Officer Egan's opinion. Other evidence indicated the defendant's balance was poor, his speech was slurred, he smelled of alcohol, and he appeared disoriented. In addition to this evidence of appreciable impairment, the State also presented evidence of the defendant's BAC at the time of the crash. The Court of Appeals concluded there was sufficient evidence of impaired driving, and the trial court did not err by denying the motion to dismiss.

As to the second issue, the defendant argued the trial court plainly erred by admitting expert testimony of retrograde extrapolation because the witness, Dr. Richard Waggoner, made critical assumptions unsupported by the record. When an expert witness offers a retrograde extrapolation opinion based on an assumption that the defendant is in a post-absorptive or post-peak state, that assumption must be based on some underlying facts. State v. Babich, 252 N.C. App. 165 (2017). Here, the Court of Appeals said, Dr. Waggoner based his analysis of a blood draw at the hospital, the defendant's statements, and the evidence found at the scene. The Court of Appeals concluded the trial court did not err by admitting Dr. Waggoner's testimony, and in any event the defendant failed to show sufficient prejudice to establish plain error.

As to the third issue, the defendant argued the trial court plainly erred by failing to give the entire civil pattern jury instruction on intervening negligence. To convict a defendant of felony death by vehicle, the State must show, among other things, that the defendant's impairment was the proximate cause of death. G.S. 20-141.4(a1); State v. Bailey, 184 N.C. App. 746 (2007). Here, the trial court properly instructed the jury on proximate cause. The Court of Appeals concluded that the intervening negligence instruction sufficiently incorporated the necessary principles, and in any event, the defendant failed to show sufficient prejudice to establish plain error.

Finally, the defendant argued he received ineffective assistance when counsel failed to object to the testimony of Officer Egan and Dr. Waggoner and to the incomplete jury instruction. The Court of Appeals concluded, however, that the defendant failed to show deficient performance.

Jury Issues

Provisions of G.S. 15A-1215(a) permitting a juror to be excused and replaced by an alternate after the jury has begun deliberations comport with state constitutional requirement for unanimous jury

State v. Chambers, 387 N.C. 521 (May 23, 2025). In this Wake County case, the defendant, who was convicted of first-degree murder and a related felony assault, contended that the trial court's substitution of an alternate juror during deliberations pursuant to G.S. 15A-1215(a) violated his state constitutional right to a twelve-person jury. The North Carolina Supreme Court rejected the defendant's argument, determining that the substitution of an alternate juror pursuant to G.S. 15A-1215(a) did not violate the defendant's right under Article 1, Section 24 of the North Carolina Constitution to a unanimous verdict by a jury of twelve.

The charges arose from a shooting at a Raleigh motel in which a man was killed and a woman injured. The defendant represented himself at trial and chose to be absent from the courtroom after the trial court cut off his closing argument for failing to follow the trial court's instructions. He remained absent during the proceedings involving the excusal of one juror and the substitution of another.

The jury began its deliberations near the end of a workday. After less than 30 minutes of deliberation and minutes before the jury was set to be released for the day, one of the jurors asked to be excused for a medical appointment the next morning. The trial court released the jury for the day and excused the juror with the medical appointment. The next morning, the trial court substituted the first alternate juror and instructed the jury to restart its deliberations. Later that day, the jury returned guilty verdicts against the defendant.

The defendant petitioned for certiorari review, contending that the substitution of the alternate juror violated his state constitutional right to a twelve-person jury. The Court of Appeals granted the defendant's petition and agreed with his argument. The Court of Appeals held that notwithstanding statutory amendments to G.S. 15A-1215(a) enacted in 2021 to authorize the substitution of alternate jurors after deliberations begin, Article I, Section 24 of the North Carolina Constitution, as interpreted *State v. Bunning*, 346 N.C. 253 (1997), forbids the substitution of alternate jurors after deliberations begin because such substitution results in juries of more than twelve persons determining a defendant's guilt or innocence. The North Carolina Supreme Court granted the State's petition for discretionary review and reversed the Court of Appeals.

The Court first determined that the defendant's failure to object to the substitution of the juror did not waive his right to challenge the constitutionality of G.S. 15A-1215(a) on appeal given the fundamental nature of the right to a properly constituted jury. Then, taking up the defendant's argument, the court rejected his claims that the substitution of the juror violated his rights under the state constitution.

The Court held that G.S. 15A-1215(a) provides two critical safeguards that secure a defendant's right to a unanimous verdict by a jury of twelve. First, the statute expressly states that no more than twelve jurors may participate in the jury's deliberations. Second, it requires trial courts to instruct a jury to

begin deliberations anew upon the substitution of an alternate juror. Thus, the court reasoned, when a jury follows the trial court's instruction and restarts deliberations, there is no risk that the verdict will be rendered by more than twelve people. Because the trial court in *Chambers* so instructed the jury, the Court determined that the defendant's constitutional right to a jury of twelve was not violated.

The Court further explained that *Bunning*, which held that the substitution of an alternate juror in a capital sentencing proceeding after deliberations had begun resulted in a jury verdict reached by more than twelve persons, did not dictate a different result. The *Chambers* Court stated that though *Bunning* cited Article I, Section 24, its conclusion was founded not upon constitutional requirements but instead upon its analysis of the controlling statutes, which did not permit the substitution of jurors after deliberations had begun. In addition, *Bunning* involved the sentencing phase of defendant's capital trial, which was a different circumstance from the noncapital trial in *Chambers*.

The Court reversed the decision of the Court of Appeals and remanded the case for consideration of the remaining issues raised by the defendant below.

Justice Riggs, joined by Justice Earls, concurred in part and dissented in part. She agreed with the majority's holding that issues related to the structure of the jury are automatically preserved for appellate review, but would have held that allowing the substitution of an alternate juror during deliberations violates Article I, Section 24 of the North Carolina Constitution.

Sentencing, Probation, and Parole

The trial court had no authority to order a civil judgment for a fine immediately at sentencing

State v. Santana, No. COA24-946, ___ N.C. App. ___ (Oct. 1, 2025). In this Burke County case, the defendant was convicted after a jury trial of drug trafficking and other offenses. In addition to the mandatory active sentence, the trial court ordered a $250,000 fine—in the form of a civil judgment. The trial court also ordered $1,615 in costs and attorney fees as civil judgments. Through a petition for writ of certiorari, the defendant challenged the civil judgments for the fine and costs, arguing that the trial court had no authority to impose them immediately at sentencing. The court of appeals agreed. Under G.S. 15A-1365, a judge may docket costs or a fine when a defendant has defaulted, but there is no authority to do so without first determining that Defendant had defaulted in payment. The court noted that the defendant was prejudiced by the premature entry of the judgment, as over $17,000 in interest had accrued on the civil judgment in the year since its entry. The court vacated the judgments. The court also remanded the matter for correction of a clerical error as to the offense classification.

Although the trial court misstated the possible range of punishment to defendant when advising him before proceeding pro se, the trial court informed defendant that he effectively faced a life sentence, satisfying the statutory requirement

State v. Fenner, 387 N.C. 330 (Mar. 21, 2025). In this Wake County case, the Supreme Court affirmed and modified the unpublished Court of Appeals decision finding no error with the defendant's sentence despite the trial court's failure to accurately advise him of the full sentencing range he faced if he were convicted.

Before going on trial for various felonies in 2022, the defendant told the trial court he wished to waive his right to counsel and proceed pro se, and the trial court followed G.S. 15A-1242 by providing the defendant with the required colloquy, including the range of permissible punishments he faced. Unfortunately, the trial court miscalculated, informing the defendant he faced "75 to 175 years in prison" when he was actually sentenced after his conviction to "121 to 178 years in prison." Slip op. at 2. On appeal, the Court of Appeals rejected the defendant's argument that this was error, explaining that he understood he was subject to a life sentence. The defendant petitioned for discretionary review, arguing the Court of Appeals' precedent on this issue conflicted with the Supreme Court's interpretation of G.S. 15A-1242, leading to the current case.

The Supreme Court explained the issue as the practical consideration of how long a defendant could be imprisoned, as "the 'range of permissible punishments' described in [G.S.] 15A-1242 contains a ceiling equivalent to the defendant's natural life." *Id*. at 8. Here the trial court made a miscalculation, but if "the miscalculation and the actual range are tantamount to the remainder of the defendant's life, the trial court complies with the statute." *Id*. Put more simply, the defendant was informed "if convicted, he could spend the rest of his life in prison," and "[t]hat accurately conveyed the sentencing range that [defendant] faced in this case and therefore confirmed that [defendant] comprehended the range of permissible punishments." *Id*. at 9.

The Court dispensed with the defendant's other issues with the Court of Appeals decision, but modified the decision to the extent that it did not call for the trial court to advise the defendant of all the charges against him. Although the Court did not interpret the Court of Appeals decision to say this, the Court provided the following guidance to trial courts:

> When calculating the permissible range of punishments, the best practice is for trial courts to use the checklist of inquiries we articulated in *State v. Moore*, 362 N.C. 319, 327–28 (2008). This includes informing the defendant of all charges in the case and the minimum and maximum possible sentence the defendant faces if convicted of all those charges. *Id*. at 11.

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

State v. Curtis, 297 N.C. App. 826 (Feb. 19, 2025). In this Wake County case, the 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, the 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 the defendant admitted to also using alcohol and marijuana the evening of the collision. The defendant pleaded guilty pursuant to an agreement that avoided second-degree murder; the State stipulated to a mitigating factor that the defendant "has accepted responsibility for [his] criminal conduct." *Curtis* Slip op. at 3. The defendant waived his right to appeal in the plea agreement. However, along with his appeal in this case, the defendant filed a writ of certiorari, which the Court of Appeals granted to consider this case. The State did not oppose the defendant's writ and conceded that an error was committed.

The 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.'" *Curtis* Slip op. at 7. The 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 that the 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.

Trial court was not required to hold a hearing or make findings of fact when considering the record and making a recommendation on life without parole sentence under G.S. 15A-1380.5

State v. Walker, COA 24-615, ___ N.C. App. ___; 916 S.E.2d 54 (Apr. 16, 2025). In this Wake County case, the defendant appealed the order determining that his sentence of life without parole should not be altered under G.S. 15A-1380.5. The Court of Appeals found no abuse of discretion or error and affirmed the trial court's order.

The defendant was found guilty of first-degree murder in 1999 and received the sentence of life without the possibility of parole. In September of 2023, the defendant requested review of his sentence under G.S. 15A-1380.5. After the trial court reviewed the trial record, the defendant's record from the Department of Corrections, the degree of risk posed to society, and other issues, the trial court determined that the defendant's sentence should not be altered. The defendant subsequently filed a petition for writ of certiorari to appeal this decision, and the Court of Appeals granted certiorari in April 2024.

The defendant argued three issues on appeal: (1) abuse of discretion in failing to make findings of fact to support the denial, (2) error in failing to consider the trial record, and (3) abuse of discretion by not holding a hearing. The Court of Appeals looked to the text of G.S. 15A-1380.5 and caselaw interpreting it to determine the applicable requirements. The court first dispensed with the hearing issue (3), explaining "[o]ur Supreme Court has held that [G.S.] 15A-1380.5 'guarantees no hearing, no notice, and no procedural rights.'" *Walker* Slip op. at 5 (quoting *State v. Young*, 369 N.C. 118, 124 (2016)). Next the court moved to (1), noting the structure of G.S. 15A-1380.5 did not call for an "order" with findings of fact and conclusions of law, but instead called for a "recommendation," and "[h]ad the legislature intended for findings of fact and conclusions of law to be required it could have chosen to require the reviewing judge to issue orders, rather than recommendations." *Id*. at 6. Finally, the court noted in (2) that the trial court clearly stated it had considered the record, and the court determined the record supported the trial court's conclusion.

Appeals & Post-Conviction

No error in denial of motion for post-conviction discovery when evidence was potentially favorable but not material in light of the ample evidence presented at trial.

State v. Cataldo, No. COA24-855, ___ N.C. App. ___; 919 S.E.2d 536 (July 16, 2025). In 2013, the defendant was convicted after a jury trial of two counts of statutory sexual offense and one count of statutory rape. That conviction was affirmed on direct appeal. State v. Cataldo, 234 N.C. App. 329 (2014)

(*Cataldo* I). In 2015, he filed a motion for post-conviction discovery pursuant to *Pennsylvania v. Ritchie*, 480 U.S. 39 (1987), which was denied. In an unpublished decision, the Court of Appeals reversed that denial and ordered the trial court to conduct an in camera review of Department of Social Services (DSS) records regarding the victim's allegations of prior abuse, to determine whether they contained material evidence and whether their exclusion prejudiced the defendant's case. State v. Cataldo, 261 N.C. App. 538 (2018) (unpublished) (*Cataldo II*). The trial court gathered the pertinent DSS records and concluded that the defendant was not entitled to them because there was not a reasonable probability that the outcome of his trial would have been different had he been able to access them. The defendant appealed and the Court of Appeals again reversed, holding that the trial court's review was impermissibly narrow as to relevant times and persons. State v. Cataldo, 281 N.C. App. 425 (2022) (*Cataldo III*). After another in camera review of the records—the subject of this appeal—the trial court again denied the motion for post-conviction discovery. The trial court concluded that the records may have been favorable to the defendant in that they potentially adversely affected the victim's credibility, but they were not material, in that there was no reasonable probability that the outcome of the trial would have been different even had he been allowed access.

After granting the defendant's petition for writ of certiorari, the Court of Appeals found no error in the trial court's denial of the motion for post-conviction discovery. The appellate court conducted a de novo review of all the sealed records and concluded that there was "a single instance which potentially may have tended to impeach the credibility of [the victim]." Slip op. at 7. However, the court went on to conclude that there was no reasonable probability that anything in the records would, even if disclosed to the defendant, have changed the result of the proceedings in light of the ample evidence of the defendant's guilt presented at trial. The records were therefore not "material," and therefore did not require disclosure under *Ritchie*, which only requires disclosure of evidence that is both favorable and material to the defendant's guilt or punishment.

Sex Offender Registration

The law of the other state governs whether a juvenile adjudication from that state is a final conviction that requires registration in North Carolina

State v. Jackson, No. COA24-731, ___ N.C. App. ___ (July 16, 2025). [This summary was updated August 4, 2025, after the opinion was reissued.] The defendant was placed on Delaware's sex offender registry in 2008, when he was 15 years old, based on a juvenile adjudication of delinquency for first-degree rape. When he moved to North Carolina in 2022, he was notified that he was required to register as a sex offender. He filed a Petition for Judicial Determination of Sex Offender Registration under G.S. 14-208.12B. He argued that the Delaware adjudication did not qualify as a reportable conviction, because he would not be required to register on the adult registry for a comparable North Carolina juvenile adjudication. The trial court disagreed. It found that the Delaware juvenile adjudication was substantially similar to first-degree statutory sexual offense in North Carolina and ordered registration on North Carolina's adult registry.

The Court of Appeals affirmed the trial court's order, holding that the defendant was required to register pursuant to G.S. 14-208.6(4)(b), which states that a person must register in North Carolina for a "final conviction in another state of an offense that requires registration under the sex offender registration statutes of that state." The court read that statute to require application of the law of the other state, Delaware, to determine whether the defendant's adjudication qualified as a "final

conviction." Because a juvenile adjudication is included within the term "conviction" under Delaware law (which the court concluded overrides North Carolina G.S. 7B-2412, barring juvenile adjudications from being treated as convictions), it requires registration in North Carolina under G.S .14-208.6(4)(b).

The court declined to apply the rule from *State v. Melton*, 371 N.C. 750 (2018), rejecting reliance on other states' laws to resolve interpretive disputes, because the question here is not one of interpretive disparity, but rather one of which state's law applies. Finally, the court rejected the defendant's appeal to the rule of lenity, concluding that the text of G.S. 14-208.6(4) is unambiguous, and the rule of lenity therefore does not apply.

State offered adequate evidence to justify defendant's term of SBM despite the lack of high-risk Static-99 score

State v. Belfield, COA24-640, ___ N.C. App. ___; 911 S.E.2d 754 (Feb. 19, 2025). In this Nash County case, the defendant appealed the order imposing a 25-year term of satellite-based monitoring (SBM), arguing error as the defendant was not at high risk to reoffend and did not require the highest level of supervision and monitoring. The Court of Appeals disagreed, finding no error.

In August of 2020, the defendant pleaded guilty to one count of indecent liberties with a child and was sentenced; subsequently the trial court held a SBM hearing and determined that the defendant was subject to SBM. In *State v. Belfield*, 289 N.C. App. 720 (2023) (unpublished), the defendant appealed the SBM order, pointing out that the trial court's order was on form AOC-CR-615, with a box checked indicating the decision was based on additional findings from "the attached form 618." *Belfield* Slip op. at 4 (cleaned up). This was significant as the defendant's Static-99 score was a four, which alone was not "high risk" and did not justify SBM, so the trial court had to consider additional evidence to justify the order. However, the order did not contain the referenced form 618, so the court vacated and remanded for the trial court to make findings of fact regarding the imposition of SBM. In October of 2023, the trial court heard the matter, considering the evidence from the previous SBM hearing and entered new findings, again imposing SBM. The defendant appealed that order, leading to the current decision.

Taking up the defendant's appeal a second time, the Court of Appeals explained that when, as here, a defendant does not have a "high risk" Static-99 score, the State must offer additional evidence, and the trial court must make additional findings, to justify a SBM sentence. The defendant argued that the trial court's additional findings in this case were based upon "the trial court's consideration of improperly duplicative evidence of matters already addressed in Defendant's Static-99 risk assessment." *Id*. at 11. The court disagreed, noting that while "additional findings cannot be based solely on matters already addressed in the Static99 risk assessment," four of the additional findings here were supported by "competent evidence other than that of a defendant's risk assessment" and justified the imposition of SBM. *Id*.