

Criminal Case Update

This handout includes the cases flagged for discussion at the 2025 Superior Court Judges' Summer Conference. Cases covered include published opinions from the North Carolina Appellate Courts from September 17, 2024, to May 23, 2025.

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Jury Instructions

Jury instruction on various alternative acts that could establish a single sexual offense was sufficiently clear to provide adequate constitutional certainty as to the unanimity of the verdict and did not amount to plain error.

[State v. Bowman](#), No. 49A24, ___ N.C. ___ (May 23, 2025). This Durham County case arose from a 2019 incident in which the victim alleged that the defendant penetrated her anally with his fingers and penis and forced her to perform oral sex. Those acts resulted in multiple charges, including two charges of first-degree forcible sexual offense. The indictments for those charges did not differentiate between the alleged acts, stating only that the defendant “feloniously engage[d] in a sex offense” with the victim. Without objection from the defendant, the trial court instructed the jurors once on first-degree forcible sexual offense, stating that a sexual act means fellatio, anal intercourse, and penetration of the anal opening by an object. The jury returned guilty verdicts on both first-degree forcible sexual offense charges and the judge imposed a 365–498 month consolidated sentence. On appeal, the defendant argued that the trial court erred in

instructing the jury on only one count of first-degree forcible sexual offense. The Court of Appeals majority agreed, concluding that a new trial was required because it was not possible to match the jury's verdict of guilty with the multiple acts committed against the victim, jeopardizing the defendant's right to a unanimous verdict. *State v. Bowman*, 292 N.C. App. 290, 296 (2024). A dissenting judge would have found no error plain error, based on controlling precedent. The State appealed to the Supreme Court based on the dissent.

The Supreme Court reversed, concluding that the Court of Appeals erred in holding that the trial court instruction amounted to plain error. The state constitution and General Statutes require a unanimous verdict, but longstanding Supreme Court precedent (e.g., *State v. Hartness*, 326 N.C. 561 (1990)) has established that, when a criminal statute does not define "discrete criminal activities . . . that may each be charged as separate offenses," a trial court instruction on various alternative acts that will establish an element of an offense satisfies the unanimity requirement. The court distinguished the sexual offense statute, which defines a single offense that may be committed in five different ways, from the drug trafficking statute, which sets out five discrete trafficking crimes, each of which can result in a separate conviction and punishment (trafficking by sale, manufacture, delivery, transportation, and possession). With that precedent in mind and in light of the evidence presented in the case, the Supreme Court concluded that the jury instruction here was sufficiently clear to provide "adequate constitutional certainty as to the unanimity of the verdict," and therefore did not amount to plain error.

Although the Court reversed the grant of a new trial, it reiterated that the better practice in cases like this is to tie each sexual offense charge to a distinct sexual act, both in the indictment and on the verdict sheet, to avoid unanimity concerns. The Court remanded the case to the Court of Appeals for consideration of the defendant's remaining arguments.

Jury Selection

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](#), 56PA24, __ N.C. __ (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 I, 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 Article I, Section 24 of the North Carolina Constitution, as interpreted in *State v. Bunning*, 346 N.C. 253 (1997), forbids the substitution of alternate jurors after deliberations begin because such substitution results in a jury of more than twelve persons determining a defendant's guilt or innocence. The Court vacated the defendant's convictions and remanded the case for a new trial. The State petitioned the North Carolina Supreme Court for discretionary review of two issues: (1) whether the defendant waived his challenge to the constitutionality of G.S. 15A-1215(a) by failing to object to the substitution of the alternate juror at trial, and (2) whether G.S. 15A-1215(a) is constitutional. The Supreme Court granted the petition and reversed the Court of Appeals.

The Court first determined that the defendant's right to challenge the constitutionality of G.S. 15A-1215(a) on appeal was preserved notwithstanding his failure to object at trial given the fundamental nature of the right to a properly constituted jury. Then, taking up the constitutional issue, the court determined that the substitution of an alternate juror pursuant to G.S. 15A-1215(a) did not compromise the constitutional requirement for a unanimous verdict by a jury of twelve.

The Court held that G.S. 15A-1215(a) provides two critical safeguards that secure a defendant's right to a unanimous verdict by the proper number of jurors. 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. Justice Riggs 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.

Counsel Issues

Defendant's disputes and requests for replacement of appointed counsel did not represent forfeiture or waiver of counsel, justifying remand for new trial.

[State v. McGirt](#), COA24-551, ___ N.C. App. ___ (March 19, 2025), *temp. stay allowed*, 913 S.E.2d 444 (Mem). In this Wake County case, defendant appealed his convictions for statutory sex offense with a child and indecent liberties with a child, arguing error in concluding defendant waived his right to counsel or forfeited his right to counsel. The Court of Appeals majority concluded defendant did not voluntarily waive his right to counsel or forfeit his right to counsel, reversing and remanding for a new trial.

In 2019, defendant was indicted for the sex offense and indecent liberties charges, and because defendant was indigent the trial court appointed counsel. This began a series of five appointed attorneys representing defendant, and by 2023 all the attorneys withdrew or were replaced. On May 4, 2023, the trial court held a hearing on the final attorney's motion to withdraw, and after consulting with defendant concluded that defendant had waived his right to representation and ordered the public defender's office to supply standby counsel. On May 22, 2023, defendant requested another court-appointed attorney, and the trial court denied the request. The State moved to have standby counsel question witnesses during trial and the trial court granted the motion, but otherwise defendant represented himself at trial.

Taking up defendant's arguments, the Court of Appeals first considered waiver, looking to precedent like *State v. Moore*, 290 N.C. App. 610 (2023), for the circumstances required to find waiver of the right to counsel. Here, the trial court did not tell defendant that if he fired his attorney, he would be waiving the right to counsel, instead pronouncing this after granting the attorney's motion to withdraw. Also, "[t]he trial court never asked if Defendant wished to represent himself, nor did Defendant make an explicit statement that he would represent himself" and the trial court also "did not inquire whether Defendant understood the difference between a court-appointed counsel versus standby counsel, such that Defendant was now proceeding pro se." Slip Op. at 14 (cleaned up). The court noted that defendant repeatedly asked for new counsel, despite once mentioning representing himself, meaning it was not clear and unequivocal that defendant wished to represent himself. As a result, the court concluded defendant did not "clearly and unequivocally" waive his right to counsel. *Id.* at 18.

The court then looked to whether defendant forfeited his right to counsel, concluding "[b]ased on the Record evidence, we cannot say Defendant's firing of his attorneys was 'egregious misconduct' or a flagrant delaying tactic" and it was error to find that defendant forfeited his right to counsel. *Id.* at 23. Finally, the court considered the hybrid waiver/forfeiture by conduct outlined in *State v. Blakeney*, 245 N.C. App. 452 (2016). The court concluded defendant did not waive his right to counsel by conduct "[b]ecause waiver by conduct 'requires that a defendant be warned about the consequences of his conduct,' and there is no Record here that the trial court provided Defendant with any warning regarding his conduct, nor does the State argue there was any warning[.]" *Id.* at 25 (quoting *Blakeney* at 465).

Judge Tyson dissented and argued "[t]he majority's opinion incorrectly concludes Defendant did not waive or forfeit his right to counsel." *Id.* at 32.

Defendant forfeited right to counsel and right to be present in courtroom by repeated disruptive conduct; Virginia conviction for identity theft was not substantially similar to North Carolina offense for sentencing purposes.

[State v. Fuller](#), COA24-471, ___ N.C. App. ___ (March 19, 2025). In this Rockingham County case, defendant appealed his convictions for obstruction of justice, attempting to access a government computer to defraud, and filing false liens, arguing error in (1) concluding defendant forfeited his right to counsel and right to be present in the courtroom for trial, and (2) finding that defendant's Virginia conviction was substantially similar to the North Carolina offense of identity theft for sentencing. The Court of Appeals found no error in (1), but remanded for resentencing based on (2).

Defendant was indicted in February 2022, and at his first appearance indicated he wanted to waive his right to counsel but refused to sign the waiver form. At a later pretrial appearance, defendant asked for counsel to be appointed for “the defendant,” but gave confusing responses as to whether he was requesting counsel for himself. At the next appearance before the trial court, defendant was removed for being disruptive, and eventually the trial court concluded defendant had forfeited his right to counsel through inappropriate behavior. At trial, defendant was handcuffed to a wheelchair after threatening to remove his clothing. After another confusing exchange where defendant requested a lawyer for “the defendant,” and caused disruption in the courtroom, defendant was removed from the courtroom and was given written updates on the trial by the trial court. Defendant was subsequently convicted on all counts.

Taking up (1), the Court of Appeals looked to *State v. Smith*, 292 N.C. App. 656 (2024), for the applicable standard when a defendant’s conduct justifies forfeiture of counsel. Here, defendant’s conduct was “combative and interruptive—he insisted the trial court could not be impartial, interrupted and spoke out of turn, threatened to remove his clothing, and refused to directly answer the trial court’s questions.” Slip Op. at 16. As a result, the court held that it was not error to conclude defendant forfeited his right to counsel. The court then considered whether removing defendant from the courtroom was error, looking to *United States v. Mack*, 362 F.3d 597 (9th Cir. 2004) and *People v. Cohn*, 160 P.3d 336 (Colo. Ct. App. 2007). Complicating the considerations, many cases and G.S. 15A-1032 presume that a defendant removed from the courtroom will be represented by counsel, which was not the case here. The court concluded that the trial court’s actions here were reasonable, including providing updates to defendant and instructing the jury not to consider defendant’s removal from the courtroom. Finally, the court concluded that not appointing standby counsel was not prejudicial error and G.S. 15A-1032 did not require appointment of standby counsel when defendant was removed.

Arriving at (2), the court explained that Virginia’s statute on identity theft (Va. Code § 18.2-186.3) differed in material ways from the North Carolina version in G.S. 14-113.22. The court agreed with defendant’s argument that “the statutes are not substantially similar because Virginia’s statute can be violated using the identifying information of a ‘false or fictitious person’ whereas North Carolina’s statute requires the offender to have used the identifying information of a ‘real person.’” Slip Op. at 28. Thus the court remanded for resentencing.

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

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

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

Taking up the arguments, the Court explained that the purpose of the Confrontation Clause was to protect against the unreliable nature of out-of-court testimonial statements made by humans, specifically "*ex parte* examinations" offered against the accused. Slip Op. at 11. Here, the evidence in question was computer-generated data, and the Court noted this was not the type of evidence contemplated by the Confrontation Clause. After explaining the unique nature of machine-generated data and why it was more reliable than a human witness's out-of-court statement, the Court held that 'machine-generated raw data, if truly machine-generated,' are 'neither hearsay nor testimonial' under the Confrontation Clause." *Id.* at 17 (quoting *State v. Ortiz-Zape*, 367 N.C. 1, 10 (2013)). The Court emphasized that "we focus here on data produced entirely by the internal operations of a computer or other machine, free from human input or intervention" in contrast to "(1) computer-stored evidence, and (2) human interpretations of computer-produced data." *Id.* at 18. Because the machine-generated data did not implicate the Confrontation Clause in the same way that human interpretations of the data would, the Court determined the Court of Appeals improperly analyzed the admissibility of the exhibits in the current case.

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

[State v. Clark](#), COA23-1133, ___ N.C. App. ___ (Dec. 3, 2024), *temp. stay allowed*, 909 S.E.2d 323 (Mem). In this Avery County case, defendant appealed his conviction for possession with intent to sell and deliver methamphetamine, arguing his Confrontation Clause rights were implicated because a testifying expert relied on another analyst's statements in a lab report when stating his opinions. The Court of Appeals concluded it was error to allow the opinion testimony, and vacated defendant's judgment, remanding for a new trial.

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

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

Motions

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

[State v. Fearn](#), COA23-650, ___ N.C. App. ___ (March 5, 2025), *temp. stay allowed*, 912 S.E.2d 850 (Mem). In this Granville County case, defendant appealed her conviction for embezzlement, arguing that the trial court lacked authority to enter the order denying her motion to dismiss because it was not issued by the superior court judge who held the hearing. The Court of Appeals vacated the trial court’s order denying Defendant’s motion and remanded the matter for a new hearing on the motion.

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

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

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

Pleas

Trial court's failure to hold evidentiary hearing on defendant's MARs justified remand as factual issues about defendant's guilty plea remained unresolved; sex-offender registration was collateral consequence of guilty plea, but mandatory term of post-release supervision was direct consequence of plea.

[State v. Spry](#), COA24-129, ___ N.C. App. ___ (Feb. 5, 2025), *temp. stay allowed*, 911 S.E.2d 489 (Mem). In this Guilford County case, defendant appealed the denial of his motions for appropriate relief (MARs), arguing error in summarily denying his MARs challenging the entry of his guilty plea. The Court of Appeals agreed, vacating the denials and remanding for an evidentiary hearing and findings of fact on defendant's MARs.

In 2006, defendant was indicted for a robbery at a restaurant, and the charges included second-degree kidnapping and attempted kidnapping of two victims under sixteen years old. Defendant pleaded guilty to three charges and received an active sentence of imprisonment with nine months of post-release supervision; the trial court did not identify the offenses as reportable convictions. Afterwards, the Combined Records Section of North Carolina Department of Correction requested that the trial court clarify the ages of the kidnapping victims, and “[w]ithout prior notice nor Defendant being present, the trial court entered a ‘corrected’ judgment . . . indicating ‘the above designated offense(s) is a reportable conviction involving a minor. G.S. 14-208.6.’” Slip Op. at 2. This change required defendant to register as a sex offender and also required five years of post-release supervision. In defendant's first MAR, he argued he did not learn of this change until right before his release from prison. The trial court denied defendant's MARs without holding an evidentiary hearing.

Reviewing the MARs, the Court of Appeals highlighted that the issues before the trial court required settling factual disputes, and thus the trial court erred by failing to hold an evidentiary hearing. The record before the court did not contain a verbatim recording of defendant's entry of his guilty plea, limiting the court's ability to consider defendant's claims. This required the court to remand for an evidentiary hearing and to vacate the previous rulings on the MARs.

Going further, the court also considered whether the sex-offender registration and post-release supervision were direct or collateral consequences of defendant's guilty plea, as failure to advise defendant of direct consequences would render his guilty plea involuntary. Regarding sex-offender registration, the court held that “sex offender registration is a collateral consequence of a guilty plea to a crime requiring registration.” *Id.* at 14. However, the court held that “post-release supervision is distinguishable from . . . sex offender registration” and represented a direct consequence of the guilty plea. *Id.* at 19. The court directed the trial court to consider defendant's arguments regarding his post-

release supervision to determine whether his plea was entered “voluntarily, intelligently and understandingly.” *Id.* at 21.

Sex Offenders

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. ___ (Feb. 19, 2025). In this Nash County case, defendant appealed the order imposing a 25-year term of satellite-based monitoring (SBM), arguing error as 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, 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 defendant was subject to SBM. In [State v. Belfield](#), 289 N.C. App. 720 (2023) (unpublished), 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.” Slip Op. at 4 (cleaned up). This was significant as 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. Defendant appealed that order, leading to the current decision.

Taking up 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. 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 with defendant, 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.*

Despite lacking a mental state/intent requirement, North Carolina statute was categorical match for federal statute and represented Tier II offense for sex offender registration.

[State v. Lingerfelt](#), COA23-1158, ___ N.C. App. ___ (Dec. 17, 2024). In this McDowell County case, defendant appealed the order denying his petition for termination of sex offender registration, arguing his underlying offense, sexual activity by a substitute parent, was a Tier I offense not a Tier II offense. The Court of Appeals majority disagreed, affirming the order.

In February of 2003, defendant was convicted of two counts of sexual activity by a substitute parent under G.S. 14-27.7. In March of 2023, defendant filed a petition to terminate his sex offender registration, but the trial court denied this petition, finding his offense was Tier II under the federal Jacob Wetterling Act and denying his petition. On appeal, defendant disputed the classification of his offense.

The Court of Appeals looked to *State v. Moir*, 369 N.C. 370 (2016), for guidance on determining which tier an offense falls under in the federal framework. Here, the court determined that G.S. 14-27.7(a) represents a “divisible statute” because it contains multiple offenses, meaning the court would need to apply the “modified categorical approach” from *Moir*. Slip Op. at 7. The court proceeded to “inquire as to whether the federal statute, abusive sexual contact, is a *categorical* match with the state offense of sexual activity by a substitute parent.” *Id.* at 10. Here the court noted that there was a difference between the two, as the “range of conduct prohibited by [G.S.] 14-27.7(a) is wider than the range prohibited by 18 U.S.C. § 2244(a)(3), because it does not require a mental state.” *Id.* at 13.

At this point, the court concluded “despite the mens rea mismatch between the statutes at issue, there is no *realistic probability* that North Carolina could or would enforce its statute in a way that would sweep in *unintentional* sexual activity by a substitute parent” and thus there was a categorical match. *Id.* at 14. The court acknowledged this was the opposite outcome from *Cabeda v. Attorney General of United States*, 971 F.3d 165 (3d Cir. 2020), where the Third Circuit concluded that the lack of a mens rea requirement meant a Pennsylvania statute was not categorical match for the federal crime.

Judge Murphy dissented and would have held that defendant’s conviction was not a match for the federal statute, making him a Tier I offender.

Contempt

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

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

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

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

Sentencing

Defendant’s life without parole sentence satisfied *Miller v. Alabama* requirements and his jury selection claim was barred by statute.

[State v. Sims](#), 297PA18, ___ N.C. ___ (Mar. 21, 2025). In this Onslow County case, the Supreme Court affirmed the Court of Appeals decision finding no error in defendant’s sentence of life without parole for first-degree murder. Defendant’s co-defendant for this murder also appealed, and the Supreme Court considered that appeal in [State v. Bell](#), 86A02-2, issued contemporaneously with this opinion.

In January of 2000, defendant and a co-defendant kidnapped and killed an eighty-nine-year-old woman. In 2001 defendant was tried for murder, and although the State sought the death penalty, defendant was sentenced to life without parole. The Supreme Court upheld this conviction on defendant's initial appeal. Subsequently, defendant filed a motion for appropriate relief (MAR), arguing his mandatory life without parole sentence was unconstitutional under *Miller v. Alabama*, 567 U.S. 460 (2012), and a superior court concluded his sentence was valid in a hearing held in 2014. Defendant then appealed; however, before the Supreme Court could take up the appeal, defendant filed a second MAR arguing gender discrimination in jury selection under *J.E.B. v. Alabama ex rel. T.B.*, 511 U.S. 127 (1994). The superior court considering this second MAR found a violation of *J.E.B.*, and both MARs form the basis of the current opinion.

Taking up the *J.E.B.* claim first, the Supreme Court explained G.S. 15A-1419 operates as a bar to post-conviction review of certain issues like defendant's *J.E.B.* claim, unless the defendant can demonstrate good cause under G.S. 15A-1419(c) or a fundamental miscarriage of justice under G.S. 15A-1419(e). For the reasons stated in [State v. Bell](#), the Court held that defendant's claim was barred under G.S. 15A-1419.

The Court then moved to the life without parole sentence, explaining defendant challenged the sentence on two fronts, that the sentence violated his Eighth Amendment rights and that the sentencing court disregarded mitigating evidence and failed to properly weigh the evidence. The Court disagreed with both of defendant's assertions, highlighting that the procedure in G.S. 15A-1340.19, the *Miller*-fix statute, conforms to federal law.

The Court first clarified that "the inquiry is not whether a defendant is permanently incorrigible or irreparably corrupt; nor is it potential for redemption[.]" meaning that the only requirement was that the superior court comply with the *Miller*-fix statute when conducting its inquiry. Slip Op. at 18. After establishing this framework, the Court walked through defendant's specific challenges to the various conclusions of the superior court, finding no abuse of discretion. The Court concluded by dismissing defendant's argument that the Court of Appeals applied an improper standard of review, and affirmed the Court of Appeals decision.

Justice Earls, joined by Justice Riggs, concurred in the result only, and wrote to highlight issues with the majority's analysis. *Id.* at 36.

Defendant's life without parole sentences complied with *Miller v. Alabama*.

[State v. Borlase](#), 33A24, ___ N.C. ___ (Mar. 21, 2025). In this Watauga County case, the Supreme Court majority affirmed the Court of Appeals decision finding no error with the imposition of two consecutive life sentences without parole for defendant's first-degree murder convictions.

In April of 2019, when defendant was a senior in high school and seventeen years old, he stabbed his mother and father to death with a large kitchen knife. Defendant then took steps to cover up the murder, washing away the blood inside their home and hiding the bodies under bags of mulch and leaves from the yard, and went to smoke marijuana with his friends. After defendant was convicted of two counts of first-degree murder, the sentencing court performed the analysis required by G.S. 15A-1340.19B and -1340.19C, and sentenced defendant to two consecutive sentences of life imprisonment without the possibility of parole. The Court of Appeals majority found no error, but defendant appealed based on the dissent, leading to the current opinion.

Taking up defendant's appeal, the Supreme Court first explained the body of law around sentencing juveniles to life sentences without parole, including *Miller v. Alabama*, 567 U.S. 460 (2012), and North Carolina's statutes implementing *Miller's* process requirements in G.S. 15A-1340.19A to -1340.19D. Defendant argued that the Court of Appeals did not conduct a thorough appellate review of the sentencing court's order, a proposition the Court rejected, noting "the majority below determined that the sentencing court's written order showed that it exercised discretion consistent with the Eighth Amendment in sentencing defendant." Slip Op. at 17. The Court also rejected defendant's argument that the Court of Appeals failed to apply the abuse of discretion standard, as the majority opinion concluded the sentencing court's decision "was not arbitrary" *Id.* at 20. Finally, the Court rejected defendant's challenges to the sentencing court's consideration and weighting of evidence, as "the sentencing court considered defendant's mitigating evidence and made explicit findings in its written order." *Id.* at 22. The Court explained "[i]n the absence of express evidence that demonstrates a sentencing court did not consider mitigating evidence or exercise its discretion, we will not presume error." *Id.* Here, defendant did not demonstrate the sentencing court refused to consider mitigating evidence, but instead challenged the weight and conclusions it reached, arguments the Court held had no merit.

Justice Earls, joined by Justice Riggs, dissented and would have reversed the judgment of the Court of Appeals and remanded for a new sentencing hearing. *Id.* at 27.

North Carolina Constitution's Article I, Section 27 prohibition of cruel or unusual punishments did not provide greater protection to defendant than the U.S. Constitution's Cruel and Unusual Punishments Clause.

[State v. Tirado](#), 267PA21, ___ N.C. ___ (Jan. 31, 2025). In this Cumberland County case, the Supreme Court majority affirmed an unpublished Court of Appeals decision denying defendant's constitutional challenge to his sentences of life without parole for murders committed while he was a juvenile.

In August of 1998, defendant was seventeen years old, and a member of the Crips gang, when he participated in the abduction and robbery of three women; defendant and the

gang killed two of the women, but one woman survived. Defendant was convicted of first-degree murder and sentenced to death, but the sentence was reduced to two consecutive life sentences without parole after the holding in *Roper v. Simmons*, 543 U.S. 551 (2005), that sentencing juvenile offenders to death was unconstitutional. The Supreme Court subsequently held in *Miller v. Alabama*, 567 U.S. 460 (2012), that a mandated life without parole sentence for a juvenile was unconstitutional, but permitted sentencing where the trial court had discretion to impose a lesser sentence. Defendant was resentenced in accordance with the *Miller*-fix statute adopted by the General Assembly, resulting in the imposition of two consecutive terms of life without parole in March 2020. The Court of Appeals affirmed the sentences in the unpublished decision *State v. Tirado*, COA20-213 (June 15, 2021), leading to the current opinion.

On appeal, defendant argued that Article I, Section 27 of the North Carolina Constitution was more protective than the Eighth Amendment to the U.S. Constitution, and his sentences were cruel or unusual punishments and unconstitutional under North Carolina law. The Supreme Court disagreed, explaining that the Cruel or Unusual Punishment clause in the North Carolina Constitution prohibited imposing sentences beyond those authorized by law. The Court reached this conclusion by conducting a historical analysis of the clause along with Article XI, which provides a list of acceptable punishments and has no analogue in the U.S. Constitution. Summarizing the function of these two provisions, the Court noted:

Because a constitution cannot violate itself, we must construe Article I, Section 27’s proscription of cruel or unusual punishments and Article XI’s enumeration of acceptable punishments harmoniously. Logically, therefore, the punishments the people sanctioned in Article XI, Sections 1 and 2 are inherently not “cruel or unusual” in a constitutional sense. Accordingly, an act of the General Assembly cannot violate the Cruel or Unusual Punishments Clause by prescribing a punishment allowable under Article XI, Sections 1 and 2, and similarly, judges cannot violate Article I, Section 27, by handing down a sentence in obedience to such an act.

Slip Op. at 32 (cleaned up). Although defendant argued the North Carolina Constitution was more protective, the Court explained that the Eighth Amendment’s Cruel and Unusual Punishments Clause provided more protection in modern jurisprudence and concluded the Court of Appeals properly evaluated and decided defendant’s appeal in light of the protections afforded by both.

The Court also determined that the trial court’s sentence complied with *State v. Kelliher*, 381 N.C. 558 (2022), as that opinion was released after defendant’s appeal. First the Court noted defendant’s case did not meet the criteria of that opinion because “*Kelliher* applies only to juvenile homicide offenders whom the trial court (1) expressly finds to be neither incorrigible nor irredeemable and (2) sentences to multiple, consecutive terms of life with parole.” Slip Op. at 43. Then the Court clarified that a portion of the *Kelliher* opinion was

obiter dictum, as “the statement requiring the trial court to make an express finding of incorrigibility before sentencing a defendant to life without parole was unnecessary in determining the outcome of the case.” *Id.* at 44.

Justice Berger, joined by Justices Barringer and Allen, concurred but wrote separately to express concerns with the *Kelliher* opinion and the precedential weight to which it is entitled. *Id.* at 46.

Justice Earls, joined by Justice Riggs, concurred in the result only and argued that the majority’s assertions regarding Article I, Section 27 were unnecessary and should be interpreted as dicta. *Id.* at 50.

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. ___ (Apr. 16, 2025). In this Wake County case, 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.

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, defendant requested review of his sentence under G.S. 15A-1380.5. After the trial court reviewed the trial record, defendant’s record from the Department of Corrections, the degree of risk posed to society, and other issues, the trial court determined defendant’s sentence should not be altered. Defendant subsequently filed a petition for writ of certiorari to appeal this decision, and the Court of Appeals granted certiorari in April 2024.

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.’” 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.

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

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

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

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

Officer’s testimony regarding cell tower data was part lay testimony, part expert testimony; imposition of special sentencing condition preventing educational or vocational classes while imprisoned was error.

[State v. Lacure](#), COA 23-975, ___ N.C. App. ___ (Dec. 31, 2024). In this Wake County case, two defendants were indicted for murdering the victim and their cases were consolidated for trial. After both defendants were convicted of first-degree murder, they appealed, arguing error in admitting certain evidence, imposing special conditions restricting defendant’s ability to participate in training or educational classes, and denying a motion to sever. The Court of Appeals found no error with the evidence or denying motion to sever, but reversed the portion of the judgments imposing special conditions on the two defendants.

In August of 2019, the victim was shot as he entered his home after being dropped off by a friend. The victim was followed by the two defendants, who were in separate vehicles but coordinating on a facetime call before shooting the victim. They fled in their separate vehicles after the shooting.

The Court of Appeals began with objections to five surveillance videotapes that defendants argued were not properly authenticated. The court rejected the challenge for all five tapes, noting each tape was introduced by witness testimony, and “[e]ach witness testified to the reliability of the surveillance videotaping systems and that the videos that were at trial accurately depicted the original videos recorded by the surveillance systems.” Slip Op. at 3.

The court next considered testimony from an officer regarding data from cell towers showing the movement of defendants on the night of the murder, as defendants argued the officer was not tendered as an expert. Here, no published North Carolina opinion had determined whether this was expert or lay opinion testimony. The court looked to the unpublished *State v. Joyner*, 280 N.C. App. 561 (2021), and the Iowa Supreme Court opinion *State v. Boothby*, 951 N.W.2d 859 (Iowa 2020). After exploring the applicable caselaw, the court “expressly adopt[ed] the analysis and holding in *Boothby*” when concluding that most of the officer’s testimony was lay testimony and admissible. Slip Op. at 5. The remaining testimony, while constituting expert testimony, was not prejudicial due to the video evidence previously discussed.

Reaching the special sentencing conditions, the State conceded the trial court’s sentencing conditions barring each defendant from receiving educational or vocational training for the first twenty-two years of imprisonment was error. The court agreed, explaining “[n]owhere in our General Statutes is there language providing a trial judge the authority to restrict a defendant’s rights to vocational training or educational classes while incarcerated.” *Id.* at 6.

The court also dispensed with an ineffective assistance of counsel claim as the defendant in question could not demonstrate unprofessional conduct. And finally, the court noted the motion to sever was properly denied, because although the two defendants presented antagonistic defenses, their respective positions did not represent a conflict that would prevent a fair trial.

Trial court's statements during sentencing were accurate reflections of the law and did not indicate punishment for defendant's choice to seek a jury trial.

[State v. Mills](#), COA23-1097, ___ N.C. App. ___ (Oct. 15, 2024). In this Rowan County case, defendant appealed after being convicted of robbery with a dangerous weapon and possession of a firearm by a felon, arguing the trial court improperly considered his choice to have a jury trial in sentencing. The Court of Appeals found no error.

Defendant's matter came to trial in August of 2021; on the day the matter was called, defendant failed to appear, and the trial court set defendant's bond at \$1 million, noting that defendant had reached his "reckoning day." Slip Op. at 2. After the jury returned verdicts of guilty, the trial court addressed defendant during sentencing regarding his right to a jury trial: "the law also allows me in my sentencing discretion to consider a lesser sentence for people who step forward and take responsibility for their actions. By exercising your right to a jury trial[,], you never ever did that." *Id.* at 3-4. Defendant received sentences within the presumptive range.

Considering defendant's argument, the Court of Appeals agreed with the State's position that "the trial court's statements were an accurate reflection of the law." *Id.* at 4. The court noted that the pretrial remarks were the result of frustration that the defendant did not appear, and as for the remarks at sentencing, "the [trial] court did not suggest, much less explicitly state, that it was imposing a harsher sentence because Defendant invoked his right to a jury trial." *Id.* at 10. Because the trial court's comments were permissible, defendant could not demonstrate that he was punished for exercising his right to a jury trial.

State failed to offer evidence that Kentucky felonies were substantially similar to North Carolina offenses for prior record level calculation.

[State v. Sandefur](#), COA23-1012, ___ N.C. App. ___ (Oct. 15, 2024). In this Cleveland County case defendant appealed after being convicted of firearm and drug possession charges and receiving a prior record level V during sentencing. Defendant argued the state improperly classified his two felony convictions from Kentucky. The Court of Appeals agreed, remanding for resentencing.

In March of 2023, defendant came for trial on charges related to possession of a firearm and methamphetamine. After the jury returned verdicts of guilty, the trial court proceeded to sentence defendant, calculating 16 prior record level felony points. The trial court relied on a worksheet from the State which identified two felony convictions from Kentucky as G and F level felonies, with no further evidence to support they were substantially similar to North Carolina offenses.

Taking up the argument, the Court of Appeals reviewed G.S. 15A-1340.14, noting that the default assumption is an out-of-state felony conviction is equivalent to a Class I felony, and the burden is on the State to show the out-of-state violation is substantially similar to a higher level felony. Here, the only evidence submitted was a record level worksheet, despite the requirement that “the State must submit to the trial court a copy of the applicable out-of-state statute it claims to be substantially similar to a North Carolina offense.” Slip Op. at 6. Neither the State nor the trial court conducted any comparative analysis of the violations, and the trial court simply accepted the worksheet with the information provided, which was error. As a result, the court remanded for resentencing, noting that the State could offer additional information at the resentencing hearing.

Defendant forfeited right to counsel and right to be present in courtroom by repeated disruptive conduct; Virginia conviction for identity theft was not substantially similar to North Carolina offense for sentencing purposes.

[State v. Fuller](#), COA24-471, ___ N.C. App. ___ (March 19, 2025). In this Rockingham County case, defendant appealed his convictions for obstruction of justice, attempting to access a government computer to defraud, and filing false liens, arguing error in (1) concluding defendant forfeited his right to counsel and right to be present in the courtroom for trial, and (2) finding that defendant’s Virginia conviction was substantially similar to the North Carolina offense of identity theft for sentencing. The Court of Appeals found no error in (1), but remanded for resentencing based on (2).

Defendant was indicted in February 2022, and at his first appearance indicated he wanted to waive his right to counsel but refused to sign the waiver form. At a later pretrial appearance, defendant asked for counsel to be appointed for “the defendant,” but gave confusing responses as to whether he was requesting counsel for himself. At the next appearance before the trial court, defendant was removed for being disruptive, and eventually the trial court concluded defendant had forfeited his right to counsel through inappropriate behavior. At trial, defendant was handcuffed to a wheelchair after threatening to remove his clothing. After another confusing exchange where defendant requested a lawyer for “the defendant,” and caused disruption in the courtroom, defendant was removed from the courtroom and was given written updates on the trial by the trial court. Defendant was subsequently convicted on all counts.

Taking up (1), the Court of Appeals looked to *State v. Smith*, 292 N.C. App. 656 (2024), for the applicable standard when a defendant’s conduct justifies forfeiture of counsel. Here, defendant’s conduct was “combative and interruptive—he insisted the trial court could not be impartial, interrupted and spoke out of turn, threatened to remove his clothing, and refused to directly answer the trial court’s questions.” Slip Op. at 16. As a result, the court held that it was not error to conclude defendant forfeited his right to counsel. The court then considered whether removing defendant from the courtroom was error, looking to

United States v. Mack, 362 F.3d 597 (9th Cir. 2004) and *People v. Cohn*, 160 P.3d 336 (Colo. Ct. App. 2007). Complicating the considerations, many cases and G.S. 15A-1032 presume that a defendant removed from the courtroom will be represented by counsel, which was not the case here. The court concluded that the trial court's actions here were reasonable, including providing updates to defendant and instructing the jury not to consider defendant's removal from the courtroom. Finally, the court concluded that not appointing standby counsel was not prejudicial error and G.S. 15A-1032 did not require appointment of standby counsel when defendant was removed.

Arriving at (2), the court explained that Virginia's statute on identity theft (Va. Code § 18.2-186.3) differed in material ways from the North Carolina version in G.S. 14-113.22. The court agreed with defendant's argument that "the statutes are not substantially similar because Virginia's statute can be violated using the identifying information of a 'false or fictitious person' whereas North Carolina's statute requires the offender to have used the identifying information of a 'real person.'" Slip Op. at 28. Thus the court remanded for resentencing.

Defendant's prior record level was improperly calculated due to inclusion of DWLR-Impaired Revocation, and calculation error justified resentencing.

[*State v. Wilson*](#), COA24-442, ___ N.C. App. ___ (March 19, 2025). In this Watauga County case, defendant appealed the sentence he received after pleading guilty to possession of a stolen firearm, arguing error in calculating his prior record level. The Court of Appeals majority agreed, vacating defendant's sentence and remanding for resentencing.

During sentencing, the trial court calculated defendant's prior record level as Level III with six points, including one point for defendant's misdemeanor conviction of driving while license revoked for impaired driving (DWLR-Impaired Revocation). On appeal, defendant argued that the DWLR-Impaired Revocation conviction was exempt from prior record level calculations under G.S. 15A-1340.14(b)(5) as it is an "other misdemeanor traffic offense" identified under the statute. Slip Op. at 2-3. This led the court to conclude that defendant "should have been sentenced as a PRL II, rather than a PRL III." *Id.* at 3.

The State argued that this error was not prejudicial, but the court disagreed, noting the holding in *State v. Williams*, 355 N.C. 501 (2002), that a prior record level error prejudices a defendant even if the sentence given fell within the appropriate presumptive range.

Judge Murry dissented, agreeing that the prior record level calculation was error but that the error was harmless and did not justify remand for resentencing.

Self-Defense

(1) State’s evidence supported premeditation and deliberation; (2) trial court properly allowed previous testimony regarding defendant’s violence towards his girlfriend; (3) State’s closing argument misstatement of law was cured by jury instruction; (4) excluding evidence of victim’s gang affiliation was not error.

Defendant was “occupant” in motor vehicle for purposes of Castle Doctrine, even though he shot the victim after exiting the vehicle.

[State v. Williams](#), COA24-50, ___ N.C. App. ___ (Dec. 31, 2024), *temp. stay allowed*, 910 S.E.2d 259 (Mem). In this Wake County case, defendant appealed his conviction for voluntary manslaughter, arguing error in failing to instruct the jury on the Castle Doctrine in G.S. 14-51.2. The Court of Appeals agreed that defendant was entitled to a Castle Doctrine instruction, reversing the conviction and remanding for a new trial.

In the summer of 2020, defendant met a woman on Facebook and they agreed to set up a time to meet. On the agreed day, the couple spent time driving around, and returned to the street outside the woman’s house. At that point, a man who previously had a relationship with the woman showed up, yelling at defendant. This led to defendant leaving his car, a physical altercation, and ultimately defendant shooting the man in the street and fleeing in his vehicle. In February of 2023, defendant went on trial for murder. During the trial, the State called the woman and another witness who was present at the time, and both testified about the events leading to the shooting. Defendant also testified about the events and why he felt it was necessary to shoot the victim. At the charge conference, the trial court denied defendant’s request for a Castle Doctrine instruction under G.S. 14-51.2, as defendant was not an “occupant” in his motor vehicle when the shooting occurred. Slip Op. at 7. The trial court ultimately gave an instruction on self-defense, but included the instruction that if defendant used excessive force in self-defense, he would be guilty of voluntary manslaughter. Defendant was subsequently convicted of voluntary manslaughter, and appealed.

The Court of Appeals first explained the difference between common law self-defense and the Castle Doctrine, as the latter provides a defendant “the presumption of justified deadly force,” which is rebuttable in certain circumstances. *Id.* at 14-15. Here, there were two issues regarding defendant’s right to an instruction on the doctrine; first, whether defendant was an “occupant” of a motor vehicle when using force, and second, whether (i) the victim was unlawfully entering or entered the vehicle and (ii) defendant knew or had reason to believe the unlawful entry was occurring or occurred. *Id.* at 15. The first issue required the court to interpret the language of G.S. 14-51.2, as the term is undefined in the statute. Because the plain language also did not offer a clear answer, the court looked to “the language, object, and spirit of the statutory castle doctrine.” *Id.* at 20. After this

analysis, the court noted the use of the word “of” and not “within,” and arrived at the following interpretation:

[T]he lawful occupant “of” a home, motor vehicle, or workplace is not bound to become a fugitive from these locations, and therefore is not required to flee or remain in his home, motor vehicle, or workplace until his assailant is upon him. Rather, the lawful occupant, under specific circumstances—including those where he is no longer within the home, motor vehicle, or workplace— may exercise deadly defensive force against his assailant.

Id. at 24 (cleaned up). Applying this interpretation to the current case, “where Defendant retreated from his vehicle amidst an enduring attack, and exercised deadly force while standing directly next to the driver’s side door, and still under attack,” the court held that defendant was an “occupant” for purposes of the statute. *Id.* at 27.

The court then looked to determine if the victim unlawfully entered the vehicle, and if defendant had the required knowledge of that entry. The court found both of these in the record, as “the Record demonstrates that [the victim], without Defendant’s invitation or consent, opened the passenger’s side door of Defendant’s car and began attacking Defendant, and after Defendant exited his vehicle, [the victim] came around the vehicle and continued to attack Defendant.” *Id.* at 29. Because defendant was an “occupant” of the vehicle and the victim unlawfully entered the vehicle, defendant was entitled to the Castle Doctrine instruction. The court held the lack of a Castle Doctrine instruction was prejudicial, explaining “because Defendant has shown by competent evidence he was entitled to a statutory castle doctrine instruction, but for the trial court’s instructional error, there is a reasonable possibility a different result would have been reached by the jury.” *Id.* at 31.

Judge Stroud concurred in the result only and wrote separately to express that the majority engaged in unnecessary statutory interpretation to justify that defendant was an “occupant” under the statute.

Defendant was not entitled to Castle Doctrine instruction after pursuing intruder into nearby parking lot and beating him to death.

[State v. Carwile](#), COA23-885, ___ N.C. App. ___ (Dec. 17, 2024). In this Lincoln County case, defendant appealed his convictions for second-degree murder, misdemeanor assault, and misdemeanor communicating threats, arguing (1) plain error in failing to give the jury an instruction on the defense of habitation, and (2) error by refusing to give his requested special jury instruction. The Court of Appeals found no error.

In September of 2018, a masked man approached defendant’s house, grabbed a chainsaw off defendant’s front porch and entered the house, striking defendant with the chainsaw.

Defendant fought off the intruder, and their fight continued out into the yard, through a neighbor's yard, and into a nearby car dealership parking lot. By the time they had reached the car dealership, the intruder had dropped the chainsaw and was backing away from defendant with his hands raised. At this point, defendant's wife and another man staying at defendant's home arrived, and all three began beating the intruder. Defendant continued to slam the intruder's head into the concrete and beat him even as the intruder lay motionless on the ground. The intruder died of the injuries sustained from the beating. At trial, defendant asserted defense of habitation, and requested a special jury instruction. The trial court denied defendant's requested instruction, and defendant did not object to the jury instructions given at trial.

For (1), defendant argued the following Castle Doctrine instructions were necessary: "(a) his fear for his life was presumptively reasonable; (b) an aggressor instruction clarifying that a person is 'not the aggressor while defending their home'; and (c) he was allowed to threaten [the intruder] with lawful force." Slip Op. at 5. The Court of Appeals disagreed, and reviewed each disputed instruction in turn. In (a), the court looked to G.S. 14-51.2(c), where the General Assembly provided exceptions to the presumption of reasonable fear. The court noted that the intruder had clearly exited defendant's home, and based on the evidence, had also "discontinued all efforts to unlawfully and forcefully enter" defendant's home. *Id.* at 9. Resolving (b), the court concluded "the evidence shows Defendant became the aggressor when Defendant continued to pursue [the intruder] after [the intruder] discontinued his efforts to unlawfully and forcefully enter the home and tried to leave." *Id.* at 12-13. Finally in (c), the court noted that under the facts of this case defendant was not entitled to use deadly force under the Castle Doctrine and "[t]hus, Defendant's contention that if deadly force is justified, so too is communicating threats fails because Defendant's use of deadly force was *not* justified." *Id.* at 14. The court also dispensed with defendant's ineffective assistance of counsel claims as he was not entitled to the Castle Doctrine in this case.

Coming to (2), the court noted that defendant's requested instruction focused on the intruder's use of force and inability to assert self-defense while committing a felony, and attempted to extend *State v. McLymore*, 380 N.C. 185 (2022), "to the conduct of [the intruder], arguing that [the intruder] used impermissible force against Defendant because he was in the process of fleeing a felony when he fled Defendant's home." Slip Op. at 20. The court found that this was not supported by legal authority as the intruder "is not a criminal defendant and is not asserting self-defense as an affirmative defense for his conduct." *Id.* Additionally, to the extent defendant's requested instruction dealt with defendant's right to self-defense, the jury was properly instructed on that concept and the court found no error in the instructions as given.

Despite conflicting evidence of who was the aggressor in the confrontation, defendant was entitled to self-defense instruction on attempted murder and assault charges.

[State v. Myers](#), COA24-435, ___ N.C. App. ___ (Nov. 19, 2024). In this Union County case, defendant appealed his convictions for attempted first-degree murder, discharging a weapon into an occupied property, and assault with a deadly weapon inflicting serious injury, arguing error in failing to instruct the jury on self-defense. The Court of Appeals agreed, granting defendant a new trial.

In December of 2021, defendant and two friends stopped at a local store to purchase snacks, and defendant recognized another man, a purported gang member, from an Instagram video where he threatened to shoot up defendant's home. Defendant and his friends got into a dispute with this man and another possible gang member, eventually leading to shots being fired. Based on defendant's testimony, he initially attempted to prevent the gun violence, but after shots were fired, he retaliated, hitting the eventual victim. Defendant cooperated with law enforcement the next day, surrendering his firearm and giving a statement. At trial, defense counsel requested an instruction on self-defense, but the trial court denied the request, as the trial court felt case law precluded giving the instruction in this case.

Taking up the self-defense argument, the Court of Appeals noted that "a defendant who presents competent evidence of self-defense at trial is entitled to a jury instruction on this defense." Slip Op. at 6. After establishing the statutory basis for self-defense under G.S. 14-51.3(a) and the applicability of perfect and imperfect self-defense, the court examined the evidence in the light most favorable to defendant. The court concluded "the evidence is sufficient to support an instruction of at least imperfect self-defense, if not perfect self-defense" and conflicting evidence about the initial aggressor "[must] be resolved by the jury, after being fully and properly instructed." *Id.* at 10.

[Weapons 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). In this Buncombe County case, 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.

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, defendant raised constitutional arguments, but the trial court denied his motion.

The Court of Appeals considered 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 defendant under the Second Amendment, or (3) unconstitutional as applied to 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 defendant's case, the court concluded G.S. 14-415.1 was constitutional when applied to 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.

Possession of a firearm by a felon under G.S. 14-415.1 was not facially unconstitutional or unconstitutional as applied to defendant's case; defendant's statements showing racial motivation were properly admitted.

[State v. Nanes](#), COA24-487, ___ N.C. App. ___ (Feb. 19, 2025). In this Wake County case, defendant appealed his convictions for first-degree murder and possession of a firearm by a felon, arguing (1) G.S. 14-415.1, the statute making possession of a firearm by a felon an offense, was unconstitutional, and (2) error in admitting defendant's own statements. The Court of Appeals held G.S. 14-415.1 was constitutional and found no error.

During August of 2020, defendant shot and killed two victims he had never met, one in Raleigh and another in Cary. Defendant's probation officer recognized a BOLO put out by police, and reported him, leading to his arrest. Defendant had previously been convicted of

felony animal cruelty for stealing his parent's dog and decapitating it with a knife. At trial, the State offered statements from defendant made during a phone call with his mother, where she questioned why he posted a picture of a firearm on social media despite being convicted of a felony. Defendant responded "[t]his is a hard time for our country, and you've got racist black people out here." Slip Op. at 18.

In (1), defendant argued that G.S. 14-415.1 was unconstitutional both facially and as-applied to his situation, pointing to *N.Y. State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1 (2022), and *United States v. Rahimi*, 602 U.S. 680 (2024), to support his arguments. The Court of Appeals began with the facial challenge, noting "the State must only show that section 14-415.1 'is constitutional in some of its applications.'" Slip Op. at 6 (quoting *Rahimi* at 693). The court acknowledged that G.S. 14-415.1 regulated some conduct covered by the Second Amendment, but concluded the section was "sufficiently analogous to historical laws to show that prohibiting convicted felons from possessing firearms is within the nation's history and tradition of firearm regulation." *Id.* at 6-7. Because G.S. 14-415.1 could be "applied constitutionally to numerous circumstances" the court found no merit in defendant's facial challenge. *Id.* at 10.

Moving to the as-applied constitutional challenge, defendant argued his felony did not represent violent crime against a person, and therefore shouldn't justify disarming him. The court again disagreed, noting that beheading the dog was a violent crime, and "the record reflects Defendant has a history of victimizing others resulting in convictions for: assault on a government official or employee, simple assault, simple assault again, assault inflicting serious injury, assault on a handicapped person, and assault and battery." *Id.* at 11. This led the court to conclude defendant had a history of violence towards others, and removing his right to possess a firearm was well within historical tradition. The court also considered defendant's arguments under Section 30 of the North Carolina Constitution, applying the five-factor framework from *Britt v. State*, 363 N.C. 546, (2009). After performing the analysis the court concluded "the *Britt* factors undoubtedly weigh in favor of upholding the application of section 14-415.1 against Defendant as he has a demonstrated history of violence, victimizing others, and disregarding the law." Slip Op. at 16.

Arriving at (2), the court explained "[t]he State's theory of the case was that, because both victims were peaceful individuals whom Defendant had never met that happened to be people of color, the murders were committed out of racial animus on Defendant's part." *Id.* at 18. This made defendant's comments relevant and probative of his motive for the murders under Rule of Evidence 401. The court then looked to the Rule of Evidence 403 balancing test, concluding the trial court adequately balanced the prejudicial effect with the probative value. The court noted that several of defendant's statements that were more inflammatory were excluded, and even if it were error to admit the statements, overwhelming evidence supported defendant's guilt in the matter, meaning he could not demonstrate the jury would have reached a different result without the statement in evidence.