

Criminal Case Update

This handout includes the cases flagged for discussion at the 2026 Superior Court Judges' Summer Conference. Cases covered include published opinions from the United States Supreme Court and the North Carolina appellate courts from October 15, 2025, to June 3, 2026.

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Jurisdiction

No jurisdiction to try infractions in superior court where the infractions were not lesser-included violations of a crime and the defendant did not admit responsibility; probationary period longer than statutory maximum required findings of facts in support.

[State v. Myers](#), COA25-631 (N.C. Ct. App. May 20, 2026) (New Hanover County) (Zachary). After trial, a jury found the defendant guilty of felony fleeing to elude arrest and misdemeanor resisting a public officer, and responsible for the infractions of lane change signal violation and failure to carry a valid driver's license. On appeal, the defendant contended that the evidence was insufficient that he committed a lane change signal violation and that his sentence of 30 months on probation was not supported by requisite findings of fact under G.S. 15A-1343.2(d)(2).

The Court of Appeals resolved the defendant's first argument by *sua sponte* raising the question of subject-matter jurisdiction for the infractions. Under G.S. 7A-271(d), the superior court only has jurisdiction to dispose of an infraction where the infraction is a lesser-included violation of a crime properly before the court or where the defendant admits responsibility to the infraction. As neither of these circumstances applied, the Court of Appeals concluded that the trial court lacked jurisdiction to enter judgment for the infractions. As the misdemeanor conviction was consolidated with the infractions in one judgment, this judgment was vacated and remanded for resentencing on the misdemeanor alone. In addition, should the trial court on remand choose to impose a probationary period longer than the statutory maximum of 24 months, it was required to make findings in support.

Superior court did not lack jurisdiction when misdemeanor charge was initiated by presentment; State's evidence of misdemeanor death by vehicle did not vary from the indictment.

[State v. Gibbon](#), No. COA25-415 (N.C. Ct. App. Feb. 4, 2026) (Buncombe County) (Dillon), *temp. stay allowed*, (N.C. Supreme Ct. March 3, 2026). The defendant was speeding on a mountain road, lost control of the vehicle, and crashed into a tree, killing a passenger. The grand jury returned a presentment, and the defendant was charged by indictment with misdemeanor death by vehicle under G.S. [20-141.4](#) with a predicate offense of failure to maintain lane under G.S. [20-146\(a\)](#). The defendant was convicted by a jury and appealed. Before the Court of Appeals, the defendant argued: (1) the superior court lacked original jurisdiction to try him for a misdemeanor, and (2) there was a fatal variance between the indictment and the evidence.

Addressing the first issue, the Court of Appeals noted the superior court has original jurisdiction to try a misdemeanor when, among other circumstances, the charge is

initiated by presentment. G.S. [7A-271\(a\)\(2\)](#). When the grand jury returns a presentment, the district attorney must investigate the factual background and submit bills of indictment when appropriate. G.S. [15A-641\(c\)](#). Here, the defendant's indictment was returned only after the grand jury had returned a presentment. The prosecutor's investigation consisted of reviewing the case file to prepare the indictment. The Court of Appeals rejected the defendant's argument that the investigation language of G.S. [15A-641\(c\)](#) required the prosecutor to engage in additional fact gathering, and it concluded the superior court did not err by denying the defendant's motion to dismiss for lack of jurisdiction.

As to the second issue, the Court of Appeals said a variance between the offense charged and the offense shown by the evidence is essentially a failure of the State to prove the offense charged. Here, the defendant was charged with misdemeanor death by vehicle with the predicate offense of failure to maintain lane under G.S. [20-146\(a\)](#). A person violates G.S. 20-146(a) by failing to drive upon the right half of the highway. G.S. [20-146\(a\)](#). Here, the evidence showed that the defendant's deliberate actions resulted in his losing control over the vehicle, departing from his lane, and colliding with a tree. This was sufficient evidence the defendant violated G.S. 20-146(a). The Court of Appeals rejected the defendant's argument that the State had to show he *intentionally* left his lane of traffic in order for the State to use violation of G.S. 20-146(a) as a predicate offense.

Guilford County Superior Court lacked jurisdiction to revoke Defendant's probation absent evidence that Defendant was sentenced, violated probation, or resided in Guilford County.

[State v. Crabtree](#), No. COA25-395 (N.C. Ct. App. Dec. 3, 2025) (Guilford County) (Wood). On June 27, 2022, in Franklin County, Defendant was convicted of felony fraudulently burning a dwelling and conspiracy and sentenced to two consecutive sentences of six to seventeen months. That sentence was suspended, and Defendant was placed on supervised probation for sixty months. On August 31, 2024, in Guilford County, Defendant's probation officer filed violation reports alleging that Defendant had violated the terms of his probation by, among other things, committing new criminal offenses in Pennsylvania. The violation reports came on for a hearing on September 9, 2024, in Guilford County. The trial court revoked probation and activated the suspended sentences.

Defendant's pro se notice of appeal was defective, and the Court of Appeals granted his petition for certiorari to review the orders revoking probation. Defendant argued, among other things, that the trial court lacked jurisdiction to revoke probation. By statute, probation may be revoked by any judge entitled to sit in the court which imposed probation and who is resident or presiding in the district where the sentence of probation was imposed, or where the probationer violates probation, or whether the probationer resides. G.S. 15A-1344(a). Here, the Court of Appeals observed (1) Defendant's sentence and probation were imposed in Franklin County; (2) the violation was alleged to have occurred in Pennsylvania; and (3) there is no indication Defendant resided in Guilford County. The

Court of Appeals concluded that the Guilford County Superior Court therefore did not have jurisdiction to revoke probation, and it vacated the September 13, 2024, judgments.

First Amendment

Requiring registered sex offenders to disclose their online identifiers is not a facial violation of the First Amendment.

[State v. Smathers](#), No. COA25-357 (N.C. Ct. App. Mar. 18, 2026) (Buncombe County) (Arrowood). In 2010, the defendant was convicted of taking indecent liberties with a child. He was required to register as a sex offender. Specifically, he was required to provide the sheriff with his “online identifiers.” He provided the sheriff with a Gmail username and a Grindr username. In 2023, he was on post-release supervision for an unrelated matter when his supervising officer conducted a warrantless search of his phone. She found a Snapchat account, and he admitted using the account to send photographs of his penis. He was charged with failing to register an online identifier – his Snapchat username – and with being a habitual felon. He moved to dismiss on First Amendment grounds. A superior court judge denied the motion. He was tried and convicted, sentenced to prison, and appealed.

On appeal, the defendant pursued a facial challenge to the online identifier registration requirement. The court of appeals acknowledged that the internet is a vital tool for expressive activity, and that requiring offenders to provide their identifiers to the government “place[s] an indirect burden” on offenders First Amendment rights and may deter some speech. Because the requirement is content neutral, the court determined that intermediate scrutiny was the proper standard for determining its constitutionality. Such review asks whether the requirement is justified by an important purpose, is narrowly tailored, and leaves open ample alternative avenues for communication.

The court ruled that the online identifier law serves the important government interest of preventing sex offenders – who it stated were at an elevated risk of recidivism – from using the internet to contact minors for illicit purposes.

The case focused on what the defendant argued was a lack of narrow tailoring. He pointed out that the statute requires the disclosure of all online identifiers, even for platforms that can’t plausibly be used to contact minors, and that it applies to all registered sex offenders, even those with no history of using the internet to identify and contact victims. The court quickly rejected the latter point, stating that it would be naïve to believe “that an offender who met his first young victim in a public park would therefore be unlikely to pursue his next victim online.”

As to requiring the disclosure of identifiers for platforms not useful for contacting potential victims, the court rejected as contrary to the plain language of the statute the State’s proposal to read the requirement narrowly to apply only to identifiers related to “private,

person-to-person communication.” And the court acknowledged that the breadth of the requirement could enable First Amendment violations, such as if a sheriff were to reveal an online identifier that an offender used to engage in political blogging, effectively silencing the offender.

Nonetheless, the court determined that these risks were not disproportionate to the legitimate sweep of the statute. The court highlighted that the statute does not prohibit any speech, and that offenders retain the right to engage in anonymous speech offline, such as through “distribut[ing] anonymous handbills.”

The court also considered whether the statute is overbroad in allowing public disclosure of an offender’s online identifiers under certain circumstances. Concluding that it did not, the court decided that the statute was sufficiently narrowly tailored to survive intermediate scrutiny. It therefore affirmed the defendant’s conviction.

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

[State v. Matthews](#), No. COA24-961(N.C. Ct. App. Nov. 19, 2025) (Zachary). The defendant in this Moore County case was convicted in a jury trial of possession of methamphetamine, carrying a concealed gun, and two counts each of resisting a public officer and communicating threats. The drug and gun charges arose from evidence discovered during a traffic stop; the remaining charges arose from defendant’s actions when two officers arrested him for those offenses. On appeal, the defendant argued that the trial court erred by (1) denying his motion to dismiss one of the charges of communicating threats and (2) delivering Pattern Jury Instruction 105.21, which informs the jury that it may consider false, contradictory, or conflicting statements by a defendant as a circumstance tending to reflect the mental process of a person with a guilty conscience.

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

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

(1) The First Amendment protected the silent display of a crude banner criticizing a county commissioner at a board meeting; (2) the defendant was entitled to resist an unlawful arrest where he used reasonable force.

[State v. Barthel](#), No. COA25-159 (N.C. Ct. App. Nov. 5, 2025) (Stroud). In January of 2024, William Barthel attended an Avery County Board of Commissioners meeting. Shortly after the meeting began, Barthel stood against the back wall and, without blocking anyone's view, held up a banner with vulgar language criticizing Commissioner Cindy Turbyfill. The banner contained a picture of the commissioner with the phrase "I'm no gynecologist but I know a c**t when I see one" (original uncensored). Law enforcement officers approached him and instructed him to put the banner down. He refused, arguing with law enforcement and pulling away from them. He was charged with disrupting an official meeting and resisting a public officer. He was convicted of both offenses after a jury trial and timely appealed.

The Court of Appeals held that the defendant's silent protest was protected speech. Although offensive, the banner did not meet the legal standard for "fighting words," which must be likely to provoke immediate violence. The Court emphasized that criticism of public officials is core political speech and receives heightened constitutional protection. The meeting was deemed a limited public forum, where content-based restrictions are allowed only if they are reasonable and viewpoint-neutral. The Court found that the defendant's removal was based on the offensive nature of his message, not any actual disruption. The disruption occurred only after law enforcement intervened, and the banner itself did not block views or interrupt proceedings. Therefore, the Court found the defendant did not disrupt the meeting and was engaged in protected speech. Regarding the resisting a public officer charge, the Court reaffirmed that individuals have the right to resist unlawful arrests using reasonable force. The defendant's resistance was mostly verbal and nonviolent. Because his arrest violated the First Amendment, his limited resistance to that arrest was justified and could not sustain a conviction for resisting a public officer.

Search and Seizure

Administrative Warrant

Search of the defendant’s premises conducted solely pursuant to a general administrative tax warrant violated the Fourth Amendment and required suppression of seized evidence.

State v. Hickman, No. COA24-893 (N.C. Ct. App. Nov. 5, 2025) (Flood), *discretionary review allowed*, (N.C. Jan. 28, 2026). In 2022, the North Carolina Department of Revenue (DOR) issued a general administrative tax warrant against Johnnie Denise Hickman for unpaid taxes related to prior drug sales. Issued pursuant to G.S. 105-242, the tax warrant authorized the McDowell County Sheriff’s Office to “levy upon and sell the real and personal property of the said taxpayer.” DOR agents, accompanied by a sheriff’s deputy, entered Hickman’s residence pursuant to the tax warrant. They conducted a search, found methamphetamine and drug paraphernalia, and later obtained the defendant’s written consent to search after detaining her. The defendant moved to suppress the evidence, arguing the search violated her Fourth Amendment rights. The trial court denied the motion, finding the tax warrant gave agents inherent authority to search her residence.

The Court of Appeals disagreed, citing *G.M. Leasing Corp. v. United States*, 429 U.S. 338 (1977) which held that searches for purposes of tax collection must be authorized by a search warrant if consent is not given. The court emphasized that while tax collection is a legitimate government interest, it does not override Fourth Amendment protections against unreasonable searches, and that the tax warrant does not confer the authority to search. It concluded that the search was unlawful and the evidence must be suppressed, reversing the trial court’s order and vacating the judgment.

Emergency Aid

To enter a home without a warrant, officers must have an objectively reasonable basis for believing that someone inside needs emergency assistance because they are facing serious danger; this standard does not require that officers have probable cause to believe a person is in peril.

Case v. Montana, 607 U.S. ___ (2026). The petitioner, William Case, called his ex-girlfriend J.H. and told her he was going to kill himself and that he was going to get a note for others to find. J.H. then heard a clicking sound, like the cocking of a gun. J.H. told Case she was going to call law enforcement. Case said he would shoot them all too. Finally, J.H. heard a pop followed by no additional sound, despite her yelling Case’s name. J.H. called 911 and drove as fast as she could to Case’s home. Three police officers met her there.

Officers thought the situation was serious based on what J.H. told them about the call and what they knew about Case, who had a history of alcohol abuse and mental health issues. Case had once seemed to attempt “suicide by cop,” by confronting law enforcement in a way that was likely to provoke a lethal response. Slip op. at 2. The three officers summoned the chief of police to the scene. While waiting, they circled the house, knocked on the doors and yelled into an open window. They received no response. They shone their flashlights inside and saw empty beer cans, an empty gun holster, and a notepad with writing on it. They saw no sign of Case.

After the chief arrived, the officers decided to enter the house to render emergency aid. They were unsure whether Case had shot himself and might need medical assistance or whether he remained unharmed. In the latter case, they worried their entry might spark a confrontation. So they equipped themselves with long-barrel guns and a ballistic shield. Case was hiding in an upstairs bedroom closet. When an officer came into that room, Case threw open the closet curtain and appeared from behind it, holding a black object that looked like a gun. The officer shot Case (who recovered). Another officer found a gun next to the place where Case had stood.

Case was charged with assaulting a police officer. He moved to suppress the evidence obtained as a result of the home entry, arguing that the officers violated the Fourth Amendment when they came into his house without a warrant. The trial court denied the motion and Case was convicted. The Montana Supreme Court upheld the trial court’s ruling that the entry was lawful, rejecting Case’s argument that an officer must have probable cause to believe that an occupant of a home is in need of emergency aid to enter a home without a warrant. The United States Supreme Court granted certiorari review because lower courts have differed on whether officers entering a home to provide emergency aid need probable cause to believe that an occupant is in peril.

A unanimous court in an opinion authored by Justice Kagan determined that the probable cause standard did not apply. Instead, the Court reiterated its holding from *Brigham City v. Stuart*, 547 U.S. 398 (2006), that officers may enter a home without a warrant if they have an “objectively reasonable basis for believing” that an occupant faces serious danger, holding that that standard applies “with no further gloss”. Slip op. at 1, 5. The Court reasoned that the probable cause standard is rooted in the criminal investigatory context and does not fit well in the non-criminal, non-investigatory context of an emergency aid situation. Indeed, the difficulty of mapping the criminal standard onto emergency aid cases led the Court in *Brigham City* to adopt a different approach. In adhering to the *Brigham City* standard, the Court in *Case* acknowledged the home’s status as the “first among equals” under the Fourth Amendment and noted that an emergency aid entry “provides no basis to search the premises behind what is reasonably needed to deal with the emergency while maintaining officers’ safety.” Slip op. at 9 (quoting *Florida v. Jardines*, 569 U.S. 1, 6 (2013)).

The Court found the *Brigham City* standard satisfied in *Case* because officers had an objective basis for believing that Case intended to take his own life and that he may already have shot himself. Officers knew that Case suffered from mental-health and alcohol-abuse problems and had previously talked about committing suicide. They learned about the phone call with J.H., and the concerns that the call raised were heightened by what the officers could see through Case’s windows – empty beer cans, an empty holster, and a notepad -- as well as his failure to respond to their knocking. If Case had shot himself, he could have needed immediate medical care. If he had not, the facts known to the officers provided a reasonable basis for believing the risk of suicide remained acute.

Case argued that the main risk officers objectively faced was that their entry into the home would induce a shoot-out leading to suicide-by-cop and that if the officers had not entered, nothing would have happened. The Court charged Case with oversimplifying a complex situation and stated that the objective reasonableness of an officer’s conduct is evaluated by the totality of the circumstances. While the officers knew that Case might provoke a confrontation, the Court found “no basis for thinking that the officers would have gone into Case’s home just so he could instigate a gunfight.” Slip op. at 10. Instead, the circumstances making that entry reasonable were those suggesting that Case may have already shot himself or would do so without intervention. Thus, the court concluded that the “decision of the officers to enter his home to prevent that result—even at some significant risk to themselves—was (at the least) reasonable.” Slip op. at 10.

Justice Sotomayor wrote a concurring opinion to underscore the “unique considerations that law enforcement and courts should bear in mind” when assessing whether the *Brigham City* standard is satisfied in connection with a person experiencing a mental-health crisis. Slip op. at 1 (Sotomayor, J., concurring). Those circumstances include the risk that the presence of law enforcement may escalate the situation rather than ameliorating it, putting both the occupant and officers at risk. Thus, she opined that it may not always be objectively reasonable for officers responding to a mental-health crisis to make a warrantless entry.

Justice Gorsuch wrote a concurring opinion to articulate his view that the emergency aid exception to the Fourth Amendment was tied to the common law.

For additional analysis of this case, see Jeff Welty, [Case v. Montana Attempts to Clarify the Emergency Aid Exception to the Warrant Requirement](#), N.C. Crim. L.: A UNC Sch. of Gov’t Blog (Feb. 2, 2026).

Exclusionary Rule

If the state constitution’s search and seizure provisions imply any exclusionary rule at all, it is subject to a good faith exception; *State v. Carter* is overruled.

[State v. Rogers](#), No. 37PA22 (N.C. Oct. 17, 2025) (Newby). In this New Hanover County case, an officer investigating suspected drug trafficking sought a court order allowing him to access the defendant’s cell site location information (CSLI). A superior court judge found that the officer’s application was supported by probable cause and issued the order. The CSLI revealed that the defendant traveled to California and quickly returned to North Carolina, where he was apprehended with trafficking amounts of cocaine in his vehicle. The defendant was charged with drug offenses and moved to suppress the CSLI. A superior court judge denied the motion and the defendant pleaded guilty, reserving his right to appeal.

The Court of Appeals determined the court order was supported only by reasonable suspicion, not probable cause. It ruled that this violated the defendant’s state and federal constitutional rights, and that at least as to the state constitution, no good faith exception was available in light of *State v. Carter*, 322 N.C. 709 (1988).

The Supreme Court seemingly accepted the Court of Appeals’ determination that the order was supported only by reasonable suspicion and that probable cause was required. However, it ruled that suppression was not an appropriate remedy. As to any violation of the United States Constitution, the officer reasonably relied on the court order, so the good faith exception from *United States v. Leon*, 468 U.S. 897 (1984), rendered the federal exclusionary rule inapplicable.

Turning to the state constitution, the court noted that prior to *Mapp v. Ohio*, 367 U.S. 643 (1961) (holding that the exclusionary rule applicable to violations of the United States Constitution applies to the states), there was no exclusionary rule for violations of the state constitution. In decisions after *Mapp*, though, the Supreme Court of North Carolina “began to sow seeds of confusion into our constitutional criminal procedure jurisprudence,” ultimately in *Carter* “proclaim[ing], without explanation,” that violations of the state constitution’s search and seizure provisions require suppression and that no good faith exception exists. The court viewed *Carter* as a confusing and analytically weak opinion that “did not evaluate Article I, Section 20’s text, consider the historical context, or reconcile itself with precedents expressly disclaiming any exclusionary rule other than as provided by statute.” Therefore, the Supreme Court overruled *Carter*. However, it did *not* rule that there is no exclusionary rule for violations of the state constitution. That issue was apparently not briefed by the parties and the court left it for another day. Instead, assuming *arguendo* that the state constitution does imply an exclusionary rule, the court ruled that any such exclusionary rule contains a good faith exception for the reasons set

forth in *Leon*. Therefore, the state constitution also did not require the suppression of the CSLI in this case.

Justice Earls, joined by Justice Riggs, dissented. The dissenters would have reaffirmed *Carter*, the “majestic” conception of constitutional protections that it embodied, and the values of judicial integrity and constitutional legitimacy that it promoted. They also criticized the majority’s decision not to decide whether an exclusionary rule exists for violations of the state constitution but nonetheless to establish a good faith exception to the possible rule.

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

[State v. Julius](#), No. COA25-277 (N.C. Ct. App. Feb. 4, 2026) (McDowell County) (Dillon). On May 20, 2018, police responded to the scene of a single-vehicle wreck, finding a vehicle immobilized in a ditch. The defendant, who had been a passenger, told police that the vehicle belonged to her parents and a man named Kyle had been driving. Kyle fled the scene, allegedly because he had outstanding warrants. Without a warrant, police searched the vehicle for Kyle’s identification and found illegal drugs and drug paraphernalia. They arrested the defendant and found more drugs in her backpack.

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

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

Addressing the trial court’s finding that police had probable cause for a search, Chief Judge Dillon agreed with the trial court that the trooper had probable cause to search the vehicle for evidence of Kyle’s identity. As for the good faith exception, Chief Judge Dillon stated the exclusionary rule does not apply when officers act in objectively reasonable reliance on binding precedent. Prior to the North Carolina Supreme Court’s 2023 opinion in

this case (holding the automobile exception did not apply to an immobilized vehicle), binding precedent indicated the automobile exception applied though the vehicle was undriveable. Based on its prior opinion in *State v. Corpening*, 109 N.C. App. 586 (1993), opinions from the United States Supreme Court, and opinions from several federal circuit courts, Chief Judge Dillon concluded the trooper here acted in good faith reliance on binding precedent, and the trial court did not err in denying the defendant’s motion to suppress.

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

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

Odor of Marijuana

The totality of the circumstances provided probable cause to search a vehicle. The odor of marijuana was one factor, but not the only one.

[State v. Dobson](#), No. 190PA24 (N.C. May 22, 2026) (Guilford Co.) (Earls). This case arose out of a traffic stop. Officers involved in the stop smelled (a) the odor of burnt marijuana and (b) a strong, perfumed cover scent coming from the vehicle. They also learned that multiple occupants of the vehicle had criminal records, including for drug offenses. They

searched the vehicle and found drugs, leading to criminal charges. On review, the state supreme court determined that the totality of the circumstances in this case provided probable cause to support the search. It expressly declined to resolve “whether the smell of a single odor [of marijuana] or a double odor [of marijuana and a cover scent] is sufficient to establish probable cause.”

The totality of the circumstances provided reasonable suspicion to frisk a person and probable cause to search a vehicle. The odor of marijuana was one factor, but not the only one.

[State v. Rowdy](#), No. 300PA24 (N.C. May 22, 2026) (Forsyth Co.) (Riggs). This is a companion case to [Dobson](#), summarized above. It involved (a) a warrantless frisk of the defendant’s person, under a reasonable suspicion standard, and (b) a warrantless search of the defendant’s vehicle, under a probable cause standard. Similar to Dobson, the court stated that reasonable suspicion and probable cause are assessed under the totality of the circumstances, and in this case, multiple facts supported the officers’ actions, including the odor of marijuana and also circumstances such as the defendant’s “refusal to pull over for the traffic stop, his presence in a ‘high crime area,’ his prior convictions for narcotics and weapons offenses . . . and his evasive behavior during questioning.” Because multiple incriminating factors were present, the court did not opine regarding whether the odor of marijuana alone would support reasonable suspicion or probable cause.

Capacity to Proceed

The trial court erred by proceeding to trial and entering judgment without first determining that a defendant’s competency had been restored; a new trial is required when a meaningful retrospective determination of competency is not possible.

[State v. Cooke](#), No. COA25-527 (N.C. Ct. App. Feb. 18, 2026) (Caldwell) (Gore). The defendant was charged with felony larceny and other crimes. In June 2023, a superior court judge found the defendant incompetent to proceed and ordered a follow-up evaluation. [Note: This appears to have been a determination of incapacity under G.S. 15A-1002, not an incompetency proceeding under G.S. Chapter 35A. This summary follows the language of the opinion.] In March 2024, a psychologist completed a second evaluation and issued a report indicating that the defendant was competent to proceed. However, the trial court did not adopt that report or make findings of restored competency. Nine months later, in December 2024, the defendant was tried and convicted.

On appeal, the defendant argued that the trial court’s failure to hold a new competency hearing or enter findings of restored capacity violated G.S. 15A-1002 and due process. The court of appeals agreed. Under existing precedent, an incompetency adjudication remains effective until vacated. The appellate court rejected the State’s argument that the

defendant waived the right to any further inquiry into his competence when he did not object before trial. The court explained that the constitutional right not to be tried while incompetent cannot be waived, and that an unvacated order of incompetence is, as a matter of law, substantial evidence that automatically triggers the trial court's duty to conduct a competency hearing. Thus, even if the defendant forfeited his statutory claim under G.S. 15A-1002 by failing to raise it at trial, the trial court "failed to discharge its constitutional obligation to ensure defendant's capacity to stand trial." Slip op. at 7. As to the remedy, the court vacated the defendant's convictions and ordered a new trial. The court noted that a new trial was not automatically required, but here, given the 9-month delay between the second forensic evaluation and the trial, the record did not permit a meaningful retrospective determination of the defendant's competency.

Jury Selection

Batson

Where the trial court did not afford defense counsel an opportunity to rebut the prosecutor's proffered race-neutral reasons for striking black jurors, thereby failing to conduct the third step of the *Batson* inquiry, the Mississippi Supreme Court's conclusion that the defendant waived his opportunity to rebut those reasons was unreasonable.

[Pitchford v. Cain](#), 608 U.S. ____ (2026). In 2004, Terry Pitchford, then 18, and Eric Bullins, then 16, robbed a grocery store in Grenada County, Mississippi. During the robbery, Bullins, who is black, shot and killed the store owner, a white man. Pitchford, who also is black, fired a gun too. His was loaded with rat shot, and it is disputed whether he shot at the store owner or fired his gun into the floor. Bullins reached a plea agreement with the state and received a 20-year sentence. Pitchford was charged with murder and prosecuted capitally.

During jury selection, the prosecutor used peremptory strikes against four of the five black potential jurors. Pitchford's counsel raised a *Batson* objection. The trial court asked the prosecutor for race-neutral reasons for striking each juror. The prosecutor stated that one juror had returned 15 minutes late to court, two jurors had brothers convicted of violent offenses, and the fourth, like Pitchford, was young, unmarried, and a father. The trial court declared each of these reasons to be race-neutral without affording defense counsel an opportunity to rebut those reasons as pretextual. Moreover, the trial court did not make any findings regarding whether the reasons were pretextual. Instead, it pivoted immediately to the defendant's peremptory strikes. At the close of jury selection, defense counsel again sought to raise the *Batson* issue. The trial court ended the inquiry, telling defense counsel that the objections already had been made, were "clear in the record," and announcing "the Court finds there to be no *Batson* violation." Slip op. at 3.

The empaneled jury consisted of 11 white jurors and 1 black juror. (The population of the county was 60 percent white and 40 percent black.) The jury convicted Pitchford of capital murder and sentenced him to death. Pitchford argued on appeal that the prosecutor's reasons for striking the black prospective jurors were pretextual. The Mississippi Supreme Court concluded that Pitchford had waived that argument by not making it to the trial court.

Pitchford later filed a habeas petition in federal court seeking relief under the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), which required him to establish that the state supreme court's decision involved an unreasonable application of clearly established federal law or was based on an unreasonable determination of the facts in light of the evidence. The federal district court determined that Pitchford made that showing, but the United States Court of Appeals for the Fifth Circuit reversed, concluding that the Mississippi Supreme Court's waiver finding was reasonable. The United States Supreme Court granted certiorari review and, in a five to four opinion authored by Justice Kavanaugh, reversed the judgment of the Fifth Circuit.

The *Pitchford* Court opened its opinion by reciting the Court's holding in *Batson v. Kentucky*, 476 U.S. 79 (1986): The Equal Protection Clause bars prosecutors from exercising peremptory challenges based on race. In *Batson* and its progeny, the Court has spelled out how a trial court should determine whether a prosecutor has run afoul of this rule. The defendant must first make a prima facie showing that a peremptory strike was based on race (step one). The prosecutor must then provide a race-neutral reason for the challenged strike (step two). Then, defense counsel must be provided an opportunity to rebut the prosecutor's reason as pretextual, and the trial court must decide whether the race-neutral reason is pretextual in light of all the evidence (step three).

The *Pitchford* Court agreed with the U.S. District Court below that the trial court erroneously omitted *Batson*'s third step. The trial court did not afford Pitchford's counsel a sufficient opportunity to rebut the prosecutor's proffered race neutral reasons for striking the black jurors and did not determine whether the stated reasons were pretextual. Moreover, the Court held that the Mississippi Supreme Court's conclusion that Pitchford waived his opportunity to rebut the prosecutor's proffered race-neutral reasons was unreasonable. The Court noted that Pitchford's counsel raised the *Batson* issue again at the close of jury selection and the trial court explicitly assured trial counsel that the *Batson* objection was preserved.

The Court repeated its admonishment from *Flowers v. Mississippi*, 588 U.S. 284 (2019), in which it held that the trial court committed clear error in concluding that the prosecutor's peremptory strike of a black prospective juror was not motivated in substantial part by discriminatory intent, again noting that:

"America's trial judges operate at the front lines of American justice," and "the job of enforcing *Batson* rests first and foremost with trial judges."

Slip op. at 6. (internal citations omitted).

Notably, the prosecutor and trial judge in *Pitchford* were also the prosecutor and trial judge in *Flowers*. See Amy Howe, [Supreme Court sides with death row inmate in challenge to racial discrimination in jury selection](#), SCOTUSblog (May. 28, 2026, 1:18 PM).

Justice Gorsuch, joined by Justices Thomas, Alito, and Barrett, dissented. The dissent would have concluded that *Pitchford* failed to satisfy the high bar required to secure federal habeas relief under the AEDPA. The dissent reasoned that neither Mississippi's preservation rules for *Batson* claims nor its application of that rule departed from federal precedent. Moreover, it did not view the Mississippi Supreme Court's waiver holding as resting on an unreasonable reading of the trial record.

The trial judge did not err by finding no *prima facie* case in connection with a *Batson* challenge; step one of the *Batson* analysis was not moot simply because the prosecutor volunteered race-neutral reasons for peremptory challenges.

[State v. Wilson](#), No. 307PA23 (N.C. Oct. 17, 2025) (Berger). In this Cleveland County case, the defendant was charged with murder and other offenses after he shot and killed a woman and her young son and shot and wounded another person. During jury selection, the State used peremptory challenges on two Black jurors. The defense raised a *Batson* challenge and the prosecutor quickly explained that the first strike was due to the juror knowing a member of the defendant's family and the second was due to the juror yawning and not being attentive during jury selection. The trial court found no *prima facie* case of racial discrimination. The defendant was convicted and appealed.

A divided Court of Appeals ordered a remand for a new *Batson* hearing. The majority concluded that the discussion of the reasons for the prosecutor's strikes rendered moot the first step of the *Batson* analysis, which considers whether the defendant has made a *prima facie* case, and advanced the matter to the third step of the analysis, which considers whether the defendant has carried his or her burden of showing purposeful discrimination. Because the trial court nonetheless purported to rule on the first step third step, a remand was required for the trial judge to address the third step.

The Supreme Court reversed the Court of Appeals. It emphasized that step one, concerning the existence of a *prima facie* case, is not moot simply because a prosecutor offers race-neutral reasons for strikes. It is moot only when the trial court "rules on the ultimate question of intentional discrimination." Here, the court ruled only on step one. Although the trial judge asked whether the State wanted "to be heard" on the *Batson* issue and the prosecutor responded by giving race-neutral reasons for the strikes, the judge's inquiry was properly seeking input on step one, and the prosecution's decision instead to comment on later steps in the process did not lead the court to go beyond step one in its ruling.

Justice Earls, joined by Justice Riggs, dissented. The dissenters would have affirmed the Court of Appeals. They noted that after the State offered its race-neutral reasons, the trial judge – in addition to stating that there was no *prima facie* case – also made comments echoing or seemingly endorsing at least some of the State’s race-neutral reasons, such as when the court stated that it had noted the demeanor of the yawning juror and “was concerned about her.”

Confrontation Clause

(1) In aggravated death by distribution, the State need not prove that cocaine alone caused death where the evidence showed the cocaine worked in concert with other drugs; (2) the statute does not require the defendant to have distributed the controlled substance directly to each victim; (3) expert testimony based on certified toxicology reports does not violate confrontation principles where the testifying expert reviews and independently approves machine generated data; (4) a defendant waives appellate review of evidentiary error he invited by eliciting the challenged testimony.

[State v. Wise](#), No. COA25-683 (N.C. Ct. App. June 3, 2026) (Collins). The defendant was convicted of multiple drug offenses, including two counts of aggravated death by distribution, after selling cocaine that contained fentanyl to a group of users, two of whom later died from multi-drug toxicity. The evidence showed the victims ingested cocaine from a batch supplied by the defendant and died shortly thereafter; post-mortem testing revealed the presence of cocaine, fentanyl, and alcohol. The trial court denied the defendant’s motion to dismiss the aggravated death charges, and the defendant also challenged the admission of expert toxicology testimony by two experts.

On appeal, the defendant argued the State failed to establish that cocaine was the proximate cause of the deaths. The Court rejected this argument, emphasizing that the aggravated death by distribution statute defines a “certain controlled substance” to include mixtures of substances such as cocaine and opioids. The Court held the State was not required to prove that cocaine alone caused the deaths where the evidence showed the drugs acted “in concert” to produce fatal multi-drug toxicity. Viewing the evidence in the light most favorable to the State, including testimony that the cocaine sold by the defendant contained fentanyl, the Court concluded there was sufficient evidence for a jury to find proximate cause. The defendant also argued the State failed to prove distribution to one of the victims. The Court rejected this argument, clarifying that the statute requires proof that the defendant unlawfully sold a qualifying controlled substance, not that it was sold directly to each victim. Evidence that the defendant supplied the cocaine consumed by the group, combined with testimony connecting the defendant to the transaction, was sufficient.

Turning to the evidentiary issues, the defendant argued that admission of the State’s toxicology expert testimony violated the Confrontation Clause because the underlying testing was performed by a non-testifying analyst. The Court disagreed, explaining that

machine-generated toxicology data are not testimonial, and an expert may render an independent opinion based on such data if the expert reviews and certifies the results. Because the testifying expert reviewed, approved, and certified the toxicology reports and was subject to cross-examination, her testimony did not constitute impermissible surrogate testimony. The Court further held that the defendant waived any challenge to the admission of his own expert's testimony under the invited error doctrine, as he elicited that testimony at trial. Finally, even assuming any error, the Court found no plain error in light of the substantial evidence of guilt, including eyewitness testimony, forensic evidence, and the defendant's admissions. The Court found no error in the denial of the motion to dismiss, no plain error in the admission of the State's expert testimony, and dismissed the remaining evidentiary challenge.

Confrontation violation where surrogate expert testimony offered on blood alcohol concentration.

[State v. Holt](#), COA25-560 (N.C. Ct. App. May 20, 2026) (Wake County) (Griffin). The defendant was convicted of driving while impaired after trial in superior court. On appeal, he argued that his confrontation rights were violated when an expert in forensic chemistry and forensic toxicology testified as to the defendant's blood alcohol concentration. The expert did not perform the analysis and was not involved in the testing, but rather conducted a technical and administrative review of the testing expert's work (the testing expert had retired).

The Court of Appeals agreed with the defendant. Under *Smith v. Arizona*, 602 U.S. 779 (2024), when an expert relies on the work of another expert in forming an opinion and the testifying expert is effectively a "mouthpiece" for the expert who conducted the analysis, the testimony is hearsay, since the underlying conclusions of the analyzing expert are being offered for the truth of the matter asserted. The court distinguished between analysis based on purely machine-generated processes (a machine cannot offer testimonial statements), and analysis involving human actions not revealed in machine-produced data. In the present case, where the blood analysis involved human observation of the sample for "possible clotting, fermentation, pipetted bubbles, or homogeneity in the blood sample, confirmation of the sample's sufficient blood volume, and examination of packaging mistakes or vial leaks," the defendant was denied the opportunity to probe the testing expert's work when the reviewing expert took the stand as a surrogate. Furthermore, the statements were testimonial given that the analysis was conducted at the Wake City-County Bureau of Identification solely to further the police investigation. As the confrontation violation was not harmless beyond a reasonable doubt, the error was prejudicial and the defendant received a new trial.

(1) In the absence of other record evidence, the trial court did not err in allowing a substitute expert to testify to independent conclusions based on photographs; (2) the trial court did not err in allowing a witness to testify about the victim’s credibility after the defendant opened the door.

[State v. Phillips](#), No. COA25-864 (N.C. Ct. App. May 6, 2026) (Buncombe County) (Flood). The defendant was convicted at a jury trial of first-degree kidnapping, assault by strangulation, and other crimes based on his attack on his wife, Pearl, in their home. He beat her with a cane until the cane broke, tried to stab her with the broken pieces of it, strangled her, and threatened to kill her. When first responders arrived at the house, Pearl initially told them she had fallen down the stairs, because she was afraid of what was going to happen to her infant son with the defendant still inside the house. However, once she learned that her son was safe in DSS custody, she told first responders about the defendant’s attack on her. At the hospital, Pearl underwent an examination by a Sexual Assault Nurse Examiner (SANE), Tanailly Smith. Nurse Smith took over 140 photographs and wrote a report stating that Pearl’s responses and visual signs of injury were consistent with manual strangulation.

Over a year later, when the case came to trial, Nurse Smith was unavailable because she moved to Florida. The State called her supervisor, Nurse Maillet, to testify regarding Pearl’s injuries. Nurse Maillet, who was qualified as an expert in forensic nurse examination and strangulation assessment, testified that she had independently reviewed Nurse Smith’s report, including charting, photographs, and other documentation, and reached her own conclusions about the incident. The defendant objected, asserting that Nurse Maillet’s conclusions were based on the observations of another person who was not present in court. The trial court overruled the objections and allowed Nurse Maillet to testify and allowed admission of Nurse Smith’s examination report. Nurse Maillet testified that based on her independent review of the report, including the photographs, charts, and statements from Nurse Smith, there was evidence of manual strangulation and that Pearl’s injuries were consistent with her description of the attack.

The State also called Detective Burns, whose testimony indicated some inconsistencies in Pearl’s prior statements as to whether she had ever used methamphetamine. Based on those inconsistencies, defense counsel asked Detective Burns on cross examination whether he had any concerns about her truthfulness. Detective Burns replied that he did not. On redirect, the State asked Detective Burns if, based on his interview of Pearl, he believed that she had been assaulted by the defendant and believed what she was saying at trial. He replied that he “100 percent did.” The defendant did not object. The defendant was convicted on all charges and sentenced to two consecutive terms of imprisonment.

On appeal, the defendant argued (1) that the trial court erred or plainly erred under the Confrontation Clause by allowing a substitute expert witness to testify regarding Pearl’s

hospital examination, and (2) plainly erred by allowing Detective Burns to vouch for Pearl's credibility.

As to the confrontation issue, the Court of Appeals determined that the defendant's trial objections preserved the issue for de novo appellate review. The court explained that, under *Smith v. Arizona*, 602 U.S. 779 (2024), the Confrontation Clause is implicated when a surrogate expert's testimony is based on testimonial hearsay statements contained in lab reports or notes prepared by a different analyst, but not violated when the testifying expert's opinion is the product of their own independent observation and analysis of objective data that does not itself depend on the absent analyst's credibility or skill. The court had previously applied that understanding of the law in *State v. Ball*, 282 N.C. App. 151 (2024), concluding that a substitute expert may testify as to testing completed by another expert if the information is reasonably relied upon by experts in the field, and the substitute expert presents an independent opinion based on his or her own analysis of that information.

Applying the law as understood after *Smith v. Arizona* and *State v. Ball* to the facts here, the court concluded that the trial court did not err in allowing Nurse Maillet's testimony about her independent opinion formed after review of the many photographs taken by Nurse Smith. The court noted that Nurse Smith's actual report and Nurse Maillet's written opinion based on that report were not in the record on appeal, and the court was therefore unable to discern whether any of Nurse Smith's *statements* were being offered for their truth through Nurse Maillet in violation of the Confrontation Clause. In the absence of any record indicating that they were, the court held that the trial court did not err in allowing Nurse Maillet's testimony. The court added that even if some portion of Nurse Maillet's testimony was admitted in error, that any such error was harmless in light of other competent and overwhelming evidence of the defendant's guilt.

The court emphasized that its holding is limited to cases in which the *underlying data* relied upon by the out-of-court expert—like the photographs here—can be independently examined by the testifying expert, who is subject to cross examination. The court distinguished cases where the testifying expert relies on the truth of the absent expert's *statements*. The court specifically noted that in the context of drug analysis or DNA testing, where the accuracy of the results depends on whether the absent expert properly applied his or her specialized skill and training, the "truth" of those results cannot be verified without cross examination of the person who performed the tests.

As to the improper vouching issue, in the absence of a trial objection, the court reviewed for plain error. The court concluded that the trial court did not err, much less plainly err, in allowing Detective Burns to testify as to whether he believed Pearl's story, because the defendant opened the door for the detective to comment on her credibility. Defense counsel was the first to question Detective Burns on the believability of Pearl's story by illustrating inconsistencies about her prior statements to law enforcement regarding drug

use and the extent of her injuries. The court concluded the State was thereafter permitted to offer rebuttal testimony.

Evidence

Authentication

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

[State v. Leggett](#), No. COA25-288 (N.C. Ct. App. Jan. 7, 2026) (Wake County) (Griffin). The State’s evidence showed that the defendant repeatedly drugged his wife, had sex with her while she was unconscious, and recorded it. She discovered the recordings on one of his devices and emailed them to herself, then contacted police. He was charged with, and convicted of, rape and other offenses.

(1) The recordings were sufficiently authenticated and properly admitted. Under N.C. R. Evid. 901(b)(4), evidence may be authenticated by its “appearance” and “distinctive characteristics.” Here, the victim recognized the appearance and characteristics of herself, the defendant’s hands and penis, and the room in which the sexual assaults took place. Further, she discovered the videos in the defendant’s email account. Although there was no testimony about the accuracy or functioning of the recording device, such testimony is not the only way to authenticate a recording. Further, although some questions arose at trial about the exact time at which the videos were transferred to a police drive, and about the security of the chain of custody, the defendant provided no reason to believe that the recordings had been altered or were inaccurate. The questions therefore went to weight, not admissibility.

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

Rule 404(b)

In a murder case in which the defendant claimed self-defense, the trial judge erred by excluding under Rule 404(b) evidence that the decedent had a prior felony conviction and the defendant knew it.

State v. Hague, No. 225A24 (N.C. May 22, 2026) (Iredell Co.) (Riggs). The defendant and the eventual decedent, Thomas Cass, had several arguments about Cass's hunting on property near the defendant's horse rescue farm. The hunting spooked the defendant's horses, one of which had previously been shot and injured by hunters. Cass appeared to view the defendant as a meddling busybody. Things came to a head during a hunt in 2020. The defendant confronted Cass, who pushed the defendant, age 71, to the ground. The defendant was able to get up. According to Cass's friends, the defendant immediately drew his pistol and shot Cass. According to the defendant, he fired only after he saw Cass reaching into his vest pocket, causing the defendant to fear that Cass was going to draw his own gun.

The defendant was charged with, and convicted of, first-degree murder. A divided Court of Appeals ordered a new trial, finding multiple errors. The State sought further review in the Supreme Court of North Carolina. The high court agreed with the Court of Appeals that the trial judge erred in excluding evidence that Cass had previously been convicted of a felony and that the defendant knew it.

The evidentiary issue arose when the State filed a motion in limine to exclude the evidence as irrelevant. The defendant responded that it was pertinent because it helped show that it was reasonable for him to fear that Cass was going to shoot him. The trial judge ruled for the State, apparently in reliance on **Rule 404(b)**, which prohibits the admission of evidence of a person's "other crimes, wrongs, or acts . . . to prove the character of a person in order to show that he acted in conformity therewith."

The Supreme Court of North Carolina ruled that the evidence was not subject to exclusion under Rule 404(b) because the evidence served a purpose other than showing Cass's propensity to engage in misconduct. It was "relevant to the defendant's state of mind" that Cass was a felon who was willing to flaunt the gun laws by possessing a firearm in the course of hunting.

The court further determined that the exclusion of this evidence was prejudicial. The defendant's state of mind and the reasonableness of his conduct were at the heart of the case. Therefore, the court ordered a new trial. It declined to address a second alleged error, the trial court's refusal to give a stand your ground jury instruction in the case. Justice Barringer, joined by Justice Allen, wrote separately to express the view that the defendant's possession of a handgun – which he said he carried routinely – was not alone sufficient evidence of premeditation.

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

[State v. Braswell](#), No. COA25-286 (N.C. Ct. App. Jan. 21, 2026) (Carpenter), *temp. stay allowed*, (N.C. Feb. 10, 2026). The defendant was tried in Johnston County for taking indecent liberties with a child. The trial was based primarily on the complainant’s testimony describing inappropriate touching that occurred when she was alone with the defendant at his RV park, followed by a delayed disclosure to friends and family and subsequent law-enforcement/forensic interviews. At trial, defense counsel cross examined the complainant on alleged inconsistencies across her trial testimony, interviews, and written narrative. Defense counsel also suggested a possible bias based on the defendant’s having reported the complainant’s mother for drug use. Over the defendant’s objection, the trial court permitted the State to then call five witnesses to testify that the complainant had a strong reputation for truthfulness. These witnesses were the defendant’s daughter, the defendant’s wife, the complainant’s friend, and two church leaders. The jury convicted the defendant, and he was sentenced to between twenty and thirty-three months in prison.

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

Crimes

Assaults

Assault on a female is a general intent crime, and the State need not prove that the defendant specifically intended to assault a female victim.

State v. Horton, No. COA25-888 (N.C. Ct. App. May 6, 2026) (Guilford County) (Griffin). The defendant contacted a locksmith to create a key for his vehicle. When he met the locksmith to get the key, he sprayed pepper spray and took the key without paying. The pepper spray hit the locksmith and the locksmith's young daughter, who was in his truck. The defendant was convicted at a jury trial of common law robbery and assault on a female. On appeal, the defendant argued that the trial court erred in denying his motion to dismiss the assault on a female charge because he did not know anyone other than the locksmith was in the truck. The Court of Appeals disagreed, concluding that assault on a female is a general intent crime, and the State need not prove that the defendant acted with the specific intent to assault a female victim, only that he intended to spray someone. The defendant's conviction was therefore affirmed.

Firearms Offenses

The trial court erred in dismissing the charge of possession of a firearm by a felon under G.S. 14-415.1 as the statute was not unconstitutional as applied to the defendant under either the federal or state constitution.

State v. Williams, No. COA25-38 (N.C. Ct. App. Oct. 15, 2025) (Arrowood), *temp. stay allowed*, (N.C. Nov. 4, 2025). In this Forsyth County case, the Court of Appeals took up the State's appeal after the trial court dismissed a charge of possession of a firearm by a felon under G.S. 14-415.1 on the grounds that the statute was unconstitutional as applied to the defendant under both the federal and state constitutions.

The defendant was charged after authorities stopped his vehicle in 2023 and found a gun at the bottom of a bag, as well as a folded dollar bill in the defendant's pocket with trace amounts of cocaine. The defendant had previously been convicted of seven felonies between 2000 and 2005 relating to possession or sale of cocaine and possession of a firearm by a felon. In addition, the defendant had been convicted of seven misdemeanors between 2004 and 2014, including violation of a DV protective order and communicating threats.

The Court of Appeals first considered defendant's challenge under the United States Constitution. The court reviewed the history of various tests applied by the United States Supreme Court and the Fourth Circuit to determine whether a regulation unconstitutionally restricts conduct protected under the Second Amendment. The court

began with *District of Columbia v. Heller*, 554 U.S. 570 (2008), and traced the evolution of the test through *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 597 U.S. 1 (2022), and *United States v. Rahimi*, 602 U.S. 680 (2024). *Bruen* established a test that originally derived from *Heller*: “When the Second Amendment’s plain text covers an individual’s conduct, the Constitution presumptively protects that conduct. The government must then justify its regulation by demonstrating that it is consistent with the Nation’s historical tradition of firearm regulation.” The court also stressed language in cases such as *Heller*, *Rahimi*, and *Hamilton v. Pallozzi*, 848 F.3d 614 (4th Cir. 2017), supporting the proposition that felon in possession of firearm statutes are presumptively lawful without the need for case-by-case inquiry into whether a particular felon may be barred from possessing firearms. The court related the Fourth Circuit’s reasoning in *United States v. Hunt*, 123 F.4th 697 (4th Cir. 2024), that the “pre-existing right codified in the Second Amendment protects firearms possessed by the law-abiding, not by felons.” *Id.* at 705. *Hunt* (and *Rahimi*) also considered historical examples supporting “categorical disarmament” of people who committed felonies. *Id.* at 706.

After discussing the above series of federal cases as the “necessary superstructure” for analyzing a Second Amendment matter, the court proceeded to note a conflict between prior state cases addressing G.S. 14-415.1. The Court of Appeals in *State v. Fernandez*, 256 N.C. App. 539 (2017), determined that the defendant fell outside of the class of “law abiding, responsible citizen[s]” protected by the Second Amendment, *id.* at 546-47 (note that *Fernandez* applied a two-step analysis used by federal courts before *Bruen* was decided). In contrast, the Court of Appeals in *State v. Sanes*, 297 N.C. App. 863 (2025), held that the defendant’s conduct was covered by the plain text of the Second Amendment as G.S. 14-415.1 revokes an individual’s right to keep and bear arms following a felony conviction (the *Sanes* Court nonetheless determined that the defendant’s challenge failed given the sufficient historical tradition of disarming felons and the defendant’s history of violence).

The Court of Appeals resolved this conflict by reference to caselaw governing the “rare situation” in which “two lines of irreconcilable precedent develop independently- meaning the cases never acknowledge each other or their conflict.” See *State v. Gonzalez*, 263 N.C. App. 527, 531 (2019). The court stated it was authorized by the Supreme Court to “follow the older of the two cases and reject the more recent precedent.” *Id.* The court thus concluded that the Second Amendment does not presumptively protect possession of firearms by felons and that the defendant was unable to establish that he is a “law-abiding citizen” protected by the Second Amendment. As the defendant could not pass the first step of the *Bruen* test, the court did not address the second step. The court concluded that the trial court erred in dismissing the charge as unconstitutional under the federal constitution as applied to the defendant.

The Court of Appeals next considered the defendant’s challenge under the North Carolina Constitution (Art. I Sec. 30). The court set forth the five-factor test to guide analysis for such as-applied challenges under *Britt v. State*, 363 N.C. 546, 550 (2009): (1) the type of

felony convictions, particularly whether they involved violence, (2) the remoteness in time of the felony convictions, (3) the felon’s history of law-abiding conduct since the crime, (4) the felon’s history of responsible, lawful firearm possession during a time period when possession of firearms was not prohibited, and (5) the felon’s assiduous and proactive compliance with the 2004 amendment. The court distinguished between the defendant in *Britt*, who had been convicted of one felony count of possession with intent to sell and deliver a controlled substance 20 years prior, had no history of violence, and had a lengthy post-conviction history of respect for the law as well as 17 years of responsible, lawful firearm possession, with the defendant in *State v. Whitaker*, 201 N.C. App. 190, 206 (2009), who showed a “blatant disregard for the law” based on several misdemeanor convictions and three felony convictions, and who had acquired guns after the 2004 amendment that prohibited him from possessing them. The court reviewed the defendant’s history and conduct in the case at bar and concluded that the facts were much closer to those in *Whitaker* rather than *Britt*. The court thus concluded that the trial court erred in dismissing the charge as unconstitutional under the state constitution as applied to the defendant.

Thus, the Court of Appeals vacated the trial court’s order dismissing the charge and remanded the matter.

Indecent Liberties

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

[State v. Calderon](#), No. 238A23 (N.C. Dec. 12, 2025) (Wake County) (Riggs). The defendant was found guilty after a jury trial of three counts of taking indecent liberties with a child based on three acts occurring on the same day: kissing the victim on the neck outside a van, kissing the victim on the mouth inside the van, and kissing the victim on the mouth again inside the van approximately six to seven minutes later. On appeal, the Court of Appeals reversed the judgment in part, concluding over a dissent that the kisses inside the van were “touchings” and not “sexual acts,” and that they were not sufficiently distinct under a test for such acts established in *State v. Sellers*, 253 P.3d 20 (Kan. 2011), a Kansas case. The dissent would have found that the defendant committed three separate and distinct acts, and that he was thus properly convicted and sentenced for all three.

The Supreme Court reversed the Court of Appeals. First, the court concluded that the Court of Appeals erred in its threshold inquiry of whether the defendant committed a touching or a sexual act. The distinction is not supported by G.S. 14-202.1, and in fact neither type of act is required to convict a defendant of indecent liberties with a child.

Second, the court concluded that the Court of Appeals erred by applying its four-factor *Sellers* test for determining the number of counts of indecent liberties applicable to a series of non-sexual acts. The court explained that the proper test—regardless of the particular acts in question—is the “distinct interruptions” test set out in *State v. Dew*, 379 N.C. 64 (2021). Applying that test, the court held that the trial court did not err by imposing sentences for three convictions. The six-to-seven-minute gap between the two kisses inside the van was a sufficiently distinct interruption to give the defendant an opportunity to reconsider and choose not to offend, and thus supported one conviction for each act.

Obstruction of Justice

(1) Obstruction of justice does not require as an element that the defendant actually succeed in preventing officers from finding evidence; (2) felony cruelty to animals requires actual knowledge of an animal’s presence to satisfy the crime’s malice element.

[State v. Ford](#), No. 31A24 (N.C. Dec. 12, 2025) (Buncombe County) (Riggs). The facts of this case arose from an encounter between the defendant, owner of an event rental business, and a person named Alex McPherson. Mr. McPherson was known around Asheville as the “Cat Man” because he was often seen with his cat, Thomas, who sometimes rode in a stroller. Witnesses saw the defendant drive his work truck into the stroller, scaring the cat. When officers investigated the incident, the defendant told them he “had no clue” who was driving the truck and did not share documentation showing truck assignments for the day in question, even though documentation for every other day from that timeframe was still in the office recycling bin. Officers eventually found the day’s schedule through a search of the defendant’s phone. The defendant was tried for felony obstruction of justice and felony cruelty to animals. The trial court trial court denied the defendant’s motions to dismiss the charges and the jury found him guilty of both crimes.

On appeal, the Court of Appeals affirmed the convictions over a dissent. As to the animal cruelty charge, the court deemed the evidence adequate to support the conclusion that the defendant “knew or should have known” that the McPherson had a cat with him in the stroller.

The Supreme Court affirmed the Court of Appeals, concluding that the trial court did not err in denying the defendant’s motions to dismiss. As to the obstruction of justice charge, the court noted that disposal or destruction of a document sought by law enforcement can constitute obstruction of justice even when officers succeed in obtaining it by other means. In other words, the defendant’s “success” in actually obstructing justice is not an element of the offense. Additionally, the existence of a standard business practice of discarding documents did not foreclose the possibility that the defendant intentionally obstructed justice in this case. That documentation from other days was still in the recycling bin supported the inference that the spreadsheet from the particular day in question was disposed of irregularly and outside of standard practices.

As to the felony cruelty to animals charge, the Supreme Court noted that the Court of Appeals misstated the intent element of the offense to the extent that it said it could be satisfied if the defendant “should have known” that the cat was in the stroller. The crime requires malice as an element, malice requires intentionality, and intentionality in turn requires actual knowledge. Notwithstanding the Court of Appeals’ misstatement, the Supreme Court affirmed, concluding that the State presented sufficient circumstantial evidence that the defendant actually knew Thomas the cat was in the stroller.

Justice Berger concurred, writing separately to clarify that the burden required for the State to survive a motion to dismiss for insufficient evidence is “more than a scintilla of competent evidence,” which, he said, is “not a high bar.”

Right to Counsel

Forfeiture

The trial court did not err by concluding that the defendant forfeited his right to counsel.

[State v. Webber](#), No. COA25-613 (N.C. Ct. App. Feb. 18, 2026) (Union) (Collins). The defendant was arrested in October 2018 and charged with multiple felony offenses. He was assigned Attorney #1 as counsel. In July 2019, the case was delayed to await possible federal charges. Two years later, in August 2021, when the case was set for trial, the defendant made a request for a new lawyer, which the trial court granted. The court appointed Attorney #2.

Four months later, in December 2021, the defendant again asked for a new attorney. The court appointed Attorney #3.

The case came on for trial in October 2022. The defendant again asked for another attorney. The trial court gave the defendant time to speak with Attorney #3, directing them to a room outside the courtroom for privacy. After that 23-minute meeting, during which the defendant could be heard screaming at the lawyer, Attorney #3 moved to withdraw based on a breakdown in communication. After extensive discussion and review of the record, the trial court appointed Attorney #4.

The case came on for trial in October 2023, at which point the defendant informed Attorney #4 that he had retained Attorney #5. The case was continued to November 2023, but Attorney #5 did not appear. The case was continued again to March 2024. At that point, it was relayed that Attorney #5 was facing criminal charges herself. The trial court set an admin session in July 2024 and an August 2024 trial date, warning the defendant that he needed to be present with Attorney #6 in July to be ready for trial.

In July 2024, the defendant appeared alone and said he had not been able to hire Attorney #6. In August 2024, the defendant again appeared without a lawyer. After hearing an extensive review of the case history and reviewing the file, the trial court concluded that the defendant had forfeited counsel based on hiring and firing lawyers to delay the proceedings for over five years. The trial court also concluded that the defendant waived counsel by conduct by engaging in continued dilatory tactics after being warned. The trial court therefore ordered the defendant to represent himself. He was found guilty of six crimes.

On appeal, the court of appeals found no error, concluding that the defendant's egregious conduct supported the trial court's finding of forfeiture. In addition to the long passage of time in the case, the court noted that three of the first four attorneys were fired or conflicted out on the day the case was called for trial, showing the defendant's intent to delay. The court also deemed the defendant's accusations that his prior lawyers were lying to be frivolous. The court concluded that the defendant's actions made representation impossible and sought to prevent a trial from happening at all.

Having concluded that the defendant forfeited his right to counsel, the court did not address the issue of waiver by conduct.

(1) The trial court properly concluded that the defendant forfeited his right to counsel; (2) the trial court erred in holding the defendant in direct criminal contempt where the defendant was not given a summary opportunity to respond the day he was held in contempt; though he was given an opportunity to respond the following day, summary proceedings were no longer appropriate and plenary proceedings should have been initiated.

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

At sentencing, the defendant expressed his desire to appeal and requested transcripts of the proceedings. He then stated to the court, "I'll see you in federal court, bucko." The court deemed the statement a threat and imposed a 30-day sentence for contempt of

court. A back-and-forth ensued with the defendant responding, “add it up, bro,” and asking for “more,” and the court imposing five additional consecutive 30-day sentences for direct contempt. The court revisited the matter the following day while correcting a sentencing error arising from the trial convictions. The court stated that it had not “decided in final” how to handle the contempt matter and was giving the defendant an opportunity to be heard. The defendant stated he did not intend to threaten the court and was just trying to exercise his right to appeal. However, the trial court concluded that the six consecutive sentences for contempt were justified based on the defendant’s willfully interrupting court proceedings and disrespecting the authority of the court. Approximately one month later, the court *sua sponte* modified the contempt sentences, consolidating the six sentences into one 30-day sentence.

On appeal, the defendant challenged two aspects of the proceedings: (1) the trial court’s conclusion that the defendant forfeited his right to counsel, and (2) the trial court’s holding the defendant in direct criminal contempt. As to the forfeiture, the court concluded that the defendant willfully delayed and obstructed court proceedings, causing three different attorneys to withdraw from representation. The court stressed the defendant’s demands that counsel file “baseless motions” and “causes of action improper under the law.” The defendant also interrupted and disrupted proceedings during the forfeiture hearing. The Court of Appeals held that the trial court properly concluded that the defendant had forfeited his right to counsel.

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

There was no Harbison error where (1) the defendant agreed to allow counsel to concede both elements of possession of a firearm by a felon, and (2) counsel did not fully concede the defendant's guilt, though counsel did not argue the defendant's innocence.

[State v. Nunnally](#), No. 216A25 (N.C. May 22, 2026) (Durham Co.) (Berger). This case began when the defendant assaulted his ex-girlfriend, struck her with a gun, then fired shots at her and at her uncle, missing both. He was charged with being a felon in possession of a firearm and with two counts of assault with a deadly weapon with intent to kill.

Prior to trial, the defense stipulated that the defendant had a prior felony conviction. The judge noted that the stipulation “basically does admit an element of the [firearm] offense,” and asked the defendant if he agreed with the stipulation. He said yes. During trial, defense counsel asked for another inquiry under [State v. Harbison](#), 315 N.C. 175 (1985), because “there may be a point in the trial when the defense may admit [defendant] actually possessed the firearm.” The defendant stated that counsel had his permission to do so.

During closing, defense counsel “almost exclusively argued that the intent element necessary to convict on assault with a deadly weapon with intent to kill was not satisfied.” Counsel “did not explicitly argue the elements of possession of a firearm by a felon or otherwise ask the jury to find defendant not guilty of that charge.” In describing the facts, counsel acknowledged, and did not dispute, witness testimony that the defendant had a gun and pulled the trigger. Counsel’s argument apparently was persuasive. The jury found the defendant guilty of being a felon in possession of a firearm, but as to the assault charges, convicted him only of two counts of misdemeanor assault with a deadly weapon.

The defendant appealed, asserting per se ineffective assistance of counsel under [Harbison](#) on the theory that the record did not show his consent to what he saw as counsel’s admission of guilt to the gun charge. A majority of the Court of Appeals saw merit in the argument, ordering a remand for a hearing on “whether defendant understood the consequence of the concession of the second element” of the crime. Judge Murry dissented, the State appealed, and the state supreme court granted review.

The defendant argued that “even though the record reveals his consent to the separate concession of both elements of the charge, it does not show his appreciation and understanding that such concessions equated to an admission of guilt.” The Supreme Court disagreed, determining that the defendant consented to any admission of guilt made by his attorney, because “the stipulations [the defendant] agreed to on the record match counsel’s purported concessions to the jury, and . . . the purported concessions were not made to the surprise of defendant.”

Furthermore, the majority concluded that defense counsel did not concede the defendant's guilt. It acknowledged that *State v. McAllister*, 375 N.C. 455 (2020), extended *Harbison* to apply to "implied concessions" of guilt, including circumstances where counsel conspicuously fails to argue the defendant's innocence of a charged offense. However, the court ruled that in this case, "counsel did not explicitly or implicitly concede guilt." The parties agreed that there was no explicit concession, but the defendant saw an implicit concession in counsel's refusal to argue his innocence of the gun charge, and counsel's apparent embrace or acknowledgement of witness testimony that the defendant had a gun and fired it. The majority ruled otherwise, noting that counsel used "hypothetical language" to argue that a person (not necessarily the defendant) could point a gun at another person without intending to kill them. The court saw counsel's argument as properly preserving counsel's credibility with the jury while refraining from "specify[ing]" that the defendant was guilty of the gun offense.

Chief Justice Newby concurred, writing separately to express his view that the per se prejudice rule of *Harbison* "has been undermined by the United States Supreme Court" in *Florida v. Nixon*, 543 U.S. 175 (2004). Therefore, he reasoned, in an appropriate future case, the state supreme court should "realign [its] Sixth Amendment [ineffective assistance of counsel] jurisprudence" to follow the test set forth in *Strickland v. Washington*, 466 U.S. 668 (1984) (holding that a defendant asserting ineffective assistance of counsel must show both (a) unreasonably deficient performance and (b) prejudice).

Justice Riggs dissented, joined by Justice Earls. In the dissenters' view, counsel did implicitly concede the defendant's guilt of the firearm offense. They further opined that "the record does not clearly establish that [the defendant] knowingly consented to the second element of the possession of a firearm by a felon offense," based on what they saw as a somewhat confusing and disjointed colloquy on that point. Therefore, they would have affirmed the Court of Appeals.

No *Harbison* error where defense counsel merely reminded jury of option to convict on lesser included offense; defense counsel was not ineffective for failing to file a motion to suppress where search warrant was supported by probable cause; state's closing argument was not grossly improper.

[State v. Mercer](#), COA25-646 (N.C. Ct. App. Mar. 4, 2026) (Wilson County) (Murry). The defendant was convicted of assault inflicting serious bodily injury and false imprisonment after a jury trial. The defendant was in a "crazy rollercoaster" relationship with the victim, his girlfriend of four years. The evidence showed that the defendant demanded that the victim clean his room after she returned home from a sobriety meeting. The defendant became angry and threw her against a wall. He later pulled her off the bed while she was sleeping, causing her to fracture her right shoulder. He also stomped on her broken shoulder and her stomach, causing her to lose control of her bowels and defecate. She escaped to a gas station across the street.

During closing arguments, defense counsel contended that the state had failed to meet its burden as to first-degree kidnapping and stated that the jury had two choices: they could find him guilty of false imprisonment or return a verdict of not guilty. During the state's closing argument, the state made comments that the victim had "told the truth."

On appeal, the defendant argued that his counsel was ineffective because counsel conceded guilt to a lesser included offense without his client's consent (under *State v. Harbison*, 315 N.C. 175 (1985)). However, the Court of Appeals disagreed, finding that defense counsel's statement merely urged the jury to choose between finding guilt on a lesser included offense and returning a verdict of not guilty. The statement reminded the jury that they had the option of finding the defendant guilty of a lesser included offense. As the court concluded that defense counsel's argument did not concede guilt, the court found no *Harbison* problem and thus no ineffective assistance of counsel.

The defendant also claimed that his counsel was ineffective in failing to move to suppress the fruits of a search warrant of the defendant's residence. The search warrant had one officer's name listed as applicant in the accompanying affidavit and another officer's signature in the section for signature the applicant. However, the Court of Appeals explained that information relayed from one officer to another could supply the necessary probable cause for an affidavit supporting a search warrant. As the court determined that the affidavit established a nexus between the injury and the residence and the search warrant was supported by probable cause, the court concluded that counsel was not ineffective in failing to file a motion to suppress.

Finally, the court determined that the state's comments during closing argument pertaining to the victim having "told the truth" were made in the larger context of arguing that her testimony was credible after the defendant gave conflicting testimony. Any impropriety did not rise to the level of gross impropriety and thus the trial court did not err by declining to intervene.

Defenses

Self Defense

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

[State v. Allison](#), No. 103PA24 (N.C. Dec. 12, 2025) (Burke County). The defendant was convicted of second-degree murder based on the killing of Brandon Adams. After an argument related to Adams's girlfriend, Adams followed the defendant to the defendant's house. After they parked their cars, the defendant quickly entered his house but Adams

stuck his hand and foot inside the door, preventing the defendant from closing it. The defendant retrieved a shotgun and returned to the front door to show it to Adams, who remained on the front porch. The defendant warned Adams not to cross the threshold and asked him to leave so the defendant could take care of his mother, who suffered from Alzheimer's and lived with him. Adams did not leave. The defendant turned to look back at his mother, and when he turned back toward the front porch, he saw Adams make a forward move toward the house. The defendant shot him. Adams later died from the wound.

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

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

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

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

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

deemed justifiable and legal. The court thus reversed the Court of Appeals and remanded the matter for a new trial.

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

Jury Instructions

Attempt

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

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

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

The trial court denied the defendant's motion to dismiss the charges for insufficient evidence. The trial court also denied the defendant's request for instructions on attempt, including an instruction that attempt is a specific intent crime. The jury acquitted the defendant of possession of a firearm by a felon and convicted him of attempted

possession of a firearm by a felon and providing materially false information. The defendant appealed, arguing that (1) the trial court erred by denying his motion to dismiss the providing false information charge and the attempted possession charge; (2) the trial court prejudicially erred when it failed to instruct the jury on the elements of attempt; and (3) G.S. 14-415.2 (prohibiting the possession of a firearm by a felon) is unconstitutional. (1) Viewing the evidence in the light most favorable to the State, the court of appeals found ample evidence to support the charges. That evidence included proof of the defendant's prior felony conviction, evidence of the defendant's transactions at the pawn shop, which included holding the firearm and placing it on layaway, and the defendant's completion of ATF form 4473 on which he stated that he had never been convicted of a felony. Though the defendant testified that he believed his felony conviction had been expunged and thus he was legally allowed to answer no to the prior conviction question on the form, his credibility was for the jury to determine. Therefore, the appellate court concluded that the trial court did not err in denying the defendant's motion to dismiss.

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

The defendant requested the court of appeals to invoke Rule 2 to address the constitutionality of G.S. 14-415.1, an argument he had not raised below. The court

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

Sentencing

G.S. 15A-1335's bar on harsher resentencing after a successful appeal does not prevent a higher term when structured sentencing requires correcting an improper sentence.

State v. Thomas, No. 262PA24 (N.C. Mar. 20, 2026) (Newby). In 2019, the defendant waived counsel, proceeded pro se, and was tried on charges related to a string of motor vehicle and credit card thefts. He was convicted of thirteen counts, which the court consolidated into two judgments for sentencing. The first was consolidated around a felony larceny conviction. The trial court found the defendant was a habitual felon, assigned the defendant nine prior record level points, and classified him as a prior record level III offender. He was sentenced to 67-93 months in prison. The second judgment was consolidated around a breaking or entering a motor vehicle conviction. The trial court again found the defendant was a habitual felon, assigned the defendant nine prior record level points, and classified him as a level III offender. He was sentenced to 26-44 months in prison. The defendant appealed, and the Court of Appeals remanded for a new trial after finding the trial court should not have accepted the defendant's waiver of counsel.

At his second trial, the defendant was convicted of eight offenses. The trial court again consolidated the convictions into two judgments. The first was consolidated around a possession of stolen motor vehicle conviction. The trial court found the defendant was a habitual felon, assigned the defendant nine prior record level points, and classified him as a prior record level III offender. He was again sentenced to 67-93 months in prison. The second was again consolidated around a breaking or entering a motor vehicle conviction. This time, the trial court realized that due to a prior conviction "with all of the elements of the present offense," G.S. 15A-1340.14(b)(6) required assigning an additional prior record level point. As a result, for this judgment, the trial court assigned the defendant ten prior record level points and classified him as a level IV offender (and determined he was a habitual felon). He was sentenced to 30-48 months in prison. The defendant appealed, arguing that the second judgment violated G.S. 15A-1335's bar on imposing a greater sentence on remand after a defendant's successful appeal. The Court of Appeals affirmed the second judgment as imposed. The defendant filed a petition for discretionary review.

The Supreme Court narrowly framed the issue as a conflict between two statutes: the general prohibition on harsher sentences after a successful appeal in G.S. 15A-1335 and the specific, mandatory requirements of structured sentencing. The Court held that when structured sentencing requires a different result, the trial court may not perpetuate an

illegal sentence merely to comply with G.S. 15A-1335. The Court emphasized that the General Assembly has exclusive authority to prescribe punishments and that trial courts are obliged to enter judgments that conform to the structured sentencing framework. Although acknowledging that G.S. 15A-1335 ordinarily bars harsher resentencing, the Court characterized this as one of the “rare” instances where correcting an illegal sentence is required even if it increases the term. Justice Dietz dissented. Justice Riggs dissented separately, joined by Justice Earls.

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

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

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

The Supreme Court reversed the Court of Appeals and reinstated the trial court’s sentence. The court reasoned that when a case is remanded for resentencing, that hearing should be conducted *de novo* unless otherwise limited by the reviewing court. Here, in the absence of limiting language in the Supreme Court’s mandate in *Kelliher I*, the trial court had authority at the *de novo* sentencing hearing to order the murder sentences to run consecutively to the robbery sentences, even though the robberies had been concurrent in the original judgment.

(1) Where the trial court did not indicate that probation would begin after completion of an active sentence, the probation period ran concurrently with the defendant’s imprisonment; (2) a probation violation report that does not explicitly identify “absconding” may sufficiently allege facts that put the defendant on notice of an absconding violation and revocation; (3) willfully leaving a residential treatment facility and not contacting probation for nine days until being arrested constituted absconding.

State v. Stephens, No. COA24-590 (N.C. Ct. App. Nov. 5, 2025) (Stroud). In July of 2017, Jerry Stephens pled no contest to various crimes involving drug use, breaking and entering, and larceny after breaking and entering. The trial court sentenced the defendant to an active sentence in some of the cases and suspended the defendant’s sentence for 36 months of supervised probation in the others. When the defendant was on supervised probation after serving the active sentences, the State filed probation violation reports in Dare County, the first of which was dated 4 October 2021. The trial court found that the defendant willfully violated his probation and revoked his probation for absconding from supervision in ten cases. The defendant timely appealed.

The Court first held that the trial court lacked jurisdiction to revoke probation in nine of the ten cases because the probationary periods had expired before the revocation judgments were entered. In those nine cases, the trial court did not indicate that probation would begin after the defendant served his active sentence. As a result, the Court found that those probation periods ran concurrently with the defendant’s active sentence and expired in July of 2020, well before the first violation report in October of 2021. In the final case that the defendant appealed, the trial court did check the box that probation would begin after the defendant served his active sentence. The Court rejected the defendant’s argument in that case that he lacked notice of the absconding violation where the violation report did not explicitly identify “absconding” as grounds for violation. Because the defendant was on notice that absconding would be a violation of his probation, and the violation report included the actions the defendant took, the Court found the defendant was sufficiently on notice. The Court upheld the absconding finding where the defendant left a mandated residential treatment program in violation of his probation conditions and did not make his whereabouts known or contact his probation officer for nine days between his unauthorized departure and his arrest. Finally, the Court declined to review the defendant’s challenge to an anticipatory bond condition imposed in a separate, unappealed June 2023 order.

Sex Offender Registration

(1) Federal exploitation of a minor (18 U.S.C. 2252(a)(4)(A)) is substantially similar to state sexual exploitation of a minor (G.S.14-190.17A) requiring registration as a sex offender; (2) the State must show substantial similarity with an offense in effect at the time of the hearing; (3) the test for determining substantial similarity is not unconstitutionally vague.

[State v. Alcantara](#), No. COA25-98 (N.C. Ct. App. Nov. 5, 2025) (Collins). In 2003, Enoc Alcantara pled guilty in federal court to possessing material depicting minors engaged in sexually explicit conduct. In 2021, the Guilford County Sheriff’s Office notified him of the requirement to register as a sex offender, prompting him to petition for judicial review (The Court of Appeals noted that Mr. Alcantara refers to himself and the courts have used the term defendant, and that this is not accurate, as he is a petitioner in a civil proceeding). The trial court initially ruled in favor of registration, but the Court of Appeals vacated that decision in 2023, finding the State failed to present the correct version of the federal statute. On remand, the State introduced the 2003 version of the federal statute and the 2023 version of the North Carolina statute criminalizing third-degree sexual exploitation of a minor (G.S. 14-190.17A). The trial court then concluded the statutes were substantially similar and ordered registration.

The petitioner argued the trial court’s order lacked required conclusions of law, relied on the wrong version of the state statute, and that the statutes were not substantially similar. He also challenged the constitutionality of the “substantial similarity” test. Addressing the petitioner’s first argument, the Court found the trial court’s order contained the required conclusions of law. The Court also found that the version of the North Carolina statute that the State must show has substantial similarity with the conviction offense is the version in effect at the time of the hearing on the petition, and that the 2023 version of G.S. 14-190.17A was the correct version for the trial court to consider. After finding the statutes criminalized substantially similar conduct, the Court found that the substantial similarity test provides a reasonable opportunity to know what is prohibited, and prescribes “boundaries sufficiently distinct for judges and juries to interpret and administer it fairly.” As a result, the Court found the substantial similarity test was not unconstitutionally vague.

Probation Violations

(1) Where a defendant disputes or disclaims counsel’s admission of probation violations at a revocation hearing, the trial court must inquire further; (2) failure to conduct such an inquiry requires a new revocation hearing.

[State v. Haney](#), No. COA25-943 (N.C. Ct. App. June 3, 2026) (Tyson). The defendant appealed from an order revoking his probation after pleading guilty to drug offenses and being placed on supervised probation. A violation report alleged multiple violations, including failure to report, leaving his residence without notice, and absconding. At the revocation hearing, defense counsel admitted all violations except the new criminal offense allegation, and the trial court revoked probation based in part on the admitted violations. However, immediately after the purported admission, the defendant told the court he had not agreed to admit the violations, had not consulted with counsel, and wanted new representation. The trial court did not inquire further and proceeded to revoke probation and activate the sentence.

The Court of Appeals held the trial court abused its discretion by revoking probation without ensuring that the defendant's admissions were knowing and voluntary. The Court emphasized that a probationer's waiver of the State's burden of proof must occur through a valid in-court admission, and that due process requires the trial court to confirm the defendant's consent to any such admission. Here, the defendant's contemporaneous statements directly contradicted counsel's admissions and raised concerns about lack of communication and authorization. The Court vacated the revocation judgment and remanded for a new probation revocation hearing. It declined to reach the defendant's argument that he received per se ineffective assistance of counsel, noting the insufficient record due to the trial court's failure to develop the issue.

(1) A defendant may challenge the trial court's subject matter jurisdiction to extend probation for the first time on appeal; (2) the trial court erred extending probation beyond the five year statutory maximum, and such an error is substantive where extension would retroactively confer jurisdiction; (3) where a voided extension order results in the expiration of probation before violation reports are filed, the trial court lacks jurisdiction to revoke probation and must vacate the resulting judgments.

[State v. Jessup](#), No. COA25-984 (N.C. Ct. App. June 3, 2026) (Hampson). In January 2021, the defendant pled guilty and received four consecutive suspended sentences with 36 months of supervised probation, including a substantial restitution obligation. In August 2023, the trial court extended his probation for an additional 36 months after he admitted nonpayment. The written extension orders indicated the extension was imposed "for good cause" under G.S. 15A 1344(d). In August 2024, violation reports alleged new offenses, failure to pay, and absconding. The trial court revoked probation in February 2025 and activated the sentences. On appeal, the State argued the defendant waived any challenge to the extension orders by failing to object below. The Court rejected that argument, emphasizing that subject matter jurisdiction may be raised at any time and cannot be conferred by waiver.

The Court of Appeals held the extension orders were void. The Court explained that under G.S. 15A 1344(d) and G.S. 15A 1342(a), a defendant's total probationary term, including extensions, may not exceed five years. Here, the extension orders added 36 months to an existing 36-month term, resulting in a total term of six years, exceeding the statutory maximum. Because the orders expressly relied on G.S. 15A 1344(d), they exceeded the trial court's statutory authority. The Court rejected the State's argument that the orders contained a clerical error and should be treated as a permissible restitution-based extension under G.S. 15A 1342(a). The Court concluded that changing the statutory basis for the extension would constitute a substantive alteration because it would retroactively validate the extension and confer jurisdiction that otherwise did not exist.

Because the extension orders were void, the defendant's original probation expired in January 2024. The violation reports were not filed until August 2024, after the expiration of the probationary term. Under G.S. 15A 1344(f), a court may revoke probation after

expiration only if a violation report is filed beforehand. In the absence of a timely report, the trial court lacked jurisdiction to revoke probation. The Court vacated the judgments revoking probation and activating the defendant's sentences.

The trial court properly revoked the defendant's probation for absconding despite erroneously checking box 4 on the probation revocation judgment.

[State v. Mayfield](#), No. COA25-1023 (N.C. Ct. App. May 6, 2026) (Iredell County) (Wood). The defendant was on probation for a felony hit and run. His probation officer alleged multiple violations of probation: two counts of absconding, failure to complete special probation, failure to report to his probation officer, and a positive drug screen. After a probation violation hearing, the trial court orally stated that the defendant violated probation and revoked the defendant's probation, "specifically [for] both counts of absconding." However, the court's written findings indicated that the court found all four alleged violations and the court checked box 4 on the form indicating that "each violation [was], in and of itself, a sufficient basis upon which [to] revoke probation." On appeal, the Court of Appeals noted that written finding 4 was erroneous to the extent that it indicated that the non-absconding violations were, in and of themselves, a sufficient basis to revoke probation. However, because the court was able to ascertain from the record that the trial court properly weighed the violations and revoked probation based on absconding, it affirmed the trial court's judgment revoking probation. The court noted that checking box 4 when there are violations other than a new criminal offense or absconding has become a repetitive error, and admonished the trial courts to be mindful of the limited grounds on which a defendant's probation may be revoked.

Trial court did not abuse its discretion in revoking defendant's probation as sufficient evidence supported its finding that the defendant willfully absconded from supervision.

[State v. Whitt](#), No. COA25-516 (N.C. App. April 1, 2026) (Surry County) (Zachary). The defendant was convicted of drug offenses in May 2024 and was placed on 24 months of supervised probation. As a condition of his probation, the trial court ordered the defendant to complete the residential treatment program for substance abuse at DART Cherry. Shortly after he was sentenced, electronic monitoring was added as a condition of the defendant's probation.

Three violation reports were filed over the course of the defendant's probation. The first, filed June 10, 2024, alleged that the defendant had absconded from supervision by leaving the DART Cherry program. The second, filed October 2, 2024, alleged the defendant violated three other conditions of probation. The third, filed October 21, 2024, again alleged that the defendant absconded. The defendant's violation reports came on for hearing on December 17, 2024. The trial court found that the defendant had absconded from supervision, revoked his probation, and activated his suspended sentence. The defendant appealed, arguing that there was insufficient evidence that he willfully

absconded since he also was subject to electronic monitoring. The defendant suggested that the probation officer, who made several unsuccessful attempts to contact the defendant at his residence, could have ascertained the defendant's whereabouts through electronic monitoring data.

The court of appeals rejected the defendant's argument, citing the lack of record evidence that the defendant had been fitted with an electronic monitoring device or that any such device was operational as well as the defendant's testimony that he had been "on the road" from June to August, that he did not have a residence after October 4, 2024, and that he did not keep his probation officer informed that he was "staying different places." Slip op. at 6.