

Criminal Case Update

This handout includes the cases flagged for discussion at the 2025 Superior Court Judges' Fall Conference. Cases covered include published opinions from the North Carolina Appellate Courts from June 4, 2024, to October 1, 2025.

Table of Contents

Search and Seizure	2
Consent to Search	2
Abandoned Property	3
Jury Selection	4
Confrontation Clause	6
Evidence	7
Expert Testimony	7
Contempt	10
Crimes	11
Discharging a Firearm Within an Enclosure	11
Drug Offenses	12
Defenses	14
Good Samaritan Law	14
Diminished Capacity	15
Voluntary Intoxication	16
Defense of Habitation	18
Closing Argument	19
Sentencing	24
Sex Offender Registration	24

Search and Seizure

Consent to Search

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. __ (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.

Abandoned Property

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. Ct. App. Oct. 1, 2025) (Carpenter). 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.

Jury Selection

There was sufficient evidence of misdemeanor child abuse and contributing to the delinquency of a minor; the prosecutor's statements during closing arguments about the facts of similar appellate cases were not improper; the prosecutor's race-neutral reasons for striking jurors were not pretextual and survived the defendant's *Batson* challenge.

[State v. Benton](#), No. COA25-92 (N.C. Ct. App. Oct. 1, 2025) (Tyson). In this Mecklenburg County case, the defendant was charged with misdemeanor child abuse and contributing to the delinquency of a minor after leaving her six-year-old daughter unattended in a park. Her daughter was alone long enough to walk over a mile from the park, where she was found by another woman who saw the girl standing near a city street talking to two men in a car. The defendant was convicted after a jury trial. On appeal, the defendant argued (1) that there was insufficient evidence of the crimes charged, (2) that the prosecutor made improper remarks at closing, and (3) that the trial court erred in denying her *Batson* motion. The court of appeals found no error. As to the sufficiency of the evidence, the court of appeals concluded that the evidence of both crimes was sufficient. The court noted that misdemeanor child abuse can be established by a parent creating or allowing to be created a substantial risk of physical injury to a child, and that prior cases have established that failing to appropriately supervise a child can establish such a risk in light of the age of the child, whether she was left truly alone, the duration of time the child was left unsupervised, and the physical environment in which she was left. Considering those factors, the court concluded that leaving a six-year-old alone for long enough to walk one and a half miles on crowded streets was a sufficient basis for a reasonable juror to find the defendant guilty of child abuse. Similarly, the court concluded that a reasonable juror could find that the defendant neglected a child by allowing substantial risk of physical impairment by leaving her daughter unsupervised, well out of her line of sight, and exposed to an injurious environment.

As to the prosecutor's closing remarks, the defendant argued that the trial court erred by allowing the prosecutor to relay the facts of prior appellate cases involving child abuse by negligent supervision, saying "Those are the [facts and circumstances] you must consider when determining whether or not there's a substantial risk of physical injury." Slip op. at 11. The court concluded that the State's arguments were appropriate and remained within the confines of presenting analogous facts to the jury without arguing that the defendant should be convicted due to the similarity of her behavior.

Finally, the court of appeals concluded that the trial court did not err in denying the defendant's *Batson* challenge. The prosecutor used peremptory strikes against three prospective black jurors. The defendant made a sufficient prima facie case, and the prosecutor provided a sufficient race-neutral reason for his use of peremptory strikes: that all of those jurors were single parents, who might be more sympathetic to the defendant.

The court of appeals found no error in the trial court's conclusion that the rationale was not pretextual.

There was sufficient evidence of three predicate felonies presented in support of a felony murder prosecution; under binding precedent, discharging a firearm within an enclosure under G.S. 14-34.10 applies regardless of whether the victim is in the enclosure; the State's race-neutral explanation for striking a black juror was not pretextual.

[State v. Hardaway](#), No. COA24-538 (N.C. Ct. App. Oct. 1, 2025) (per curiam). In this Alamance County case, the defendant was convicted after a jury trial of first-degree murder based on felony murder. After an argument, the defendant fired a gun from a moving vehicle, hitting the victim in his chest and killing him. At trial, the State presented three felonies in support of the felony murder theory: assault with a deadly weapon with intent to kill, firing into an occupied dwelling, and discharging a firearm within a motor vehicle. On appeal, the defendant argued that there was insufficient evidence of the three alleged predicate felonies to warrant instructing the jury on them. As to the assault with a deadly weapon with intent to kill and the firing into an occupied dwelling, the court rejected the defendant's argument that there was insufficient proof that the defendant fired "at" anyone or at the house. The court said the evidence was sufficient to submit the charges to the jury when witnesses saw the defendant holding the gun and saw it discharge, the victim was shot, and at least one bullet entered the house.

As to the discharging a firearm within a motor vehicle under G.S. 14-34.10, the defendant argued that there was insufficient evidence to establish that the defendant discharged a firearm "within" the car. He argued that the statute should be interpreted to mean an event happening entirely within the car, rather than emanating from it (which would be covered by other crimes). The court of appeals majority held that the issue was foreclosed by precedent, as another panel of the court of appeals recently concluded in *State v. Jenkins*, ___ N.C. App. ___ (No. COA24-889, 2025 WL 2232043) (N.C. Ct. App. Aug. 6, 2025), that G.S. 14-34.10 could be committed when a defendant fired within an enclosure, regardless of whether the victim was within the same enclosure.

The defendant also argued on appeal that the trial court erred by denying his *Batson* challenge when the State challenged the only black prospective juror on the panel. The court of appeals concluded that the trial court did not err by accepting the State's race-neutral explanation for the challenge: that the stricken juror was inattentive, uninterested, and seemed annoyed to be there. The defendant's comparison to a white juror who was not struck did not prove the State's explanation to be pretextual. That juror also gave one-word answers indicating he didn't want to be there, but there was no indication he was uninterested or inattentive.

Judge Hampson [concurred dubitante](#), agreeing the court was bound by the prior panel's decision in *Jenkins*, but explaining why he believed that opinion was wrongly decided.

Judge Dillon concurred, expressing doubt that assault with a deadly weapon with intent to kill should serve as a predicate felony for felony murder.

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](#), ___ N.C. App. ___ (June 18, 2025) (Stroud). In this Pitt County case, 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.

Evidence

Expert Testimony

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. Ct. App. July 16, 2025) (Wood). 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 the defendant's trial in Forsyth County Superior Court, 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.

Trial court prejudicially erred by admitting expert testimony vouching for the victim's credibility; the indictment did not provide sufficient certainty as to the offense charged.

[State v. Wingate](#), No. COA24-815 (N.C. Ct. App. July 2, 2025) (Arrowood), *temp. stay allowed*, __ N.C.__, 917 S.E.2d 433 (July 25, 2025). In September 2017, the defendant forced his twelve-year-old son, James, to pull on his (the defendant's) penis, asked James to pull his pants down, and inspected James's penis. The defendant later forcibly penetrated James's anus with his penis about 12 times. After James revealed the abuse to a therapist, the defendant was charged with four counts of indecent liberties and one count of first degree statutory sexual offense.

The matter came on for trial by jury in Wake County Superior Court in July 2023. At trial, James testified about the abuse. The State's evidence also included the testimony of an intake social worker with Child Protective Services, Kennedy Gayno; a child abuse evaluation specialist, Leigh Howell; a pediatrician, Dr. Elizabeth Witman; and an expert in trauma therapy, Miriane Portes. The defendant was convicted of all charges and sentenced to a minimum 364, maximum 536 months. The defendant appealed.

On appeal, the defendant argued (1) the indictment failed to provide sufficient notice. He also argued that the trial court erred by (2) sentencing him as upon a conviction for statutory sexual offense with a child by an adult, (3) admitting expert testimony vouching for the victim's credibility, and (4) denying his motion to dismiss the charge of first-degree statutory sexual offense. The defendant also argued he received ineffective assistance of counsel.

First addressing the third issue, the Court of Appeals posited that, absent physical evidence of abuse, an expert witness may not be permitted to testify that sexual abuse actually occurred. *State v. Stancil*, 355 N.C. 266 (2002). Here, Portes testified that she diagnosed James with PTSD and that James's symptoms were consistent with the trauma he had reported. Dr. Witman testified that the lack of physical findings was consistent with James's disclosure of sexual abuse. The Court of Appeals concluded that Portes's and Witman's testimony amounted to impermissible vouching. It further held that this error rose to the level of plain error, entitling the defendant to a new trial.

As for the indictment issue, the Court of Appeals posited that an indictment must provide sufficient notice to enable the accused to prepare for trial and the court to pronounce sentence. See *State v. Reavis*, 19 N.C. App. 497 (1973). First-degree statutory sexual offense under G.S. 14-27.29 is a lesser included offense of statutory sexual offense with a child by an adult. G.S. 14-27.28(d). Under *State v. Singleton*, 386 N.C. 183 (2024), however, the Court of Appeals said, "a defendant raising the issue of an insufficient indictment must show prejudice."

Here, the defendant's indictment alleged the elements of statutory sexual offense with a child by an adult, but it identified the offense by name and statutory citation as first-degree statutory sexual offense. At trial, the trial court instructed the jury on statutory sexual offense with a child by an adult, but the verdict sheet identified the offense as first-degree statutory sexual offense. The defendant was sentenced as upon a conviction of statutory sexual offense with a child by an adult, but the judgment identified the offense as first-degree statutory sexual offense.

The Court of Appeals ruled that the indictment did not provide such certainty to allow the defendant to prepare for trial and the court to pronounce sentence. It found that the defendant was prejudiced, as the difference in length of potential sentences is significant and may have influenced his decision to plead not guilty. The Court of Appeals notified the

State and the trial court it would have vacated the conviction “if we were required to rule on the sufficiency of the indictment.”

Judge Dillon dissented, opining that the trial court did not plainly err by admitting the vouching testimony. But Judge Dillon believed that the jury convicted the defendant of first-degree statutory sexual offense, and he would have remanded for entry of judgment as upon that offense.

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. Ct. App. Sept. 17, 2025) (Stading). In April 2023, the defendant pled guilty in Pasquotank County Superior Court 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.

Crimes

Discharging a Firearm Within an Enclosure

(1) Any error in giving self-defense instruction was dismissed as invited error; (2) no discovery violation where in-court identification of defendant was not significantly different from prior statements made by victim; (3) evidence was sufficient for conviction of discharging a firearm within an enclosure to incite fear under G.S. 14-34.10 where statute requires only that the defendant discharge a weapon from within *any* occupied enclosure; (4) trial court erred by imposing sentence for conviction under G.S. 14-34.10 where defendant was convicted of other crimes carrying greater punishment.

[State v. Jenkins](#), No. COA24-889 (N.C. Ct. App. Aug. 6, 2025). The victim was driving when the defendant pulled up alongside her and fired a bullet into her car, shattering the victim's window. The bullet entered the victim's left arm and was lodged in her back. In the aftermath of the drive-by shooting, the victim identified the defendant as the shooter on multiple occasions. After a jury trial, the defendant was convicted of multiple charges, including discharging a weapon from within an enclosure to incite fear under G.S. 14-34.10. The defendant raised multiple claims on appeal.

As to an alleged error in the self-defense instruction, the Court dismissed the defendant's argument as invited error, noting that the defendant had multiple opportunities to object to the instruction at trial, but trial counsel expressly agreed with the instructions and stated that he had no proposed changes.

As to the claimed discovery violations, the Court concluded that the trial court did not abuse its discretion in finding that the State complied with G.S. 15A-903 and that the defense had adequate information to prepare his defense. The Court noted that oral statements to a prosecutor need only be provided to the defense if the statements contain significantly new or different information from prior statements. The Court did not find that the in-court identification of the defendant was significantly different from prior identifications of the defendant as the shooter.

As a third issue, the defendant contended that the evidence was insufficient to support a conviction for G.S. 14-34.10 (discharging a firearm within an enclosure to incite fear). The defendant argued that the statute required that the defendant and the victim be within the same occupied vehicle at the moment of discharge, while the State argued that the statute required only that the defendant be within any occupied vehicle when firing the weapon. As a matter of first impression, the Court engaged in a lengthy process of statutory interpretation to determine the meaning of the words "within" and "occupied" in the context of G.S. 14-34.10. This analysis of the plain meaning of the statute led the Court to conclude that the statute requires only that the defendant be within *any* occupied enclosure upon discharge. The Court thus held that the evidence was sufficient.

Finally, the Court addressed defendant's argument that he should not have been punished under G.S. 14-34.10 where express language in the statute provides that punishment is proper "*unless* covered under some other provision of law providing greater punishment." The Court held that this language created a statutory mandate that was preserved despite the defendant's failure to object at trial. As defendant's conduct was punished by multiple other offenses carrying greater punishment, the Court concluded that the defendant was prejudiced in receiving a sentence under G.S. 14-34.10 and arrested judgment on this conviction, remanding for resentencing.

Drug Offenses

There was sufficient evidence of the defendant's drug convictions; the trial court did not commit plain error by failing to read a portion of the jury instruction on constructive possession; the trial court erred by not considering the defendant for conditional discharge under G.S. 90-96.

[State v. Verdi](#), No. COA24-1014 (N.C. Ct. App. Oct. 1, 2025) (Gore). In this Stanly County case, the defendant was convicted after a jury trial of possession of methamphetamine and possession of drug paraphernalia. The defendant argued on appeal that the trial court erred in denying her motion to dismiss for insufficiency of the evidence and in its jury instruction on constructive possession. She also argued that the trial court erred by imposing a sentence rather than a conditional discharge under G.S. 90-96. As to the motion to dismiss for insufficiency of the evidence, the court of appeals concluded that it was properly denied when the defendant was seen in or leaving the bedroom where drugs and drug paraphernalia were found and her driver's license and credit card were found in the bedroom. As to the jury instruction (which the defendant did not object to at trial), the court of appeals concluded that the trial court erred by reading only a portion of instruction N.C.P.I.—CRIM. 104.41 and failing to include the portion that defines constructive possession, but that the omission did not amount to plain error. Finally, the appellate court concluded that the trial court erred by failing to consider conditional discharge under G.S. 90-96. Under the language of that statute, as interpreted in *State v. Dail*, 255 N.C. App. 645 (2017), conditional discharge is mandatory unless the court determines and the district attorney agrees that it is inappropriate. The court rejected the State's argument that the statutory language requiring the defendant's "consent" requires the defendant to initiate a request for conditional discharge to trigger the trial court's obligation to consider it. To the contrary, the court of appeals said, the court must consider conditional discharge for any defendant—like the defendant here—who is eligible. The court remanded the case for a new sentencing hearing.

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. Ct. App. Sept. 17, 2025) (Griffin). 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 in Gaston County Superior Court 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.

Defenses

Good Samaritan Law

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. Ct. App. Oct. 1, 2025) (Murry). 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.

Diminished Capacity

A trial judge correctly stated the law concerning the need to acknowledge guilt in order to claim diminished capacity, and did not plainly err in instructing the jury on insanity.

[State v. Copenhagen](#), No. COA24-221 (N.C. Ct. App.) (June 4, 2025) (multiple authors). The defendant stabbed her mother 95 times and left her body in a closet. She was charged with murder and tried in Brunswick County Superior Court. Initially, the trial court found that she lacked capacity to proceed, but her capacity subsequently was restored. Defense counsel advised her to pursue an insanity defense, but the defendant refused and instead sought to advance a diminished capacity defense. The trial judge held a colloquy with the defendant, asking her whether she understood that to support diminished capacity, she would need to concede that she was "responsible for the death of the victim." After some back and forth, the defendant agreed that her counsel could acknowledge her guilt to the extent necessary to pursue diminished capacity. At trial, she introduced evidence of her history of behavioral health problems. The trial judge instructed the jury on both insanity and diminished capacity, and the defendant was convicted of first-degree murder.

On appeal, the defendant first argued that the trial court erred during its pretrial colloquy with her by promising that a diminished capacity defense would "guarantee" an instruction on second-degree murder, and conversely, by indicating that without a diminished capacity defense, the jury would not be instructed on second-degree murder. The Court of Appeals, quoting extensively from the transcript and highlighting the trial judge's qualifying statements like "possibly" and "likely," determined that the judge's comments, "taken as a whole, accurately state the law."

The defendant next argued that the trial judge erred by instructing the jury on insanity. Although prior to trial the defendant had opposed relying on the insanity defense, at the charge conference defense counsel did not object to the issuance of the instruction, so

the Court of Appeals reviewed for plain error. Assuming *arguendo* that the trial court erred by giving the instruction, the Court of Appeals determined that it did not rise to the level of plain error. The jury rejected both diminished capacity and the insanity defense and found that the defendant had the culpable mental state required for first-degree murder.

Finally, the defendant contended that her attorney provided ineffective assistance of counsel by (1) acknowledging her guilt, to the extent required to claim diminished capacity, without her fully informed consent, and (2) failing to object to the insanity instruction. The Court of Appeals determined that the record was sufficient to address these claims on direct appeal. It rejected the first because the colloquy between the trial judge and the defendant showed that she understood the consequences of pursuing a diminished capacity defense. It rejected the second because it saw no prejudice to the defendant.

Judge Hampson dissented in part and would have dismissed the ineffective assistance claims without prejudice so that they could be considered in the first instance in superior court.

Voluntary Intoxication

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. Ct. App. Sept. 3, 2025) (Dillon), *temp. stay allowed*, __ N.C. __ (Sept. 24, 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 conclude 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.

Defense of Habitation

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. Ct. App. Sept. 17, 2025) (Stroud). 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 Surry County Superior Court 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 phrase “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.

Closing Argument

An acquittal at an earlier trial did not collaterally estop the State from remarking on an alleged sexual assault and kidnapping related to the defendant’s murder prosecution; the State’s rhetorical question during closing arguments did not amount to an improper comment on the defendant’s election not to testify; the defendant’s right to a fair trial was not violated by cumulative error.

[State v. Lamm](#), No. COA24-982 (N.C. Ct. App. Oct. 1, 2025) (Murry). In this Johnston County case, the defendant was convicted after a jury trial of second-degree murder and obtaining [violent] habitual felon status and sentenced to life without parole. This was the second trial related to these crimes; the first resulted in the trial court dismissing first-degree rape and first-degree kidnapping charges for insufficiency of the evidence (which had the effect of an acquittal), and a mistrial on the first-degree murder charge. On appeal, the defendant argued that trial court erred by denying the defendant’s motion for a mistrial based on the State’s remarks during jury selection, opening arguments, and closing arguments that the defendant raped, kidnapped, and sexually assaulted the victim. The court of appeals concluded that the defendant’s acquittal on the rape and kidnapping charges at the first trial “did not collaterally estop the State from introducing or arguing the

truth of evidence tending to show that he committed a certain crime in service of his ultimate murder of the victim.” Slip op. at 10.

The defendant also argued that the trial court erred by failing to declare a mistrial based on the State’s closing argument, in which it played one of the defendant’s interrogation videos for the jury and then asked the defendant “Was that a lie or did you just forget it?” The court of appeals concluded that the question did not amount to an improper comment by the prosecutor on the defendant’s election not to testify.

Finally, the court of appeals rejected the defendant’s argument that the trial court’s purported errors cumulatively violated his right to a fair trial, because the “trial court did not err in any respect.” Slip op. at 15.

Prosecutor erred by commenting on the defendant’s failure to testify, but the error was not so grossly improper as to entitle the defendant to a new trial.

[State v. Gilbert](#), No. COA25-32 (N.C. Ct. App. July 2, 2025) (Collins). On December 8, 2022, the defendant broke into a home in High Point and stole seven wristwatches. The next day, he pawned two of the stolen watches. On December 12, 2022, the defendant attempted to pawn additional wristwatches. The defendant was charged with felony breaking and entering, felony larceny, obtaining property by false pretenses, and habitual felon status. The matter came on for trial by jury in Guilford County Superior Court in March 2024. During closing arguments, the prosecutor told the jury, “Now, [the defendant] doesn’t have to testify, but there’s no other evidence to say otherwise as to how he got those watches honestly.” The defendant was convicted of the substantive charges and pled guilty to habitual felon status. The defendant appealed.

Before the Court of Appeals, the defendant argued the trial court erred by failing to intervene *ex mero motu* when the prosecutor referred to his failure to testify. The Court of Appeals posited that a prosecutor’s comment on the defendant’s failure to testify violates the defendant’s constitutional right to remain silent, but such a comment is not invariably prejudicial, citing *State v. Ward*, 354 N.C. 231 (2001), and *State v. Reid*, 334 N.C. 551 (1993). Here, the prosecutor’s reference to the defendant’s failure to testify was error. But given the overwhelming evidence of the defendant’s guilt, the error was not so grossly improper as to entitle him to a new trial.

No error in refusing to instruct on voluntary intoxication; (2) sufficient evidence of two separate assaults by strangulation; (3) no error in failing to distinguish the injuries caused by the two assaults by strangulation; (4) no error in failing to intervene *ex mero motu* in the prosecutor’s closing argument, and (5) no abuse of discretion in imposing a fine of \$25,000.

[State v. Tadlock](#), No. COA24-459 (N.C. Ct. App. July 2, 2025) (Hampson). On March 18, 2022, the defendant began drinking, and his wife, designated K.S., went to bed. Around

1:30 a.m., the defendant came into the bedroom screaming at K.S. When she ignored him, the defendant returned with a gun and pointed it at K.S. The defendant forced K.S. to retrieve a necklace she had given to her daughter and compelled her to destroy it with a hammer. The defendant then choked K.S. until she lost consciousness. When she regained consciousness, K.S. laid down with the defendant in bed and the defendant initiated sex with K.S.; K.S. complied out of fear of the defendant. When the defendant fell asleep, K.S. left the home and went to the hospital.

The defendant was charged with attempted first-degree murder, first-degree kidnapping, first-degree forcible rape, assault with a deadly weapon with intent to kill or inflict serious injury, and two counts of assault by strangulation. The matter came on for trial by jury in Haywood County Superior Court in October 2023. During the charge conference, the trial court denied the defendant's request for an instruction on voluntary intoxication. During closing arguments, the prosecutor told the jury that alcoholics can still function, and that the evidence here showed that the defendant knew what he was doing. The defendant was convicted of first-degree kidnapping, first-degree forcible rape, assault with a deadly weapon inflicting serious injury, and two counts of assault by strangulation. The trial court's judgments included a fine of \$25,000. The defendant appealed.

The Court of Appeals framed the issues on appeal as whether the trial court erred by (1) declining to instruct on voluntary intoxication, (2) denying the defendant's motion to dismiss one count of assault by strangulation, (3) failing to distinguish between the injuries caused by each assault by strangulation, (4) failing to intervene *ex mero motu* in the prosecutor's closing argument, and (5) imposing a fine of \$25,000.

Addressing the first issue, the Court of Appeals recognized a defendant may be entitled to an instruction on voluntary intoxication if he produces substantial evidence he was so intoxicated he could not form the requisite specific intent, citing *State v. Mash*, 323 N.C. 339 (1988). Here, the Court of Appeals noted there was no evidence the defendant had trouble speaking or walking; there was no evidence the defendant engaged in inexplicable behavior prior to attacking K.S.; and the evidence showed that the defendant apologized to K.S. after the attack. It concluded there was not substantial evidence the defendant was so intoxicated he could not form the intent required for kidnapping or rape, and the trial court did not err by declining to instruct on voluntary intoxication.

As for the second issue, the State may charge a defendant with multiple assaults only when there is substantial evidence that a distinct interruption occurred between the assaults, such as an intervening event, a lapse of time, an interruption in the momentum, a change in location, or some other break. Here, the Court of Appeals said, there was sufficient evidence of a distinct interruption between one assault by strangulation and the next, evidenced by a change in location and different methods of attack. The trial court therefore did not err by denying the defendant's motion to dismiss one count of assault by strangulation.

As for the third issue, a conviction of assault by strangulation requires a showing of physical injury. G.S. 14-32.4(b). The Court of Appeals analogized this case to *State v. Bates*, 179 N.C. App. 628 (2006), and distinguished *State v. Bowman*, 292 N.C. App. 290 (2024), *rev'd*, 915 S.E.2d 134 (N.C. 2025). As in *Bates*, “the number of counts equals the number of incidents presented in evidence,” the trial court instructed the jury once for each count, and the trial court instructed the jury that it could not reach a verdict by majority vote. Unlike in *Bowman*, the verdict sheets differentiated each offense. The Court of Appeals concluded that the trial court did not err by failing to distinguish the physical injuries for the jury.

As for the fourth issue, during closing argument an attorney may not make arguments based on matters outside of the record. G.S. 15A-1230(a). Arguments that fail to provoke timely objection are reviewed for gross impropriety, an exceedingly high bar. Here, the prosecutor’s statements about alcoholics – that they can still function and they know right from wrong – were not so grossly improper that the trial court erred by failing to intervene *ex mero motu*.

As for the fifth issue, a person who has been convicted of a criminal offense may be ordered to pay a fine, and as to felony sentencing the amount of the fine is within the trial court’s discretion. G.S. 15A-1340.17(b); 15A-1361. Here, the Court of Appeals rejected the defendant’s argument that the trial court erred by failing to take his financial situation into consideration, explaining that G.S. 15A-1340.36 pertains to restitution, not fines. It also rejected the argument that the fine was unreasonable, explaining that G.S. 15A-1362(a) relates to the method of payment rather than its amount. The Court of Appeals concluded the defendant failed to show any abuse of discretion.

Judge Freeman dissented in part, opining that there was not sufficient evidence of a distinct interruption to support two separate convictions of assault by strangulation.

(1) Defendant’s motion to dismiss was properly denied where the State provided sufficient evidence of first-degree murder; (2) the trial court did not prejudicially err in admitting evidence from a 2017 incident to establish the defendant’s identity; (3) no error where the trial court did not intervene during the State’s closing argument.

[State v. Solomon](#), No. COA24-748 (N.C. Ct. App. June 18, 2025) (Freeman). In September of 2019, the defendant was indicted for two counts of first-degree murder in a drive-by shooting. During trial in Wake County Superior Court, the State’s evidence tended to show, in part, that the defendant was in repeated contact with one of the victims before the shooting, the last calls from one victim were to the defendant, the defendant’s ankle monitor showed he left his house thirty minutes before the shooting, and he returned about twenty minutes after the shooting, the defendant was a passenger in the suspect vehicle shortly before the shooting, the defendant’s cell phone was within one or two blocks of the crime scene at the time of the shooting, and the defendant had incriminating digital evidence on his cell phone after the shooting. Over the defendant’s objection, the

State also introduced evidence of a drive-by shooting in 2017 in order to establish the defendant's identity. The State also referenced this evidence during closing arguments by stating the defendant "likes to shoot out of the backs of cars at people, like he did" in 2017.

The Court first addressed the defendant's argument that the trial court erred by denying his motion to dismiss. Noting that substantial evidence required to survive a motion to dismiss only requires more than a scintilla, the Court concluded that the evidence provided by witnesses, in addition to video surveillance, cell phone analysis, ankle monitoring data, and internet search history, was sufficient to justify the denial of the defendant's motion to dismiss.

The Court then addressed the defendant's argument that the trial court improperly admitted evidence of a drive-by shooting in 2017. The Court first found that the 2017 incident met the temporal proximity requirement for inclusion under Rule 404(b). In addressing the similarity requirement, the Court found merit in the State's argument that the circumstances were sufficiently unique to the defendant and found merit in the defendant's argument that the circumstances were merely inherent to most crimes of this type (drive-by shootings). Leaving this question unanswered, the Court found that due to the overwhelming evidence of guilt, any error would be harmless, and as a result the trial court did not prejudicially err by admitting the evidence.

Finally, the Court addressed the defendant's argument that the court reversibly erred by failing to intervene *ex mero motu* during the State's closing argument. The Court found that the statement referring to the 2017 incident did not rise to the level of gross impropriety, in part due to the prosecutor's repeated cautions to the jury that the incident was to be considered solely for the purpose of identity and that the statement was not so overreaching as to shift the focus of the jury.

A prosecutor's arguments concerning a witness's truthfulness were not improper vouching. They properly highlighted the fact that the witness's testimony matched the physical evidence.

[State v. Arrington](#), No. COA24-688 (N.C. Ct. App. June 4, 2025) (Collins). During closing arguments in the defendant's murder trial in Wake County Superior Court, the prosecutor argued that a specific prosecution witness was the "most credible witness that testified in this trial," and that he "told [the jury] the truth." Defense counsel did not object and the defendant was convicted. On appeal, the defendant argued that this was improper vouching for the credibility of the witness, and that the trial judge erred by failing to intervene *ex mero motu*. The Court of Appeals determined that the prosecutor's arguments were proper. Viewed in context, they were not statements of "personal belief" in the witness's honesty. Rather, they were proper arguments highlighting the fact that the witness's testimony matched the physical evidence.

Sentencing

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. Ct. App. Oct. 1, 2025) (Collins). 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.

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. Ct. App. July 16, 2025) (Tyson). 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 in Guilford County Superior Court 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.