

## Summer 2026 Criminal Law Webinar Criminal Case Update Paper June 12, 2026

Cases covered include published criminal and related decisions from the North Carolina appellate courts and the Fourth Circuit Court of Appeals decided between November 5, 2025, and May 22, 2026. State cases were summarized by SOG criminal law faculty, Fourth Circuit cases were summarized by Phil Dixon, and U.S. Supreme Court decisions were summarized by Shea Denning. To obtain summaries automatically by email, sign up for the [Criminal Law Listserv](#). Summaries are also posted on the [North Carolina Criminal Law Blog](#).

### Warrantless Stops and Seizures

**The 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). Phil Dixon will blog separately about this case. Briefly, the 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). 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.

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

[State v. Julius](#) (“Julius II”), No. COA25-277; \_\_\_ N.C. App. \_\_\_; 925 S.E.2d 854 (Feb. 4, 2026). 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 (opinion summarized [here](#)), 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 (opinion summarized [here](#)).

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 Stroud 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.

Shea Denning blogged about the case [here](#) and Phil Dixon blogged about the good faith exception [here](#).

### **Drug investigation stemming from traffic stop was not supported by reasonable suspicion of a drug offense; denial of motion to suppress reversed**

[U.S. v. Hawkins](#), 161 F.4th 242 (4th Cir. 2026). One afternoon, drug task force officers were patrolling a high crime area known for illegal drug activity. They spotted a car with expired tags, tinted windows, and a broken taillight. The officers knew the car was owned by a man who was currently on federal supervised release for a 2015 drug conviction. That man was driving the car and another person, also familiar to the officers as someone formerly involved with drugs, was in the passenger seat. The officers followed the car to an apartment building. The car parked in the parking lot and a man in a red jacket walked up to the car, briefly reached inside, and spoke with the two occupants. While officers did not observe any items change hands, they believed that the men had conducted a drug sale. The man in the red jacket left the car after around two minutes. Soon thereafter, the defendant approached the car and sat in the back seat. The car then left the parking lot. The task force officers radioed to a traffic patrol officer and relayed what they had seen in the parking lot, and the patrol officer stopped the car based on traffic violations and suspicion of drug activity. The officer separated the occupants of the car and questioned them individually about where they were coming from and whether they had met anyone at the apartment building. The driver stated they were coming from the apartment building and had not met with anyone. When pressed about the man in the red jacket who approached the car, the driver admitted that the man had asked for a cigarette. The front seat passenger also confirmed that they had been at the apartment building and stated that the man who approached the car was the defendant's uncle, who was looking for employment. The patrol officer contacted a K9 unit, and the canine ultimately alerted on the car. All three men were frisked, and officers discovered a gun on the defendant (although no drugs were found). The defendant admitted that he was not allowed to possess the weapon due to a prior domestic violence conviction. He was indicted in the Northern District of West Virginia for illegal possession of a firearm. The defendant moved to suppress, arguing that the officers unlawfully extended the traffic stop without reasonable suspicion. The district court denied the motion and the defendant entered a conditional guilty plea, preserving his right to appeal the denial of his suppression motion. On appeal, a unanimous panel of the Fourth Circuit reversed.

When a car is stopped for a suspected traffic violation, police are authorized to investigate the suspected violation. *Rodriguez v. United States*, 575 U.S. 348, 354. During such a stop, the officer is justified in performing the normal incidents of a traffic stop, such as checking the driver's license, ensuring the driver has insurance, and looking for any outstanding arrest warrants. Once these steps are complete, the stop may not be extended unless the driver consents or the officer develops reasonable suspicion of another crime. *U.S. v. Branch*, 537 F.3d 328, 336 (4th Cir. 2008).

Here, the government argued that the officer developed reasonable suspicion of a drug offense based on the defendant's presence in a high-crime area associated with drug activity, the fact that the driver of

the car had a 2015 drug conviction, the interaction at the apartment building before the defendant entered the car, and the alleged differences between the driver's and passenger's statements to the stopping officer. The Fourth Circuit has consistently treated a suspect's presence in a high crime area as "a weak and generic factor," and one incapable of creating reasonable suspicion on its own. *Hawkins* Slip op. at 8. Moreover, despite the general area being identified as a high crime area, the apartment building itself was not. Similarly, the fact that the driver of the car had a prior criminal record could not, on its own, create reasonable suspicion. "There is no evidence that [the driver] has not been compliant with the terms and conditions of his release or that [he] is involved in any criminal activity." *Id.* This factor too was entitled to "little weight in the totality of circumstances." *Id.* As to the officers' observations of an interaction between the occupants of the car and another man in the parking lot of the apartment building, the government offered nothing to show that the interaction was a drug deal instead of a normal conversation between acquaintances. According to the court:

The officers never witnessed a handshake, or any items change hands in the car. [The man visiting the car] remained near the vehicle and spoke with [the occupants] for approximately two minutes, which is less suggestive of a drug transaction than an abrupt handshake not accompanied by any conversation. And when he did leave the car, the officers never saw [the man] holding anything in his hands or placing anything in his pockets. Nor did the officers witness multiple people approaching and interacting with the car. . . . The officers essentially said, 'I know it when I see it.' These facts cannot amount to a reasonable, particularized suspicion and deserve little weight in the totality of circumstances. *Id.* at 9-10.

Finally, the minor differences between the driver's and passenger's statements to the patrol officer also failed to establish reasonable suspicion. To the extent the statements varied from each other, those differences were "minor and reconcilable." *Id.* at 10. Even when each of these factors are weighed together, they failed to establish reasonable suspicion that the occupants of the car were committing a crime. Thus, the motion to suppress should have been granted. The district court's order to the contrary was reversed and the matter was remanded for additional proceedings.

**Warrantless search of home owned by probationer but leased to another person was not justified as a probation search; probation officers may not conduct a warrantless search of a third-party's home without probable cause to believe the probationer is living there; denial of motion to suppress reversed**

[U.S. v. Perez](#), 167 F.4th 709 (4th Cir. 2026). Augustine Perez was on federal supervised release in the Middle District of North Carolina. As a condition of his supervision, he was required to allow his probation officer to visit him at his home or any other place and to allow the officer to seize any contraband in plain view during such visits. Perez originally resided at one home but later moved to another residence in town, which he reported to probation as required. Perez began renting his former home to his girlfriend, Deanna Coleman. She registered utilities to the home in her name, signed a year-long lease with Perez for possession of the property, and moved in with her minor daughter. Probation later received a report that Perez was violating the terms of his supervision by dealing drugs, traveling out of state without permission, and no longer living at his given address. There was some indication that an informant told the probation office that Perez had moved in with his girlfriend and that probation officers had corroborated that fact, but there was no record of either the informant's comments to that effect or of probation's investigation to corroborate it. Probation officers decided to conduct warrantless searches of both of Perez's properties.

Local law enforcement and federal probation officers first searched the home where Perez was supposed to be living. They found a bottle of prescription medicine with Perez's name and Coleman's address on it. After a canine alerted on his car, officers discovered a "trap compartment" used for surreptitiously storing drugs in the car. They also seized seven cell phones from Perez. Perez denied having any connection to his former address, where Coleman now lived. Officers proceeded to search Coleman's residence. They found a white powder inside a lemonade container and suspected it was a controlled substance (although later testing determined that it was not contraband). They found more of the same powder under the kitchen cabinet. Based on that discovery and Coleman's refusal to consent to a full search of the home, the officers sought and obtained a search warrant for the home. The application for the search warrant recounted the circumstances of the search of Perez's home, including the hidden compartment in his car, the prescription medicine with Perez's name with Coleman's address, and the canine alert on Perez's car. The application also referenced the white powder found at Coleman's residence. Upon executing the warrant for Coleman's home, officers found around a gram of cocaine and two grams of heroin in Coleman's bedroom, as well as more than \$25,000 in cash packaged in \$1,000 increments, which police knew was a common way of bundling money among drug dealers. They also found medication bottles with Perez's name, mail addressed to Perez, Perez's old passport, guns, ammo, and a safe. Perez had the key to the safe on his keychain, and a search of it revealed four bags of white powder, nearly 200 oxycodone pills, digital scales, a money-counting machine, what appeared to be a drug ledger, and a money bag.

The government initiated civil forfeiture proceedings to claim the seized cash under the theory that the money was derived from drug trafficking. Both Perez and Coleman contested the forfeiture, with Coleman claiming around \$15,000 of the money and Perez claiming around \$10,000. They sought to suppress the evidence obtained from the searches of both of their residences. The district court denied that motion and ultimately found probable cause to believe that the seized funds were traceable to drug dealing. Perez and Coleman appealed, renewing their suppression argument. On appeal, a unanimous panel of the Fourth Circuit reversed.

The court assumed that the search of Perez's home was lawful but found that the search of Coleman's home violated the Fourth Amendment. While probation was entitled to conduct a warrantless search of Perez's "property," this did not include real property in the possession of a third party. "[J]ust as a landlord's property interest does not confer authority to consent to the search of a tenant's residence, a probationer's ownership interest does not permit officers to rely on probation conditions to search a tenant-occupied residence." *Perez Slip op.* at 16.

There was some confusion about whether Perez was in fact living at Coleman's, and the government argued (and the district court agreed) that officers were entitled to search Coleman's home because they had at least reasonable suspicion to believe that Perez was residing there. While the Fourth Circuit had not previously determined the legal standard for probationary searches of third parties' residences, the Ninth and Eighth Circuits have. Both concluded that officers need probable cause to believe that the probationer is living in the third party's home, just as they would to execute an arrest warrant for a person suspected of being in a third party's home. *See U.S. v. Grandberry*, 730 F.3d 968 (9th Cir. 2013); *U.S. v. Thabit*, 56 F.4th 1145 (8th Cir. 2023). The Fourth Circuit adopted the approaches of those sister circuits. In the words of the court: "We hold that an officer must have probable cause to believe a dwelling is the residence of the court-supervised individual to initiate a warrantless search of a residence not known to be the court-supervised individual's home." *Perez Slip op.* at 19-20. Here, because the officers did not have probable cause to think Perez lived at Coleman's home, the motion to suppress evidence seized from Coleman's home should have been granted.

The district court's order to the contrary was therefore reversed, its grant of summary judgment to the government was vacated, and the matter was remanded to the district court with instructions to dismiss the government's civil forfeiture complaint.

## Searches

**Defendant retained a reasonable expectation of privacy in Google Drive files despite Google's privacy policy and despite the contraband nature of the images within the files; law enforcement exceeded Google's private search of the files; evidence was sufficiently attenuated from the illegal search, rendering suppression inappropriate**

[U.S. v. Lowers](#), 170 F.4th 134 (4th Cir. 2026). Google takes voluntary steps to identify and remove child sexual abuse material ("CSAM") from its services. Google often finds such material through a process known as "hash-matching." Digital files on Google servers are assigned specific hash values based on the content of the file. The assigned hash value is then checked against a database of the hash values of known CSAM images. A match means that the two images are likely the same (although the exact degree of accuracy of a hash-match is unclear). When the algorithm detects possible CSAM, a Google employee who has been trained to identify CSAM examines the suspicious file. If the reviewer confirms that the file contains probable CSAM, the file is identified as such, the file's hash value is placed into the database of suspected CSAM images, and a report is made about the file to the National Center for Missing and Exploited Children ("NCMEC"). This process allows Google to identify other files containing the same or similar CSAM on Google servers as new files are uploaded to the system. When the hash-value of a new file matches a known hash-value in Google's database, Google investigators sometimes open the suspicious file to verify the likely presence of CSAM before sending the report to NCMEC, but sometimes this step is skipped and the report is made directly to NCMEC without additional human review of the image (since a hash-match presumably means that a reviewer already examined the matching image before it was placed into Google's database of suspected CSAM at some point in the past). When making the report to NCMEC, Google indicates whether a reviewer has opened and viewed the suspicious image. Google's privacy policy cautions users that Google proactively tries to identify CSAM on its servers and will report suspected CSAM to law enforcement.

In 2019, someone associated with a particular email address uploaded 156 files to Google Drive, a digital file storage platform. Google quickly identified each of the files as probable CSAM. A human reviewer opened 31 of the 156 files and determined that each file contained likely CSAM. A report was made to NCMEC noting that around 20% of the files had been opened and reviewed, but 80% of the files had not. A worker with NCMEC reviewed the same 31 files and did not open the unviewed files. The employee determined that the IP address connected with the upload came from Bedford County, Virginia, and forwarded the report to local law enforcement. Local law enforcement took no action for six months. When an investigator began working on the report, they subpoenaed the internet service provider for account information connected to the IP address. From that information, law enforcement determined that the residence connected to the IP address was in Chesapeake, Virginia, and not Bedford County. Bedford County law enforcement therefore passed the report along to the Chesapeake police and closed their file.

After receiving the file, a detective with Chesapeake police opened at least three files containing images that neither Google nor NCMEC had previously opened. She confirmed that each file contained CSAM. The detective did not obtain a search warrant before doing so. She then sought and received a search

warrant for the email account that had uploaded the files. That information showed that the account had been created expressly for the purpose of uploading the files—the account went inactive in less than 30 minutes after it was created and had not been used again since. The detective conducted surveillance on the home connected with the account for four months but did not obtain any new information. Eventually, she sought a search warrant for the home, explaining in her affidavit that she had seen three images of CSAM that originated from an email account connected to the home. A married couple with two young children lived in the house. Law enforcement searched ten digital devices but found no CSAM. During an interview with the police, the husband reported that their 21-year-old son had recently moved from their home to Raleigh, North Carolina. Chesapeake police therefore closed their file and reported what they knew about the case to Raleigh police.

A Raleigh detective and an agent from Homeland Security contacted the son, who agreed to speak with the men. He denied knowing anything about the Google account but consented to a search of his cell phone and computer. Police found four images of CSAM that had been deleted on the phone. Police again interviewed the young man. This time, he confessed that he downloaded CSAM from his parent's home onto a flash drive and transported the flash drive to Raleigh. He informed the officers where they could locate the flash drive in his apartment. While this second interview was being conducted, other law enforcement agents were already searching the suspect's apartment pursuant to a search warrant. Those officers found the flash drive with hundreds of CSAM images and over a dozen videos of CSAM, along with a hard drive with additional video and over 750 CSAM images.

The defendant was indicted in the Eastern District of North Carolina for possessing and transporting CSAM. All the charges related to images found in the defendant's apartment; he was not charged with the images uploaded to the Google Drive account. The defendant moved to suppress. He argued that the Chesapeake detective's act of opening the three images that had not previously been viewed by Google or NCMEC violated his reasonable expectation of privacy and violated the Fourth Amendment. The district court denied the motion, finding that the detective's actions did not amount to a search. Given Google's privacy policy and the warning to users that Google takes steps to identify CSAM on its platforms, the district court concluded that the defendant did not have an objectively reasonable expectation of privacy in his Google cloud account.

In the alternative, even assuming the defendant had a reasonable expectation of privacy in his cloud account, he did not have a reasonable expectation of privacy in the files because they were contraband and "nobody has an expectation of privacy in contraband." *Lowers Slip op.* at 11. The district court also held in the alternative that Google's private search of the files defeated any expectation of privacy in the file that the defendant may have had. Assuming arguendo that the search was unconstitutional, the district court further found that the detective reasonably relied on the federal statute that requires internet service providers to report CSAM to law enforcement which (according to the district court) allowed a warrantless search of the files. The good-faith exception therefore would have precluded suppression. Finally, the district court also found that "significant intervening events" between the discovery of the suspicious images on the Google servers and the discovery of the evidence in the defendant's apartment were sufficiently attenuated to purge the taint from any potentially unconstitutional search. *Id.*

The defendant pleaded guilty and reserved the right to appeal the denial of his motion. On appeal, the Fourth Circuit found that the Bedford County detective violated the Fourth Amendment by examining the three unopened images but agreed that the exclusionary rule did not apply on the facts of the case.

The government did not contest that the defendant had a subjective expectation of privacy in his Google cloud account, so the court declined to address that issue. Regarding whether the defendant's expectation of privacy in the account was objectively reasonable, the court rejected the notion that Google's privacy policy defeated any expectation of privacy. According to the court: "Every Google Drive user knows that Google may scan their files to see if those files contain anything illegal. But a user's knowledge that Google might occasionally sift through their files does not mean that he expects the Government to have unfettered access to those same files." *Id.* at 15. The court compared the situation to a person temporarily occupying a hotel room. While that person's privacy rights are somewhat diminished by the right of access of a hotel housekeeper to the room, the hotel guest is nonetheless protected against a warrantless search by police. "A Google Drive account is no different merely because it exists in the cyberworld." *Id.* at 16. The situation would be different where the government itself warns users of its computers that their internet use and files would be monitored. *See U.S. v. Simons*, 206 F.3d 392 (4th Cir. 2000) (so holding). The defendant here therefore retained a reasonable expectation of privacy in his cloud account.

He also had a reasonable expectation of privacy in the files uploaded to the Google account, notwithstanding their contraband nature. The district court erred by determining that the hash-matching algorithm was "exceedingly reliable," because no record evidence supported that proposition. It also erred by determining that the "hit" by the algorithm was akin to a canine alert in the automobile context. According to the court:

For one thing, Appellant's files were not in jeopardy of being lost or destroyed. Far from it. Google had copied each of the 156 files and sent them to NCMEC, which then forwarded them to law enforcement. Law enforcement easily could have obtained a warrant before opening the file, and any delay would not have hampered the investigations—the files were not going anywhere. . . They were instead hidden in a cloud-based storage system, a digital filing cabinet of sorts, inaccessible to law enforcement. At the risk of stating the obvious, digital files are not automobiles. The two things are poles apart, and the Fourth Amendment treats them differently. *Lowers Slip op.* at 24-25.

As to the district court's private search reasoning, the court acknowledged a split of authority among the circuit courts about whether a hash-match can defeat a person's expectation of privacy in unopened digital files. The Ninth and Sixth Circuits have found that a hash-match does not overcome a person's privacy interest in digital files, while the Fifth and Sixth Circuits have found that it does. The Fourth Circuit agreed with the Ninth and Sixth Circuits. The hash-match itself did not reveal the contents of the files. Under the private search doctrine, a search by a private person—even an unreasonable one—does not violate the Fourth Amendment, and police may lawfully examine anything found by the private actor. However, police may not exceed the scope of the private search by conducting further warrantless searches. *U.S. v. Jacobsen*, 466 U.S. 109 (1984). Here, the Chesapeake detective exceeded the scope of the search by Google when she opened files that had not previously been examined by Google or NCMEC. "Because [the detective's] visual examination revealed information that the algorithm could not, the district court erred in concluding that her search did not exceed Google's private search. It clearly did." *Id.* at 33. Further, the fact that Google may have inspected a matching image uploaded by a different user at some earlier point in time could not frustrate the defendant's expectation of privacy in the files he personally uploaded.

However, the district court correctly determined that suppression was inappropriate here, as the deterrent purpose of the exclusionary rule would not be served by excluding the evidence. Under *Utah*

*v. Strieff*, 579 U.S. 232, 238 (2016), if “the causal connection between the unconstitutional police conduct and the evidence is remote or has been interrupted by some intervening circumstance,” suppression is unwarranted. Courts use three factors to evaluate whether the discovery of evidence is sufficiently attenuated from the illegal search: 1) the passage of time between the search and the discovery of the evidence; 2) the existence of intervening circumstances; and 3) “the purpose and flagrancy of the official misconduct.” *Id.* Here, seven months passed between the illegal search and the later discovery of the evidence in the defendant’s apartment. The defendant voluntarily agreed to submit to two interviews with law enforcement (ultimately confessing in the second interview) and consented to searches of his digital devices. “Each of these intervening voluntary acts significantly attenuated the casual chain.” *Lowers Slip op.* at 43. Finally, the police misconduct at issue was “anything but flagrant.” *Id.* Application of the attenuation doctrine therefore precluded suppression, as any taint from the illegal search had dissipated by the time the evidence leading to prosecution was discovered. Given this decision, the court declined to address the reasoning of the district court regarding the good faith exception.

While the district court erred in finding no Fourth Amendment violation, it was correct as to the remedy, and its judgment was therefore affirmed.

Judge King wrote separately to concur. He would have joined the view of the Fifth and Sixth Circuits that any privacy interest the defendant had in the files was defeated by Google’s private search of the files.

**The defendant lacked standing to challenge the court order authorizing law enforcement to obtain real-time cell-site location information where he showed only “mere possession” of the tracked cell phone rather than ownership or a possessory interest and law enforcement gathered less than one hour’s worth of data**

[State v. Escalante](#), No. COA25-64; \_\_\_ N.C. App. \_\_\_; 925 S.E.2d 309 (Dec. 17, 2025). The defendant was convicted of first degree murder at trial. On appeal, he challenged the denial of his motion to suppress. At issue was whether law enforcement violated the defendant’s Fourth Amendment rights in obtaining one hour’s worth of real-time cell-site location information (“CSLI”) in order to find the defendant and arrest him. Authorities determined that the defendant was using a particular cell phone to contact family and friends in the aftermath of the murder. They applied for a court order to obtain the CSLI. Upon locating and arresting the defendant at a residence, authorities found five other cell phones in the home. As to the phone that was the subject of the order, the court concluded that the defendant had not carried his burden of establishing standing to challenge the search. Relying on *State v. Stitt*, 201 N.C. App. 233, 241 (2009), the court declined to “assume ownership or a possessory interest” based on the defendant’s “mere possession” of the cell phone. The court noted that the defendant only stated he had used the phone and did not offer evidence that he had a possessory interest in it. The court also emphasized the difference between obtaining one hour’s worth of real-time CSLI and obtaining four months of historical CSLI, which was found to be an unreasonable search in *Carpenter v. United States*, 585 U.S. 296 (2018). The Court of Appeals thus affirmed the trial court’s order denying the defendant’s motion to suppress.

**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. App. \_\_\_; 924 S.E.2d 50 (Nov. 5, 2025); *disc. review allowed*, \_\_\_ N.C. \_\_\_; 924 S.E.2d 815 (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.

## 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. COA25-2; \_\_\_ N.C. App. \_\_\_; 926 S.E.2d 173 (Jan. 7, 2026). 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.

**A recording of a voicemail was authenticated by the recipient's testimony that the recording was accurate and by a forensic analyst's testimony that the recording was the entire voicemail, despite the recipient's testimony that she thought the voicemail had been longer**

[State v. Oakes](#), No. COA25-2; \_\_\_ N.C. App. \_\_\_; 926 S.E.2d 165 (Jan. 7, 2026). The defendant was charged with, and convicted of, the first-degree murder of his mother. A voicemail of the defendant threatening his mother just before the murder was sufficiently authenticated and properly admitted. The voice mail was left on the defendant's sister's phone as a result of an inadvertent call placed by the mother. The sister testified that she had recently reviewed the voice mail; that although she thought the message had been longer, the recording was accurate; and that she recognized her brother's and mother's

voices. A forensic data analyst testified to the extraction of the message from the sister's phone and stated that the full recording had been retrieved. This was sufficient to authenticate the recording. Any doubts about completeness went to weight, not admissibility.

## **Confrontation Clause**

### **Confrontation violation where surrogate expert testimony offered on blood alcohol concentration**

[State v. Holt](#), COA25-560; \_\_\_ N.C. App. \_\_\_ (May 20, 2026). 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.

### **Expert testimony based on machine-generated toxicology data did not violate confrontation principles**

[State v. Robinson](#), No. COA25-199; \_\_\_ N.C. App. \_\_\_; 926 S.E.2d 459 (Jan. 21, 2026). The defendant was convicted of death by distribution, possession with intent to sell or deliver a controlled substance, maintaining a dwelling to keep controlled substance, and possession of drug paraphernalia after a jury trial in Alamance County arising out of a fentanyl sale and ensuing overdose. The evidence included witness testimony, police investigation, the defendant's admissions during an interview, and items recovered during a search warrant at the defendant's home. Dr. Justin Brower, a forensic toxicologist and expert in forensic toxicology, approved the toxicology report of the overdose decedent. The toxicology report was produced by other forensic chemists using machine-generated data, and showed the decedent had used methamphetamine, cocaine, and fentanyl prior to his death. On appeal, the defendant argued that the trial court prejudicially erred by admitting the toxicology report, among other arguments.

The court held that the confrontation argument was waived because it was not raised at trial. However, the court further explained that because the challenged toxicology output was machine-generated and Dr. Brower independently analyzed that machine-produced data, the testimony did not rest on

testimonial statements of non-testifying analysts, and that admitting it did not violate the defendant's confrontation rights.

**(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. App. \_\_\_ (May 6, 2026). 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.

## **Expert Testimony**

**Trial court did not err by admitting expert testimony on historical cell-site handoff analysis; Defendants failed to preserve an objection to an alleged discovery violation; and Defendants failed to show ineffective assistance of counsel in not objecting to the expert testimony**

[State v. Allen & Rush](#), No. COA25-336; \_\_\_ N.C. App. \_\_\_; 942 S.E.2d 569 (Dec. 3, 2025). On March 25, 2022, Defendants Allen and Rush committed a drive-by shooting at Kermit's Hot Dog restaurant ("Kermit's") in Winston-Salem, injuring three victims. At trial, FBI Agent Harrison Putman testified as an expert in historical cell site analysis. Though his initial written report indicated that neither of Defendants' phones had initiated cell site service in the area around Kermit's on the day of the shooting, Agent Putman testified at trial that around 2 p.m., Defendant Rush's phone had used the cell tower site next to Kermit's, which he described as "handoff" data stored by the cell service providers. Agent Putman based this opinion on voluminous data from the cell service providers. Both Defendants were

convicted of two counts of assault with a deadly weapon with intent to kill inflicting serious injury, one count of assault with a deadly weapon with intent to kill, and seven counts of discharging a firearm into occupied property. Both Defendants appealed.

Before the Court of Appeals, both Defendants argued that (1) the trial court erred by admitting Agent Putman's expert testimony on historical cell-site "handoff" analysis, (2) the trial court erred in failing to find a discovery violation, and (3) they received ineffective assistance of counsel.

Addressing the first issue, the Court of Appeals found Defendant Allen failed to preserve the issue for appellate review, but that neither Defendant was entitled to relief on this basis. Under Evidence Rule 702, a witness qualified as an expert may testify in the form of an opinion if: (1) the testimony is based on sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case. N.C. R. Evid. 702(a). Here, the Court of Appeals said, Agent Putman's testimony was grounded in sufficient facts or data and reliable principles and methods. Further, the trial court had ample basis to conclude Agent Putman's methodology was reliable and properly applied. Finally, assuming error, any such error was harmless given the "overwhelming independent evidence."

As for the second issue, both Defendant's argued the trial court erred by failing to exclude the expert opinion when the State failed to disclose it until the night before the witness testified. The Court of Appeals noted that, though Defendant Rush raised a discovery objection at trial, upon further research Defendant Rush confirmed that he had in fact received the data in discovery. As neither Defendant objected to this testimony, both failed to preserve the issue for appellate review.

As for the third issue, both Defendants argued that counsel was ineffective for failing to object to the alleged discovery violation, to object to Agent Putman's surprise testimony, or to hire an expert in historical cell site analysis. Under *Strickland*, to establish ineffective assistance of counsel, a defendant must show (1) deficient performance and (2) resulting prejudice. Here, the Court of Appeals said, both defense attorneys demonstrated command of cell-site methodology during their examinations of Agent Putman, reflecting familiarity with the field and targeting weaknesses in the State's presentation. Their decision not to object fell within permissible trial strategy, not deficient performance. Assuming any deficiency existed, Defendants could not show prejudice.

## Impeachment

**(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. App. \_\_\_; 925 S.E.2d 440 (Jan. 21, 2026); *temp. stay allowed*, \_\_\_ N.C. \_\_\_; 925 S.E.2d 241 (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.

**Trial court erred by admitting evidence of prior conviction more than ten years old absent sufficient findings of fact, but error was harmless; trial court did not err by substituting an alternate juror after jury deliberations had begun**

[State v. Toomer](#), No. COA24-1102; \_\_\_ N.C. App. \_\_\_; 927 S.E.2d 55 (Feb. 4, 2026). On September 23, 2023, the defendant and Starnasia Shaw finished their shift at Taco Bell around 1:00 a.m. and Shaw got into the defendant's car. Shaw testified that the defendant beat her, prevented her from leaving by driving around, and, when she managed to exit the vehicle, dragged her back to the car. Shaw testified that the defendant also threatened her with a knife, cutting her hand in the process.

The defendant was charged with, among other things, second-degree kidnapping, assault on a female, and habitual felon status. At trial, the trial court permitted the prosecutor to ask the defendant about his 1996 convictions for second-degree kidnapping and armed robbery. After jury deliberations began, the trial court replaced a sitting juror with an alternate juror, advising the jury to begin deliberations anew. The defendant was convicted by the jury of felonious restraint and assault on a female, and he pled guilty to habitual felon status. The defendant appealed. Before the Court of Appeals, the defendant argued the trial court erred by: (1) admitting evidence of his 1996 convictions, and (2) allowing the substitution of an alternate juror after deliberations had begun.

Addressing the first issue, the Court of Appeals noted that Rule 609 governs the admissibility of prior convictions to attack a witness's credibility. Evidence of a conviction more than 10 years old is inadmissible unless (1) the proponent of the evidence gives sufficient notice, and (2) the trial court determines that the probative value of the conviction substantially outweighs its prejudicial effect. N.C. R. Evid. 609(b). The trial court must make findings addressing the impeachment value of the prior crime, its remoteness, and the centrality of the defendant's credibility to the case. Here, the trial court ruled that the 1996 convictions were admissible because they were substantially similar to the offenses for which the defendant was on trial. The Court of Appeals found the trial court's findings of fact were inadequate, and the trial court abused its discretion by admitting evidence of the defendant's 1996 convictions. Given the overwhelming evidence of guilt, however, the Court of Appeals concluded that the defendant failed to show the error was prejudicial.

As to the second issue, the Court of Appeals cited G.S. 15A-1215(a) for the proposition that the judge may permit the seating of one or more alternate jurors. If an alternate juror replaces a juror after deliberations have begun, the trial court must instruct the jury to begin its deliberations anew. G.S. [15A-1215\(a\)](#). In [State v. Chambers](#), 387 N.C. 521 (2025), the North Carolina Supreme Court upheld the constitutionality of G.S. 15A-1215(a). Here, the trial court instructed the jury to begin deliberations anew when it substituted an alternate juror. The Court of Appeals concluded that, under *Chambers*, the trial court did not violate the defendant's state constitutional right to a jury.

Joe Hyde blogged about the *Toomer* and *Braswell* decisions, [here](#).

## Relevance

**The admission of the defendant's salacious, unflattering, and possibly irrelevant text messages did not rise to the level of plain error given the strength of the State's case and the weakness of the defendant's claim of self-defense**

[State v. Hicks](#), No. 136PA22-2; \_\_\_ N.C. \_\_\_ (May 22, 2026). The defendant shot her paramour twice in the back, killing him. She was charged with murder. She claimed to have acted in self-defense. Without objection, the State introduced at trial "phone extraction reports" that showed all the text messages she sent and received over a period of several months leading up to the shooting. Based on the [opinion of the Court of Appeals](#), the messages included sexually explicit content revealing that she was involved in simultaneous relationships with multiple men, callous remarks about misfortunes suffered by others, and advice to her son to lie to school authorities about his conduct, among other unflattering material. She was convicted of second-degree murder and appealed.

The Court of Appeals determined that the messages were "irrelevant and prejudicial" and that their admission constituted plain error. In that court's view, there was a plausible self-defense case to be made, but the admission of the messages "probably caused the jurors to convict Defendant based on their emotional revulsion toward her rather than acquit her based on the evidence of self-defense."

The Supreme Court concluded that any error did not rise to the level of plain error. Essentially, the majority viewed the State's case as being strong enough that any prejudice arising from the admission of the messages was not so severe as to change the outcome. It emphasized that the defendant was "the only armed party" in the interaction leading up to the shooting, that the victim was "shot twice in the back," that there were no "significant injuries" to the defendant suggestive of a violent struggle, and that there was no "damage to the room" in which the shooting took place. It also noted that the defendant gave police multiple inconsistent accounts of events.

**The trial judge did not err in excluding hateful text messages the victim, the defendant's ex-girlfriend, sent to the defendant's new girlfriend, where the judge admitted other text messages more directly illustrating the ex-girlfriend's ill will towards the defendant and her possible motive to incriminate him**

[State v. Sloan](#), No. COA25-128; \_\_\_ N.C. App. \_\_\_ (Mar. 18, 2026). On June 21, 2021, the defendant jumped out from some bushes, assaulted his ex-girlfriend, and threatened her with a gun. A friend of the ex-girlfriend captured the incident on video. On June 29, 2021, the defendant confronted his ex-girlfriend outside her parents' house, again brandished a gun, and when she ran towards the home,

fired several shots that struck the dwelling and one that injured the ex-girlfriend's brother. The defendant pled guilty to multiple charges arising from the June 21 incident. He went to trial on multiple charges arising from the June 29 incident and was convicted. He received a lengthy sentence and appealed.

The defendant argued that the trial court erred in excluding certain insulting text messages his ex-girlfriend sent to his new girlfriend – such as calling the latter's baby "ugly and deformed" – which he contended showed the ex-girlfriend was angry and jealous and motivated to incriminate him. The court of appeals noted that the trial judge allowed the defendant to introduce other messages that were more specific to the ex-girlfriend's ill will towards him, and that the ex-girlfriend admitted sending hateful messages to the new girlfriend. The trial judge's decision to exclude the additional messages as needlessly inflammatory therefore did not impair the defendant's ability to present his defense and was not an abuse of discretion under Rules 607 (impeachment) and 403 (relevancy balancing).

The court of appeals also rejected the defendant's challenges to the joinder of the June 21 charges and the June 28 charges (before he pled guilty to the June 21 charges). There was a transactional connection supporting joinder because the incidents were only eight days apart, involved the same victim, and featured similar conduct by the defendant. The reviewing court likewise rejected the defendant's argument that the trial judge erred in admitting evidence of the June 21 incident under Rule 404(b), noting that the similarities between the incidents supported admission to show identity, intent, motive, and modus operandi. The trial court's limiting instruction adequately prevented any Rule 403 undue prejudice).

The court declined to invoke Rule 2 to review an unpreserved constitutional challenge to the defendant's convictions of felon in possession of a firearm. Finally, it remanded the case for the correction of a clerical error in the judgment.

## Right to Counsel

**(1) A defendant's momentary claim that he did not understand the nature of the sex offense charges he faced did not render his waiver of counsel invalid where the record overall demonstrated his understanding; (2) His convictions of indecent liberties were vacated because the trial court did not confirm his understanding of those charges**

[State v. Ingram](#), No. COA25-83; \_\_\_ N.C. App. \_\_\_ (Mar. 18, 2026); *temp. stay allowed*, \_\_\_ N.C. \_\_\_ (April 8, 2026). The defendant, a Marine, married a woman with a young daughter. He sometimes put the daughter to bed while her mother was at work. At these times, and others, he engaged in various forms of sexual contact with the daughter. Several years later, the daughter disclosed the abuse to friends and to her mother. The defendant was eventually charged with twenty-four counts of sex offense with a child by an adult, and twenty-four counts of taking indecent liberties with a child. After a bench trial, a superior court judge found him guilty on fifteen counts of each crime and not guilty on nine counts of each crime. The judge imposed a lengthy sentence and the defendant appealed.

The defendant argued that the trial court had wrongly allowed him to waive his right to counsel and to proceed pro se. Under G.S. 15A-1242, a defendant may proceed pro se only if the court is satisfied that

the defendant has been advised of his right to counsel, understands the consequences of waiving that right, and “[c]omprehends the nature of the charges and proceedings.”

As to the sex offense charges, the defendant pointed to a pretrial colloquy with a judge in which he said “I do not understand the nature of” the sex offenses. However, the court of appeals noted that the defendant signed a written waiver of counsel and agreed in multiple colloquies that he understood that he was charged with the sex offenses. This established the validity of his waiver notwithstanding the one exchange in which he claimed not to understand the charges.

As to the indecent liberties charges, no judge reviewed those with the defendant or confirmed his understanding of them. Therefore, his convictions for indecent liberties were vacated, and his case was remanded for resentencing only on the sex offenses.

### **The trial court properly concluded that the defendant forfeited his right to counsel**

[State v. Jacobs](#), No. COA24-1081; \_\_\_ N.C. App. \_\_\_; 925 S.E.2d 364 (Dec. 17, 2025). 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.

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.

## **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. App. \_\_\_ May 6, 2026). 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.

**(1) There was a sufficiently distinct interruption between the defendant's attacks to support three assaults; (2) the trial court did not err by sentencing multiple assaults; (3) there was sufficient evidence of serious injury and sufficient evidence that the defendant's hands and feet could be considered deadly weapons**

[State v. Smith](#), No. COA25-791; \_\_\_ N.C. App. \_\_\_ (May 6, 2026). The defendant was convicted at a jury trial of assault with a deadly weapon inflicting serious injury, assault by strangulation, and assault on a female, stemming from an incident with a woman he was dating. The defendant punched the victim in the face while she was in the bathroom, causing her to hit her head on the bathtub. The defendant then grabbed the victim by the throat and continued hitting her head against the tub, causing her to lose consciousness. He hit her with the metal shower rod, kicked her with his bare feet, and strangled her with both hands around her neck, making her feel numb and unable to breathe. The defendant then dragged the victim by her hair to another room where he lashed her with a belt, using the buckle to strike her, which pierced her skin and drew blood. Finally, the defendant bit the victim's cheek. A medical evaluation showed the victim had compression fractures of her thoracic spine, a head injury, bite marks on her cheek, and other injuries.

The defendant made three arguments on appeal. First, he argued that the trial court erred by denying his motion to dismiss all but one of the assault charges. The Court of Appeals disagreed, concluding under *State v. Dew*, 379 N.C. 64 (2021), that there was a sufficiently "distinct interruption" between the attacks to support three separate assault charges. The first interruption occurred when the defendant stopped the momentum of the attack to pull the metal shower rod down to use it as a weapon. The second interruption occurred when the defendant dragged the victim from the bathroom into another room—pausing, changing the location, and altering the method of attack by using his belt. Therefore, the trial court did not err by denying the defendant's motion to dismiss. The Court of Appeals likewise rejected the defendant's second argument, that the trial court erred by sentencing the defendant on three assault convictions.

Finally, the defendant argued that there was insufficient evidence that the victim suffered serious injury and that the defendant's hands and feet were deadly weapons. The Court of Appeals again disagreed. As to serious injury, the court said the evidence of the victim's hospitalization, spinal fractures, and other injuries was sufficient to submit the issue to the jury. As to the defendant's hands and feet as deadly weapons, the State proffered evidence that the defendant was a couple of inches taller than the victim and at least "a little bit bigger." The defendant surprised the victim while she was in the bathroom when she was nude and vulnerable and banged her head against the tub, causing her to lose consciousness. Based on that manner of use and the relative size and condition of the parties, the appellate court concluded that the trial court did not err in denying the defendant's motion to dismiss.

## Child Abuse

**(1) G.S. 14-318.5 is not unconstitutionally vague; (2) G.S. 14-318.5 does not impermissibly compel self-incrimination; (3) there was sufficient evidence that the defendant had knowledge that the child was**

**missing; (4) the defendant failed to show any prejudice stemming from the exclusion of a text message on hearsay and relevancy grounds**

[State v. Palmiter](#), No. COA25-338; \_\_\_ N.C. App. \_\_\_ (May 6, 2026). The defendant was charged with failure to report the disappearance of a child under G.S. 14-318.5. The child—missing since November 2022—was the young daughter of the defendant’s partner Diana, who moved to the United States from Moldova after meeting the defendant on an online dating website. When school counselors noticed the child absent from school in late 2022, they initiated a truancy investigation that eventually led to criminal charges for both the defendant and Diana. Diana—whose behavior was erratic in the time period before the child’s disappearance, and who shared limited and seemingly misleading information with the defendant about the child’s whereabouts—pled guilty. The defendant went to trial.

At trial, the defendant testified that he did not report the child as missing because he had no reason to think she was; Diana, who was the child’s biological mother and primary caregiver, spoke of the child as though she were in the house and texted the defendant as if she were with the child. When the defendant received messages from the school in late 2022 indicating the child’s absence, Diana told him the child was sick in her room. In early December 2022, Diana told the defendant she was taking the child hiking in the mountains. Nevertheless, the defendant was convicted and sentenced to probation.

The defendant made four arguments on appeal. First, he argued that G.S. 14-318.5 is unconstitutional in that it is vague. In support that argument, the defendant raised a series of hypotheticals involving temporary caregivers and babysitters to demonstrate how a literal interpretation of the statute could lead to absurd results. The Court of Appeals rejected that argument, concluding in light of *Holder v. Humanitarian L. Project*, 561 U.S. 1 (2010), and related cases that a defendant whose conduct is clearly proscribed by a statute cannot succeed on a facial vagueness challenge by reference to hypotheticals that would fall on the margins of the law’s coverage. Though not the child’s biological parent, he clearly fell under the definition of “other person providing care to or supervision of a child,” as he was listed on her school forms and provided for insurance, food, and other necessities. Therefore, the law was not vague as applied to him.

Second, the defendant argued that G.S. 14-318.5 is unconstitutional in that it impermissibly compels self-incrimination. The Court of Appeals again disagreed. Though the statute compels testimonial disclosures that could aid in a criminal prosecution, the court concluded that it is not targeted at inherently criminal activity, and that the concern about self-incrimination is outweighed by the strong policy in favor of protecting minors.

Third, the defendant argued that there was insufficient evidence that he violated G.S. 14-318.5 in that he did not knowingly fail to disclose the disappearance of a child. The Court of Appeals rejected that argument, concluding that even in light of the defendant's travel and work schedule and Diana’s erratic behavior and representations about the child’s whereabouts, a reasonable person might accept that the defendant had sufficient information to know that the child was missing and failed to report it.

Finally, the defendant argued that the trial court erred by excluding on hearsay and relevancy grounds evidence of a text message between Diana and her cousin indicating that the child was with Diana during a time where the child was alleged to be missing. The Court of Appeals did not reach the merits of the argument, concluding that the defendant failed to demonstrate prejudice in light of other admitted evidence.

Finding no error, the court affirmed the defendant's conviction.

## Contempt

**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](#), No. COA24-1081; \_\_\_ N.C. App. \_\_\_; 925 S.E.2d 364 (Dec. 17, 2025). 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. The defendant was convicted of all charges. 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.

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.

## Drug Offenses

**Evidence was insufficient to establish that the defendant kept or maintained a hotel room for use of controlled substances where he had stayed in hotel room for "a while"**

[State v. Hollis](#), No. COA25-239; \_\_\_ N.C. App. \_\_\_ (Mar. 4, 2026). The defendant was convicted at trial of trafficking in opium or heroin and misdemeanor keeping or maintaining a dwelling for controlled substances. The evidence showed that the defendant wanted to meet a woman without his girlfriend knowing. He made arrangements to use a hotel room a family member was renting. The defendant, the

woman, and the family member all partied in the room. The defendant left the room and returned the following day to retrieve a shoebox. As the room had been booked in the family member's name and the defendant did not have the key, the defendant had to get assistance in entering the room from a housekeeper.

Officers subsequently stopped the defendant as he drove away from the hotel. The officers brought the defendant back to the hotel and executed a search warrant of the room, where they found a wallet on the nightstand containing the defendant's identification and \$481.00 in cash. They also found a container with fentanyl pills and a digital scale. The defendant told officers he had been staying in the room "for a while" and made a statement about obtaining the pills.

On appeal, the defendant challenged only the conviction for misdemeanor keeping or maintaining a dwelling, contending the evidence was insufficient. The Court of Appeals stated that the question of whether the defendant "kept or maintained" a place within the meaning of the statute was a totality-of-the-circumstances analysis depending on several factors, including occupancy of the property, payment of rent, possession over a duration of time, possession of a key, and payment of utility expenses, as well as other factors related to drug activity such as large amounts of cash on premises, admission to selling, and the existence of drug paraphernalia. The court proceeded to compare the facts in the case at hand to prior cases addressing drug activity at hotel rooms and other locations. The court also focused on the definition of "keep" under the statute, explaining that the word indicates possessing something for at least a short period of time or intending to retain possession for a certain use. In light of the defendant's lack of a key, the family member's name on the room, the observation of the defendant leaving the room on only one occasion, and the inconclusive nature of the defendant's statement that he had stayed in the room for "a while," the Court of Appeals concluded that the trial court erred in denying the motion to dismiss the keeping or maintaining charge.

**Sale and/or delivery of a controlled substance is not a lesser included offense of death by distribution, and the court did not err in sentencing both offenses; counsel was not ineffective for failing to object to the defendant being sentenced for both offenses**

[State v. Robinson](#), No. COA25-199; \_\_\_ N.C. App. \_\_\_; 926 S.E.2d 459 (Jan. 21, 2026). The defendant was convicted of death by distribution, possession with intent to sell or deliver a controlled substance, maintaining a dwelling to keep controlled substance, and possession of drug paraphernalia after a jury trial in Alamance County arising out of a fentanyl sale and ensuing overdose. Among other arguments, The defendant also argued that she received ineffective assistance of counsel because her counsel did not object to her being sentenced for both death by distribution and sale and/or delivery of a controlled substance.

The Court rejected the defendant's double jeopardy argument, finding again that it was not raised at trial, and went on to find that because sale and/or delivery of a controlled substance is not a lesser included offense of death by distribution, the trial court did not violate the defendant's double jeopardy rights by sentencing her for both offenses. The court also denied the defendant's claim of ineffective assistance of counsel for not objecting to the defendant being sentenced for both death by distribution and sale and/or delivery of a controlled substance (because it was not error to be sentenced for both). As a result, the Court found no prejudicial error by the trial court.

**In defendant's trial for possession with intent to manufacture, sell, or deliver methamphetamine, (1) the trial court did not err by refusing to instruct the jury about the different isomers of methamphetamine or that the State must prove the presence of a controlled substance by a scientifically valid chemical analysis; (2) The trial court did not err by denying defendant's motion to dismiss on the basis that the State failed to present sufficient evidence of a controlled substance**

[State v. Dean](#), No. COA24-654; \_\_\_ N.C. App. \_\_\_; 924 S.E.2d 403 (Nov. 19, 2025); *disc. review granted*, \_\_\_ N.C. \_\_\_; 926 S.E.2d 399. The defendant in this Johnston County case was convicted in a jury trial of possession with intent to manufacture, sell, or deliver methamphetamine and possession of drug paraphernalia. The jury further found the defendant had obtained habitual felon status. After entering a defective notice of appeal, the defendant petitioned the court of appeals for certiorari review, which it granted. The defendant argued that the trial court erred by (1) declining to deliver the special jury instructions distinguishing among different isomers of methamphetamine and specifying that the State had to prove the presence of a controlled substance by a “[s]cientifically valid analysis” and (2) denying his motion to dismiss the charge of possession with intent to sell and deliver methamphetamine “as the State failed ‘to produce evidence that the seized substance contained an illegal isomer . . . as opposed to a legal isomer.’” Slip op. at 4. 7.

(1) The court of appeals found no error in the trial court's refusal to instruct the jury that “[m]ethamphetamine-D is a controlled dangerous substance under Chapter 90 of North Carolina General Statutes” while “[m]ethamphetamine-L is not a controlled dangerous substance under Chapter 90 of North Carolina General Statutes.” Slip op. at 4. The defendant's request followed testimony by a defense expert that methamphetamine exists in two isomer forms, D-isomer and L-isomer, and that the isomers have different effects on the body. The State and defense drug chemistry experts agreed that the testing performed by the State did not differentiate between isomers.

The court of appeals characterized the issue of whether the State must discern between isomers of methamphetamine when instructing the jury as an issue of first impression. The North Carolina Controlled Substances Act classifies methamphetamine as a Schedule II controlled substance and defines it to include “its salts, isomers, and salts of isomers.” Slip op. at 9-10 (quoting G.S. 90-90(3)(c)). The term “isomer” is defined to mean “the optical isomer, unless otherwise specified.” Slip op. at 10 (quoting G.S. 90-87(14a)). The court cited research stating that D- and L-methamphetamine are optical isomers. Thus, the court concluded that both isomers of methamphetamine are controlled substances. For this reason, the court found that the pattern instructions delivered by the trial court appropriately addressed whether the substance was methamphetamine and the instruction that the defendant requested regarding methamphetamine-L was incorrect in law.

The court of appeals likewise found that the trial court did not err by refusing to instruct the jury that the State must prove the presence of a controlled substance by a scientifically valid chemical analysis. The appellate court noted that the pattern jury instructions delivered by the trial court informed the jury that they must be satisfied beyond a reasonable doubt as to every element of the offense, including the identification of the controlled substance. The trial court further instructed the jury that they were the sole judge of the weight and credibility of the evidence, including testimony from the State and defense experts. The court of appeals stated that these instructions captured the essential substance of the law and therefore the trial court did not err in declining the defendant's request for this special instruction.

Finally, the court of appeals concluded that even if it assumed error in the trial court's denial of the defendant's request for special instructions, the defendant had failed to show prejudice as there was no

reasonable possibility that the jury would have reached a different result had the instructions he requested been given.

(2) The court of appeals rejected the defendant's argument that the trial court erred in denying his motion to dismiss the charge of possession with intent to sell or deliver methamphetamine on the ground that the State failed to present sufficient evidence of a controlled substance. The defendant based his argument on the State's failure to differentiate between the isomers of methamphetamine. The court noted that a forensic scientist with the State Crime Laboratory testified that she performed testing on the substance seized from the defendant and determined that it was methamphetamine. She further testified that she reviewed the report prepared by the defendant's expert witness who testified at trial that methamphetamine exists in two isomer forms that have different effects on the body and that the testing done by the State could not differentiate between the isomers. The State's expert stated that this report did not change her scientific opinion as to the identity of the substance, testifying: "It is still identified as methamphetamine." Slip op. at 17. The court of appeals concluded that the evidence supported a reasonable inference that the defendant possessed a controlled substance—methamphetamine.

## Firearm Offenses

**(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. App. \_\_\_; 923 S.E.2d 881 (Nov. 19, 2025). 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.

## Impaired Driving

**A motor vehicle checkpoint operated under a template prepared by the Governor’s Highway Safety Program met statutory and constitutional standards; officers had probable cause to search a vehicle based on the odor of marijuana**

[State v. White](#), No. COA 25-4; \_\_\_ N.C. App. \_\_\_; 925 S.E.2d 815 (Jan. 7, 2026). The defendant was stopped at a motor vehicle checkpoint (or checking station) run by the Saint Pauls Police Department. His vehicle smelled of marijuana, so officers ordered him out of his vehicle. He said he had a gun in the car. Officers seized it and charged him with being a felon in possession of a firearm. He moved to suppress, arguing that the checkpoint was unlawful and that the odor of marijuana did not provide probable cause because it was indistinguishable from the odor of legal hemp. The trial judge denied the motions and the defendant pled guilty, reserving his right to appeal. (1) The checkpoint was lawful. The reviewing court rejected several challenges to the trial judge’s factual findings, determining that the checkpoint was approved in advance, in writing, by the Chief of Police, who signed an authorization form, and concluding that although the Saint Pauls Police Department did not have its own checkpoint policy, it operated under a template promulgated by the Governor’s Highway Safety Program. This arrangement satisfied [G.S. 20-16.3A](#), which requires police checkpoints to “[o]perate under a written policy.” Furthermore, the checkpoint was constitutional because it served the legitimate primary purpose of detecting traffic violations, and because it satisfied the balancing test set forth in *Brown v. Texas*, 443 U.S. 47 (1979), with the public interest in traffic safety outweighing the checkpoint’s limited intrusion into individual liberty. (2) Following several of its own recent cases, the reviewing court rejected the defendant’s argument that the odor of marijuana does not provide probable cause to search because it cannot be distinguished from the odor of legal hemp. The court additionally noted that in conversation with officers, the defendant did not claim to possess legal hemp.

## Sex Crimes

**(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; 388 N.C. 700 (Dec. 12, 2025). 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.

Shea Denning blogged about the *Calderon* case, [here](#).

### **Failure to register as a sex offender is a specific-intent crime, but the trial court did not plainly err by instructing the jury that the defendant’s intoxication had no bearing on his guilt or innocence**

[State v. Davidson](#), No. COA25-478; \_\_\_ N.C. App. \_\_\_ (Feb. 18, 2026). The defendant was charged with failure to register as a sex offender after satellite-based monitoring location data showed he was barely at his registration address for over a month. At trial, the jury asked the trial court a question about the interplay between willfulness and being under the influence of drugs. After some discussion with the State and defense counsel, the judge answered the jury’s question with a modified voluntary-intoxication instruction, but did not define willfully. The defendant was convicted.

On appeal, the defendant argued that the trial court erred by failing to define the term “willfully” in response to the jury’s question. The court of appeals dismissed the argument, concluding that the defendant neither objected at trial nor sought plain-error review, and that the issue was therefore waived.

The defendant also argued that the trial court committed plain error by instructing the jury that failure to register did not require specific intent, and therefore the defendant’s intoxication had no bearing on his guilt or innocence. After reviewing a series of legislative amendments from 1995 to 2006, including the addition of the word “willfully” as a *mens rea* requirement, the court concluded that failure to register is now a specific-intent crime. Accordingly, the trial court erred by instructing the jury that voluntary intoxication had no bearing on the defendant’s guilt or innocence. However, in light of the length of the defendant’s failure to register and the fact that he expressly declined to raise a voluntary intoxication defense, that error did not rise to the level of plain error.

### **Sufficient evidence of penetration supported Defendant’s conviction for statutory sex offense with a child by an adult**

[State v. Cruz](#), COA25-456; \_\_\_ N.C. App. \_\_\_; 924 S.E.2d 854 (Dec. 3, 2025). In mid-August 2020, Defendant molested his daughter-in-law’s brother’s four-year-old daughter “Sarah.” In May 2021, Defendant was indicted for statutory sex offense with a child by an adult and indecent liberties with a child. The matter came on for trial in February 2024. Sarah testified at trial that her cousins’ grandfather touched her inappropriate part. Sarah’s father testified that Sarah told him she went to the bathroom to wipe herself off and there was blood on the toilet paper. A registered nurse testified that Sarah told her that her cousins’ grandfather put his fingers in her “colis,” and it hurt. (“Colis” was the word Sarah used to describe her vagina.) The nurse conducted a physical exam of Sarah and found a 0.25 millimeter laceration at the bottom of Sarah’s labia minora. A forensic interviewer also testified that Sarah told her that her cousins’ grandfather had put his whole finger into her colis. Defendant’s DNA was found on Sarah’s underwear. Defendant was convicted of statutory sex offense with a child and indecent liberties with a child and appealed.

Before the Court of Appeals, Defendant argued the State presented insufficient evidence of penetration to support a conviction of statutory sex offense with a child by an adult. A person is guilty of statutory sex offense with a child by an adult if the person, among other things, engages in a sexual act with a victim. G.S. 14-27.28(a). “Sexual act” is defined as the penetration, however slight, of any object (such as a finger) into the genital or anal opening of another person’s body. G.S. 14-27.20(4). Here, the Court of Appeals said, the State presented substantial evidence supporting the element of penetration, including Sarah’s own testimony that Defendant touched her vagina and the testimony of a registered nurse that she found a laceration on Sarah’s labia.

**Evidence was insufficient to show Defendant aided and abetted statutory rape of a child by an adult and statutory sex offense of a child by adult; evidence was insufficient to show Defendant allowed the commission of a sexual act upon a child; no plain error in permitting expert to testify that the absence of injury does not lessen any concern for sexual abuse**

[State v. Kleist & Lipscomb](#), No. COA24-677; \_\_\_ N.C. App. \_\_\_; 925 S.E.2d 284 (Dec. 3, 2025). In December 2020, Defendant Lipscomb and her two children “Val,” age seven, and “Luke,” age nine, lived with her boyfriend Defendant Kleist. At some point, Defendant Kleist molested the children. In particular, he forced Luke to touch his penis, performed oral sex on him, and anally penetrated him. Defendant Kleist also penetrated Val’s vagina and anus with his penis, penetrated her anus with his finger and a bottle, forced her to perform oral sex on him, and performed oral sex on her. Both Defendants were indicted on multiple charges arising from the sexual abuse.

The matter came on for trial in July 2023. Luke and Val testified about Defendant Kleist’s actions. Val testified that she told Defendant Lipscomb what Defendant Kleist had been doing to her, but Defendant Kleist continued to abuse her after she had informed Defendant Lipscomb. Nurse Liana Hill, admitted as an expert in forensic sexual assault examinations, testified that the children’s physical examinations were normal, but that this does not rule out sexual assault. She testified, consistent with her written report, that given the overwhelming fact that the majority of children who disclose sexual abuse have normal genital exams, the absence of injury on the examinations in no way lessens any concern for sexual abuse. Defendant Kleist was convicted of statutory rape of a child by an adult and two counts of statutory sexual offense with a child by an adult. Defendant Lipscomb was convicted of aiding and abetting those crimes and two counts of felony child abuse by sexual act. Both Defendants appealed.

Before the Court of Appeals, Defendant Lipscomb argued the trial court erred by: (1) denying her motion to dismiss for insufficient evidence (1A) the charges of aiding and abetting statutory rape and statutory sexual offense and (1B) felony child abuse, (2) failing to instruct the jury on the intent requirement for aiding and abetting, and (3) imposing an unconstitutional sentence. Both Defendants argued the trial court erred by (4) admitting nurse Hill’s testimony that the absence of physical injuries should in no way lessen any concern for sexual abuse. Given its disposition of these arguments, the Court of Appeals addressed only issues one and four.

As for aiding and abetting (Issue 1A), to prove aiding and abetting the State must show (1) another person committed a crime, (2) the defendant knowingly advised, instigated, encouraged, procured, or aided that person to commit the crime, and (3) the defendant’s actions or statements caused or contributed to the crime’s commission. Here, the Court of Appeals found no evidence Defendant Lipscomb aided, actively encouraged, or communicated an intent to assist Defendant Kleist in committing statutory rape of a child by an adult or statutory sexual offense of a child by an adult. As for Luke, it also found no evidence that Defendant Lipscomb knew that Defendant Kleist was abusing him.

The Court of Appeals distinguished the State's caselaw as involving a parent who was present and witnessed the abuse but failed to intervene.

As for felony child abuse (Issue 1B), any parent of a child less than 16 who allows the commission of any sexual act upon the child is guilty of a Class D felony. G.S. 14-318.3(a2). Construing the term "allows," the Court of Appeals said that to allow something is to refrain from stopping it. Thus, a parent allows the commission of a sexual act when she: (1) knows that a sexual act has occurred or is occurring, (2) has the capacity to prevent further acts, and (3) fails to take action to protect her child. Her presence during the act is not required. Here, the Court of Appeals found substantial evidence that Defendant Lipscomb allowed the commission of a sexual act upon Val: Val told Defendant Lipscomb about Kleist's conduct, Defendant Lipscomb could have prevented the abuse, but Defendant Lipscomb took action to protect Val. As for Luke, however, the Court of Appeals found no evidence Defendant Lipscomb allowed the commission of a sexual act upon him because the State failed to prove Defendant Lipscomb knew about the sexual acts upon Luke.

As for the expert testimony (Issue 4), in a child sex case, absent physical evidence of sexual abuse, the trial court should not admit an expert opinion that sexual abuse has in fact occurred. *State v. Stancil*, 355 N.C. 266 (2002). Here, the Court of Appeals found no violation of *Stancil* in the admission of Nurse Hill's testimony that the absence of injuries does not rule out sexual assault. It distinguished Defendants' caselaw in which experts more clearly vouched for child victims. Further, given the children's testimony, corroborated by "their outcries to family members and behavioral changes observed by multiple witnesses," Defendants could not show that, but for the admission of Nurse Hill's testimony, the jury probably would have reached a different result.

## Theft Offenses

**There was substantial evidence that the defendant knew or had reasonable grounds to believe the gun in his possession was stolen.**

[State v. Bracey](#), No. 32A25; 388 N.C. 689 (Dec. 12, 2025). The defendant, a previously convicted felon with outstanding warrants, led officers on a high-speed chase after they asked him to get out of his car in a hotel parking lot. Upon the defendant's eventual arrest, officers saw an empty holster in his car, leading them to suspect the defendant had a firearm. They eventually found it behind a panel next to the car's steering wheel during a search of the car at the impound lot. A run of the gun's serial number indicated it was stolen. The defendant was charged with possession of a stolen firearm and other crimes. At trial, the court denied the defendant's motion to dismiss the stolen firearm charge for insufficient evidence and he was convicted.

On appeal, the defendant argued that the State's evidence was insufficient to establish that he knew or had reasonable grounds to believe the firearm was stolen. Over a dissent, the Court of Appeals affirmed the conviction.

The Supreme Court likewise affirmed, concluding that the defendant's flight, his attempt to conceal the gun, and his decision to hide the gun but not the holster provided evidence upon which would allow a rational juror to infer that the defendant knew or had reasonable grounds to believe the gun was stolen.

Justice Earls, joined by Justice Riggs, dissented, distinguishing the facts of this case from prior cases where evidence of the defendant's knowledge that a firearm or other property was stolen was deemed sufficient.

## Threats Offenses

**(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. App. \_\_\_ (Nov. 19, 2025). 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.

## Defenses

**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). 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.

**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; 388 N.C. 664 (Dec. 12, 2025). 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.

**1) Evidence was sufficient to support charges of attempted murder and discharging a firearm within an occupied enclosure with the intent to incite fear; (2) Trial court did not err by instructing jury on the felony disqualifier limiting a defendant's right of self-defense; (3) Trial court did not err by declining to instruct the jury on the defense of accident where the evidence failed to support such an instruction.**

[State v. Cole](#), No. COA24-563; \_\_\_ N.C. App. \_\_\_ (April 1, 2026). The defendant was convicted of two counts of first-degree murder, two counts of attempted first-degree murder and one count of discharging a firearm within an occupied enclosure with the intent to incite fear for shooting multiple people, and killing two of them, inside and outside of a Charlotte drug house.

The defendant took a friend to the drug house and had an altercation with the friend upon arriving that resulted in the friend hiding from him in the yard outside the house. After he was unable to find his friend in the yard, the defendant went inside the house. Some time later, other occupants of the house told the defendant he needed to leave and physically guided him out of the house. The defendant left in his car only to return twenty minutes later.

Upon seeing the defendant's car parked back on the street in front of the house, Furahn Morrow and Doug Bolten went out into the yard to look for him. Morrow was armed. The two were standing near the back porch when Morrow pushed Bolten away and grabbed his gun. Before Morrow fully raised the gun, the defendant shot Morrow in the face, killing him. Bolten ran into a storage closet. The defendant found him, and Bolten, who was unarmed, held up his hands and pled for his life. The defendant shot Bolten and then walked into the house.

The defendant opened fire inside the house's crowded kitchen, shooting Tilden Hoyle and shooting and killing Hoyle's girlfriend, Janet Scronce. Two of the other occupants of the home wrestled the defendant for his gun, ultimately subduing him.

The defendant was prosecuted for two counts of first-degree murder for shooting and killing Morrow and Scronce and with two counts of attempted first-degree murder for shooting Bolten and Hoyle, who survived their injuries.

(1) The defendant argued on appeal that the trial court erred by denying his motion to dismiss the charge of attempted murder of Bolten as the evidence merely raised conjecture or suspicion that he had the requisite specific intent to kill. The court of appeals rejected that argument, finding that the circumstances surrounding Bolten's shooting, including the fact that a cornered and unarmed Bolten pleaded for his life before the defendant shot him, provided substantial evidence of the defendant's intent to kill.

The defendant also contended that the trial court erred by denying his motion to dismiss the charge of discharging a firearm within an occupied enclosure with the intent to incite fear. The court of appeals disagreed, finding substantial evidence that the defendant intended to incite fear. Here, the evidence showed that after shooting two people in the backyard, the defendant entered the kitchen with his gun and extra ammunition and resumed shooting. Chaos ensued as people scrambled to leave the kitchen and hid throughout the house. The court of appeals determined that the defendant had inspired fear — the foreseeable consequence of his deliberate action — and that he must be held to have intended that fear.

(2) While the trial court provided a self-defense instruction as to the shootings of Morrow and Bolton, the defendant argued that the trial court erred by also instructing the jury that the shootings would not be justified as self-defense if the defendant was attempting or committing a felony with a causal nexus to his use of defensive force. The defendant argued that this instruction improperly allowed the jury to consider allegedly felonious conduct that occurred after those shootings. The court of appeals disagreed. It rejected the notion that there is a specific temporal component to the felony disqualifier beyond the statutory requirement of an immediate causal nexus. Noting that it is ordinarily for the jury to determine whether a defendant was engaged in disqualifying conduct bearing an immediate causal nexus to the circumstances giving rise to the use of force, the appellate court held that the jury was given the opportunity to make that determination.

(3) The defendant argued on appeal that the trial court committed reversible error in denying his request for jury instructions on the defense of accident with respect to the shootings of Scronce and Hoyle and discharging a firearm within an occupied enclosure with the intent to incite fear. The defendant contended that his “‘version of events described a struggle over a gun,’ during which his weapon accidentally discharged, and Hoyle and Scronce were unintentionally shot.” Slip op. at 25. Thus, he argued that it was for the jury to decide whether he had the requisite criminal intent. The court of appeals concluded that the evidence taken in the light most favorable to the defendant did not support an instruction on the defense of accident. It agreed with the trial court’s determination that the evidence demonstrated that the defendant was engaged in unlawful conduct and acting with criminal intent. The appellate court stated that even in the light most favorable to the defendant, there is no reasonable explanation for the defendant’s decision to return to the house armed with a gun twenty minutes after multiple people told him he was no longer welcome there. Moreover, the court of appeals stated that the undisputed evidence of the struggle over the defendant’s gun did not give rise to the defense of accident as it occurred only after Scronce and Hoyle were shot. Finally, even assuming error, the appellate court concluded that the defendant could not demonstrate prejudice as the jury’s verdicts reflected its determination that the shootings were intentional.

The court of appeals declined to consider the defendant’s unpreserved argument that the trial court erred when it imposed judgment for discharging a firearm within an occupied enclosure with the intent to incite fear “when he ‘was also convicted of murder and attempted murder based on this same shooting, in violation of double jeopardy.’” Slip op. at 31. Finally, the court of appeals remanded the case for correction of a clerical error in the judgment that did not affect the sentence.

**The trial judge was not required to instruct the jury about lack of justification or excuse when there was no evidence of any justification or excuse for the assault in question**

[State v. Phillips](#), No. COA25-275; \_\_\_ N.C. App. \_\_\_ (Jan. 7, 2026). The defendant was convicted of stalking with a court order in effect (based on his repeated harassment of his neighbors), assault with a firearm on a law enforcement officer (as a result of pointing a gun at a deputy who approached the defendant while investigating the stalking), and other charges.

The trial properly declined to include, in the jury instructions for the assault charge, the phrase “without justification or excuse.” Such instruction must be given only when there is some evidence of justification or excuse, and there was none here. Defendant contended on appeal that “he could have been asleep and thus reacted involuntarily” when the deputy approached his vehicle, but the evidence at trial showed that his eyes were open and that the deputy loudly announced his approach.

## Jury Issues

**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.

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 court followed G.S. 15A-1214(g) and did not err by declining to strike a juror; a defendant who does not exhaust peremptory challenges could not seek reversal of the trial court’s declination to strike a juror for cause**

[State v. Crowder](#), No. COA25-384; \_\_\_ N.C. App. \_\_\_ (Feb. 18, 2026). The defendant was charged with possession of firearm by felon and other crimes. During jury selection, one of the potential jurors told the judge she was concerned that the defendant had fallen asleep several times, which she viewed as “hugely disrespectful to the situation,” and potentially impairing her ability to be impartial. Slip op. at 2. The trial court asked if she could nonetheless base her decision on the evidence presented at trial. She replied that she didn’t know if she could. The defendant’s lawyer did not move to strike the juror and she was impaneled. After opening statements, the trial court asked again about the juror. Defense counsel expressed concern about the juror’s impartiality, acknowledged passing on her, and objected for the record that the juror had not been removed. The defendant was found guilty of possession of firearm by a felon and other crimes after a jury trial.

On appeal, the defendant argued that the trial court erred by failing to excuse the juror under G.S. 15A-1214(g), which allows the judge at any time before impanelment to excuse a juror for cause if the juror had made an incorrect statement during voir dire or some other good reason exists. The court of appeals concluded that the trial court did not err in applying G.S. 15A-1214(g); it heard the juror’s statement, conducted an initial inquiry, and allowed the parties to ask questions. Defense counsel was given an opportunity to exercise a peremptory challenge and did not, and the trial court determined in its discretion that there was no basis for a challenge for cause.

As to defense counsel’s objection after the jury was impaneled, the appellate court noted that the statute allowing a defendant to seek a reversal based on a trial court’s refusal to allow a challenge for cause, G.S. 15A-1214(h), requires that the defendant first have exhausted all the peremptory challenges available to him. Here, the defendant used only three of his six peremptory challenges, and therefore could not seek reversal on the trial court’s denial of his post-impanelment challenge for cause.

The court of appeals dismissed the defendant's ineffective assistance of counsel claim without prejudice.

**Foreperson's comments to the press following verdict did not show actual bias; motion for new trial properly denied**

[U.S. v. Ritter](#), 167 F.4th 677 (4th Cir. 2026). The defendant was tried and convicted in the District of South Carolina for murdering his transgender girlfriend based on her gender identity and related offenses. During jury selection, one member of the venire self-identified as a trans woman. She indicated that her gender identity would not bias her decision making in the case. The parties did not ask any additional questions of the potential juror, and she ultimately became the foreperson of the petit jury. After the jury convicted on all counts, that juror contacted the media about the case. She was quoted in a newspaper for the following remarks about the trial:

- "In my personal experience, it can be dangerous for trans women to date" and that transgender people "are everywhere."
- "If one of us goes down, there'll be another one of us on the jury."
- "I wish I had this great angle to give you as a reporter, that my gender identity weighed on this heavily and I saw myself in the victim, but honestly, I didn't. I followed the evidence and law and followed the judge's instructions and did what was asked of me and came to that conclusion."

Once these comments became public, the district court convened a hearing to explore potential juror bias. The district court judge extensively questioned the juror about her impartiality and ultimately found that the juror had credibly denied being biased against the defendant in both pretrial and post-trial proceedings. The district court also found that her statements to the media did not undercut her oath as a juror to be impartial. On appeal, the defendant argued that the juror's statements to the press showed actual bias warranting a new trial. The Fourth Circuit unanimously disagreed. "Actual bias exists only when a juror cannot or will not decide the case solely on the evidence." *Ritter* Slip op. at 5. Here, the district court did not err in its determination that the juror was both credible and impartial. The court also noted that the defendant did not argue that the juror gave false or untruthful answers during jury selection.

Other challenges to the sufficiency of the evidence and to an evidentiary ruling were likewise rejected, and the district court's judgment was affirmed in all respects.

**Potential juror's remark that he was familiar with the defendant and may have performed work for some of the alleged victims did not amount to improper external communication about the case**

[U.S. v. Umeti](#), 167 F.4th 687 (4th Cir. 2026). In this case from the Eastern District of Virginia, the defendant was charged with and convicted of wire fraud and various computer-related offenses stemming from a plan to trick U.S. businesses into sending wire transfers of funds to bank accounts belonging to the defendant. The defendant and his co-conspirators utilized malware and phishing emails to accomplish this end. During jury selection, the district court asked potential jurors whether any of them "might know something about the case." One juror spoke up, stating that he worked in cybersecurity and believed he had helped remediate some of the damage caused to the victims by the defendant's scheme. He further stated that he had heard of the defendant and knew of his involvement in the cybersecurity business. Counsel for the defendant immediately objected at the bench that these

comments poisoned the entire jury pool, because the potential juror had implied that he knew the defendant had committed computer fraud. The district court noted the objection but overruled it. During the remainder of jury selection, the district court emphasized the need for jurors to be impartial. At the end of jury selection, the district court struck the juror who had made the comment about being familiar with the defendants for cause. The jury ultimately returned guilty verdicts on all counts.

The defendant then moved for a judgment of acquittal and for a new trial, renewing his argument that the remarks from the potential juror unduly prejudiced the jury against him (among other arguments). The district court denied the motion. It found that the remarks were “general” in nature and reasoned that, because the potential juror was struck for cause, he could not have revealed external information about the case to the other jurors.

The right to an impartial jury under the Sixth Amendment includes ensuring that jurors are not exposed to external information or influence that can impact the decision-making process. Under *Remmer v. U.S.*, 347 U.S. 227 (1954), when there is “private communication, contact, or tampering . . . with a juror during a trial about the matter pending before the jury,” such external communication is regarded as presumptively prejudicial. *Id.* at 229. However, that presumption may be rebutted with evidence that the external information was “innocuous” and should not warrant a presumption of prejudice. Relevant factors to determine whether the external juror contact was merely innocuous or presumptively prejudicial include whether: “(1) any private communication; (2) any private contact; (3) any tampering; (4) directly or indirectly with a juror during trial; (5) about the matter before the jury.” *U.S. v. Cheek*, 94 F.3d 135, 141 (4th Cir. 1996). If the party claiming improper external juror influence makes out an initial case that such contact, communication, or tampering occurred, then the government has a chance to attempt to rebut the presumption of prejudice.

Here, the defendant could not pass the initial hurdle of demonstrating improper outside influence. In the words of the court:

[The potential juror’s] statements occurred in open court before the entire jury pool. Their substance—which is nothing more than [the potential juror] stating a general awareness of [the defendant] through his work in cybersecurity—falls far short of tampering or attempting to influence potential jurors. Moreover, nothing in the [potential juror’s] statements show any disposition towards [the defendant’s] guilt or innocence. *Umeti* Slip op. at 10.

The district court therefore did not err in refusing to grant the defendant’s motions based on improper external juror influence.

The government’s evidence was also sufficient to connect the defendant to the fraudulent activities, but the defendant prevailed on a challenge to the sufficiency of the evidence for a sentencing enhancement. The case was therefore affirmed in part, reversed in part, and remanded for resentencing.

## First Amendment Issues

### **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. App. \_\_\_ (Mar. 18, 2026). 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 state 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 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. App. \_\_\_; 924 S.E.2d 74 (Nov. 5, 2025). 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.

Phil Dixon blogged about the First Amendment issues in this case [here](#). Kristi Nickodem and Kristina Wilson blogged about the public meetings law implication of the case [here](#).

**Statute prohibiting knowingly teaching bombmaking to a person who intends to commit a violent crime is not facially overbroad; motion to dismiss properly denied**

[U.S. v. Arthur](#), 160 F.4th 597 (4th Cir. 2025). Under 18 U.S.C. 842(p)(2)(B), it is a crime to teach another person how to create or use “explosives, destructive devices, or weapons of mass destruction, knowing that such person intends to use that teaching, demonstration, or information for, or in furtherance of, an activity that constitutes a Federal crime of violence.” (cleaned up). The defendant ran a business that sold military equipment and offered training for people to help defend themselves “against a tyrannical government of our own or an invading tyrannical government.” *Arthur* Slip op. at 4. After one of the defendant’s customers was involved in a “fatal incident,” the FBI searched the customer’s home and discovered numerous manuals authored by the defendant, along with 14 functional pipe bombs that matched explosive devices described in the manuals. The FBI arranged for an undercover informant to contact the defendant and engage his training services. When the two met in person, the informant told the defendant that federal agents had been to his home, were probably going to return, and that he wanted to be prepared for their return. In response, the defendant told the informant that his choices were to either “stand and fight” the agents or flee. When the informant indicated he was not willing to flee, the defendant explained to the informant how to protect his property from federal agents. This

included advice on how to use grenades, improvised explosive devices (IEDs), guns capable of being fired remotely, and more. The defendant also showed the informant how to create a detonator and how to modify a shotgun so that it could fire grenades. Federal agents later arrested the defendant and searched his property, finding multiple IEDs and guns. In addition to the 18 U.S.C. 842 charge, the defendant was charged with several other counts relating to possession of illegal guns and bombs.

The defendant moved to dismiss pretrial, arguing that 18 U.S.C. 842(p)(2)(B) was facially overbroad. The district court denied the motion, finding that the statute did not limit protected speech and that the knowledge requirement of the law narrowed its scope to something akin to an aiding and abetting statute. The district court noted that the conduct covered by the statute went far beyond “abstract advocacy” of violence. *Arthur* Slip op. at 8. Following a jury trial, the defendant was convicted of all counts and sentenced to 300 months in prison. The defendant appealed, and a divided panel of the Fourth Circuit affirmed.

A law is facially overbroad under the First Amendment when it “criminalizes a substantial amount of protected expressive activity.” *Id.* at 12 (internal citation omitted). A court considering an overbreadth challenge must first analyze the scope of the challenged law and determine whether it may be read narrowly to avoid a constitutional issue. Next, the court must examine the breadth of protected speech criminalized by the statute. The challenger has the burden to show that the law substantially burdens protected expression compared to its legitimate reach. The court must also consider whether the speech affected by the statute is among the categories of unprotected speech. If the court determines that the statute is constitutionally overbroad, the court must then examine whether the overbroad part of the law is severable from the rest of the law.

Here, Congress substantially narrowed the reach of 18 U.S.C. 842(p)(2)(B) by including a knowledge requirement—the law only applies to those who teach or distribute knowledge about the creation of or use of explosives while knowing the recipient of the information intends to use it for illegal purposes. The law does not sweep in an undue amount of protected expressive activity, because it only applies to speech integral to criminal conduct, one of the categories of unprotected speech. 18 U.S.C. 942(p)(2)(b) only applies to someone who is effectively assisting in the commission of a crime by another. According to the court:

[S]omeone violating § 842(p)(2)(B) is aiding—i.e., facilitating—the underlying crime by intentionally sharing the specified information with someone that they know intends to use it to commit a proscribed crime. And because that sort of facilitation is undoubtedly ‘integral’ to the underlying crime, it is unprotected speech. *Id.* at 18-19.

Even if the statute could theoretically be applied to protected speech, the defendant here failed to show that the statute sweeps in a substantial amount of protected speech compared to its lawful applications. Thus, the district court correctly denied the motion to dismiss.

### **Generalized encouragement to conduct jihad did not rise to the level of incitement or speech integral to criminal conduct and was protected speech under the First Amendment**

[U.S. v. Al-Timimi](#), 164 F.4th 292 (4th Cir. 2026). The defendant was the founder of an Islamic Center in the Eastern District of Virginia. He was a frequent lecturer at the center and was a leader among the Muslim community. A group of young men connected with each other through the center and began

planning to engage in combat jihad. This planning began around 2000 and included playing paintball together as a form of combat training. The defendant was not a part of the group. When members of the group informed the defendant of their activities, he neither approved nor disapproved. At some point, an FBI agent approached a member of the group. When the defendant learned of this, he reprimanded the group members for making their plans too obvious to outsiders and advised them to be more discreet. Several group members began collecting firearms, and some began planning travel to Pakistan to be trained in combat by an Islamic militant group there. Some members of the group had already trained with that organization.

After the attacks on the World Trade Center on September 11, 2001, the defendant convened members of the center. He advised them that he expected anti-Muslim sentiment would be on the rise in America and to be careful. He also told one individual to “gather some brothers and come up with a . . . contingency plan,” to address the potential for “mass hostility towards Muslims in America.” *Al-Timimi Slip* op. at 5. At a later meeting with select members of the center (which included some members of the paintball group), the defendant advised the men to repent their sins, leave the U.S., and join the fight in Afghanistan. He told the men that, should they stay in the U.S., they would be complicit in the U.S. fight against Muslims by paying U.S. taxes. He also mentioned the Pakistani militant organization and suggested that the men get trained by them, because members of that group were on “the correct path” of religion. *Id.* at 6. This discussion had an impact on some of the group members, and several members travelled to Pakistan and were trained in combat tactics (although none of the men ever actually fought in Afghanistan).

In October of 2001, the defendant held another meeting at his home with adherents of the center. Some of the same men from the earlier meeting were present. The defendant advised the group to “support [the Muslims in Pakistan and Afghanistan] physically, [and] if you can’t support them financially, support them through speaking good of them or telling the good of what they are doing, and if you can’t do that, then at least pray from them.” *Id.* at 9.

By early 2003, law enforcement began investigating members of the Islamic center. They obtained search warrants for the homes of the defendant and others, interviewed members, and began recording their phone calls. Eleven members of the group, including the defendant, were indicted for various charges in June 2003, all relating to their alleged conspiracy to engage in combat against the U.S. The defendant spoke to law enforcement several times, acknowledging many of his prior remarks, but denying that he specifically encouraged people to get combat training or wage jihad. A superseding indictment later charged the defendant with a host of serious terrorism-related crimes, including conspiring to levy war against the U.S., soliciting and inducing others to do so, contributing services to the Taliban, and inducing others to illegally use firearms. The defendant pleaded not guilty, but the jury convicted on all counts. The defendant was sentenced to life plus a number of long consecutive sentences. Procedural wrangling relating to certain secret government surveillance programs relevant to the prosecution that came to light in 2005 delayed the appeal of that verdict until 2014. More new information relating to government surveillance was discovered around that time. The U.S. Supreme Court also decided the *Johnson* case, which impacted the defendant’s appeal. *See U.S. v. Johnson*, 576 U.S. 591 (2015) (finding the definition of “violent felony” in 18 U.S.C. 924(e) unconstitutional). These developments led to multiple remands to the district court before resolution of the appeal. Several of the defendant’s convictions were vacated in 2024 due to the *Johnson* decision. Between the time he served and the convictions that were ultimately vacated, the defendant had served a large portion of his sentence, but still faced an additional 360 months imprisonment.

On appeal, the defendant argued that his convictions violated the First Amendment because the language that formed the basis of his convictions was protected speech. The Fourth Circuit unanimously agreed. “Abstract ‘advocacy of lawlessness’ is protected speech. ‘Mere encouragement’ of unlawful activity is ‘quintessential protected advocacy.’” *Al-Timimi* Slip op. at 14. Only speech that incites or produces imminent lawlessness and is likely to cause such conduct is unprotected. *Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969). Similarly, speech that facilitates, solicits, or abets the commission of crime is unprotected as speech integral to criminal conduct. *Giboney v. Empire Storage & Ice Co.*, 336 U.S. 490, 498 (1949). Here, the defendant’s speech did not fall within either category of unprotected speech. “Al-Timimi’s speech was neither sufficiently imminent or sufficiently definite to lose First Amendment protection under *Brandenburg*.” *Al-Timimi* Slip op. at 20. Likewise, the defendant “did not help anyone to commit crimes. To be sure, he encouraged them. But the most he did to further the commission of these crimes was to advise individuals—in quite general terms—on how to react to the Sept. 11 attacks . . .” *Id.* at 28.

The convictions were all therefore vacated and the case was remanded to the district court for it to enter judgments of acquittal.

## 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. \_\_\_; 926 S.E.2d 911 (Mar. 20, 2026). 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.

**(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. App. \_\_\_ (June 2, 2026). 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.

**Extension of probation was not authorized under G.S. 15A-1342(a) as it did not occur in the last six months of the original period of probation and was improper under G.S. 15A-1344(d) as the trial court did not make requisite findings of good cause to extend; the trial court lacked jurisdiction to revoke probation after original period expired**

[State v. Smith](#), COA25-713; \_\_\_ N.C. App. \_\_\_ (May 20, 2026). The defendant was placed on probation for 36 months after entering an *Alford* plea on 16 felonies in November 2020. In December 2021, the state filed a probation violation report, and in April 2022, the state requested a probation extension of 24 months to reset the payment plan for restitution. Defense counsel agreed and the court extended the probation. The trial court did not make findings of good cause under G.S. 15A-1344(d), nor did the written order specify that the extension was entered pursuant to G.S. 15A-1342(a), which allows for certain extensions in the last six months of the original period of probation. Subsequent violation reports were filed in 2022 leading to a modification of various financial obligations. Additional violation reports were filed in 2024, and a hearing on these allegations resulted in the defendant's probation being revoked and his sentence being activated. The defendant filed a handwritten, deficient notice of appeal.

As the defendant failed to timely file his notice of appeal, he sought review through a petition for writ of certiorari. The Court of Appeals granted the defendant's petition, concluding that he had met his burden of showing that an error was probably committed and that extraordinary circumstances (such as an unwarranted extension of probation) existed. Addressing the merits of the defense's claims, the Court of Appeals agreed that the trial court lacked authority to extend the defendant's probation in 2022. The extension was not authorized by G.S. 15A-1342(a) because it did not occur during the last six months of the original period of probation, and the extension was not valid under G.S. 15A-1344(d) because the trial court made no findings of good cause for the extension. As the extension was not proper, the period of probation expired in November of 2023, and the trial court lacked jurisdiction to revoke the defendant's probation in 2024. The court vacated the judgment and remanded for further proceedings.

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

[State v. Kelliher](#), 388 N.C. 728 (Dec. 12, 2025). 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.

## Post-Conviction and Appeals

**When a governor commutes a defendant’s death sentence to life in prison prior to appellate review, the defendant’s appeal is to the Court of Appeals, not to the state supreme court**

[State v. Robinson](#), No. 142A12; \_\_\_ N.C. \_\_\_ (May 22, 2026). The defendant killed a man in 2007. He was charged with, and convicted of, first-degree murder and was sentenced to death. He appealed directly to the Supreme Court of North Carolina pursuant to [G.S. 7A-27\(a\)\(1\)](#) (stating that appeals go directly to the state supreme court in “[a]ll cases in which the defendant is convicted of murder in the first degree and the judgment of the superior court includes a sentence of death”) and [G.S. 15A-2000\(d\)\(1\)](#) (providing that “[t]he judgment of conviction and sentence of death is subject to automatic review by the Supreme Court of North Carolina”).

The defendant had also made a claim under the Racial Justice Act (RJA). He asked the state supreme court to stay his direct appeal pending a resolution of his RJA claim. In 2012, the court granted a stay. On December 31, 2024, with the stay still in place, Governor Cooper commuted the defendant’s death sentence to a sentence of life in prison.

The defendant then asked the Supreme Court of North Carolina to dissolve the stay and remand the case to the Court of Appeals. In his view, with the death penalty off the table, his case was no longer a capital case subject to direct and automatic review by the state supreme court. Rather, it was in effect a first-degree murder conviction with a sentence of life in prison. Appeals in such cases go to the Court of Appeals under [G.S. 7A-27\(b\)\(1\)](#).

A majority of the Supreme Court of North Carolina agreed. The majority looked at the type of review required by [G.S. 15A-2000\(d\)](#), which addresses whether “the record . . . support[s] the jury’s findings of any aggravating circumstance . . . upon which the sentencing court based its sentence of death,” whether “the sentence of death was imposed under the influence of passion, prejudice, or any other arbitrary factor,” and whether the “sentence of death is excessive or disproportionate.” The majority concluded that those considerations revealed “the legislature’s principal concern in creating direct appeals to this Court from judgments imposing the death penalty: to prevent arbitrary or unjust executions.” Given that the defendant in this case no longer faces the possibility of execution, the majority saw no reason for his appeal to go directly to the state supreme court. It therefore remanded the case to the Court of Appeals.

Justice Berger dissented. In his view, [G.S. 7A-27\(a\)\(1\)](#) unambiguously requires that where “the judgment of the superior court includes a sentence of death,” the direct appeal in “all cases” goes to the state supreme court. Clemency is an act of executive grace that does not change the judgment. Because the judgment in this case contains a sentence of death, Justice Berger would have kept the case in the Supreme Court of North Carolina.

**Where defense counsel stated his *intention* to enter notice of appeal at the appropriate time, but the defendant then physically attacked his lawyer during entry of judgment, oral notice of appeal was in violation of Rule 4; appeal dismissed and petition for writ of certiorari denied**

[State v. Jordan](#), No. COA25-107; \_\_\_ N.C. App. \_\_\_; 925 S.E.2d 37 (Dec. 17, 2025). The defendant was convicted at trial of assault with a deadly weapon with intent to kill and possession of a firearm by a felon. After the defendant was sentenced for the first conviction, defense counsel stated, “At the appropriate time, we would be entering notice of... appeal.” However, as the court pronounced the second judgment, the defendant attacked his attorney and knocked him to the ground. The bailiffs intervened in the “melee” and removed the defendant from the courtroom. While defense counsel received medical attention in the judge’s chambers, the judge resumed court, noted the circumstances, and stated: defense counsel “does give[ ] notice of appeal on behalf of his client.” No written notice of appeal was filed.

The Court of Appeals pointed to cases where defense counsel’s statement of an *intention* to give oral notice of appeal was found to be premature and in violation of Rule 4. The court concluded that it lacked jurisdiction to hear the appeal and dismissed it. The court also declined to exercise its discretion to consider the matter and denied the defendant’s petition for writ of certiorari.

**(1) A second MAR raising a forfeiture of counsel argument was procedurally barred where the defendant was in a position to raise the relevant change in law in an earlier MAR but did not; (2) “good cause” did not excuse the procedural bar where the failure to raise the claim earlier was attributable to counsel’s omission rather than true unavailability; (3) defendant’s claim that a fundamental miscarriage of justice excuses the procedural bar was abandoned where it was not supported by argument**

[State v. Haizlip](#), No. COA25-469; \_\_\_ N.C. App. \_\_\_; 926 S.E.2d 198 (Jan. 21, 2026). This post-conviction appeal arose from a 2013 Guilford County trial in which the defendant ultimately proceeded pro se after discharging retained counsel, declining appointed counsel, and later appearing for trial with a private attorney who sought (and was denied) a continuance. The defendant was convicted of cocaine trafficking-related offenses and attaining habitual felon status. On direct appeal, the Court of Appeals upheld the trial court’s denial of the motion to continue and the defendant’s forfeiture of counsel under then-existing caselaw. The defendant filed a first MAR in 2020 arguing the continuance denial unfairly deprived him of counsel. The trial court denied it as having been previously determined on the merits on direct appeal, and the defendant did not seek review. The defendant later filed a second MAR in 2023 based on caselaw from the North Carolina Supreme Court that narrowed forfeiture of counsel to “egregious misconduct.” The trial court denied the defendant’s second MAR, finding that the merits had been previously determined and that the defendant was barred from reasserting them. The Court of Appeals granted certiorari to review the denial.

The Court of Appeals affirmed solely on procedural bar grounds, concluding the defendant was “in a position to adequately raise” the changed forfeiture theory in his first MAR. This is because the first case narrowing forfeiture of counsel (*State v. Simpkins*, 373 N.C. 530 (2020)) had been decided months before he filed his first MAR. The Court also rejected the defendant’s attempt to fit within statutory exceptions to the procedural bar. The Court first explained that “good cause” requires genuine unavailability beyond counsel’s control, and that the record reflected omission of the changed law argument in the first MAR, rather than unavailability. The Court also addressed the defendant’s claim that a fundamental miscarriage of justice would occur if the Court did not address his forfeiture of

counsel argument. The Court found that the defendant did not support this claim with an argument that a different result would have been reached, and as a result the Court held the argument to be abandoned. Finally, the Court noted that its holding in this case is narrow and decided solely on the procedural bar, and as a result it does not address the merits of whether the defendant forfeited counsel under the new standard announced in *Simpkins*.

## Sex Offender Registration and Satellite-Based Monitoring

### **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. App. \_\_\_ (Mar. 18, 2026). 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 state 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.

**Trial court reversibly erred by ordering SBM when presented with low-risk Static 99 evaluation and no other evidence showed that the defendant required the highest level of monitoring and supervision**

[State v. Leggett](#), No. COA25-2; \_\_\_ N.C. App. \_\_\_; 926 S.E.2d 173 (Jan. 7, 2026). 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.

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.

**(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. App. \_\_\_; 924 S.E.2d 64 (Nov. 5, 2025). 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.