302 N.C. App.—No. 3 Pages 323-467

ADVANCE SHEETS

OF

CASES

ARGUED AND DETERMINED IN THE

COURT OF APPEALS

OF

NORTH CAROLINA

SEPTEMBER 2, 2026

MAILING ADDRESS: The Judicial Department
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COURT OF APPEALS

CASES REPORTED

Filed 7 January 2026

CASES REPORTED WITHOUT PUBLISHED OPINIONS

HEADNOTE INDEX

APPEAL AND ERROR

Appellate subject matter jurisdiction—civil judgment for attorney fees—not included in appeal from criminal judgment—The appellate court lacked subject matter jurisdiction to review defendant's civil judgment for attorney fees—apparently imposed after defendant was found guilty of multiple drug offenses—because defendant failed to include any civil judgment in his record on appeal regarding his criminal judgment or to appeal from the civil judgment either as a matter of right or by filing a petition for writ of certiorari; therefore, defendant's appeal from the civil judgment was dismissed. **State v. Hodges, 361.**

Preservation of issues—right to present complete defense—constitutional claim—not raised at trial—In a prosecution for first-degree murder, defendant failed to preserve for appellate review his argument that his constitutional right to present a complete defense was denied when the trial court prohibited him from presenting defenses of diminished capacity and insanity, where defendant did not raise the constitutional claim in the first instance before the trial court. **State v. Oakes, 379.**

Preservation of issues—sufficiency of evidence—untimely renewal of motion to dismiss—Defendant failed to preserve for appellate review any argument regarding the sufficiency of the evidence where, after his motion to dismiss the charge of possession of methamphetamine for insufficient evidence was denied at the close of the State's evidence, he failed to timely renew his motion to dismiss at the close of all the evidence as required by Appellate Rule 10(a)(3), instead renewing the motion after both the charge conference and the trial court's instruction of the jury. **State v. Hodges, 361.**

CIVIL PROCEDURE

Rule 60(b)(6) motion for relief—from voluntary dismissal without prejudice—final adjudication—no extraordinary circumstances shown—In a case where plaintiff voluntarily dismissed without prejudice a negligence action filed after a car accident with defendants, where the insurance company providing underinsured motorist coverage to plaintiff ("Unnamed Defendant"), appearing pursuant to N.C.G.S. § 20-279.21(b)(4), filed a motion to enforce an alleged agreement to settle the now-dismissed litigation and contended that defendants had breached this agreement, the trial court did not abuse its discretion by denying plaintiff's motion for relief from judgment—filed pursuant to Rule 60(b)(6) and seeking to set aside his prior voluntary dismissal so that Unnamed Defendant could pursue its motion in the original suit. On the one hand, since the one-year period for refiling the negligence action had already passed, plaintiff's voluntary dismissal functioned as a "final adjudication" from which relief could be sought through a Rule 60(b)(6) motion. On the other hand, however, plaintiff failed to show that extraordinary circumstances existed or that justice demanded setting aside his voluntary dismissal, where Unnamed Defendant's counsel conceded that it had an alternative avenue for enforcing the settlement agreement: filing a separate action against defendants for breach of contract. **Crumel v. Morton, 323.**

CONSTITUTIONAL LAW

Due process—competency to stand trial—adoption of competency report—no error—In a prosecution for first-degree murder, in which, during a pre-trial competency hearing, the trial court received a written competency report from the forensic psychiatrist who had examined defendant, the trial court did not err by incorporating facts from the report rather than making its own independent findings. Further, the report supported the court's determination that defendant was competent to stand trial where it detailed defendant's ability to understand the proceedings against him and to participate in his defense. **State v. Oakes, 379.**

Due process—competency to stand trial—prior competency determination—no duty to conduct new hearing sua sponte—In a prosecution for first-degree murder, in which the trial court had previously determined that defendant was competent to stand trial following a pre-trial competency hearing, the trial court was not required to sua sponte conduct an additional competency inquiry several months later at the start of trial. In the time between the pre-trial competency hearing and the start of trial defendant had remained in the hospital rather than jail in order to ensure he received consistent medication and mental health treatment and there was no evidence to suggest his incompetency at trial. **State v. Oakes, 379.**

Effective assistance of counsel—failure to argue deficiency of counsel—In an appeal from a first-degree murder conviction, defendant failed to support his argument that he received ineffective assistance of counsel (IAC) by making any allegations, much less showing, that his counsel's performance was deficient. Instead, defendant argued that the trial court erred by failing to allow defense counsel to present defenses of diminished capacity and insanity; therefore, defendant's IAC claim was rejected. **State v. Oakes, 379.**

Effective assistance of counsel—premature claim—dismissal without prejudice—Defendant's claim that his counsel provided ineffective assistance for failing to subpoena a witness to testify at his trial for multiple drug offenses was premature because the record was not clear regarding what steps, if any, defense counsel took to secure the witness. Therefore, defendant's claim was dismissed without prejudice to his right to file a motion for appropriate relief in the trial court. **State v. Hodges, 361.**

North Carolina—civil penalties clause—appropriations clause—hog farm agreement payments—not civil penalties—In a suit brought by a Randolph County taxpayer on behalf of the county's board of education—seeking a declaration that taxpayer funds received under an agreement with hog producers which rightly belonged to the state's public schools pursuant to the civil penalty and appropriations clauses of the North Carolina Constitution were wrongly distributed as Environmental Enhancement Grants (EEGs)—the trial court erred by granting summary judgment in plaintiff's favor, rather than in defendants' favor, for fiscal years 2021-25. Payments made under the agreement during these years did not constitute civil penalties and, accordingly, were not required to be deposited into the Civil Penalty and Forfeiture Fund and used exclusively for the public schools. That the account receiving the EEG payments was designated "23606-Justice-Seized and Forfeited Assets"—thus sharing the root "forfeit" with the Civil Penalty and Forfeiture Fund—did not transform the nature of the funds. Further, because plaintiff's claim under the appropriations clause rested upon his position that the EEG funds were withdrawn without a lawful appropriation, that contention failed as well. **Randolph Cnty. Bd. of Educ. v. Stein, 346.**

North Carolina—gift clause—appropriations clause—hog farm agreement payments—not gifts—In a suit brought by a Randolph County taxpayer on behalf of the county's board of education—seeking a declaration that taxpayer funds received under an agreement with hog producers which rightly belonged to the state's public schools pursuant to the gift and appropriations clauses of the North Carolina Constitution were wrongly distributed as Environmental Enhancement Grants (EEGs)—the trial court erred by granting summary judgment in plaintiff's favor, rather than in defendants' favor, for fiscal years 2019-21. The gift clause ensures that any general gifts received by the State and not intended for another purpose are spent on public schools; since the hog farm agreement expressly designated that the payments be used for environmental enhancement efforts, the gift clause was inapplicable to those funds. Further, because plaintiff's claim under the appropriations clause rested upon his position that the EEG funds were withdrawn without a lawful appropriation, that contention failed as well. **Randolph Cnty. Bd. of Educ. v. Stein, 346.**

North Carolina—separation of powers clause—legislative appointment provisions—Building Code Council—Utilities Commission—facial challenge by Governor—Following principles established by prior case law, the appellate court determined that the General Assembly did not violate the separation of powers clause of the North Carolina Constitution by enacting laws altering the structures of and appointments to the Building Code Council and Utilities Commission, respectively, since the laws did not deprive the governor of his constitutionally sufficient control over either entity. In particular, the reassignment of one of the governor's appointments to the Utilities Commission to the State Treasurer was permissible under the constitution, which authorizes the legislature to appoint and confirm statutory officers, and since the reassigned appointment remained within the executive branch. Therefore, the three-judge panel assigned to hear the governor's facial constitutional challenge to both laws properly denied the governor's motion for summary judgment and properly granted the legislative defendants' motions for summary judgment on this issue. **Stein v. Hall, 420.**

North Carolina—separation of powers clause—legislative appointment provisions—judicial vacancies—facial challenge by Governor—The General Assembly did not violate the separation of powers clause of the North Carolina Constitution by enacting a law altering how appointments to appellate judicial vacancies are made—newly requiring the governor to select from a list of three qualified persons recommended by the political party executive committee of the political party with which the vacating judge was affiliated when elected—where the phrase in the constitution that judicial vacancies shall be filled "in a manner prescribed by law" clearly suggested and did not preclude legislative involvement. Therefore, since the three-judge panel erred by granting the governor's motion for summary judgment in his facial constitutional challenge, this portion of the panel's order was reversed and the matter was remanded with instructions for the panel to enter an order granting the legislative defendants' motions for summary judgment and denying the governor's motion. **Stein v. Hall, 420.**

CRIMINAL LAW

Jury instructions—assault with a firearm on a law enforcement officer—"without justification or excuse"—optional phrase not supported—In a prosecution for assault with a firearm on a law enforcement officer, felony stalking with a court order in effect, and resisting a public officer, the trial court did not err by declining to add the phrase "without justification or excuse" to the jury instructions on the assault charge because the optional phrase from the pattern jury instruction was not supported by the evidence. For one thing, defendant did not raise any affirmative defenses and instead argued that he had been unaware of the officers' identities when they approached his car. Further, although defendant argued that his act of pointing his gun at the officers was involuntary, there was evidence that defendant was awake when the officers approached him, and that the officers were wearing their uniforms, they loudly announced their presence and identified themselves, and they had to draw their guns and tell defendant twice to drop his gun or they would shoot before he lowered his weapon. **State v. Phillips, 392.**

DOMESTIC VIOLENCE

Protective order—statutory one-year maximum duration—not affected by separate ex parte protective order—The trial court's entry of a domestic violence protective order (DVPO), pursuant to N.C.G.S. § 50B-3(b), for one year against defendant (based on threats he made to plaintiff, with whom he shared two minor children and cohabited), following the entry of an ex parte DVPO, pursuant to N.C.G.S. § 50B-2—which was extended for almost three months because defendant sought (and received) three continuances for the scheduled hearing to determine whether a section 50B-3(b) DVPO should be entered—did not violate the limitation in section 50B-3(b) that a DVPO "shall be for a fixed period of time not to exceed one year." Section 50B-2(c)(5) protects defendants in DVPO proceedings by providing that, upon entry of an ex parte DVPO, a hearing on the potential entry of a section

50B-3 DVPO must be held within 10 days, absent consent of the parties (as occurred in this case). That language demonstrated the legislature's intent to limit the length of an ex parte DVPO independent of the length restriction for a DVPO entered under section 50B-3. **Hays v. Lewis, 330.**

EVIDENCE

Authentication—video evidence—testimony about distinctive characteristics—In a prosecution that resulted in defendant being convicted of three counts of second-degree rape, three videos—of defendant engaging in sexual acts with his wife while she was drugged (and to which she had not consented)—were authenticated pursuant to Evidence Rule 901 and thus were properly admitted by the trial court. Defendant's wife recognized distinctive characteristics of the videos based upon her knowledge of the people (herself and defendant), location (their Raleigh townhouse), and approximate time (the period when they lived there) depicted therein; that testimony was sufficient to support a finding that the videos showed what their proponent claimed. Further, defendant's wife testified that she first observed the videos by accessing a previously unknown email account on defendant's iPad using defendant's password and that she never altered the videos, and defendant did not adduce any evidence that the videos were altered. Accordingly, any potential breach in the chain of custody of the videos was applicable only to the jury's weighing of the evidence and not to the trial court's finding that the videos were authenticated. **State v. Leggett, 367.**

Authentication—voicemail recording—personal knowledge—In defendant's prosecution for first-degree murder for the strangulation of his mother, there was no error in the admission into evidence of a voicemail recording of defendant and his mother. The testimony of defendant's sister that she recognized defendant and her mother on the voicemail based on her personal knowledge was sufficient to authenticate the recording pursuant to Evidence Rule 901. **State v. Oakes, 379.**

INDICTMENT AND INFORMATION

Felony stalking with a court order in effect—sufficiency—plain and concise factual statement of charge—The trial court did not err by failing to dismiss a charge of felony stalking with a court order in effect where the indictment charging that offense was not fatally flawed—as contended by defendant, who argued that it did not include a plain and concise factual statement putting defendant on notice of the crime charged—or, if the indictment was deficient, defendant failed to allege, much less prove, that any error was prejudicial. Moreover, if defendant required clarification of the exact nature of the stalking charge, his proper recourse was to file a motion for a bill of particulars. **State v. Phillips, 392.**

JUDGMENTS

Summary judgment order—decree regarding hog farm agreement—future payments—In a suit brought by a Randolph County taxpayer on behalf of the county's board of education—seeking a declaration that taxpayer funds received under an agreement with hog producers rightly belonged to the state's public schools and were wrongly distributed as Environmental Enhancement Grants—the trial court erred by decreeing that "all funds received" under the agreement "after July 1, 2019 must be used for the purpose of environmental enhancement in public schools."

JUDGMENTS—Continued

Because the theories on which the trial court granted plaintiff relief depended on how funds received in the past were treated in the past and that same treatment might not reoccur in the future, the judgment could not extend to future payments beyond those fiscal years that were the subject of the litigation. **Randolph Cnty. Bd. of Educ. v. Stein, 346.**

JURISDICTION

Motion to enforce settlement of voluntarily dismissed action—voluntary dismissal left in effect—trial court's order denying motion—vacated—In a case where plaintiff voluntarily dismissed without prejudice (under Civil Procedure Rule 41) a negligence action filed following a car accident with defendants, where the trial court subsequently denied plaintiff's Rule 60(b)(6) motion for relief from the voluntary dismissal, which plaintiff filed so that the insurance company providing underinsured motorist coverage to plaintiff ("Unnamed Defendant," appearing pursuant to N.C.G.S. § 20-279.21(b)(4)) could pursue—in the now-dismissed action—its motion to enforce an alleged settlement agreement between the parties, the trial court's denial of Unnamed Defendant's motion to enforce was vacated as void for lack of jurisdiction, since, with the voluntary dismissal left in effect, there was no pending action in which the trial court could have ruled on the motion. **Crumel v. Morton, 323.**

Standing—taxpayer suit on behalf of county school board—board's refusal of demand to sue—Plaintiff had standing to bring an action on behalf of the Randolph County Board of Education (RCBE)—seeking a declaration that taxpayer funds received under an agreement with hog producers which rightly belonged to the state's public schools (pursuant to the civil penalty, gift, and appropriations clauses of the North Carolina Constitution), were wrongly distributed as Environmental Enhancement Grants—where the complaint alleged that (1) plaintiff was a taxpayer of Randolph County (2) who made a demand on the RCBE to file the lawsuit and was refused. **Randolph Cnty. Bd. of Educ. v. Stein, 346.**

PUBLIC RECORDS

Public Records Act exception—"research data, records, or information of a proprietary nature"—statutory interpretation—In an action filed against a state university (defendant) by an investigative research group (plaintiff) examining the origins of the global COVID-19 pandemic, defendant did not violate the Public Records Act when it withheld certain documents in response to plaintiff's request for records relating to one of the university's professors and, specifically, his work with the Wuhan Institute of Virology—the alleged origin site of the virus resulting in the pandemic. In ruling that these documents fell under the exception to the Public Records Act expressed in N.C.G.S. § 116-43.17, which exempts "[r]esearch data, records, or information of a proprietary nature" from public disclosure, the trial court properly concluded that: (1) under the last antecedent canon of statutory interpretation, the phrase "of a proprietary nature" only modified the word "information" and did not modify either "data" or "records;" and (2) the phrase "of a proprietary nature" referred broadly to information in which the owner had a protectable interest (not just to trade secrets, as plaintiff contended). **US Right to Know v. Univ. of N.C. at Chapel Hill, 453.**

SATELLITE-BASED MONITORING

Lifetime monitoring—nominal risk level on Static-99R—statutorily required evidence for higher level risk not presented—The trial court's placement of defendant on lifetime satellite-based monitoring (SBM)—the maximum SBM sentence—following his conviction of second-degree rape (an aggravated offense) was reversed where defendant's Static-99R risk assessment came back with a nominal risk level of 0 and the State did not present any evidence as to matters not already addressed in the risk assessment (which included defendant's underlying offense) to support a higher level of risk or SBM sentence, as required by N.C.G.S. § 14-208.40A(c1). **State v. Leggett, 367.**

SEARCH AND SEIZURE

Motion to suppress—challenged findings of fact—supported by competent evidence—In a possession of a firearm by a felon prosecution, competent evidence supported each of the challenged findings of fact in the order denying defendant's motions to suppress evidence—obtained at a traffic checkpoint during which defendant acknowledged not having a driver's license, displayed a partially smoked joint when asked about a strong odor of marijuana, and later admitted that he was a felon and had a firearm in the vehicle—including that: the checkpoint utilized the Governor's Highway Safety Program template, the checkpoint was authorized by the local chief of police, the supervising officer complied with statutory requirements in placing the checkpoint, defendant did not deny that marijuana was the source of the odor detected, defendant admitted to possessing a gun and being a felon after being ordered to exit his car, and an SBI Memo described "difficulties" in distinguishing between hemp and marijuana. **State v. White, 401.**

Motion to suppress—probable cause—odor and sight of burnt marijuana— In a possession of a firearm by a felon prosecution, the trial court properly denied defendant's motion to suppress evidence obtained at a traffic checkpoint—during which defendant acknowledged not having a driver's license and displayed a partially smoked joint when asked about a strong odor of marijuana—where defendant argued that the law enforcement officer supervising the checkpoint lacked probable cause to search the car because illegal marijuana could not be distinguished from legal hemp by sight or scent. The officer testified that, based upon his training and experience, he saw and smelled burnt marijuana, and defendant did not claim to possess hemp. **State v. White, 401.**

Motion to suppress—traffic checkpoint—lawful primary programmatic purpose—reasonable under Fourth Amendment—In a possession of a firearm by a felon prosecution, the trial court properly denied defendant's motion to suppress evidence obtained at a traffic checkpoint during which defendant: acknowledged not having a driver's license, displayed a partially smoked joint when asked about a strong odor of marijuana, and later admitted that he was a felon and had a firearm in the vehicle. The court's conclusion that the checkpoint had a lawful primary programmatic purpose (detecting and deterring violations of the state's motor vehicle code) was supported by testimony to that effect from the checkpoint's supervising officer, which, because defendant presented no conflicting evidence, was sufficient for the trial court to rely upon. Further, competent evidence supported the court's conclusion that the checkpoint was reasonable under the Fourth Amendment because its advancement of the public interest—as shown by its location, timing, and operation in accordance with the checkpoint plan—outweighed the severity of its interference with individual liberty in that it: did not interfere with legitimate traffic; was signaled by police cars with blue lights and officers in safety vests; stopped every vehicle traveling in both directions; and was otherwise appropriately sited, authorized, and conducted. **State v. White, 401.**

TRUSTS

Law firm—professional limited liability company—ineligibility to serve as trustee—legal services exception—inapplicable—In a declaratory judgment action filed by petitioner in connection with his grandfather's will, where the respondents included the attorney who drafted the will and his law firm, a professional limited liability company that the will named as the sole trustee of the grandfather's testamentary trust, the trial court erred in concluding that the firm could legally serve its trustee role when, in fact, a corporate entity is statutorily barred from serving as trustee of a testamentary trust unless expressly authorized under one of eight enumerated categories listed in N.C.G.S. § 53-303(a), none of which applied to the firm. Notably, the law firm did not fall under the exception for companies providing "legal services" (in section 53-304(2)), since serving as a trustee is not itself the practice of law and is legally recognized as something that individual lawyers—not law firms—undertake as part of a fiduciary relationship, not an attorney-client relationship. **In re Est. of Russo, 337.**

WILLS

Beneficiary—standing—declaratory judgment action—to enforce will's terms—forfeiture clause in will—not triggered—In a declaratory judgment action filed by petitioner in connection with his grandfather's will—where the respondents included the grandfather's wife, whom the will named as executor of the estate; the attorney who drafted the will; and the attorney's law firm, which was named as successor executor of the estate and sole trustee of a testamentary trust created under the will—the trial court properly denied respondents' motion to dismiss for lack of standing under Civil Procedure Rule 12(b)(1). Although the will's forfeiture clause provided that beneficiaries—including petitioner—would forfeit their interests if they challenged any provision of the will or trust, petitioner did not trigger the forfeiture clause by filing the action where, by arguing that his grandfather's wife had renounced her role as executor and that the law firm was statutorily barred from serving as successor executor or trustee of the trust, petitioner did not contest the will but rather sought to enforce its terms and proper appointment of fiduciaries (as authorized under N.C.G.S. § 28A-5.1(b)(ii)). **In re Est. of Russo, 337.**

Executor—delay in qualifying—waiver—factual question—In a declaratory judgment action filed by petitioner in connection with his grandfather's will, where the grandfather's wife was named as executor of the estate but failed to qualify as such in the five years after petitioner's grandfather died, the trial court erred in dismissing the petition for declaratory judgment without first conducting a fact-finding hearing to determine whether the wife's failure to qualify as executor constituted a waiver of her right under the will to serve in that capacity. **In re Est. of Russo, 337.**

Law firm—professional limited liability company—ineligibility to serve as executor of estate—In a declaratory judgment action filed by petitioner in connection with his grandfather's will, where the respondents included the attorney who drafted the will and his law firm, a professional limited liability company that the will named as successor executor of the grandfather's estate, the trial court erred in

N.C. COURT OF APPEALS
2026 SCHEDULE FOR HEARING APPEALS

Cases for argument will be calendared during the following weeks:

January	12 and 26
February	9 and 23
March	9 and 23
April	20
May	4 and 18
June	1
August	10 and 24
September	14 and 28
October	12 and 26
November	16
December	1

Opinions will be filed on the first and third Wednesdays of each month.

WILLIAM FITZGERALD CRUMEL, Plaintiff
v.
MELISSA CROOM MORTON and SARAH ELIZABETH ANNE MORTON, Defendants

No. COA25-372

Filed 7 January 2026

1. Civil Procedure—Rule 60(b)(6) motion for relief—from voluntary dismissal without prejudice—final adjudication—no extraordinary circumstances shown

In a case where plaintiff voluntarily dismissed without prejudice a negligence action filed after a car accident with defendants, where the insurance company providing underinsured motorist coverage to plaintiff ("Unnamed Defendant"), appearing pursuant to N.C.G.S. § 20-279.21(b)(4), filed a motion to enforce an alleged agreement to settle the now-dismissed litigation and contended that defendants had breached this agreement, the trial court did not abuse its discretion by denying plaintiff's motion for relief from judgment—filed pursuant to Rule 60(b)(6) and seeking to set aside his prior voluntary dismissal so that Unnamed Defendant could pursue its motion in the original suit. On the one hand, since the one-year period for refiling the negligence action had already passed, plaintiff's voluntary dismissal functioned as a "final adjudication" from which relief could be sought through a Rule 60(b)(6) motion. On the other hand, however, plaintiff failed to show that extraordinary circumstances existed or that justice demanded setting aside his voluntary dismissal, where Unnamed Defendant's counsel conceded that it had an alternative avenue for enforcing the settlement agreement: filing a separate action against defendants for breach of contract.

2. Jurisdiction—motion to enforce settlement of voluntarily dismissed action—voluntary dismissal left in effect—trial court's order denying motion—vacated

In a case where plaintiff voluntarily dismissed without prejudice (under Civil Procedure Rule 41) a negligence action filed following a car accident with defendants, where the trial court subsequently denied plaintiff's Rule 60(b)(6) motion for relief from the voluntary dismissal, which plaintiff filed so that the insurance company providing underinsured motorist coverage to plaintiff ("Unnamed Defendant," appearing pursuant to N.C.G.S. § 20-279.21(b)(4)) could pursue—in the now-dismissed action—its motion to enforce an alleged settlement agreement between the parties, the trial court's denial of Unnamed Defendant's motion to enforce was vacated as void for lack of jurisdiction, since, with the voluntary dismissal left in effect, there was no pending action in which the trial court could have ruled on the motion.

Appeal by Unnamed Defendant from Order entered 29 October 2024 by Judge William D. Wolfe in Nash County Superior Court. Heard in the Court of Appeals 29 October 2025.

No brief filed for Plaintiff-Appellee William Fitzgerald Crumel.

Poyner Spruill LLP, by J. Nicholas Ellis and John J. Ferebee, III, for Defendants-Appellees Melissa Croom Morton and Sarah Elizabeth Anne Morton.

Pinto Coates Kyre & Bowers, PLLC, by Britney M. Millisor, Richard L. Pinto, and Lyn K. Broom, for Unnamed Defendant-Appellant Pennsylvania National Mutual Casualty Insurance Company.

HAMPSON, Judge.

Factual and Procedural Background

Pennsylvania National Mutual Casualty Insurance Company (Unnamed Defendant) appeals from an Order denying its Rule 60(b)(6) Motion for Relief from Judgment and denying its Motion to Enforce Settlement. The Record before us tends to reflect the following:

On 10 November 2017, William Crumel (Plaintiff) was involved in a car accident with Melissa and Sarah Morton (Defendants). On 6 January 2020, Defendants' insurer, North Carolina Farm Bureau Insurance Group (NCFB),[1] offered to tender its policyholder limit of $30,000 to Plaintiff in exchange for a release from further liability as to any future claims against NCFB and Defendants. On 20 January 2020, Unnamed Defendant, Plaintiff's insurer, advised NCFB it would be advancing the $30,000 payment to Plaintiff to protect its subrogation rights.

On 18 September 2020, Plaintiff filed a Complaint against Defendants alleging the November 2017 car accident was a result of Defendants' negligence. Defendants filed their Answer denying the allegations and asserting the defense of contributory negligence on 4 January 2021. On

1. NCFB is not a party to the present action.

7 April 2021, Unnamed Defendant, as the insurer providing underinsured motorist coverage to Plaintiff, filed a Notice of Appearance and Conditional Answer pursuant to N.C. Gen. Stat. § 20-279.21(b)(4).[2]

Despite attempts at settling the matter, a trial date was ultimately set for 13 June 2022. However, Plaintiff voluntarily dismissed the action without prejudice pursuant to Rule 41 of the North Carolina Rules of Civil Procedure on 23 May 2022. Settlement discussions continued between the parties over the course of the next year, but eventually NCFB and Defendants allegedly indicated a refusal to settle the matter.

On 18 October 2024, Unnamed Defendant filed a Motion to Enforce Settlement. On 21 October 2024, at the hearing on the Motion to Enforce Settlement, Plaintiff made an oral Motion to set aside his prior voluntary dismissal and resurrect the original action under Rule 60(b)(6) of the North Carolina Rules of Civil Procedure.[3] Plaintiff and Unnamed Defendant asserted NCFB and Defendants had agreed to settle the matter but now would not comply with the agreement. The parties acknowledged that in order to seek judicial enforcement of the alleged settlement agreement, they could either: (1) petition the trial court to set aside the voluntary dismissal and reopen the original case pursuant to Rule 60(b)(6), or (2) file "a whole new lawsuit" asserting a claim on the alleged settlement agreement. Counsel for Unnamed Defendant stated they had elected to exercise the former option under Rule 60(b)(6) because filing a lawsuit on the alleged settlement agreement didn't "seem very efficient." Unnamed Defendant argued justice demanded setting aside the dismissal so that it could seek judicial enforcement of the alleged settlement agreement.

Following argument on the Rule 60(b)(6) Motion, Unnamed Defendant argued its Motion to Enforce Settlement. Unnamed Defendant further elaborated on the argument it presented in support of its Rule 60(b)(6) Motion, explaining why it believed a settlement agreement

2. "A party injured by the operation of an underinsured highway vehicle who institutes a suit for the recovery of moneys for those injuries and in such an amount that, if recovered, would support a claim under underinsured motorist coverage shall give notice of the initiation of the suit to the underinsured motorist insurer as well as to the insurer providing primary liability coverage upon the underinsured highway vehicle. Upon receipt of notice, the underinsured motorist insurer shall have the right to appear in defense of the claim without being named as a party therein, and without being named as a party may participate in the suit as fully as if it were a party." N.C. Gen. Stat. § 20-279.21(b)(4) (2023).

3. The Rule 60(b)(6) Motion was made by Plaintiff, but Unnamed Defendant argued most of its substance.

existed between the parties and how NCFB and Defendants had refused to comply. Defendants, for their part, maintained they had never entered into a settlement agreement. The trial court took both Motions under advisement.

On 29 October 2024, the trial court entered an Order denying the Rule 60(b)(6) Motion for Relief from Judgment and denying the Motion to Enforce Settlement "procedurally and on its merits." On 25 November 2024, Unnamed Defendant timely filed Notice of Appeal.[4]

Issues

The issues on appeal are whether the trial court: (I) abused its discretion in denying the Rule 60(b)(6) Motion for Relief from Judgment; and (II) erred in ruling on the Motion to Enforce Settlement.

Analysis

I. Rule 60(b)(6) Motion

[1] " '[A] motion for relief under Rule 60(b) is addressed to the sound discretion of the trial court and appellate review is limited to determining whether the court abused its discretion.' " *Yang Real Est. Invs., LLC v. Affordable Mini Storage of Newton, LLC*, 300 N.C. App. 114, 118, 920 S.E.2d 231, 235 (2025) (quoting *Sink v. Easter*, 288 N.C. 183, 198, 217 S.E.2d 532, 541 (1975)). An abuse of discretion results when the trial court's ruling is "manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision." *Brown v. Foremost Affiliated Ins. Servs. Inc.*, 158 N.C. App. 727, 732, 582 S.E.2d 335, 339 (2003) (citation and quotation marks omitted).

As a threshold matter, we address Defendants' assertion that Unnamed Defendant cannot use Rule 60(b)(6) to seek relief from Plaintiff's voluntary dismissal because a voluntary dismissal without prejudice is not a "final adjudication" for the purposes of Rule 60(b). Under Rule 60(b) of the North Carolina Rules of Civil Procedure, the trial court may "relieve a party or his legal representative from a final judgment, order, or proceeding" for a number of reasons, including any reason "justifying relief from the operation of the judgment." N.C. Gen. Stat. § 1A-1, Rule 60(b)(6) (2023). Generally, "relief from a voluntary dismissal is not available pursuant to Rule 60(b), because no relief is

4. Although Plaintiff brought the Rule 60(b)(6) Motion in the trial court, Plaintiff did not appeal the trial court's Order denying the Rule 60(b)(6) Motion, nor has he submitted any arguments to this Court.

sought from an order, judgment, or proceeding as contemplated by the Rule." *Troy v. Tucker*, 126 N.C. App. 213, 215, 484 S.E.2d 98, 99 (1997). However, "once the one-year period for refiling an action has elapsed and the action can no longer be resurrected, the voluntary dismissal acts as a final adjudication for purposes of Rule 60(b)." *Robinson v. Gen. Mills Rests.*, 110 N.C. App. 633, 637, 430 S.E.2d 696, 698 (1993).

Here, Plaintiff voluntarily dismissed the original action on 23 May 2022. Thus, over two years had passed when Plaintiff and Unnamed Defendant made their Rule 60(b)(6) Motion on 21 October 2024. Therefore, Plaintiff's voluntary dismissal constituted a final adjudication from which Unnamed Defendant could seek relief under Rule 60(b)(6). *See id*. However, we further conclude the trial court did not abuse its discretion in denying the Rule 60(b)(6) Motion.

"The test for whether a judgment, order or proceeding should be modified or set aside under Rule 60(b)(6) is two pronged: (1) extraordinary circumstances must exist, and (2) there must be a showing that justice demands that relief be granted." *Howell v. Howell*, 321 N.C. 87, 91, 361 S.E.2d 585, 588 (1987) (citation omitted). "[R]elief should be forthcoming only where both requisites exist." *Huggins v. Hallmark Enters., Inc.*, 84 N.C. App. 15, 25, 351 S.E.2d 779, 785 (1987) (quoting *Baylor v. Brown*, 46 N.C. App. 664, 670, 266 S.E.2d 9, 13 (1980)).

Unnamed Defendant's sole argument for setting aside Plaintiff's voluntary dismissal is essentially a substantive argument asserting Defendants and NCFB have breached the alleged settlement agreement. Unnamed Defendant has presented lengthy arguments to this Court as to why there is a valid settlement agreement, how NCFB and Defendants have breached that agreement, and effectively contends NCFB and Defendants will "get away with" breach of the settlement agreement if Plaintiff's voluntary dismissal is not set aside so that Unnamed Defendant may seek relief in the original action. *See generally Est. of Barber v. Guilford Cnty. Sheriff's Dep't*, 161 N.C. App. 658, 662, 589 S.E.2d 433, 436 (2003) ("[T]o specifically enforce the terms of the settlement agreement[,] Defendant could: (1) take a voluntary dismissal of his original action and then institute a new action on the contract, or (2) seek to enforce the settlement agreement by petition or motion in the *original* action." (emphasis in original) (citing *State ex rel. Howes v. Ormond Oil & Gas Co., Inc.*, 128 N.C. App. 130, 136, 493 S.E.2d 793, 796-97 (1997))).

At the hearing in the instant case, counsel for Unnamed Defendant acknowledged it could have elected to enforce the alleged settlement agreement through filing a separate claim for breach of contract but instead chose to seek enforcement of the alleged agreement by asking the trial court to reopen the original action pursuant to Rule 60(b)(6) because filing a separate claim didn't "seem very efficient." We are not persuaded Unnamed Defendant has shown extraordinary circumstances exist or that justice demands setting aside Plaintiff's voluntary dismissal where Unnamed Defendant has conceded a separate avenue exists to pursue its desired relief. *See id.*

Unnamed Defendant took a strategic risk in pursuing relief through a Rule 60(b) motion rather than through a separate action on the alleged settlement agreement.[5] *Cf. Sessions v. Sloane*, 248 N.C. App. 370, 387, 789 S.E.2d 844, 857 (2016) (holding trial court did not abuse its discretion in declining to conduct in camera review of documents where defendants "took a strategic risk in not submitting the documents to be sealed for *in camera* review."). Nonetheless, both Plaintiff and Unnamed Defendant acknowledged the decision to set aside Plaintiff's voluntary dismissal was fully within the trial court's sound discretion, and "[o]ur Supreme Court has indicated that this Court cannot substitute 'what it consider [s] to be its own better judgment' for a discretionary ruling of a trial court, and that this Court should not disturb a discretionary ruling unless it 'probably amounted to a substantial miscarriage of justice.' " *Huggins*, 84 N.C. App. at 25, 351 S.E.2d at 785 (quoting *Worthington v. Bynum*, 305 N.C. 478, 486-87, 290 S.E.2d 599, 604-05 (1982)).

Thus, Unnamed Defendant has not shown extraordinary circumstances exist and that justice demands relief to justify setting aside Plaintiff's voluntary dismissal of the original action under Rule 60(b)(6). *See Howell*, 321 N.C. at 91, 361 S.E.2d at 588 (citation omitted). Therefore, on the facts before us, the trial court did not abuse its discretion in denying Unnamed Defendant's Rule 60(b)(6) Motion for Relief from Judgment.

II. Motion to Enforce Settlement

[2] Unnamed Defendant next argues, because the trial court denied its Rule 60(b)(6) Motion, the trial court's Order denying its Motion to Enforce Settlement must be vacated for lack of jurisdiction. Defendants, for their part, argue Unnamed Defendant should be judicially estopped from asserting this argument because the Motion to

5. We express no opinion as to the existence of the alleged settlement agreement or whether Unnamed Defendant has a valid claim for breach of the alleged settlement agreement. Likewise, we express no opinion on Defendants' arguments that Unnamed Defendant's claim is barred by the statute of limitations.

Enforce Settlement was filed by Unnamed Defendant and heard at Unnamed Defendant's request.

Generally, "a party is not entitled to seek relief on appeal from a trial court action the party invited." *In re K.B.C.*, 295 N.C. App. 619, 625, 906 S.E.2d 840, 845 (2024) (citing *Frugard v. Pritchard*, 338 N.C. 508, 512, 450 S.E.2d 744, 746 (1994)) (other citations omitted). However, we give special consideration to issues of jurisdiction; indeed, "[a] universal principle as old as the law is that proceedings of a court without jurisdiction over the subject matter are a nullity and its judgment without effect either on the person or property." *Hart v. Thomasville Motors, Inc.*, 244 N.C. 84, 90, 92 S.E.2d 673, 678 (1956) (citations omitted). Accordingly, we will address Unnamed Defendant's jurisdictional argument.

" 'It is well established that where [a] plaintiff takes a voluntary dismissal pursuant to [N.C. Gen. Stat. §] 1A-1, Rule 41(a)(1), no suit is pending thereafter on which the court could make a final order.' " *TOG Props., LLC v. Pugh*, 276 N.C. App. 422, 426, 857 S.E.2d 535, 539 (2021) (alterations in original) (quoting *Ward v. Taylor*, 68 N.C. App. 74, 78, 314 S.E.2d 814, 818 (1984)). Here, Plaintiff voluntarily dismissed the original action in the instant case pursuant to Rule 41(a) on 23 May 2022, which effectively closed the file and left no suit pending upon which the trial court could enter an order. *See id.*; *see also Walker Frames v. Shively*, 123 N.C. App. 643, 646, 473 S.E.2d 776, 778 (1996) ("A Rule 41(a) dismissal strips the trial court of authority to enter further orders in the case . . . ."). Unnamed Defendant later sought relief from the dismissal; however, because the trial court denied its Rule 60(b)(6) Motion, Plaintiff's voluntary dismissal remained in force with no action pending.

Thus, because there was no action pending, the trial court did not have jurisdiction to rule on Unnamed Defendant's Motion to Enforce Settlement. *See TOG Props.*, 276 N.C. App. at 426, 857 S.E.2d at 539. Therefore, the trial court's Order denying Unnamed Defendant's Motion to Enforce Settlement is void for lack of jurisdiction. Consequently, we vacate the portion of the trial court's Order denying Unnamed Defendant's Motion to Enforce Settlement.

Conclusion

Accordingly, for the foregoing reasons, we affirm the trial court's denial of the Rule 60(b)(6) Motion for Relief from Judgment. We vacate the trial court's denial of the Motion to Enforce Settlement.

AFFIRMED IN PART; VACATED IN PART.

Chief Judge DILLON and Judge STADING concur.

RYAN LYNN HAYS, Plaintiff
v.
MATTHEW THOMAS LEWIS, Defendant

No. COA24-872

Filed 7 January 2026

Domestic Violence—protective order—statutory one-year maximum duration—not affected by separate ex parte protective order

The trial court's entry of a domestic violence protective order (DVPO), pursuant to N.C.G.S. § 50B-3(b), for one year against defendant (based on threats he made to plaintiff, with whom he shared two minor children and cohabited), following the entry of an ex parte DVPO, pursuant to N.C.G.S. § 50B-2—which was extended for almost three months because defendant sought (and received) three continuances for the scheduled hearing to determine whether a section 50B-3(b) DVPO should be entered—did not violate the limitation in section 50B-3(b) that a DVPO "shall be for a fixed period of time not to exceed one year." Section 50B-2(c)(5) protects defendants in DVPO proceedings by providing that, upon entry of an ex parte DVPO, a hearing on the potential entry of a section 50B-3 DVPO must be held within 10 days, absent consent of the parties (as occurred in this case). That language demonstrated the legislature's intent to limit the length of an ex parte DVPO independent of the length restriction for a DVPO entered under section 50B-3.

Appeal by Defendant from order entered 7 June 2024 by Judge Larry L. Archie in Guilford County District Court. Heard in the Court of Appeals 22 May 2025.

Beacon Legal PLLC, by Gavin J. Reardon, for defendant-appellant.

Bullock Clay & Furr, PLLC, by Jessica S. Bullock, for plaintiff-appellee.

STADING, Judge.

Matthew Thomas Lewis ("Defendant") appeals from entry of a domestic violence protective order ("DVPO"). Defendant contends the trial court exceeded its authority by entering the DVPO with a statutorily impermissible expiration date. After careful consideration, we affirm the trial court's order.

I. Background

Ryan Lynn Hays ("Plaintiff") and Defendant "are persons of the opposite sex who are not married but live together" and share two minor children. The record tends to show that the parties' relationship ended after Defendant made "some threats" to Plaintiff. In response, on 8 March 2024, Plaintiff filed a complaint requesting a DVPO against Defendant. That same day, the trial court granted Plaintiff's request for ex parte relief. The ex parte DVPO stated it "shall be effective until" 15 March 2024—the date scheduled for a hearing after notice to Defendant and an opportunity to be heard concerning whether the trial court should grant or deny Plaintiff's action "for a fixed period of time not to exceed one year" under N.C. Gen. Stat. § 50B-3 (2023).

On 15 March 2024, Defendant moved for a continuance. The trial court granted Defendant's motion and ordered that the ex parte DVPO remain in effect until the new hearing date of 28 March 2024. On the next hearing date, Defendant again moved for a continuance. The trial court also granted this motion and ordered that the ex parte DVPO remain in effect until the new hearing date of 25 April 2024. Plaintiff thereafter moved for the disqualification of Defendant's attorney, citing a conflict of interest. On 25 April 2024, Plaintiff's motion was heard, and following admonishment to Defendant's attorney for the conflict, Defendant requested his attorney to withdraw and moved for a third continuance. Again, the trial court granted Defendant's motion for a continuance and ordered that the ex parte DVPO remain in effect until the new hearing date of 6 June 2024.

On 30 April 2024, Defendant moved for relief under North Carolina Rule of Civil Procedure 60(b) and "sanctions OR (in the alternative) . . . for attorneys fees." Defendant requested the trial court to set aside the ex parte DVPO and attached an affidavit of "a close friend to the parties." The trial court ordered Defendant's motion to be heard in conjunction with the DVPO on the next court date.

The trial court conducted a hearing on 7 June 2024, and found: "On [or] about March 24, Defendant threaten[ed] to ass[a]ult [ ] Plaintiff. Defendant has a long history of threatening and placing the Plaintiff in fear [of] imminent serious bodily injury. March 7[ ] the Defendant contacted the Plaintiff 84 times with threats to her livelihood, and employment." Thus, the trial court concluded, inter alia, that "[t]he defendant committed an act of domestic violence against the plaintiff," and "[t]here is danger of serious and immediate injury to the plaintiff." And so, effective until 6 June 2025, the trial court ordered, among other things, Defendant "shall not commit any further acts of domestic violence or make any threats of domestic violence," and "shall have no contact" with Plaintiff. It also ordered Defendant to "not assault, threaten, abuse, follow, harass . . . , or interfere with" Plaintiff, nor to "interfere with the minor children residing with" Plaintiff. Additionally, the trial court granted Plaintiff "possession of . . . the parties' residence," and "custody of the minor children," but granted Defendant visitation.

On 27 June 2024, Defendant filed his notice of appeal.

II. Jurisdiction

This Court has jurisdiction under N.C. Gen. Stat. § 7A-27(b)(2) (2023) ("[A]ppeal lies of right directly to the Court of Appeals in any of the following cases . . . [f]rom any final judgment of a district court in a civil action.").

III. Analysis

Defendant asks our Court to consider whether the trial court exceeded its authority under N.C. Gen. Stat. § 50B-3 in ordering the DVPO effective until 6 June 2025 since an ex parte DVPO was entered before 7 June 2024. He contends N.C. Gen. Stat. § 50B-3 prohibits the combined length of the two DVPOs since it exceeds one year. Thus, the core of this appeal is the meaning and applicability of the time limitations set forth in the North Carolina Domestic Violence Act, codified in Chapter 50B of the North Carolina General Statutes. We are therefore tasked with interpreting the statute and determining its applicability to this matter.

Defendant presents a novel question of statutory construction. "Questions of statutory interpretation are ultimately questions of law for the courts and are reviewed de novo." *In re Summons Issued to Ernst & Young, LLP*, 363 N.C. 612, 616, 684 S.E.2d 151, 154 (2009). "Our primary goal in construing a statute is 'to ensure that the purpose of the legislature, the legislative intent, is accomplished.' " *Wynn v. Frederick*, 385 N.C. 576, 581, 895 S.E.2d 371, 377 (2023) (quoting *Elec. Supply Co. v. Swain Elec. Co.*, 328 N.C. 651, 656, 403 S.E.2d 291, 294 (1991)). To accomplish this task, "we first look to the plain meaning of the statute." *In re Summons Issued to Ernst & Young, LLP*, 363 N.C. at 616, 684 S.E.2d at 154 (quoting *Frye Reg'l Med. Ctr., Inc. v. Hunt*, 350 N.C. 39, 45, 510 S.E.2d 159, 163 (1999)). "Where the language of a statute is clear, the courts must give the statute its plain meaning; however, where the statute is ambiguous or unclear as to its meaning, the courts must interpret the statute to give effect to the legislative intent." *Id.* Our application of the plain meaning rule requires us to "consider the context in which the statutory words are used because '[w]e do not . . . construe statutory phrases in isolation; we read statutes as a whole.' " *Ayes v. United States VA*, 473 F.3d 104, 108 (4th Cir. 2006) (quoting *United States v. Morton*, 467 U.S. 822, 828, 104 S. Ct. 2769 (1984)). If the text at issue is unambiguous, then our "judicial inquiry is complete." *Id.* (quoting *Conn. Nat'l Bank v. Germain*, 503 U.S. 249, 254, 112 S. Ct. 1146, 1149 (1992)).

"Our General Assembly enacted the Domestic Violence Act, N.C.G.S. Chapter 50B, to respond to the serious and invisible problem of domestic violence." *State v. Elder*, 368 N.C. 70, 72, 773 S.E.2d 51, 53 (2015) (citation modified) (quoting *Augur v. Augur*, 356 N.C. 582, 591, 573 S.E.2d 125, 132 (2002)). The North Carolina Domestic Violence Act proscribes the procedural framework for issuance of protective orders. *See* N.C. Gen. Stat. § 50B-1 et seq. Defendant claims the time limitations imposed by N.C. Gen. Stat. § 50B-3(b) "must include any period in which there was an *ex parte* order. . . ." That subsection provides:

> Protective orders entered pursuant to this Chapter shall be for a fixed period of time not to exceed one year. The court may renew a protective order for a fixed period of time not to exceed two years, including an order that previously has been renewed, upon a motion by the aggrieved party filed before the expiration of the current order; provided, however, that a temporary award of custody entered as part of a protective order may not be renewed to extend a temporary award of custody beyond the maximum one-year period.

N.C. Gen. Stat. § 50B-3(b). We thus begin our analysis by considering the plain meaning of the N.C. Gen. Stat. § 50B-3(b) to effectively apply the statute as written. *See Wynn*, 385 N.C. at 581, 895 S.E.2d at 377.

A. Statutory Interpretation

Defendant contends the "start" date for "a fixed period of time not to exceed one year" for a DVPO entered under N.C. Gen. Stat. § 50B-3(b) cannot be determined "by the express terms of the Act." Further, Defendant argues "[t]he one[-]year period in § 50B-3(b) should be narrowly construed to include any period in which there was an ex parte order under G.S. § 50B-2." First looking to the plain meaning of the statute reveals Defendant's argument as defective.

The provision at issue states: "Protective orders entered pursuant to this Chapter shall be for a fixed period of time not to exceed one year." N.C. Gen. Stat. § 50B-3(b). "When construing a statute, we first examine the plain words of the statute, as the best indicia of legislative intent is the language of the statute itself." *Wynn*, 385 N.C. at 581, 895 S.E.2d at 377 (cleaned up). "If the plain language of the statute is unambiguous, we 'apply the statute[ ] as written.' " *Id.* (quoting *N.C. Dep't of Correction v. N.C. Med. Bd.*, 363 N.C. 189, 202, 675 S.E.2d 641, 649 (2009)).

Although "the substantive protective provisions of any type of protective order are addressed by N.C. Gen. Stat. § 50B-3," *Rudder*, 234 N.C. App. at 183, 759 S.E.2d at 328, this Court recognizes a distinction between ex parte DVPOs and DVPOs entered only after notice to the defendant and an opportunity to participate in a full adversarial hearing. *See*, *e.g.*, *id.* at 173, 182–83, 759 S.E.2d 321, 328 (noting an ex parte DVPO is intended to address a threat of imminent harm while "the one-year DVPO is entered only after notice to the defendant and an opportunity to participate in a full adversarial hearing . . . to address issues for a longer time period. . . ."); *see also Hensey v. Hennessy*, 201 N.C. App. 56, 63, 685 S.E.2d 541, 547 (2009). As explained by this Court in *Hensey*, ex parte DVPOs and DVPOs entered only after notice and an opportunity to be heard are "*independent of one another*. . . ." 201 N.C. App. at 66, 685 S.E.2d at 548 (emphasis added). These orders are distinct—a DVPO entered after notice and an opportunity to be heard is not merely an extension of an existing ex parte DVPO; it is entered independently of the ex parte DVPO and separately by the trial court only after an adversarial hearing, or by consent of the parties. *See* N.C. Gen. Stat. § 50B-2(c)(5) (2023); *see also* N.C. Gen. Stat. § 50B-3(b1) (2023). Therefore, the plain meaning of "[p]rotective orders entered pursuant to this Chapter" places a limitation "of time not to exceed one year" beginning upon the issuance of a DVPO entered after notice and an opportunity to be heard and does not include the time encompassed by an ex parte DVPO. *Id.* § 50B-3(b).

Furthermore, considering the applicability of N.C. Gen. Stat. § 50B-3(b) within the context of the Domestic Violence Act illustrates why Defendant's urged reading of the statute is the product of viewing a particular subsection through an overly narrow aperture. Our Court "does not read segments of a statute in isolation." *Rhyne v. K-Mart Corp.*, 358 N.C. 160, 188, 594 S.E.2d 1, 20 (2004). "Context is a primary determinant of meaning. A legal instrument typically contains many interrelated parts that make up the whole. The entirety of the document thus provides the context for each of its parts." Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 167 (2012).

Our analysis must therefore account for another subsection in the Domestic Violence Act specifically addressing the time limitations imposed on ex parte DVPOs:

> Upon the issuance of an ex parte order under this subsection, a hearing shall be held within 10 days from the date of issuance of the order or within seven days from the date of service of process on the other party, whichever occurs later. A continuance shall be limited to one extension of no more than 10 days unless all parties consent or good cause is shown. The hearing shall have priority on the court calendar.

N.C. Gen. Stat. § 50B-2(c)(5). The legislature provided particularized safeguards within the text of N.C. Gen. Stat. § 50B-2(c)(5), precisely addressing Defendant's concerns. That subsection demands that continuances "shall be limited to one extension of no more than 10 days *unless all parties consent or good cause is shown*." N.C. Gen. Stat. § 50B-2(c)(5) (emphasis added). And, "[t]he hearing shall have priority on the court calendar." *Id.*

Here, Defendant bears responsibility for the majority of the delay of which he now complains. Save the time initially set forth in the ex parte DVPO until its expiration—one week, the record shows each instance of the trial court's granting a continuance of the ex parte DVPO was due to Defendant's request. The built-in procedural protections of N.C. Gen. Stat. § 50B-2(c)(5) were designed by the legislature to save litigants in Defendant's position from unnecessarily prolonged ex parte DVPOs. We do not believe it an accident, but by thoughtful design, that the legislature included language in N.C. Gen. Stat. § 50B-2(c)(5) carefully limiting the length of ex parte DVPOs separately from the one-year limitation contained in N.C. Gen. Stat. § 50B-3(b).

Our adoption of Defendant's urged reading of N.C. Gen. Stat. § 50B-3(b) would ignore the limitations already provided in N.C. Gen. Stat. § 50B-2(c)(5). Reading both subsections together shows a statutory scheme calculated to limit the total length of the process as a whole. We thus decline to "superimpose[ ] provisions and limitations not contained" in N.C. Gen. Stat. § 50B-3(b). *In re Banks*, 295 N.C. 236, 239, 244 S.E.2d 386, 388-89 (1978). Considering the plain language of N.C. Gen. Stat. § 50B-3(b), in context, further compels us to hold that a DVPO entered after notice and an opportunity to be heard is not merely an extension of a previously entered ex parte DVPO entered under N.C. Gen. Stat. § 50B-2; it is an independent, separately issued protective order entered "for a fixed period of time not to exceed one year." N.C. Gen. Stat. § 50B-3(b).

B. *Rudder*

Defendant contends his position is suggested by this Court's opinion in *Rudder v. Rudder*, 234 N.C. App. 173, 759 S.E.2d 321 (2014). We first note that *Rudder* dealt with whether a trial court lost jurisdiction to enter a DVPO under N.C. Gen. Stat. § 50B-3, after an ex parte DVPO, entered under N.C. Gen. Stat. § 50B-2, had expired before the hearing and more than one year had passed since its issuance. 234 N.C. App. at 184, 759 S.E.2d at 329 ("Based upon the orders entered continuing the ex parte DVPO and setting this matter for hearing, upon expiration of the ex parte order after more than a year, the trial court no longer had jurisdiction . . . to enter an order further extending the DVPO.").

The ruling in *Rudder* does not suggest the time limitations of a DVPO entered after notice and an opportunity to be heard should incorporate a previously issued ex parte DVPO. In fact, the *Rudder* opinion consistently referred to a DVPO entered after notice and an opportunity to be heard as a "one-year DVPO." 234 N.C. App. 173, 759 S.E.2d 321. And contrary to Defendant's contention, the *Rudder* opinion contemplates that N.C. Gen. Stat. § 50B-2 "addresses the procedure and time limitations for ex parte or temporary orders, while the substantive protective provisions of any type of protective order are addressed by N.C. Gen. Stat. § 50B-3, *and the time limitations of the one-year DVPO are addressed by N.C. Gen. Stat. § 50B-3(b)*." *Id.* at 183, 759 S.E.2d at 328 (emphasis added). The *Rudder* Court declined to hold that ex parte DVPOs necessarily expire after one year when repeatedly continued. *Id.* at 184, 759 S.E.2d at 329 ("Even if we assume, without deciding, that an ex parte DVPO may lawfully continue for more than a year through the mechanism of repeated continuances, in this case, the ex parte DVPO ultimately expired . . . when no order was entered continuing the ex parte DVPO in effect after that date."). Defendant's reliance on *Rudder* is therefore misguided.

IV. Conclusion

The trial court did not exceed its statutory authority since the one-year time limitation imposed by N.C. Gen. Stat. § 50B-3(b) does not include the time that an ex parte DVPO, entered under N.C. Gen. Stat. § 50B-2, was in effect.

AFFIRMED.

Judges FLOOD and MURRY concur.

IN THE MATTER OF THE ESTATE OF LEONARD A. RUSSO, DEVIN ANTHONY RUSSO, PETITIONER
v.
GRACE LONG RUSSO; ROSEMARIE RUSSO; DEBRA LYNN ROBINSON; D'ANNA RENEN RUSSO SAWYER; MICHAEL SCHMIDT, ATTORNEY AT LAW, PLLC; AND ROBERT MICHAEL SCHMIDT, III, RESPONDENTS

No. COA25-321

Filed 7 January 2026

1. Wills—beneficiary—standing—declaratory judgment action—to enforce will's terms—forfeiture clause in will—not triggered

In a declaratory judgment action filed by petitioner in connection with his grandfather's will—where the respondents included the grandfather's wife, whom the will named as executor of the estate; the attorney who drafted the will; and the attorney's law firm, which was named as successor executor of the estate and sole trustee of a testamentary trust created under the will—the trial court properly denied respondents' motion to dismiss for lack of standing under Civil Procedure Rule 12(b)(1). Although the will's forfeiture clause provided that beneficiaries—including petitioner—would forfeit their interests if they challenged any provision of the will or trust, petitioner did not trigger the forfeiture clause by filing the action where, by arguing that his grandfather's wife had renounced her role as executor and that the law firm was statutorily barred from serving as successor executor or trustee of the trust, petitioner did not contest the will but rather sought to enforce its terms and proper appointment of fiduciaries (as authorized under N.C.G.S. § 28A-5.1(b)(ii)).

2. Trusts—law firm—professional limited liability company—ineligibility to serve as trustee—legal services exception—inapplicable

In a declaratory judgment action filed by petitioner in connection with his grandfather's will, where the respondents included the attorney who drafted the will and his law firm, a professional limited liability company that the will named as the sole trustee of the grandfather's testamentary trust, the trial court erred in concluding that the firm could legally serve its trustee role when, in fact, a corporate entity is statutorily barred from serving as trustee of a testamentary trust unless expressly authorized under one of eight enumerated categories listed in N.C.G.S. § 53-303(a), none of which applied to the firm. Notably, the law firm did not fall under the exception for companies providing “legal services” (in section 53-304(2)), since serving as a trustee is not itself the practice of law and is legally recognized as something that individual lawyers—not law firms—undertake as part of a fiduciary relationship, not an attorney-client relationship.

3. Wills—law firm—professional limited liability company—ineligibility to serve as executor of estate

In a declaratory judgment action filed by petitioner in connection with his grandfather’s will, where the respondents included the attorney who drafted the will and his law firm, a professional limited liability company that the will named as successor executor of the grandfather’s estate, the trial court erred in concluding that the firm could legally serve as an executor under the will because, as a corporate entity that is not a duly chartered trust company, the firm was not authorized under N.C.G.S. § 53-303(a) to act as a fiduciary and, therefore, it was statutorily barred from serving as a successor executor under N.C.G.S. § 28A-4.2(5).

4. Wills—executor—delay in qualifying—waiver—factual question

In a declaratory judgment action filed by petitioner in connection with his grandfather’s will, where the grandfather’s wife was named as executor of the estate but failed to qualify as such in the five years after petitioner’s grandfather died, the trial court erred in dismissing the petition for declaratory judgment without first conducting a fact-finding hearing to determine whether the wife’s failure to qualify as executor constituted a waiver of her right under the will to serve in that capacity.

Appeal by Petitioner from order entered 13 November 2024 by Judge Dawn M. Layton in Scotland County Superior Court. Heard in the Court of Appeals sitting at Duke University School of Law on 21 October 2025.

James E. Hickmon, PLLC, by James E. Hickmon and Jeremy T. Canipe, for Petitioner-Appellant.

Cranfill Sumner LLP, by Steven A. Bader and Melody J. Jolly, for Respondents-Appellees Robert Michael Schmidt and Michael Schmidt, Attorney at Law, PLLC.

William R. Purcell, II, for Respondent-Appellee Grace Russo Long.

Attorney General Jeff Jackson, by Assistant Attorney General Benjamin T. Spangler, for Amicus Curiae North Carolina Commissioner of Banks.

COLLINS, Judge.

The central issues on appeal are whether a law firm, as a corporate entity, may serve as trustee of a trust or executor of a will without being authorized under one of the eight enumerated categories listed in N.C. Gen. Stat. § 53-303(a). We hold that it cannot. For the reasons stated herein, we reverse the trial court's order dismissing Plaintiff's petition for declaratory judgment and remand for further proceedings.

I. Background

Leonard A. Russo executed his Last Will and Testament in June 2012. The will was drafted by attorney Robert Michael Schmidt, III ("Mr. Schmidt"), who practiced through his professional limited liability company, Michael Schmidt, Attorney at Law, PLLC ("Law Firm"). The will named Leonard's wife, Grace Long Russo, as executor, and named the Law Firm as successor executor. Article III of the will created the "Leonard A. Russo Trust," a testamentary trust funded principally with Leonard's residence. The will named the Law Firm as the sole trustee of the trust.

Under the terms of the trust, Grace is the lifetime beneficiary. The trustee is directed to hold the residence for Grace's benefit during her life, and if she becomes unable to maintain the home, the trustee is authorized to sell the property and acquire a suitable replacement residence for her use, applying any remaining proceeds for her support. Upon Grace's death, the trust terminates and any remaining trust property passes to Leonard's grandson, Devin Anthony Russo ("Petitioner"). The will also contains a forfeiture clause providing that any beneficiary who "attempt[s] to contest any provision" of the will or the trust forfeits his or her interest.

Leonard died on 15 March 2018. The will was admitted to probate in Scotland County on 23 April 2018. Although named as executor, Grace did not qualify at that time or during the ensuing five years. The Law Firm did not seek to qualify as successor executor. During this period, no personal representative administered the estate, and no trustee undertook administration of the trust.

On 13 July 2023, after more than five years of inactivity, Petitioner filed a verified petition for declaratory judgment before the clerk of superior court. Petitioner alleged that Grace's prolonged failure to qualify as executor constituted an implicit renunciation under N.C. Gen. Stat. § 28A-5-1(b)(ii), and that the Law Firm was statutorily barred from serving either as trustee or successor executor. He sought an order declaring the trust ineffective, declaring that Article IV of the will placed the remainder of Leonard's estate into trust rather than devising it outright to Grace, disqualifying the Law Firm from serving as trustee or executor, and appointing either Petitioner or the Scotland County Public Administrator as administrator C.T.A. and trustee.

Grace, Mr. Schmidt, and the Law Firm (collectively, "Respondents") opposed the petition. They asserted that Petitioner's filing triggered the will's forfeiture clause and deprived him of standing. They further argued that the Law Firm was legally permitted to serve as trustee and executor.

The matter was transferred to superior court. Respondents moved to dismiss for lack of standing under Rule 12(b)(1)[1] and for judgment on the pleadings under Rule 12(c). They requested declarations confirming Grace as executor, the Law Firm as trustee, and the trustee's authority to sell the residence for Grace's benefit.

By order entered 13 November 2024, the trial court denied Respondents' Rule 12(b)(1) motion, concluding that Petitioner had standing notwithstanding the forfeiture clause. The trial court granted Respondents' Rule 12(c) motion, concluding that Grace was the proper executor, the Law Firm was authorized under North Carolina law to serve as trustee, and the residence was properly held in trust and subject to sale by the trustee pursuant to the will's terms. The trial court dismissed Petitioner's petition with prejudice and denied his request for costs and attorney's fees. Grace subsequently qualified as executor on 20 November 2024.

Petitioner timely appealed.

II. Discussion

A. Standing

[1] Respondents argue, as an alternative basis to affirm the trial court's order, *see* N.C. R. App. P. 10(c), that Petitioner lacks standing to bring this action because, under the will's forfeiture clause, Petitioner "forfeited

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1. This motion is not in the record on appeal but is referenced in the order denying the motion.

his beneficiary status by filing this petition for declaratory judgment." We reject this argument.

Standing refers to whether a party has a sufficient stake in a case to seek relief from the court. *American Woodland Indus. v. Tolson*, 155 N.C. App. 624, 626 (2002). Standing is required before a court can exercise subject matter jurisdiction. *Intrepid Direct Ins. Agency v. Amerex Corp.*, 298 N.C. App. 384, 388 (2025).

"In construing a will, the court seeks to ascertain and carry into effect the expressed intention of the testator, i.e., the intention which the will itself, either explicitly or implicitly, declares." *Elmore v. Austin*, 232 N.C. 13, 18 (1950) (citations omitted). "Where the language employed by the testator is plain and its import is obvious, the judicial chore is light work; for, in such event, the words of the testator must be taken to mean exactly what they say." *Id.* (citation omitted).

The will's forfeiture clause states that if any beneficiary "shall attempt to contest any provision of this document, including but not limited to the trust provided for in this ARTICLE III of my Last Will and Testament," then their interest is forfeited. Petitioner did not contest any provision of the will. Instead, he sought enforcement of its terms and proper appointment of fiduciaries by filing the petition for declaratory judgment. Such petitions are authorized by statute. *See* N.C. Gen. Stat. § 28A-5-1(b)(ii) (2025) ("If any person named or designated as executor fails to qualify or to renounce within 30 days after the will had been admitted to probate, . . . any other person named or designated as executor in the will or any interested person may file a petition in accordance with Article 2 of this Chapter for an order finding that person named or designated as executor to be deemed to have renounced.").

Because Petitioner did not forfeit his beneficiary status by filing this petition, Petitioner does not lack standing to bring this action. The trial court correctly denied Respondents' Rule 12(b)(1) motion to dismiss.

B. Trustee Eligibility of the Law Firm

[2] Petitioner argues that the Law Firm was not authorized to serve as trustee of the Leonard A. Russo Trust because a professional limited liability company is statutorily barred from serving as trustee of a testamentary trust.

Under the Multistate Trust Institutions Act, "[n]o company shall engage in trust business in this State except" as authorized by one of the eight enumerated categories listed in Section 53-303(a):

> (1) A State trust company;
>
> (2) A State bank;
>
> (3) A State savings association;
>
> (4) A national bank having its principal office in this State;
>
> (5) A federally chartered savings association having its principal office in this State;
>
> (6) An out-of-state trust institution in accordance with and subject to the provisions of Subpart D of this Part;
>
> (7) A foreign trust institution in accordance with and subject to the provisions of Subpart E of this Part; or
>
> (8) A company otherwise authorized to engage in trust business or to act in a particular capacity described in [N.C. Gen. Stat. §] 53-331(b)(2) under the laws of this State or of the United States.

Id. § 53-303(a) (2025). "Trust business" is defined as acting as a fiduciary or engaging in activities permitted for a trust institution. *Id.* § 53-301(50) (2025).

The comprehensive list in Section 53-303(a) does not include law firms organized as professional limited liability companies. "Under the doctrine of *expressio unius est exclusio alterius*, when a statute lists the situations to which it applies, it implies the exclusion of situations not contained in the list." *Evans v. Diaz*, 333 N.C. 774, 779-80 (1993) (citations omitted).

Petitioner argues that because a law firm organized as a professional limited liability company is not among the enumerated categories in Section 53-303(a), one cannot serve as a trustee. The Commissioner of Banks, appearing as amicus curiae, modifies Petitioner's position, arguing that because a law firm organized as a professional limited liability company is not among the enumerated categories in Section 53-303(a), one cannot serve as trustees unless authorized under Section 53-303(a). The Commissioner of Banks' interpretation accords with the statute's plain language. *See* N.C. Gen. Stat. § 53-303(a).

Respondents rely on the "legal services" exception in Section 53-304(2), which provides that

> a company does not act as a fiduciary; engage in trust business or in any other business requiring a charter, license,

> or approval under the provisions of this Chapter; or engage in unauthorized trust activity by . . . [r]endering legal services in a manner authorized by the North Carolina State Bar[.]

Id. § 53-304(2) (2025). But serving as trustee is not itself the practice of law; any competent adult may serve as trustee. *See id.* §§ 32-2, 3-25 (2025).

The North Carolina State Bar has long affirmed this view. In RPC 82 (1990), the State Bar clarified that the duties of a lawyer serving as a trustee arise from the fiduciary relationship, not the attorney-client relationship. Moreover, the Rules of Professional Conduct define "professional fiduciary services" as those undertaken by a lawyer in a fiduciary capacity, such as a trustee, but which are not, standing alone, legal services. *See* N.C. R. Prof. Conduct 1.15-1; Comment 6 to Rule 1.15 (2019).

Importantly, the State Bar's guidance consistently refers to individual lawyers–not law firms–as trustees. For example, Comment 9 to Rule 1.7 addresses conflicts of interest arising from a lawyer's service as a trustee, and Comment 7 to Rule 8.44 references fiduciary positions such as trustee in the context of individual lawyer conduct. Nowhere do the Rules suggest that a law firm, as an entity, may serve in a fiduciary capacity. For these reasons, the "legal services" exception does not authorize a law firm organized as a professional limited liability company to act as trustee without being duly chartered.

Here, the Law Firm was organized as a professional limited liability company that was not authorized under Section 53-303(a) to engage in trust business. Accordingly, it was statutorily barred from serving as trustee of the Leonard A. Russo Trust, and the trial court's conclusion to the contrary was erroneous. As a result, the trial court also erred by finding and concluding that the Law Firm, as trustee, has authority to sell the residence.

C. Successor Executor Eligibility of the Law Firm

[3] Petitioner next argues that the Law Firm was not authorized to serve as successor executor of Leonard's will because a professional limited liability company is statutorily barred from serving as an executor of a will.

Chapter 28A governs the qualification of personal representatives. An executor is a personal representative. N.C. Gen. Stat. § 28A-1-1(5) (2025). Section 28A-4-2 identifies categories of persons who are disqualified from serving as personal representatives. Relevant here, subsection

(5) provides that "[a] corporation not authorized to act as a personal representative in this State" may not serve as a personal representative. *Id.* § 28A-4-2(5) (2025). Thus, a corporation may serve as executor only if it is "authorized to act as a personal representative" under North Carolina law. *See id.*

Chapter 53 regulates corporate fiduciaries. Section 53-301 includes "act[ing] as personal representative of the estate of a deceased person" in its definition of "[a]ct[ing] as a fiduciary." *Id.* § 53-301(a)(2)(a)(iv) (2025). And no company may act as a fiduciary–included in the definition of engaging in trust business–unless it falls within one of the eight enumerated categories in Section 53-303(a). *See id.* § 53-303(a). A law firm organized as a professional limited liability company that is not a duly chartered trust company is not among the entities listed.

A professional limited liability company is a corporate entity created under Chapter 57D. Although a professional limited liability company may render professional services through its licensed members, *see id.* §§ 55B-2(6), 57D-2-02 (2025), the authority to provide legal services does not confer authority to act as a fiduciary in a representative capacity for an estate, *see id.* § 53-303(a).

Respondents argue that the Law Firm may serve as executor because it is authorized to render legal services and because attorneys frequently serve as fiduciaries. This argument conflates the authority of an individual attorney with that of a corporate entity.

North Carolina law permits any competent adult to serve as executor. *See id.* § 28A-4-1(b) (2025). It does not permit just any corporate entity to do so. *See id.* § 28A-4-2(5). The exception in Section 53-304(2) for "[r]endering legal services" does not apply because acting as executor is not itself a legal service.

Because the Law Firm is a corporate entity and is not authorized under Section 53-303(a) to act as a fiduciary, it is disqualified from serving as executor under N.C. Gen. Stat. § 28A-4-2(5). Accordingly, the trial court erred to the extent it concluded that the Law Firm was eligible to serve as successor executor of Leonard's will.

D. Grace's Delay in Qualifying

[4] Petitioner next argues that Grace waived her right to serve as executor of Leonard's will by failing to qualify for over five years.

Pursuant to Section 28A-5-1, "If any person named or designated as executor fails to qualify or to renounce within 30 days after the will had been admitted to probate, . . . any interested person may file a petition in accordance with Article 2 of this Chapter for an order finding that person named or designated as executor to be deemed to have renounced." *Id.* § 28A-5-1(b)(ii).

In his verified petition, Petitioner alleged that Grace had failed to qualify as executor for over five years after Leonard's death and for at least two, and possibly five, years after Leonard's will was admitted to probate. Article II of the will appointed Grace as the executor and the Law Firm as the successor executor. The will was incorporated into the petition.

Whether Grace's delay constituted waiver or unsuitability is a factual question for the trial court. Accordingly, the trial court erred by dismissing Petitioner's petition without a fact-finding hearing.

E. Costs and Attorney's Fees

Petitioner finally argues that the trial court erred by denying his request for costs and attorney's fees. Because the trial court's decision was based on its erroneous findings and conclusions, as detailed above, we vacate the trial court's order in this respect.

III. Conclusion

We conclude as follows: Petitioner has standing to pursue his petition. The trial court erred by holding that the Law Firm could serve as trustee, and thus that the Law Firm had the authority to sell the residence. The trial court also erred by concluding that the Law Firm could serve as successor executor. The trial court further erred by dismissing Petitioner's petition without a hearing on Grace's qualification as executor. We reverse the trial court's order dismissing Petitioner's petition for declaratory judgment and vacate the denial of Plaintiff's request for costs and attorney's fees. We remand the case to the trial court for further proceedings.

VACATED IN PART; REVERSED IN PART; AND REMANDED.

Judges GRIFFIN and STADING concur.

RANDOLPH COUNTY BOARD OF EDUCATION,
EX REL. JONATHAN BURRIS, PLAINTIFF
v.
JOSH STEIN, IN HIS OFFICIAL CAPACITY AS NORTH CAROLINA ATTORNEY GENERAL,
NELS ROSELAND, IN HIS OFFICIAL CAPACITY AS NORTH CAROLINA CONTROLLER, ROY COOPER
IN HIS OFFICIAL CAPACITY AS NORTH CAROLINA GOVERNOR, DEFENDANTS

No. COA25-130

Filed 7 January 2026

1. Jurisdiction—standing—taxpayer suit on behalf of county school board—board's refusal of demand to sue

Plaintiff had standing to bring an action on behalf of the Randolph County Board of Education (RCBE)—seeking a declaration that taxpayer funds received under an agreement with hog producers which rightly belonged to the state's public schools (pursuant to the civil penalty, gift, and appropriations clauses of the North Carolina Constitution), were wrongly distributed as Environmental Enhancement Grants—where the complaint alleged that (1) plaintiff was a taxpayer of Randolph County (2) who made a demand on the RCBE to file the lawsuit and was refused.

2. Constitutional Law—North Carolina—civil penalties clause—appropriations clause—hog farm agreement payments—not civil penalties

In a suit brought by a Randolph County taxpayer on behalf of the county's board of education—seeking a declaration that taxpayer funds received under an agreement with hog producers which rightly belonged to the state's public schools pursuant to the civil penalty and appropriations clauses of the North Carolina Constitution were wrongly distributed as Environmental Enhancement Grants (EEGs)—the trial court erred by granting summary judgment in plaintiff's favor, rather than in defendants' favor, for fiscal years 2021-25. Payments made under the agreement during these years did not constitute civil penalties and, accordingly, were not required to be deposited into the Civil Penalty and Forfeiture Fund and used exclusively for the public schools. That the account receiving the EEG payments was designated "23606-Justice-Seized and Forfeited Assets"—thus sharing the root "forfeit" with the Civil Penalty and Forfeiture Fund—did not transform the nature of the funds. Further, because plaintiff's claim under the appropriations clause rested upon his position that the EEG funds were withdrawn without a lawful appropriation, that contention failed as well.

3. Constitutional Law—North Carolina—gift clause—appropriations clause—hog farm agreement payments—not gifts

In a suit brought by a Randolph County taxpayer on behalf of the county's board of education—seeking a declaration that taxpayer funds received under an agreement with hog producers which rightly belonged to the state's public schools pursuant to the gift and appropriations clauses of the North Carolina Constitution were wrongly distributed as Environmental Enhancement Grants (EEGs)—the trial court erred by granting summary judgment in plaintiff's favor, rather than in defendants' favor, for fiscal years 2019-21. The gift clause ensures that any general gifts received by the State and not intended for another purpose are spent on public schools; since the hog farm agreement expressly designated that the payments be used for environmental enhancement efforts, the gift clause was inapplicable to those funds. Further, because plaintiff's claim under the appropriations clause rested upon his position that the EEG funds were withdrawn without a lawful appropriation, that contention failed as well.

4. Judgments—summary judgment order—decree regarding hog farm agreement—future payments

In a suit brought by a Randolph County taxpayer on behalf of the county's board of education—seeking a declaration that taxpayer funds received under an agreement with hog producers rightly belonged to the state's public schools and were wrongly distributed as Environmental Enhancement Grants—the trial court erred by decreeing that "all funds received" under the agreement "after July 1, 2019 must be used for the purpose of environmental enhancement in public schools." Because the theories on which the trial court granted plaintiff relief depended on how funds received in the past were treated in the past and that same treatment might not reoccur in the future, the judgment could not extend to future payments beyond those fiscal years that were the subject of the litigation.

Appeal by Defendants from order entered 17 July 2024 by Judge A. Graham Shirley, II, in Wake County Superior Court. Heard in the Court of Appeals 9 September 2025.

Davis Hartman Wright, LLP, by R. Daniel Gibson, and Stam Law Firm, PLLC, by Paul Stam, for Plaintiff-Appellee.

Attorney General Jeff Jackson, by Deputy Solicitor General James W. Doggett, Special Deputy Attorney General Matthew Tulchin, and Special Deputy Attorney General Laura H. McHenry, for Defendants-Appellants.

COLLINS, Judge.

This appeal arises from Plaintiff's challenge to the Attorney General's Environmental Enhancement Grants Program, initiated pursuant to a 2000 Agreement between the Attorney General and Smithfield Foods. Defendants appeal the trial court's order granting Plaintiff summary judgment on his declaratory judgment claims and denying Defendants' motion to dismiss. We reverse the trial court's order granting Plaintiff summary judgment.

I. Procedural History

Plaintiff Jonathan Burris began this action in 2023 on behalf of the Randolph County Board of Education by filing a complaint in Randolph County superior court. Plaintiff asserted declaratory judgment claims against the Attorney General; the Controller; the Governor; the Chief Financial Officer at the Department of Justice ("DOJ"); and an Office of State Budget and Management ("OSBM") employee. The claims asserted that money paid for environmental enhancement pursuant to an Agreement between the Attorney General and Smithfield Foods, Incorporated, and certain of its subsidiaries ("Smithfield") had been unconstitutionally requisitioned by the named defendants and must be used exclusively for public schools.

The named defendants moved to dismiss the complaint or, in the alternative, to transfer the case to Wake County superior court. The Randolph County superior court concluded it lacked jurisdiction to address the named defendants' motion to dismiss, allowed their motion to transfer, and ordered the case transferred to Wake County. Plaintiff voluntarily dismissed his claims against the Chief Financial Officer at the DOJ and the OSBM employee.

Plaintiff moved for summary judgment and filed supporting exhibits. The remaining defendants—the Attorney General, the Controller, and the Governor (collectively, "Defendants")—renewed their motion to dismiss. Defendants also submitted affidavits and exhibits in opposition to Plaintiff's motion for summary judgment.

The superior court denied Defendants' motion to dismiss and granted summary judgment to Plaintiff. The superior court "[d]eclare[d] that all funds received from Smithfield Foods after July 1, 2019 must be used for the purpose of environmental enhancement in public schools."

Defendants timely appealed the superior court's order to this Court.

II. Factual Background

During the 1990s, lagoons in eastern North Carolina containing hog waste repeatedly ruptured or overflowed, pouring millions of gallons of hog waste into the State's waterways. *New Hanover Cnty. Bd. of Educ. v. Stein*, 380 N.C. 94, 96 (2022) (*Stein II*). As part of the response to this crisis, the Attorney General entered into an Agreement in 2000 with Smithfield, the state's largest hog-farming operation. *Id.* Under the Agreement, Smithfield agreed to undertake various measures to enhance the environment, including "commit $50 million to environmental enhancement activities[.]" To effectuate environmental enhancement activities with Smithfield's $50 million commitment, Smithfield agreed "to pay each year for 25 years an amount equal to one dollar for each hog in which the Companies . . . have had any financial interest in North Carolina during the previous year, provided, however, that such amount shall not exceed $2 million in any year."

Under the Agreement, "[t]he funds will be paid to such organizations or trusts as the Attorney General will designate" and "will be used to enhance the environment of the State, including eastern North Carolina, to obtain environmental easements, construct or maintain wetlands and such other environmental purposes, as the Attorney General deems appropriate." A portion of the funds may "be designated as grants to the State to defray the costs incurred by the State as a result of this Agreement, . . . in the discretion of the Attorney General." To administer the program, the Attorney General is authorized to consult with representatives from Smithfield, the North Carolina Department of Environmental Quality,[1] and "any other groups or individuals he deems appropriate and may appoint any advisory committees he deems appropriate."

With the Attorney General's consent, Smithfield entered into an escrow agreement with a private bank on 18 October 2002 wherein Smithfield "agreed to deposit all funds provided in accordance with the [A]greement" into an account at the bank. *Stein II*, 380 N.C. at 97.

1. At the time the Agreement was signed, what is now the North Carolina Department of Environmental Quality was known as the North Carolina Department of Environment and Natural Resources.

In January 2003, the Attorney General established the Environmental Enhancement Grants ("EEG") Program to "improv[e] the air, water and land quality of North Carolina by funding environmental projects that address the goals of the agreement between Smithfield and the Attorney General." *Id.* at 97 (brackets omitted). The Attorney General then disbursed EEG funds from the escrow account to EEG Program recipients. *Id.* Most years, Smithfield deposited $2 million into the account around the anniversary of its entry into the Agreement. *Id.*

Between 2000 to 2016, the Attorney General awarded more than $25 million in grants pursuant to the Agreement to fund "more than 100 separate initiatives that addressed a variety of environmental problems," including "rehabilitating abandoned waste lagoons, conserving wildlife habitats, improving water quality, reducing pollution from agricultural and stormwater runoff, funding environmental research, and restoring forests, shorelines, wetlands, and streams across North Carolina." *Id.* at 98.

In 2016, the New Hanover County Board of Education and an individual taxpayer sued the Attorney General concerning the EEG Program. *See New Hanover Cnty. Bd. of Educ. v. Stein*, 374 N.C. 102 (2020) (*Stein I*). The plaintiffs alleged the payments made by Smithfield pursuant to the Agreement constituted civil penalties for purposes of Article IX, Section 7 of the North Carolina Constitution, *id.* at 105, which requires the "proceeds of all penalties and forfeitures and of all fines collected in the several counties for any breach of the penal laws of the State . . . [to be] faithfully appropriated and used exclusively for maintaining free public schools[,]" and allows the General Assembly to "place in a State fund the clear proceeds of all civil penalties, forfeitures, and fines" to "be faithfully appropriated by the General Assembly . . . to be used exclusively for maintaining free public schools." N.C. Const. art. IX, § 7. Plaintiffs

> sought to have the Attorney General preliminarily and permanently enjoined from distributing monies received pursuant to the [A]greement to any recipient other than the Civil Penalty and Forfeiture Fund authorized by article IX, section 7(b) and N.C. [Gen. Stat.] §§ 115C-457.1 [to] -475.3 and requested that all monies distributed under the grant program within the last three years and all future payments received by the Attorney General be placed into the Civil Penalty and Forfeiture Fund.

Stein I, 374 N.C. at 106.

In 2020, the individual taxpayer's complaint was dismissed because he lacked standing. *Id.* at 110. Addressing the merits of the New Hanover County Board of Education's argument, our Supreme Court concluded that the Attorney General was entitled to summary judgment because "the payments contemplated by the [A]greement did not constitute penalties for purposes of article IX, section 7." *Id.* at 123.

In 2019, while the New Hanover County Board of Education's lawsuit was pending, the General Assembly enacted N.C. Gen. Stat. § 147-76.1, providing that "all funds received by the State, including cash gifts and donations, shall be deposited in the State treasury." N.C. Gen. Stat. § 147-76.1(b) (2019). The statute further provides that "the terms of an instrument evidencing a cash gift or donation are a binding obligation of the State" and that "[n]othing in this section shall be construed to supersede, or authorize a deviation from the terms of an instrument evidencing a gift or donation setting forth the purpose for which the funds may be used." *Id.* § 147-76.1(c) (2019).

In or around July 2020, Matthew Longobardi, the Chief Financial Officer at the DOJ, contacted OSBM to effectuate the transfer of EEG funds received in 2019 and being held in the escrow account into the State treasury and to prepare for the 2020 EEG funds to be deposited into the State treasury. Mr. Longobardi asked OSBM to create a fund code for the receipt and distribution of the EEG funds.

Under the State Budget Act, funds held in the State treasury are assigned a "nine-digit fund code." N.C. Gen. Stat. § 143C-1-1(d)(23) (2024). The first five digits of the fund code comprise the "budget code." Off. of State Budget & Mgmt., Budget Manual § 3.4.1 (2025) ("Manual"), https://tinyurl.com/4v3np65z (last visited Dec. 11, 2025). This budget code assigns a "fund type" to funds "to ensure proper financial statement reporting." *Id.*; *see also* N.C. Gen. Stat. § 143C-1-3 (2024). The last four digits of the fund code[2] designate the "specific activity" that funds will be used to "support." *Id.* § 143C-1-1(d)(23); *see also* Manual § 3.4.2.

Mr. Longobardi asked OSBM to assign budget code "23606," a dormant DOJ interest-bearing treasury account that had once been used to hold seized and forfeited assets, because the EEG funds needed to be deposited into an interest-bearing account. The budget code reflected the "fund type" of the EEG moneys as "[s]pecial [r]evenue [f]unds." *Id.*

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2. After the enactment of the budgets at issue in this case, the State adopted a new accounting system (the North Carolina Financial System). Under this new system, six additional digits now complete a fund code rather than four. *See* Manual § 3.4.2.

§ 143C-1-3(a)(4). Special revenue funds are "proceeds of specific revenue sources . . . that are legally restricted to expenditure for specified purposes." *Id.*[3]

Mr. Longobardi asked OSBM to assign "2204" as the last four digits of the fund code, designating "Smithfield Environment Enhancement Grants" as the specific activity that funds will be used to support. The North Carolina Integrated Budget Information System document that created 23606-2204 as the nine-digit fund code indicated the fund was to "be used to account for the receipt of funds and distribution of reimbursements to grantees awarded funds from the original Smithfield agreement from 2000 and any subsequent modifications to that agreement." The document also indicated that "[p]ayments are restricted per the terms of the agreement and are to be used for environmental enhancement grants . . . ."

After the EEG funds were assigned their fund code, the Attorney General transferred the single payment that had been received from Smithfield prior to 1 July 2019 into the State treasury and committed to ensuring that all future payments received from Smithfield would be deposited into the State treasury. *Stein II*, 380 N.C. at 101.

In the Governor's recommended budget for fiscal years 2021-22 and 2022-23, as required by N.C. Gen. Stat. § 143C-3-5(a), the Governor proposed that the EEG funds for that biennium be spent by "090-Department of Justice" pursuant to fund code 23606-2204, and specifically to budget code "23606-Justice - Seized and Forfeited Assets" and fund type "2204" to support "Smithfield Environment Enhancement Grants." The General Assembly enacted this proposal without modification. *See* Current Operations Appropriations Act of 2021, 2021 N.C. Sess. Laws 180, S.B. 105, § 4.1(a).

In the Governor's recommended budget for fiscal years 2023-24 and 2024-25, the Governor again proposed that the EEG funds received in that biennium be spent by "090-Department of Justice" pursuant to fund code 23606-2204, and specifically to budget code "23606-Justice - Seized and Forfeited Assets" and fund type "2204" to support "Smithfield Environment Enhancement Grants." The General Assembly enacted this proposal without modification. *See* Current Operations Appropriations Act of 2023, 2023 N.C. Sess. Laws 134, H.B. 259, § 4.1(a).

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3. *See also* Off. of State Controller, NCAS Chart of Accounts, Budget Codes (2023) (designating budget code 23606 as a special revenue fund), https://tinyurl.com/mvxe8wu6 (last visited Dec. 11, 2025).

III. Discussion

Defendants argue that the trial court erred by granting summary judgment to Plaintiff and not to Defendants on all claims. Defendants first argue that Plaintiff lacks standing to sue. Defendants further argue that even if Plaintiff has standing, the trial court erred by concluding that the civil penalty clause and the appropriations clause of our North Carolina Constitution required the EEG funds for the fiscal years 2021-25 be used exclusively for public schools. Defendants also argue that the trial court erred by concluding that the appropriations clause and the gift clause required the EEG funds for the fiscal years 2019-21 be used exclusively for public schools.

A. Standard of Review

We review the grant or denial of summary judgment de novo. *Variety Wholesalers, Inc. v. Salem Logistics Traffic Servs., LLC*, 365 N.C. 520, 523 (2012). Generally, "findings of fact and conclusions of law are not required in the determination of a motion for summary judgment, and if these are made, they are disregarded on appeal." *Carmichael v. Lively*, 235 N.C. App. 222, 228 (2014) (quotation marks and citation omitted).

Summary judgment shall be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that any party is entitled to a judgment as a matter of law." N.C. Gen. Stat. § 1A-1, Rule 56(c) (2024). "When appropriate, summary judgment may be rendered against the party moving for such judgment." *Blades v. Raleigh*, 280 N.C. 531, 544 (1972). In ruling on a summary judgment motion, a trial court must "consider the evidence in the light most favorable to the non-movant, drawing all inferences in the non-movant's favor." *Morrell v. Hardin Creek, Inc.*, 371 N.C. 672, 680 (2018) (citation omitted).

"We review constitutional questions de novo." *State ex rel. McCrory v. Berger*, 368 N.C. 633, 639 (2016) (citation omitted). In analyzing constitutional questions, "we look to the text of the constitution, the historical context in which the people of North Carolina adopted the applicable constitutional provision, and our precedents." *Id.* (citations omitted).

B. Standing

[1] Defendants first argue that the trial court erred by granting summary judgment to Plaintiff and not to Defendants because Plaintiff lacks standing to sue.

"A plaintiff must establish standing in order to assert a claim for relief." *United Daughters of the Confederacy v. City of Winston-Salem*, 383 N.C. 612, 625 (2022) (citations omitted). "As a general matter, the North Carolina Constitution confers standing on those who suffer harm." *Id.* (quotation marks and citation omitted).

A taxpayer may sue on behalf of a political subdivision when the political subdivision refuses the taxpayer's demand to sue. *See Branch v. Bd. of Ed. of Robeson Cnty.*, 233 N.C. 623, 625 (1951). A school board is a political subdivision. *Id.* A taxpayer may sue on behalf of a school board to recover funds wrongfully diverted from that school board when he is a taxpayer of that school board's district. *Guilford Cnty. Bd. of Comm'rs v. Trogdon*, 124 N.C. App. 741, 747 (1996).

"[W]here a plaintiff undertakes to bring a taxpayer's suit on behalf of a . . . political subdivision, his complaint must disclose that he is a taxpayer of the . . . subdivision." *Branch*, 233 N.C. at 626 (citing *Hughes v. Teaster*, 203 N.C. 651 (1932) (other citations omitted)). Additionally, the plaintiff's complaint must allege facts sufficient to establish either "(a) [t]hat there has been a demand on and refusal by the proper authorities to institute proceedings for the protection of the interests of the public agency or political subdivision[;] . . . or (b) that such a demand on such authorities would be useless." *Id.* (citations omitted).

Here, Plaintiff's amended complaint alleges, "Burris is a citizen and taxpayer of Randolph County who made a demand on the Randolph County Board of Education to file this action. The Randolph County Board of Education *wrongfully* refused to file this action." The record reflects that Plaintiff's attorneys sent a letter to the Chair of the Randolph County Board of Education styled as "a demand for litigation under *Branch v. Bd. of Educ.* . . . ." The letter states that "[t]he Attorney General and Governor are diverting taxpayer funds that rightly belong to public schools, including the Randolph County Board of Education" and asserts that "[f]iling suit to stop that diversion would protect the interests" of the Board. The letter further states, "Our client, Jonathan Burris, is a taxpayer and resident of Randolph County" who "requests that you bring suit on these claims."

The Board adopted a resolution at its meeting on 29 June 2023, stating it had "reviewed a proposed complaint and fee agreement drafted by Jonathan Burris' counsel" and "denie[d] Mr. Burris' request to engage in litigation . . . ."

Plaintiff has established standing to bring this suit under *Branch v. Bd. of Ed. of Robeson Cnty.*, and the trial court correctly concluded as such.

C. Fiscal years 2021-25

[2] Defendants argue that the trial court erred by granting summary judgment in Plaintiff's favor, and not in Defendants' favor, with respect to the EEG funds for fiscal years 2021-25, under the civil penalties clause and the appropriations clause.

1. Civil penalties clause

North Carolina Constitution Article IX, Section 7, titled "County school fund; State fund for certain moneys[,]" provides as follows:

> (a) Except as provided in subsection (b) of this section, all moneys, stocks, bonds, and other property belonging to a county school fund, and the clear proceeds of all penalties and forfeitures and of all fines collected in the several counties for any breach of the penal laws of the State, shall belong to and remain in the several counties, and shall be faithfully appropriated and used exclusively for maintaining free public schools.
>
> (b) *The General Assembly may place in a State fund the clear proceeds of all civil penalties, forfeitures, and fines which are collected by State agencies and which belong to the public schools pursuant to subsection (a) of this section.* Moneys in such State fund shall be faithfully appropriated by the General Assembly, on a per pupil basis, to the counties, to be used exclusively for maintaining free public schools.

N.C. Const. art. IX, § 7 (emphasis added).

Article IX, Section 7 is implemented by N.C. Gen. Stat. §§ 115C-457.1 to -457.3. *See N.C. Sch. Bds. Ass'n v. Moore*, 359 N.C. 474, 512 (2005). Section 115C-457.1 creates the Civil Penalty and Forfeiture Fund allowed by Article IX, Section 7:

> (a) There is created **the Civil Penalty and Forfeiture Fund**. **The Fund** shall consist of the clear proceeds of all civil penalties, civil forfeitures, and civil fines that are collected by a State agency and that the General Assembly is authorized to place in a State fund pursuant to Article IX, Section 7(b) of the Constitution.
>
> (b) **The Fund** shall be administered by the Office of State Budget and Management. **The Fund** and all interest

> accruing to **the Fund** shall be faithfully used exclusively for maintaining free public schools.

N.C. Gen. Stat. § 115C-457.1 (2024) (emphasis added).

The process of remitting "the clear proceeds" described in Article IX, Section 7 to the Civil Penalty and Forfeiture Fund is governed by Section 115C-457.2:

> The clear proceeds of all civil penalties, civil forfeitures, and civil fines that are collected by a State agency and that the General Assembly is authorized to place in a State fund pursuant to Article IX, Section 7(b) of the Constitution shall be remitted to the Office of State Budget and Management by the officer having custody of the funds within 10 days after the close of the calendar month in which the revenues were received or collected. Notwithstanding any other law, all such funds shall be deposited in the Civil Penalty and Forfeiture Fund. . . .

N.C. Gen. Stat. § 115C-457.2 (2024).

Funds deposited into the Civil Penalty and Forfeiture Fund must be appropriated to the State Public School Fund in the Current Operations Appropriations Act, as prescribed in Section 115C-457.3:

> The General Assembly shall appropriate moneys in the Civil Penalty and Forfeiture Fund in the Current Operations Appropriations Act. These appropriations shall be made to the State Public School Fund for allotment by the State Board of Education, on behalf of the counties, to local school administrative units on a per pupil basis in accordance with Article IX, Section 7(b) of the North Carolina Constitution.

N.C. Gen. Stat. § 115C-457.3(a) (2024).

The parties do not contest that, pursuant to the North Carolina Supreme Court's decision in *Stein I*, "the payments contemplated by the [A]greement did not constitute penalties for purposes of article IX, section 7." *Stein I*, 374 N.C. at 123. Accordingly, the payments received from Smithfield pursuant to the Agreement were not required to be deposited into the Civil Penalty and Forfeiture Fund to be "faithfully appropriated by the General Assembly" to the State Public School Fund and "used exclusively for maintaining free public schools." N.C. Const. art. IX, § 7.

Plaintiff argues that "[t]he only appropriation for fiscal years 2021-2025 is to 'seized and forfeited assets,' an appropriation to an Article IX forfeiture fund." Accordingly, Plaintiff argues, the payments received from Smithfield pursuant to the Agreement for those years must be used exclusively for public schools.

Plaintiff erroneously conflates the "23606-Justice - Seized and Forfeited Assets" account, designated by OSBM to receive the EEG funds and to which the General Assembly appropriated the funds, with the Civil Penalty and Forfeiture Fund allowed by Article IX, Section 7 and implemented by N.C. Gen. Stat. § 115C-457.1. True, both include a word derived from "forfeit." This shared root does not, however, transform the "23606-Justice - Seized and Forfeited Assets" account into the Civil Penalty and Forfeiture Fund allowed by the Constitution and implemented by statute, or vice versa.

Because the funds were not placed into the Civil Penalty and Forfeiture Fund authorized by Article IX, Section 7 and N.C. Gen. Stat. §§ 115C-457.1 to -475.3, the trial court erred by concluding that the EEG funds must be used exclusively for public schools.

2. Appropriations clause

Defendants next contend that, "[t]o the extent that the superior court indirectly accepted [Plaintiff's] claim under the appropriations clause in resolving his civil-penalty claim, then his appropriations claim would also fail . . . ."

Article V, Section 7 provides that "[n]o money shall be drawn from the State treasury but in consequence of appropriations made by law[.]" N.C. Const. art. V, § 7(1). The appropriations clause is further operationalized by the State Budget Act, which provides that "[n]o State agency or non-State entity shall expend any State funds except in accordance with an act of appropriation and the requirements of [the State Budget Act]." N.C. Gen. Stat. § 143C-1-1(b) (2024). An appropriation is "[a]n enactment by the General Assembly authorizing the withdrawal of money from the State treasury." N.C. Gen. Stat. § 143C-1-1(d)(1) (2024).

Plaintiff's claim under the appropriations clause alleged that there were "no 'appropriations made by law' for the drawing of Agreement funds" for 2021 through 2025, and that "[b]y drawing or abetting the drawing of Agreement funds from the State treasury without an appropriation, Defendants have violated Article V of the North Carolina Constitution and Chapter 143C of the General Statutes."

Plaintiff consistently argues, however, that the General Assembly *did* appropriate the funds for fiscal years 2021-25. The parties do not disagree that the funds were appropriated to "23606-Justice - Seized and Forfeited Assets." Plaintiff's appropriations clause argument is another way of asserting his civil penalty clause argument – to wit, because the EEG funds were appropriated to "an Article IX forfeiture fund," the funds must have been used exclusively for public schools.

As explained above, the EEG funds were not placed into the Civil Penalty and Forfeiture Fund authorized by Article IX, Section 7 and implemented by N.C. Gen. Stat. §§ 115C-457.1 to -475.3, and the trial court thus erred by concluding that the EEG funds must be used exclusively for public schools. Accordingly, Plaintiff's appropriations clause argument fails as well.

D. Plaintiff's claims with respect to fiscal years 2019-21

[3] Defendants argue that the trial court erred by granting summary judgment to Plaintiff, and not to Defendants, on Plaintiff's claim for fiscal years 2019-21 under the gift clause of Article IX, Section 6 and the appropriations clause of Article V, Section 7.

1. Gift clause

Article IX, Section 6 of the North Carolina Constitution, titled "State school fund[,]" provides in full:

> [(1)] The proceeds of all lands that have been or hereafter may be granted by the United States to this State, and not otherwise appropriated by this State or the United States; [(2)] all moneys, stocks, bonds, and other property belonging to the State for purposes of public education; [(3)] the net proceeds of all sales of the swamp lands belonging to the State; and [(4)] *all other grants, gifts, and devises that have been or hereafter may be made to the State, and not otherwise appropriated by the State or by the terms of the grant, gift, or devise*, shall be paid into the State Treasury and, together with so much of the revenue of the State as may be set apart for that purpose, shall be faithfully appropriated and used exclusively for establishing and maintaining a uniform system of free public schools.

N.C. Const. art. IX, § 6.

Article IX, Section 6 "delineates four categories of monies that are contained within the 'State school fund' and provides that each of these four [categories of monies] 'shall be paid into the State Treasury' and 'shall be faithfully appropriated and used exclusively for establishing and maintaining a uniform system of free public schools.' " *Cooper v. Berger*, 376 N.C. 22, 39 (2016). The gift clause in Article IX, Section 6 applies only to gifts "not otherwise appropriated by the State or by the terms of the grant, gift, or devise[.]" N.C. Const. art. IX, § 6. The gift clause "is intended to ensure that any *general* grants, gifts, and devises that are received by the State and are *not intended for any other purpose* shall be spent for educational purposes . . . ." *Cooper*, 376 N.C. at 39 (emphasis added).

Consistent with the gift clause, the General Assembly mandates that "the terms of an instrument evidencing a cash gift or donation are a binding obligation of the State[,]" and that Section 147-76.1 "shall [not] be construed to supersede, or authorize a deviation from the terms of an instrument evidencing a gift or donation setting forth the purpose for which the funds may be used." N.C. Gen. Stat. § 147-76.1(c).

Smithfield's gift to the State is not a general gift that was not intended for any other purpose and, thus, is not subject to the gift clause. Instead, the terms of the Agreement expressly direct Smithfield's gift to "be paid to such organizations or trusts as the Attorney General will designate" to be used "to enhance the environment of the State, including eastern North Carolina, to obtain environmental easements, construct or maintain wetlands and such other environmental purposes, as the Attorney General deems appropriate."

Given the General Assembly's mandate and the specific terms of the Agreement, the gift clause does not require the EEG funds to be used exclusively for public schools. The trial court erred in holding otherwise.

2. Appropriations clause

The appropriations clause provides that "[n]o money shall be drawn from the State treasury but in consequence of appropriations made by law[.]" N.C. Const. art. V, § 7. The gift clause provides that "grants, gifts, and devises . . . made to the State, and not otherwise appropriated by the State or by the terms of the grant, gift, or devise" be "faithfully appropriated" and used exclusively for public schools. N.C. Const. art. IX, § 6.

Plaintiff argues that the gift clause "creates a default rule when the General Assembly does not exercise [its] appropriation authority." Because "[t]he General Assembly did not appropriate funds in 2019-2021," the gift clause "requires those funds to go to public education."

The gift clause applies only to gifts “not otherwise appropriated by the State or by the terms of the grant, gift, or devise[.]” N.C. Const. art. IX, § 6. The terms of the Agreement expressly require Smithfield’s gift to “be paid to such organizations or trusts as the Attorney General will designate” to be used “to enhance the environment of the State, including eastern North Carolina, to obtain environmental easements, construct or maintain wetlands and such other environmental purposes, as the Attorney General deems appropriate.” N.C. Gen. Stat. § 147-76.1(c) mandates such terms be binding obligations of the State. As the General Assembly mandates the EEG funds be used according to the terms of Smithfield’s gift, any constitutional “default rule” does not apply. The trial court thus erred in redirecting the 2019-21 EEG funds to be used exclusively for public schools.

E. Future funds

[4] Defendants also argue that the trial court erred by ordering that “*all* funds received from Smithfield Foods after July 1, 2019 must be used for the purpose of environmental enhancement in public schools.” (emphasis added). Defendants argue that the theories on which the trial court granted Plaintiff relief “depend on how funds received in the past were treated in the past” and “that treatment might not reoccur” in the future.

We agree that to the extent the trial court’s order reaches funds beyond fiscal years 2024-25, the order is erroneous. We thus clarify that the judgment does not and cannot extend to future payments beyond those fiscal years.

IV. Conclusion

For the reasons stated herein, the trial court’s order granting summary judgment in Plaintiff’s favor is reversed and remanded to the trial court for entry of summary judgment in Defendants’ favor.

REVERSED AND REMANDED.

Judges CARPENTER and FLOOD concur.

[302 N.C. App. 361 (2026)]

STATE OF NORTH CAROLINA
v.
BILLY HODGES, JR.

No. COA25-50

Filed 7 January 2026

1. Appeal and Error—preservation of issues—sufficiency of evidence—untimely renewal of motion to dismiss

Defendant failed to preserve for appellate review any argument regarding the sufficiency of the evidence where, after his motion to dismiss the charge of possession of methamphetamine for insufficient evidence was denied at the close of the State's evidence, he failed to timely renew his motion to dismiss at the close of all the evidence as required by Appellate Rule 10(a)(3), instead renewing the motion after both the charge conference and the trial court's instruction of the jury.

2. Constitutional Law—effective assistance of counsel—premature claim—dismissal without prejudice

Defendant's claim that his counsel provided ineffective assistance for failing to subpoena a witness to testify at his trial for multiple drug offenses was premature because the record was not clear regarding what steps, if any, defense counsel took to secure the witness. Therefore, defendant's claim was dismissed without prejudice to his right to file a motion for appropriate relief in the trial court.

3. Appeal and Error—appellate subject matter jurisdiction—civil judgment for attorney fees—not included in appeal from criminal judgment

The appellate court lacked subject matter jurisdiction to review defendant's civil judgment for attorney fees—apparently imposed after defendant was found guilty of multiple drug offenses—because defendant failed to include any civil judgment in his record on appeal regarding his criminal judgment or to appeal from the civil judgment either as a matter of right or by filing a petition for writ of certiorari; therefore, defendant's appeal from the civil judgment was dismissed.

Appeal by defendant from judgment entered 2 January 2024 by Judge Paul A. Holcombe, III, in Johnston County Superior Court. Heard in the Court of Appeals 19 November 2025.

Attorney General Jeff Jackson, by Assistant Attorney General Manuel C. Davis, for the State.

John W. Moss for defendant-appellant.

ZACHARY, Judge.

Defendant Billy Hodges, Jr., appeals from the trial court's judgment entered upon a jury's verdicts finding him guilty of possession of methamphetamine and possession of drug paraphernalia and his guilty plea to attaining habitual-felon status. On appeal, Defendant argues that: 1) the trial court erred by denying his motion to dismiss; 2) he received ineffective assistance of counsel from his trial attorney; and 3) the trial court erred by neglecting to give him notice and an opportunity to be heard before imposing a civil judgment for attorney's fees. After careful review, we conclude that Defendant failed to preserve for appellate review any argument regarding the sufficiency of the evidence; we dismiss Defendant's claim for ineffective assistance of counsel without prejudice to his right to reassert it in a motion for appropriate relief filed with the trial court; and we dismiss Defendant's claim regarding the civil judgment for attorney's fees.

I. Background

Defendant's case came on for jury trial on 11 December 2023 in Johnston County Superior Court. At trial, evidence was presented tending to show the following:

In the early morning hours of 16 April 2022, Benson Police Sergeant Ramiro Velazquez pulled over a vehicle after it ran a red light. Defendant was driving the car while a female passenger—Amanda Warren—rode in the front passenger seat. After discovering that Defendant had a suspended driver's license and the license plate of the vehicle was expired, Sergeant Velazquez issued a citation to Defendant and asked him whether there was "anything in the car illegal." Defendant answered that there was not and consented to Sergeant Velazquez's search of the vehicle.

Two other officers arrived on the scene and Sergeant Velazquez proceeded to search the vehicle. Sergeant Velazquez discovered "a small red toolbox," concealed by its placement "tucked into the sunroof." Inside the toolbox, he found "a small silver spoon" and a small plastic bag containing "a white crystal substance," which he believed—and subsequent testing confirmed—to be methamphetamine. According to Sergeant Velazquez, both occupants of the car initially denied owning the contents of the toolbox. But after being placed under arrest, Defendant stated: "I will take it. The drugs [are] mine . . . . I'm taking the charge for the . . . toolbox. It's on the sunroof."

Defendant testified that he did not own the vehicle, that it belonged to someone staying at the motel at which Defendant resided, and that he "was just working on [the vehicle] at the time." He also testified that when Sergeant Velazquez asked him for permission to search the vehicle, Defendant told him: "[Y]ou can because it's not my car, and there is nothing here that belongs to me." Defendant further testified that he did not "know that there was anything in the car," and that Sergeant Velazquez's testimony regarding Defendant's admission to owning the drugs and drug paraphernalia was either "untruthful" or "mistaken."

Defense counsel made a motion to dismiss at the close of the State's evidence and renewed his motion after the charge conference and the trial court instructed the jury; the court denied the motion on both occasions.

At the trial's conclusion on 13 December 2023, the jury returned verdicts finding Defendant guilty of possession of methamphetamine and possession of drug paraphernalia. That same day, Defendant pleaded guilty to attaining habitual-felon status. The trial court orally pronounced a criminal judgment and a civil judgment for attorney's fees.

On 2 January 2024, the trial court consolidated Defendant's convictions and entered judgment, sentencing him to a term of 45 to 66 months' imprisonment in the custody of the North Carolina Department of Adult Correction. This criminal judgment was included in the record on appeal; the record is devoid of a civil judgment.

Defendant timely filed notice of appeal from the criminal judgment.

II. Discussion

Defendant raises three issues on appeal: 1) whether the trial court erred by denying Defendant's motion to dismiss the charge of possession of methamphetamine; 2) whether Defendant received ineffective assistance of counsel from his trial attorney; and 3) whether the trial court's order assessing attorney's fees as a civil judgment is invalid.

A. Motion to Dismiss

[1] Defendant argues that the trial court erred by denying his motion to dismiss the charge of possession of methamphetamine because "the State did not present substantial evidence of [his] power and intent to control [the substance's] disposition and use." However, Defendant failed to preserve this issue for appellate review.

N.C. Gen. Stat. § 15A-1446(d)(5) "provides that errors based upon insufficiency of the evidence may be the subject of appellate review even though no objection, exception or motion has been made in the trial division." *State v. Stocks*, 319 N.C. 437, 439, 355 S.E.2d 492, 493 (1987); N.C. Gen. Stat. § 15A-1446(d)(5) (2023). Yet N.C. R. App. P. 10(a)(3) provides that where the defendant presents evidence, "if a defendant fails to move to dismiss the action . . . at the close of all the evidence, [the] defendant may not challenge on appeal the sufficiency of the evidence to prove the crime charged." N.C. R. App. P. 10(a)(3).

Our Supreme Court resolved this conflict, explaining that "[t]o the extent that [N.C. Gen. Stat. §] 15A-1446(d)(5) is inconsistent with N.C. R. App. P. 10[(a)](3), the statute must fail." *Stocks*, 319 N.C. at 439, 355 S.E.2d at 493; *see also State v. Meadows*, 371 N.C. 742, 747 & n.2, 821 S.E.2d 402, 406 & n.2 (2018) (noting that in *Stocks*, our Supreme Court held N.C. Gen. Stat. § 15A-1446(d)(5) to be an "unconstitutional encroachment[ ] on the rulemaking authority of the Court"); *State v. Spaugh*, 321 N.C. 550, 552–53, 364 S.E.2d 368, 370 (1988); *State v. Blackmon*, 208 N.C. App. 397, 399–400, 702 S.E.2d 833, 835–36 (2010) (concluding that "in accordance with Rule 10, [the] defendant ha[d] waived appellate review of" the sufficiency of the evidence where the defendant moved to dismiss the charges at the close of the State's evidence but, after presenting evidence, failed to renew the motion at the close of all evidence).

In the case at bar, defense counsel made a motion to dismiss the charges at the close of the State's evidence, which the trial court denied. Defendant then presented evidence. Although defense counsel eventually renewed the motion to dismiss, he failed to do so within the timeframe mandated by Rule 10(a)(3): at the close of all the evidence. Instead, defense counsel renewed his motion to dismiss *after* the charge conference and *after* the trial court instructed the jury. Accordingly, Defendant failed to preserve appellate review of any argument regarding the sufficiency of the evidence.

B. Ineffective Assistance of Counsel

[2] Defendant also contends that he received ineffective assistance of counsel as a result of his trial counsel's failure to subpoena Ms. Warren to testify on his behalf at trial after she "signed a statement claiming the methamphetamine at issue [w]as hers and stating that she would appear at trial."

"When a defendant attacks his conviction on the basis that counsel was ineffective, he must show that his counsel's conduct fell below an objective standard of reasonableness." *State v. Roache*, 358 N.C. 243, 279, 595 S.E.2d 381, 405 (2004) (citation omitted). "First, the defendant must show that counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." *Id.* (citation omitted). "Second, the defendant must show that the deficient performance prejudiced the defense. This requires showing that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable." *Id.* (citation omitted). "Both prongs of this test must be demonstrated in order to claim successfully ineffective assistance of counsel." *Id.*

"Ineffective assistance of counsel claims brought on direct review will be decided on the merits when the cold record reveals that no further investigation is required, i.e., claims that may be developed and argued without such ancillary procedures as the appointment of investigators or an evidentiary hearing." *State v. Campbell*, 359 N.C. 644, 691, 617 S.E.2d 1, 30 (2005) (cleaned up), *cert. denied*, 547 U.S. 1073, 164 L. Ed. 2d 523 (2006). "Therefore, on direct appeal we must determine if these ineffective assistance of counsel claims have been prematurely brought. If so, we must dismiss those claims without prejudice to the defendant's right to reassert them during a subsequent motion for appropriate relief proceeding." *Id.* (cleaned up).

In the present case, Defendant argues that counsel's failure "to take reasonable steps [to] secure the attendance of a material witness at trial"—Ms. Warren—"was not a tactical decision" and "fell below an objective standard of reasonableness." Yet as Defendant acknowledges, "[i]t is not clear on this record that [d]efense [c]ounsel attempted to use either method" of "obtaining or issuing a subpoena or requesting a material witness order" to secure Ms. Warren's presence at trial. *See* N.C. Gen. Stat. §§ 15A-801, 15A-803(a).

The record is not fully developed, rendering this claim premature. Accordingly, we dismiss Defendant's ineffective-assistance-of-counsel claim without prejudice to his right to reassert it during a subsequent proceeding upon a motion for appropriate relief. *See Campbell*, 359 N.C. at 691, 617 S.E.2d at 30.

C. Attorney's Fees

[3] Defendant further asserts that "the trial court's [o]rder that attorney's fees would be paid in a civil judgment should be vacated and the matter remanded for further proceedings." However, this Court lacks jurisdiction to review this claim.

"In certain circumstances, trial courts may enter civil judgments against convicted indigent defendants for the attorneys' fees incurred by their court-appointed counsel." *State v. Friend*, 257 N.C. App. 516, 522, 809 S.E.2d 902, 906 (2018); *see* N.C. Gen. Stat. § 7A-455.

Here, Defendant's written notice of appeal references the criminal judgment entered upon his "convictions of possession of methamphetamine and [attaining the status of an] habitual felon." (Capitalization omitted). With regard to a civil judgment, the trial court stated its intention to enter a civil judgment for attorney's fees and the criminal judgment provides: "WAIVE JAIL FEES; OTHER MONIES SHALL BE A CIVIL JUDGMENT"; nevertheless, the record on appeal is devoid of a civil judgment. Additionally, Defendant neglected to appeal from a civil judgment assessing attorney's fees in his notice of appeal from the criminal judgment and did not file a separate notice of appeal from a civil judgment.

Moreover, Defendant failed to include the civil judgment assessing attorney's fees in the record on appeal. As our Supreme Court has explained where "there is no civil judgment in the record ordering [D]efendant to pay attorney fees, the Court of Appeals ha[s] no subject matter jurisdiction on this issue." *State v. Jacobs*, 361 N.C. 565, 566, 648 S.E.2d 841, 842 (2007); *see also State v. Hester*, 287 N.C. App. 282, 286, 882 S.E.2d 446, 450 (2022) (concluding that this Court could not review the civil judgment imposing attorney's fees because the defendant failed to include the "judgment in the record on appeal and did not supplement the record with the judgment pursuant to our Rules of Appellate Procedure").

Defendant failed to provide this Court with a civil judgment imposing attorney's fees—assuming that one was entered in this matter—or to appeal from any such order, whether as a matter of right or by filing a petition for writ of certiorari. Accordingly, this Court lacks subject-matter jurisdiction.

III. Conclusion

For the foregoing reasons, we conclude that Defendant's argument regarding the denial of his motion to dismiss is unpreserved for appellate review. We dismiss Defendant's ineffective-assistance-of-counsel claim without prejudice to his right to reassert it in a subsequent motion for appropriate relief before the trial court. Finally, we dismiss Defendant's appeal regarding the civil judgment for attorney's fees.

DISMISSED IN PART; DISMISSED WITHOUT PREJUDICE IN PART.

Judges FLOOD and STADING concur.

STATE OF NORTH CAROLINA
v.
DURWARD WILSON LEGGETT III, Defendant

No. COA25-288

Filed 7 January 2026

1. Evidence—authentication—video evidence—testimony about distinctive characteristics

In a prosecution that resulted in defendant being convicted of three counts of second-degree rape, three videos—of defendant engaging in sexual acts with his wife while she was drugged (and to which she had not consented)—were authenticated pursuant to Evidence Rule 901 and thus were properly admitted by the trial court. Defendant's wife recognized distinctive characteristics of the videos based upon her knowledge of the people (herself and defendant), location (their Raleigh townhouse), and approximate time (the period when they lived there) depicted therein; that testimony was sufficient to support a finding that the videos showed what their proponent claimed. Further, defendant's wife testified that she first observed the videos by accessing a previously unknown email account on defendant's iPad using defendant's password and that she never altered the videos, and defendant did not adduce any evidence that the videos were altered. Accordingly, any potential breach in the chain of custody of the videos was applicable only to the jury's weighing of the evidence and not to the trial court's finding that the videos were authenticated.

2. Satellite-Based Monitoring—lifetime monitoring—nominal risk level on Static-99R—statutorily required evidence for higher level risk not presented

The trial court's placement of defendant on lifetime satellite-based monitoring (SBM)—the maximum SBM sentence—following his conviction of second-degree rape (an aggravated offense) was reversed where defendant's Static-99R risk assessment came back with a nominal risk level of 0 and the State did not present any evidence as to matters not already addressed in the risk assessment (which included defendant's underlying offense) to support a higher level of risk or SBM sentence, as required by N.C.G.S. § 14-208.40A(c1).

Appeal by Defendant from judgments entered 7 October 2024 by Judge A. Graham Shirley in Wake County Superior Court. Heard in the Court of Appeals 14 October 2025.

Attorney General Jeff Jackson, by Special Deputy Attorney General Zachary K. Dunn, for the State.

Gurguis Law, PA, by Nardine Mary Gurguis and Meaghan O'Connor, for Defendant.

GRIFFIN, Judge.

Defendant Durward Wilson Leggett, III, appeals from the trial court's judgments entered after a jury found him guilty of second-degree rape. Defendant argues the trial court erred by admitting unauthenticated videos into evidence, thereby violating Defendant's right to a fair trial, and erred by placing Defendant on lifetime satellite-based monitoring. We hold the trial court did not err in admitting the videos; thus, Defendant received a fair trial. However, we hold the trial court did err by placing Defendant on lifetime satellite-based monitoring without making required findings and reverse on that issue alone.

I. Factual and Procedural Background

In 2007, A.T. met Defendant, and the two began a dating relationship. A.T. would stay with Defendant at his apartment and eventually moved in with him. The two then moved into a townhouse in Raleigh. A.T. testified that she and Defendant "drank often" together, but if she said she did not want to drink, "he would be irritated," "passive-aggressive and just moody," and "ill with [her]." She testified she would normally "just drink with him[,]" but at times, she felt "different than the amount of alcohol" she drank. In May 2010, the couple moved to a house in Wake Forest. During this time, Defendant worked as a salesperson at Verizon Wireless, providing him with "all of the newest" "gadgets." Among these electronics he owned was his phone and an iPad. On 27 June 2014, A.T. and Defendant got married, and A.T. testified "things started getting weird." According to A.T.'s testimony this included more arguing between her and Defendant, more passive-aggression from Defendant, and resentment and irritation toward her.

A.T. testified that approximately once a month, A.T. began to "feel different in the morning" because of what she had consumed the night before, leading her to not remember the preceding night. According to A.T.'s testimony when she asked Defendant, "What happened last night?", "he would just make faces" and say, "I don't know." A.T. testified there were times Defendant would pour her drinks, and she would "tak[e] one sip of [her] wine and wak[e] up the next day and look[] over and see[], like, I only took one sip of that glass and just wonder[] what happened, you know." After these instances, A.T. testified she "had so many weird, like, medical things popping up left and right," including bruising and marks "that didn't make sense," scars on her leg and nose, red marks on her throat, an injured hip, and an irregular EKG.

During one incident, A.T. testified she woke up with Defendant on top of her shaking her "really violently" while she was on a couch, after which she "could see every single . . . finger in the bruise." After conversations with her mother and her friend, A.T. began to "do things differently." On 10 February 2016, Defendant went to a work event and left his iPad at their house. Because of the previous conversations with her mother and friend, A.T. testified she accidentally took a screenshot on Defendant's iPad while trying to restart it. A.T. and Defendant knew each other's passwords, and A.T. unlocked the iPad and went into the photos to delete the screenshot. A.T. testified she saw a video in which she was asleep on her couch and the iPad was recording and was pushed down "the couch cushion or chair cushion or something, because the screen goes black, but it continues to record, and you can hear" her alarm clock playing her alarm song. A.T. continued further, testifying she could hear herself "waking up, and it sounded really, really bad" like she "was moaning, and it sounded like [she] was in pain."

A.T. then opened the email app on Defendant's iPad, testifying she wanted to see if he sent the video to anyone. A.T. knew of two email addresses Defendant used, "rorysuggs" and "willleggett," and did not see the video sent to anyone else in the email she knew about, but A.T. also noticed a second tab for another email address, "rorysuggs3," which she had never seen. A.T. opened the "rorysuggs3" email and testified the email inbox contained "graphic pictures of [her] in just really compromised positions." A.T. logged into Defendant's "rorysuggs3" email on her computer with the same password Defendant used for the other known email addresses, forwarded "as much as [she] could to [her] email," and deleted the emails she sent from Defendant's sent folder. A.T. testified she had never seen nor did she consent to what was found on Defendant's email.

Later, after Defendant returned home and was asleep, A.T. testified she logged back into "rorysuggs3" on her computer and found the videos, identified in trial as 4.3GP, 5.3GP, and 6.3GP, which depicted sexual acts, and forwarded them to herself.[1] A.T. recognized herself in the

1. These videos were included in their playable forms within a slide presentation admitted as State's Exhibit 10. The thumb drive on which the videos were uploaded was admitted as State's Exhibit 4.

videos lying on a bed; the location of the videos as her and Defendant's townhouse in Raleigh, based on "the glare of the computer screen in [their] room relative to where the bed was that [she] was on"; and the date as what she believed to be 2009, based on when the couple lived in the townhouse. A.T. testified the hands, penis, and ejaculation in the videos were Defendant's. A.T. also testified she specifically did not know of the existence of these videos, she did not give consent to any of the sexual acts in the videos, she was not aware they were being recorded, and she had never been unfaithful or had sex with anyone else in her marital bed. Additionally, A.T. testified she did not alter the videos, nor did she know how to alter them, she "just forwarded the e-mails as they were."

On 11 February 2016, A.T. went to Wake Forest Police Department and met with Lieutenant Perry at approximately 7:30 or 8:00 a.m. Lt. Perry testified A.T. brought her laptop with her to the police department and pulled up the forwarded email to show Lt. Perry, after which the emails were transferred to a thumb drive by A.T. at Lt. Perry's request, which Lt. Perry kept. Lt. Perry testified she packaged the thumb drive and placed it into evidence at Wake Forest PD, accessible only by the department's evidence tech and an officer upon request and signature. Lt. Perry attempted to access the videos on the thumb drive in April 2017 but was unable to access them, causing her to send the thumb drive to the Raleigh/Wake City-County Bureau of Identification ("CCBI"). Lt. Perry testified she never saw who took the photos and videos on the laptop nor did she know what device captured those materials, and, during her meeting with A.T., A.T. claimed she was unconscious in the videos.

On 25 September 2017, Defendant was indicted on three counts of second-degree rape and one count of misdemeanor sexual battery in case no. 17CR217241. On 8 January 2024, in a superseding indictment, Defendant was indicted on three counts of second-degree rape and one count of misdemeanor sexual battery in case no. 17CR217241, and on 9 January 2024, in a superseding indictment, Defendant was indicted on one count of second-degree forcible sexual offense in case no. 17CR217388. Prior to trial, Defendant filed a motion in limine to exclude the videos from the thumb drive, to which the trial court deferred its ruling. The trial court dismissed the misdemeanor sexual battery count.

At trial, the State called John McAuliffe, who worked in the digital evidence unit of CCBI, as an expert witness. Regarding the thumb drive containing the videos 4.3GP, 5.3GP, 6.3GP, Mr. McAuliffe testified, "the 'dot 3GP' is . . . a recording file extension for primarily mobile devices of the 3G variety, but it's not limited to 3G phones." Further, Mr. McAuliffe testified, based on the EXIF data, each video was created on 20 June 2009, but he could not determine what device recorded the videos from the data. Mr. McAuliffe initially testified videos 4.3GP, 5.3GP, and 6.3GP, were placed on the thumb drive at 3:08 a.m., 3:10 a.m., and 3:12 a.m. *UTC*, or "approximately 7:00 or 8:00 in the morning,"[2] respectively on 11 February 2016. However, he later testified the videos were uploaded to the thumb drive at 3:08 a.m., 3:10 a.m., and 3:12 a.m. *EST*, differing from A.T. and Lt. Perry's testimonies.

Mr. McAuliffe testified the last access date for videos 4.3GP and 5.3GP, when "someone plugged in the thumb drive and clicked on the video to open it," was 22 March 2016, and the envelope containing the thumb drive did not contain the 22 March 2016 date on it. Mr. McAuliffe was unable "to speak to the accuracy of [the] recording device." After the voir dire of Mr. McAuliffe, the court denied Defendant's motion in limine, finding the videos to be authenticated, to which Defendant objected.

On 25 September 2024, the jury convicted Defendant of three counts of second-degree rape and found Defendant not guilty of second-degree forcible sex offense. The trial court continued sentencing until 7 October 2024. At sentencing, the trial court sentenced Defendant to a minimum term of 44 months to a maximum term of 113 months. Also, on 7 October 2024, the State filed a request that the trial court order lifetime satellite-based monitoring ("SBM") for Defendant, which included a Static-99R risk assessment form finding Defendant to have a score of 0, classifying him as "Below Average Risk." The trial court found Defendant to require the highest possible level of supervision and monitoring because he was guilty of an aggravated offense and ordered Defendant to enroll in lifetime SBM in addition to registering as a sex offender. Defendant offered an oral notice of appeal that same day.

II. Analysis

Defendant argues the trial court erred by admitting unauthenticated videos thereby violating his right to a fair trial. Defendant also argues the trial court erred by placing him on lifetime SBM based solely on a Static-99 assessment that placed him in a low-risk category. We address each argument.

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2. Mr. McAuliffe testified UTC "stands for universal time coordinate, and it basically stands for a time zone that doesn't have an offset so that computers can keep track of their time and date more easily and then transcribe it to the date and time zone of whichever one that device is in." Therefore, "the Eastern Time would be UTC minus four or five and the UTC time would be just minus zero or plus zero."

A. Authentication of Videos

[1] Defendant first argues "erroneous admission of the three videos constituting the rape charges prejudiced [Defendant], and the convictions and sentences should be vacated." Specifically, Defendant argues the videos were not properly authenticated because "no evidence was presented regarding the recording process," "no evidence was presented asserting the videos produced at trial were the same produced by the recording process," "no one testified that the videos accurately depicted what they observed," and "discrepancies in the State's theory and trial testi[]mony cast additional doubt on the videos' authenticity." We disagree.

We review Rule of Evidence 901 authentication questions de novo. *State v. Jones*, 288 N.C. App. 175, 187, 884 S.E.2d 782, 793 (2023). "Any party may introduce a photograph, video tape, motion picture, X-ray or other photographic representation as substantive evidence upon laying a proper foundation and meeting other applicable evidentiary requirements." N.C. Gen. Stat. § 8-97 (2023). "The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims." N.C. Gen. Stat. § 8C-1, Rule 901(a) (2023). Rule 901 presents a non-exhaustive list which illustrates, but does not limit, various ways evidence can be authenticated in the trial court, including,

> (1) Testimony of Witness with Knowledge.--Testimony that a matter is what it is claimed to be.
>
> . . . .
>
> (4) Distinctive Characteristics and the Like.--Appearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with circumstances.
>
> . . . .
>
> (9) Process or System.--Evidence describing a process or system used to produce a result and showing that the process or system produces an accurate result

N.C. Gen. Stat. § 8C-1, Rule 901(b)(1), (4), (9).[3] "It is not error for the trial court to admit the evidence if it could reasonably determine that there

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3. "Rule 901(b)(1) complements Rule 901(b)(4), since the latter endorses what amounts to 'indirect' (or circumstantial) proof of authenticity. Read as a whole, the general

was sufficient evidence to support a finding that the matter in question is what its proponent claims." *State v. Davenport*, 297 N.C. App. 605, 611, 910 S.E.2d 750, 754 (citation modified), *review denied*, 915 S.E.2d 167 (N.C. 2025). "Importantly, the burden to authenticate under Rule 901 is not high—only a prima facie showing is required." *Id.* at 611, 910 S.E.2d at 754–55 (citation modified).

Here, A.T. recognized distinctive characteristics based upon her knowledge of the people, location, and approximate time of the videos. During A.T.'s testimony she recognized herself in the videos lying on the bed, and identified the location of the videos as her and Defendant's townhouse in Raleigh based on the location of a computer in relation to the bed. She also identified the date as prior to 2010, likely 2009, based on when the couple lived in that townhouse, which corresponded with the expert's testimony that the videos were created on 20 June 2009. In addition, A.T. also recognized the hands, penis, and ejaculation in the video, testifying that they were Defendant's, to whom she had been either dating or married to for approximately nine years. Further, A.T. testified she first observed the videos on Defendant's email address, "rorysuggs3," which bore a similar name to the email of which A.T. was aware Defendant used, "rorysuggs." A.T. also accessed this previously unknown email using Defendant's password. Moreover, A.T. testified she never altered, nor did she know how to alter, the videos. Therefore, A.T.'s knowledge of various distinctive characteristics within the videos was "sufficient to support a finding that the matter in question is what its proponent claims." Rule 901(a); *see State v. Ford*, 245 N.C. App. 510, 519, 782 S.E.2d 98, 105 (2016) ("Indeed, the prima facie showing may be accomplished largely by offering circumstantial evidence that the documents in question are what they purport to be." (citation modified)).

First, Defendant argues the trial court erred in authenticating the videos at issue because of the lack of evidence presented by the State regarding the recording device or recording process, relying on *State v. Snead*, 368 N.C. 811, 814, 783 S.E.2d 733, 736 (2016), and *State v. Moore*, 254 N.C. App. 544, 565, 803 S.E.2d 196, 210 (2017). However, although a video can be authenticated via evidence regarding its recording device and recording process producing an accurate result, and the State did

language in the two provisions forms a catchall authority under which any probative evidence not otherwise excludable should be admitted to authenticate a matter, even if the proof does not fit comfortably within the more particular language of the other eight illustrations." § 9:3 Testimony of a witness with knowledge (Rule 901(b)(1)), 5 Federal Evidence § 9:3 (4th ed.).

not produce such evidence here, the production of such evidence is not the only avenue for authentication of a video. *Compare* Rule 901(b)(9) ("Process or System.--Evidence describing a process or system used to produce a result and showing that the process or system produces an accurate result."), *with* Rule 901(b) ("Illustrations.–*By way of illustration only, and not by way of limitation*, the following are examples of authentication or identification conforming with the requirements of this rule[.]" (emphasis added)).

In *Snead*, our Supreme Court overturned a ruling from this Court which held a "trial court erred by admitting the video of [the] defendant shoplifting because the video was not properly authenticated" after a regional loss prevention manager testified as to the validity of surveillance footage based on a store's recording policies, recording devices, and business practices even though this manager was not at the store on the date of the theft in that case. *Snead*, 368 N.C. at 812–14, 783 S.E.2d at 735–36. In holding the video to have been properly authenticated our Supreme Court said, " '[r]ecordings such as a tape from an automatic surveillance camera *can be* authenticated as the accurate product of an automated process' under Rule 901(b)(9)." *Id.* at 814, 783 S.E.2d at 736 (emphasis added) (quoting 2 Kenneth S. Broun et al., *McCormick on Evidence* § 216, at 39–40 (7th ed. 2013)). Thus, the Supreme Court did not hold Rule 901(b)(9) to be the only way to authenticate the video; rather, the Supreme Court referred to the Rule 901(b) list as "*examples* of authentication that meet the requirements of subsection (a)." *Id.* (emphasis added). Further, the Supreme Court noted "[g]iven that [the] defendant freely admitted that he is one of the two people seen in the video stealing shirts and that he in fact stole the shirts, he offered the trial court no reason to doubt the reliability or accuracy of the footage contained in the video" but additionally held the loss prevention manager's testimony regarding the video to be sufficient to authenticate. *Id.* at 815, 783 S.E.2d at 737.

Citing *Snead*, this Court in *Moore* reviewed an authentication of a video based solely on a copy of an officer's phone recording of a surveillance video. 254 N.C. App. at 565, 803 S.E.2d at 210. The store clerk in *Moore* "was not asked any questions about the creation of the original video or whether it accurately depicted the events that he observed on [the date of the theft]" nor was any further testimony elicited as to any distinctive characteristics. *Id.* In other words, unlike in this case, no testimony or evidence was given in *Moore* "sufficient to support a finding that the matter in question is what its proponent claims," Rule 901(a), including under the example given in Rule 901(b)(9).[4] Thus, this Court in *Moore* found error but did not limit the authentication of videos solely to the illustration in Rule 901(b)(9).

Therefore, we decline to limit authentication of videos here where Rule 901 and our Courts have not. Furthermore, Defendant's allusions to the possibility the videos could be altered are not backed by any evidence in the record nor does Defendant make any specific claim to such effect.

In addition, Defendant argues discrepancies in the trial testimony, including the confusion regarding the time and location the videos were placed on the thumb drive and the questions surrounding the chain of custody of the thumb drive, work against authentication. However, the timing and location of when the videos were placed on the thumb drive is immaterial to the authentication of the videos themselves because, as addressed, testimony was adduced sufficient to authenticate the evidence via distinctive characteristics and from a person with knowledge.

Regarding chain of custody, our Supreme Court was clear in *Snead*,

> "A detailed chain of custody need be established only when the evidence offered is not readily identifiable or is susceptible to alteration and there is reason to believe that it may have been altered." [*State v.*]*Campbell*, 311 N.C. [386,] 389, 317 S.E.2d [391,] 392 [1984]; [*State v.*]*Kistle*, 59 N.C. App. [724,] 726, 297 S.E.2d [626,] 627 [1982] ("[T]he State need not establish a complete chain of custody [when a] witness who had inspected the film immediately after processing testified that the photographs introduced at trial were the same as those he had inspected immediately after processing."); *accord United States v. Van Sach*, No. 1:09CR03, 2009 WL 3232989, at *3 (N.D.W.Va. Oct. 1, 2009) (unpublished order) ("Establishing a formal chain of custody of evidence is no longer required [to support a finding that evidence is authentic]. Rather, it is sufficient for the party offering the [videotape] simply to satisfy the trial court that the item is what it purports to be and has

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4. "A careful review of the transcript in this case reveals that no testimony was elicited at trial concerning the type of recording equipment used to make the video, its condition on 21 May 2015, or its general reliability. No witness was asked whether the video accurately depicted events that he had observed, and no testimony was offered on the subject. We conclude that the State failed to offer a proper foundation for introduction of the video as either illustrative or substantive evidence." *Moore*, 254 N.C. App. at 565, 803 S.E.2d at 210.

> not been altered." (citation omitted)). "[A]ny weak links in a chain of custody relate only to the weight to be given evidence and not to its admissibility." *Campbell*, 311 N.C. at 389, 317 S.E.2d at 392 (citations omitted).

368 N.C. at 815, 783 S.E.2d at 737. Defendant did not adduce any evidence to give reason to believe the videos were in any way altered. Thus, the potential breach in the chain of custody was applicable to the jury's weighing of the evidence and testimony from trial, not the trial court's finding the videos to be authenticated.

Therefore, the trial court did not err in finding the videos authenticated and admitting the videos.

B. Satellite-Based Monitoring

[2] Defendant argues the "State failed to present sufficient evidence to place [Defendant] on lifetime [SBM], and the order must be reversed without remand." We agree.

For SBM orders, we review "the trial court's findings of fact to determine whether they are supported by competent record evidence, and we review the trial court's conclusions of law for legal accuracy and to ensure that those conclusions reflect a correct application of law to the facts found." *State v. Barton*, 295 N.C. App. 182, 187, 905 S.E.2d 230, 234 (2024) (quoting *State v. Harding*, 258 N.C. App. 306, 321, 813 S.E.2d 254, 265 (2018)).

Our General Statutes prescribe when a court should impose SBM. "When an offender is convicted of a reportable conviction as defined by G.S. 14-208.6(4), during the sentencing phase, the district attorney shall present to the court any evidence . . . . [t]hat the conviction offense was an aggravated offense." N.C. Gen. Stat. § 14-208.40A(a)(3) (2023). Then, "[a]fter receipt of the evidence from the parties, the court shall determine whether the offender's conviction places the offender in one of the categories described in G.S. 14-208.40(a), and if so, shall make a finding of fact of that determination, specifying each of the following:"

> (1) Whether the offender has been classified as a sexually violent predator pursuant to G.S. 14-208.20.
>
> (2) Whether the offender is a reoffender.
>
> (3) Whether the conviction offense was an aggravated offense.
>
> (4) Whether the conviction offense was a violation of G.S. 14-27.23 or G.S. 14-27.28.

> (5) Whether the offense involved the physical, mental, or sexual abuse of a minor.

N.C. Gen. Stat. § 14-208.40A(b). After which, "[t]he court shall order that the Department of Adult Correction do a risk assessment of the offender if the court finds . . . [t]he offender has committed an aggravated offense." N.C. Gen. Stat. § 14-208.40A(c)(2).

> Upon receipt of a risk assessment from the Department of Adult Correction pursuant to subsection (c) of this section, the court shall determine whether, based on the Department's risk assessment and all relevant evidence, the offender requires the highest possible level of supervision and monitoring. If the court determines that the offender does require the highest possible level of supervision and monitoring, the court shall order the offender to enroll in a satellite-based monitoring program for the life of the offender.

N.C. Gen. Stat. § 14-208.40A(c1).

"Moreover, 'the State must present additional evidence to support a determination that the offender requires the highest possible level of supervision and monitoring[,]' and such additional evidence cannot be as to matters already addressed in the defendant's Static-99 risk assessment, such as the defendant's underlying offense." *State v. Belfield*, 297 N.C. App. 817, 823, 911 S.E.2d 754, 759 (2025) (alteration in original) (quoting *State v. Thomas*, 225 N.C. App. 631, 633–34, 741 S.E.2d 384, 386 (2013)). "Absent a 'high risk' Static-99 score, *in addition to the State offering additional evidence*, the trial court must 'make additional findings in order to justify a maximum SBM sentence.' " *Id.* (citation modified) (quoting *Thomas*, 225 N.C. App. at 634, 741 S.E.2d at 387). "A trial court's order requiring SBM must be reversed, without remand, if the defendant is low risk, and 'the State presented no evidence to support findings of a higher level of risk or to support [SBM].' " *Barton*, 295 N.C. App. at 188, 905 S.E.2d at 235 (quoting *State v. Jones*, 234 N.C. App. 239, 243, 758 S.E.2d 444, 448 (2014)).

Defendant concedes second-degree rape is an aggravated offense. The risk assessment (Static-99R) came back with a nominal risk level of 0, "Below Average Risk." Thus, the State was required to present evidence to support a higher level of risk or SBM but did not. *Barton*, 295 N.C. App. at 188, 905 S.E.2d at 235.

The State argues *Barton* is distinguishable because the crime at issue in *Barton* was not an aggravated offense, 295 N.C. App. at 184, 905

S.E.2d at 232, as it is here; however, section 14-208.40A does not maintain such a distinction for purposes of the State presenting evidence and the trial court finding additional facts.[5] Additionally, the State argues N.C. Gen. Stat. § 14-208.23 "provides for lifetime SBM for all offenders convicted of aggravated offenses," but section 14-208.23 does not determine who is or is not subject to SBM; it governs how long an individual is required to maintain his or her registration as a sexually violent predator. N.C. Gen. Stat. § 14-208.23 (2023) ("A person who is a recidivist, who is convicted of an aggravated offense, or who is classified as a sexually violent predator shall maintain registration for the person's life. Except as provided under G.S. 14-208.6C, the requirement of registration shall not be terminated."). Thus, while section 14-208.23 is applicable to Defendant based on his conviction of an aggravated offense, it is not applicable to the SBM issue.

Therefore, we must reverse the trial court's imposition of SBM.[6] *See Barton*, 295 N.C. App. at 188, 905 S.E.2d at 235; *Jones*, 234 N.C. App. at

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5. *Compare* N.C. Gen. Stat. § 14-208.40A(c1) ("Upon receipt of a risk assessment from the Department of Adult Correction pursuant to subsection (c) of this section, the court shall determine whether, based on the Department's risk assessment and all relevant evidence, the offender requires the highest possible level of supervision and monitoring. If the court determines that the offender does require the highest possible level of supervision and monitoring, the court shall order the offender to enroll in a satellite-based monitoring program for the life of the offender."), *with* N.C. Gen. Stat. § 14-208.40A(e) ("Upon receipt of a risk assessment from the Department of Adult Correction pursuant to subsection (d) of this section, the court shall determine whether, based on the Department's risk assessment and all relevant evidence, the offender requires the highest possible level of supervision and monitoring. If the court determines that the offender does require the highest possible level of supervision and monitoring, the court shall order the offender to enroll in a satellite-based monitoring program for a period of time to be specified by the court, not to exceed 50 years.").

6. The trial court engaged with the reasonableness of SBM as to Defendant, stating during the hearing because Defendant was going to be a registered sex offender, SBM's burden or infringement on his life and liberty would be "slight" and he has a diminished expectation of privacy; because he would not be on probation after being released from prison; because monitoring served the government interest of preventing society from aggravated sex offenders and deterrence of future crimes; and because sex offenders generally have a higher recidivism rate than the general population, lifetime SBM was reasonable. However, during the same hearing the trial court stated pursuant to our Supreme Court's decision in *State v. Hilton*, 378 N.C. 692, 705, 862 S.E.2d 806, 815–16 (2021), "the highest possible level of supervision is required" because Defendant was convicted of an aggravated offense. Consequently, the trial court's Judicial Findings and Order for Sex Offenders does not list any additional findings apart from the findings Defendant committed a sexually violent offense and was convicted of an aggravated offense. But after *Hilton*, the General Assembly amended section 14-208.40, removing the requirement an individual convicted of an aggravated offense is automatically enrolled in SBM. S.L. 2021-138, § 18(c).

243, 758 S.E.2d at 447–48 ("This Court has previously held that a DOC risk assessment of 'moderate,' *without more*, is insufficient to support the finding that a defendant requires the highest possible level of supervision and monitoring." (emphasis in original) (quoting *State v. Green*, 211 N.C. App. 599, 601, 710 S.E.2d 292, 294 (2011))).

III. Conclusion

We hold there was no error in the trial court's admitting the videos at issue into evidence because the videos were properly authenticated. However, we reverse the trial court's decision to place Defendant on lifetime satellite-based monitoring because, upon Defendant being determined to be low risk, the State failed to produce additional evidence to support findings of a higher level of risk or to support SBM.

NO ERROR IN PART; REVERSED IN PART.

Chief Judge DILLON and Judge FLOOD concur.

STATE OF NORTH CAROLINA
v.
JARRED ROBERT OAKES

No. COA25-247

Filed 7 January 2026

1. Appeal and Error—preservation of issues—right to present complete defense—constitutional claim—not raised at trial

In a prosecution for first-degree murder, defendant failed to preserve for appellate review his argument that his constitutional right to present a complete defense was denied when the trial court prohibited him from presenting defenses of diminished capacity and insanity, where defendant did not raise the constitutional claim in the first instance before the trial court.

2. Constitutional Law—effective assistance of counsel—failure to argue deficiency of counsel

In an appeal from a first-degree murder conviction, defendant failed to support his argument that he received ineffective assistance of counsel (IAC) by making any allegations, much less showing, that his counsel's performance was deficient. Instead, defendant argued that the trial court erred by failing to allow defense counsel to present defenses of diminished capacity and insanity; therefore, defendant's IAC claim was rejected.

3. Constitutional Law—due process—competency to stand trial —adoption of competency report—no error

In a prosecution for first-degree murder, in which, during a pre-trial competency hearing, the trial court received a written competency report from the forensic psychiatrist who had examined defendant, the trial court did not err by incorporating facts from the report rather than making its own independent findings. Further, the report supported the court's determination that defendant was competent to stand trial where it detailed defendant's ability to understand the proceedings against him and to participate in his defense.

4. Constitutional Law—due process—competency to stand trial —prior competency determination—no duty to conduct new hearing sua sponte

In a prosecution for first-degree murder, in which the trial court had previously determined that defendant was competent to stand trial following a pre-trial competency hearing, the trial court was not required to sua sponte conduct an additional competency inquiry several months later at the start of trial. In the time between the pre-trial competency hearing and the start of trial defendant had remained in the hospital rather than jail in order to ensure he received consistent medication and mental health treatment and there was no evidence to suggest his incompetency at trial.

5. Evidence—authentication—voicemail recording—personal knowledge

In defendant's prosecution for first-degree murder for the strangulation of his mother, there was no error in the admission into evidence of a voicemail recording of defendant and his mother. The testimony of defendant's sister that she recognized defendant and her mother on the voicemail based on her personal knowledge was sufficient to authenticate the recording pursuant to Evidence Rule 901.

Appeal by Defendant from judgment entered 1 February 2024 by Judge Cynthia King Sturges in Vance County Superior Court. Heard in the Court of Appeals 23 September 2025.

Attorney General Jeff Jackson, by Special Deputy Attorney General Marc Bernstein, for the State-Appellee.

Center for Death Penalty Litigation, by Janine Fodor, for Defendant-Appellant.

COLLINS, Judge.

Defendant Jarred Robert Oakes appeals from a judgment entered upon a jury's guilty verdict of first-degree murder. Defendant argues that the trial court erred by preventing him from presenting defenses of diminished capacity and insanity, preventing him from receiving effective assistance of counsel, adopting a forensic psychiatrist's evaluation of Defendant at a competency hearing, failing to conduct a sua sponte competency hearing at the beginning of trial, and admitting an unauthenticated voicemail into evidence. For the following reasons, we find no error.

I. Background

Defendant was charged with first-degree murder for the strangulation of his mother, Geraldine Oakes, which occurred on 24 May 2017.

Defendant has been diagnosed with schizophrenia, and in the five years leading up to trial, Defendant twice lost and regained the capacity to stand trial. In May 2023, the trial court ordered that Defendant remain in the hospital until trial to receive medication and mental health treatment.

At a pre-trial hearing in October 2023, defense counsel indicated that he intended to pursue defenses of diminished capacity and insanity but needed to review the latest report on Defendant's mental health and had not discussed the issue with Defendant. The trial court conducted the following colloquy with Defendant regarding his consent to presenting these defenses:

> THE COURT: Thank you, Mr. Oakes. Do you consent for when your case comes to trial for [defense counsel], because here is – this is the rule. If you don't consent to your attorney's trial strategy, he has to obey your wishes. So if you wish – if you do not wish for him to argue at trial that at the time of the offense you had diminished capacity or – I'm not saying – He cannot do that without your consent. He must obey your wishes.
>
> THE DEFENDANT: I didn't do anything to leave anybody under the impression that I had something wrong with my mind. I tried to do my best at all times, so whatever

> I put forth effort to do, everything is perfectly fine for my strength – I mean for my willpower.
>
> . . . .
>
> THE COURT: Are you good with [defense counsel] arguing to the jury that you were maybe not in your right mind 2017?
>
> THE DEFENDANT: I didn't hear what you said.
>
> THE COURT: Are you – Do you agree, or are you okay with any sort of argument or defense presented to this jury that indicates that you were not in your right mind in 2017 when you –
>
> THE DEFENDANT: I'm not in agreeance with that, no, ma'am.
>
> THE COURT: Sir?
>
> THE DEFENDANT: I'm not in agreeance with it. I'm definitely not in agreeance at all.
>
> THE COURT: You are opposed.
>
> THE DEFENDANT: I've been mentally capable of being to proceed the entire time. There's been type of misunderstanding.
>
> . . . .
>
> THE DEFENDANT: No. No, I've never claimed to be not – not be in my correct mind.
>
> THE COURT: Do you disagree or do you consent with Mr. Gardner arguing that to the jury?
>
> THE DEFENDANT: I would hope he wouldn't be arguing that I wasn't mentally capable.
>
> THE COURT: I just need to get – I really need more of a yes or no.
>
> THE DEFENDANT: No. I wouldn't.
>
> THE COURT: Thank you. Thank you. Mr. Oakes.
>
> THE DEFENDANT: Yes ma'am.

As a result of the colloquy, the trial court concluded that Defendant did not consent to defense counsel presenting diminished capacity or insanity defenses and prohibited defense counsel from doing so. Defense counsel did not object to the trial court's ruling.

The case came on for trial on 29 January 2024 where the State's evidence tended to show the following. Geraldine and Defendant's father, Robert, were married and had three children — Defendant, Will, and Kaitlin. Kaitlin lived with her parents in Youngsville, Franklin County. Defendant lived in a mobile home beside his parents' house. Robert and Geraldine also owned a house on Kerr Lake in Henderson, Vance County.

On the morning of 24 May 2017, Geraldine drove to the lake house to clean it before Memorial Day weekend. After she arrived, she texted Robert that Defendant was there. Robert finished up some work and then headed to the lake house.

At 12:54 p.m., a voicemail was sent from Geraldine's phone to Kaitlin's phone. Kaitlin was in her last class of the day at school, where she listened to the voicemail. It seemed to her to be an accidental dial, but she recognized her mother's and Defendant's voices arguing. The following dialogue can be heard on the voicemail recording:

> GERALDINE: [Unintelligible]
>
> DEFENDANT: You know why you come up here today?
>
> GERALDINE: [Unintelligible]
>
> DEFENDANT: To die. Get the fuck out of my face.
>
> GERALDINE: Jarred you got problems.
>
> DEFENDANT: What did I just say, bitch?

After hearing the voicemail, Kaitlin called her mother, who did not answer. She then called her father, who was on his way to the lake house, and told him that she had received a voicemail from her mother. Kaitlin said that on the voicemail she heard her mother and Defendant arguing, "it sounded really bad," and Defendant was threatening Geraldine.

A recording of the voicemail was admitted as State's Exhibit 6. Kaitlin testified that the voices on the voicemail belonged to her mother and Defendant, and that she received the voicemail from her mother's phone number.

When Robert arrived at the lake house, Geraldine's truck was there. Robert encountered Defendant in the driveway, and they had a conversation. When Robert asked where Geraldine was, Defendant responded, "You ain't got to worry about her. I done took care of her. She's dead."

Robert went into the house and found Geraldine in her bedroom with a rope tightly wrapped around her neck several times. Her face was purple. Robert recognized the rope as one that he had placed on his boat that was at the lake property. Robert called 9-1-1 and explained that his wife was dead, and he thought his son had killed her. He was instructed to lock the doors and begin chest compressions, which he did until first responders and police arrived.

A "be on the lookout" alert was issued for Defendant; he was stopped and arrested in Youngsville shortly thereafter. On 1 February 2024, the jury convicted Defendant of first-degree murder, and the trial court sentenced Defendant to life imprisonment without the possibility of parole. Defendant appeals.

II. Discussion

Defendant argues that the trial court erred by preventing him from presenting defenses of diminished capacity and insanity, preventing him from receiving effective assistance of counsel, adopting a forensic psychiatrist's evaluation of Defendant at a competency hearing, failing to conduct a sua sponte competency hearing at the beginning of trial, and admitting an unauthenticated voicemail into evidence. We address each argument in turn.

A. Diminished Capacity and Insanity

[1] Defendant first contends that he was denied his constitutional right, under the Due Process Clause of the Fourteenth Amendment and the Compulsory Process and Confrontation Clauses of the Sixth Amendment, to a meaningful opportunity to present a complete defense. Defendant specifically argues that he did not knowingly and intelligently waive his right to present the defenses of diminished capacity and insanity.

Defendant has failed to preserve this issue for appellate review. "In order to preserve an issue for appellate review, a party must have presented to the trial court a timely request, objection, or motion, stating the specific grounds for the ruling the party desired the court to make if the specific grounds were not apparent from the context." N.C. R. App. P. 10(a)(1). "It is also necessary for the complaining party to obtain a ruling upon the party's request, objection, or motion." *Id.* Further, "[c]onstitutional issues not raised and passed upon at trial will not be considered for the first time on appeal" by this Court. *State v. Lloyd*, 354 N.C. 76, 86-87 (2001).

At the October 2023 pretrial hearing, the trial court conducted a colloquy with Defendant where the following exchange took place:

> THE COURT: Are you – Do you agree, or are you okay with any sort of argument or defense presented to this jury that indicates that you were not in your right mind in 2017 when you –
>
> THE DEFENDANT: I'm not in agreeance with that, no, ma'am.
>
> THE COURT: Sir?
>
> THE DEFENDANT: I'm not in agreeance with it. I'm definitely not in agreeance at all.
>
> THE COURT: You are opposed.
>
> THE DEFENDANT: I've been mentally capable of being to proceed the entire time. There's been type of misunderstanding.
>
> . . . .
>
> THE DEFENDANT: No. No, I've never claimed to be not – not be in my correct mind.
>
> THE COURT: Do you disagree or do you consent with Mr. Gardner arguing that to the jury?
>
> THE DEFENDANT: I would hope he wouldn't be arguing that I wasn't mentally capable.
>
> THE COURT: I just need to get – I really need more of a yes or no.
>
> THE DEFENDANT: No. I wouldn't.

Following this, the trial court prohibited defense counsel from presenting defenses of "diminished capacity or anything else" to the jury. Defense counsel did not object to the trial court's decision or raise the constitutional argument he now raises on appeal. Accordingly, Defendant did not preserve this issue for our review.

B. Ineffective Assistance of Counsel

[2] Defendant next contends that he was denied his constitutional right to effective assistance of counsel when the trial court prohibited defense counsel from presenting diminished capacity and insanity defenses.

The Sixth Amendment to the Constitution guarantees criminal defendants the right to effective assistance of counsel. *State v. Braswell*, 312 N.C. 553, 561 (1985). To bring a successful ineffective assistance of counsel claim, a defendant must satisfy a two-part test. *Id.* at 562. "First, the defendant must show that counsel's performance was deficient." *Id.* (quoting *Strickland v. Washington*, 466 U.S. 668, 687 (1984)). "This requires showing that counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." *Id.* "Second, the defendant must show that the deficient performance prejudiced the defense." *Id.* "This requires showing that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable." *Id.*

Here, Defendant has failed to allege much less show that counsel's performance was deficient, as required by the first prong of the *Strickland* test. Instead, Defendant alleges that the *trial court* erred by failing to allow defense counsel to present diminished capacity and insanity defenses. Because Defendant has failed to "show[] that counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment," *id.*, Defendant has failed to articulate an ineffective assistance of counsel claim. We thus reject his argument.

C. Competency

Defendant next makes two arguments regarding his competency to stand trial. First, Defendant argues that the trial court erred by adopting a forensic psychiatrist's evaluation of Defendant at a 22 May 2023 competency hearing. Second, Defendant argues that the trial court should have conducted a competency hearing sua sponte at the beginning of trial.

"[T]he conviction of an accused person while he is legally incompetent violates due process[.]" *State v. Coley*, 193 N.C. App. 458, 461 (2008) (quoting *State v. Taylor*, 298 N.C. 405, 410 (1979) and citing *Pate v. Robinson*, 383 U.S. 375, 378 (1966)); *see* N.C. Gen. Stat. § 15A-1001(a) (2024). The test for competency is "whether a defendant has capacity to comprehend his position, to understand the nature of the proceedings against him, to conduct his defense in a rational manner and to cooperate with his counsel." *Coley*, 193 N.C. App. at 463 (quoting *State v. Jackson*, 302 N.C. 101, 104 (1981)).

"Evidence that a defendant suffers from mental illness is not dispositive on the issue of competency." *Id.* at 463 (quotation marks and citation omitted). "[A] defendant does not have to be at the highest stage of mental alertness to be competent to be tried." *State v. Shytle*, 323 N.C. 684, 689 (1989). "So long as a defendant can confer with his or her attorney so that the attorney may interpose any available defenses for him or her, the defendant is able to assist his or her defense in a rational manner." *Id.* "It is the attorney who must make the subtle distinctions as to the trial." *Id.*

"The determination of whether a defendant is competent to stand trial rests within the trial court's discretion and the burden of persuasion falls upon the defendant." *Coley*, 193 N.C. App. at 461 (citation omitted). "The trial court's findings of fact, as well as its final determination, will be upheld on appeal if supported by the evidence." *Id.* (citation omitted).

1. May 2023 Competency Determination

[3] Defendant argues that at the May 2023 competency hearing, the trial court erred by adopting a written Competency Report from a forensic psychiatrist who had examined Defendant and determined that Defendant was competent to stand trial. Defendant specifically argues that the competency hearing was inadequate to determine the issue of competency because the trial court adopted the competency report "wholesale" and did not make its own findings of fact or conclusions of law.

In *State v. Coley*, this Court addressed "whether the trial court can adopt [] facts as set forth in [a] psychiatric report in lieu of listing the facts in the traditional manner." *Id.* at 463. This Court held that the trial court could adopt facts as set forth in a psychiatrist's report and noted the lack of any "authority prohibiting the court from making findings of fact by incorporating a factual summary from a detailed report." *Id.* We explained that "[w]hile the better practice is to make independent detailed findings of fact, adopting facts set forth in the report was not prejudicial in this instance." *Id.*

In this case, the Competency Report includes detailed notes on Defendant's capacity based on interviews conducted on 17 April 2023, 18 April 2023, and 11 May 2023. The Competency Report states in pertinent part:

> [Defendant] readily participated in an interview to assess his knowledge of the legal system and understanding of his legal situation. . . . He knew the date of the offense was either May 23 or 24, 2017. He was aware his charge was first degree murder, which was a felony. . . . He was aware that a Not Guilty plea would result in going to trial, and that if someone was found Guilty, they could file an appeal. He described other plea options of Not Guilty by Reason of Insanity (NGRI), Guilty, No Contest, and a Plea Bargain. He said NGRI means that "you say you did the

> crime but weren't in the right mind frame[.]" He was asked if this were something he would ever consider and said "Never, not going to get into that, only Not Guilty[.]" He knew his lawyer was Buzzy Gardner Jr., a court appointed public defender, who he stated was "a good dude[.]" . . .
>
> . . . .
>
> . . . [Defendant] was asked generally about the charge of first-degree murder, and said that if someone was found guilty, they could be sentenced to death or life in prison. . . . He was aware that if someone was found NGRI their charges would be dismissed, and they would go to a hospital until they regain their "capacity to proceed in life[.]" . . .
>
> . . . .
>
> . . . [Defendant] had spoken with his attorney over the phone the week before and reviewed written discovery material in his capacity restoration session.
>
> . . . .
>
> While [Defendant] does have a diagnosis of serious mental illness (schizophrenia), his symptoms are currently well managed with medications and do not impair his ability to understand the nature of the charges against him or work with his attorney in a reasonable and rational way. He has a good understanding of courtroom procedure and personnel.

Defendant stipulated to the admission of the Competency Report and offered no evidence or argument to contradict the findings in the report. The trial court adopted the Competency Report and made its own conclusion on the record that "[Defendant] has the capacity to proceed at this time."

The trial court is not prohibited "from making findings of fact by incorporating a factual summary from a detailed report." *Id.* at 463. "While the better practice is to make independent detailed findings of fact, adopting facts set forth in the report was not prejudicial in this instance." *Id.* (citation omitted).

As the Competency Report's detailed notes support the trial court's conclusion that Defendant had the capacity to comprehend his position, understand the nature of the proceedings against him, conduct his defense in a rational manner, and cooperate with his counsel, the record evidence supports the trial court's conclusion that Defendant was competent at the time of the May 2023 competency hearing. *See id.* Accordingly, the trial court did not err by adopting the Competency Report and concluding that Defendant had the capacity to proceed.

2. Sua Sponte Competency Hearing

[4] Defendant next argues that the trial court erred by failing to conduct a competency hearing sua sponte at the beginning of trial on 29 January 2024. Specifically, Defendant argues that his history of mental illness was sufficient evidence to require the trial court to conduct a competency hearing sua sponte at the beginning of trial.

"A trial court has a constitutional duty to institute, *sua sponte*, a competency hearing if there is substantial evidence before the court indicating that the accused may be mentally incompetent." *State v. Young*, 291 N.C. 562, 568 (1977) (emphasis and citation omitted). In other words, a trial judge is only required to hold a sua sponte competency hearing "when there is *bona fide* doubt as to the defendant's competency." *State v. Staten*, 172 N.C. App. 673, 678 (2005) (quotation marks and citation omitted). "However, where, as here, the defendant has been committed and examined relevant to his capacity to proceed, and all evidence before the court indicates that he has that capacity, he is not denied due process by the failure of the trial judge to hold a hearing subsequent to the commitment proceedings." *Young*, 291 N.C. at 568 (citations omitted).

In *Staten*, the trial court was not required to conduct a competency hearing sua sponte. 172 N.C. App. at 684. There, we found there was no evidence indicating the defendant was incapable to proceed where his replies during a colloquy were "lucid and responsive," and he "exhibited proper courtroom decorum and a desire to cooperate in the process" throughout the trial. *Id.* at 680, 683.

Here, Defendant's incapacity stemmed from his inability to consistently take his medication in jail. To ensure he consistently took his medication and remained competent to stand trial, Defendant remained in the hospital, rather than jail, between the time of his competency hearing and his trial.

Like in *Staten*, Defendant's answers during a colloquy were lucid and responsive. When asked if he had any questions about his right to testify, Defendant first inquired about the meaning of the word testify because he was "not familiar with that terminology," then Defendant stated that he would "opt out of [testifying]." At no time during his trial did Defendant act in a way that indicated incompetency.

Defendant had been previously examined and found competent. No evidence before the trial court suggested incompetency. Thus, there was not a bona fide doubt as to Defendant's competency and the trial court was not required to hold a sua sponte competency hearing at the beginning of Defendant's trial.

D. Rule 901 Evidence Issue

[5] Defendant next argues that the trial court erred by admitting the voicemail recording of him and his mother into evidence. Specifically, Defendant argues that the recording was not properly authenticated under North Carolina Rule of Evidence 901 because Defendant's sister, who originally received the voicemail, testified that she remembered the voicemail being longer than the twenty-second recording entered into evidence. This argument lacks merit.

"We review de novo rulings on authentication issues under Rule of Evidence 901." *State v. Jones*, 288 N.C. App. 175, 187 (2023) (citation and italics omitted).

Under Rule 901, "[t]he requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims." N.C. Gen. Stat. § 8C-1, Rule 901(a) (2024). Various means may be used to authenticate evidence, including "[i]dentification of a voice . . . by opinion based upon hearing the voice at any time under circumstances connecting it with the alleged speaker." *Id.* § 8C-1, Rule 901(b)(5). "[I]t is not error under Rule 901 for a trial court to admit evidence so long as it can reasonably determine that there was sufficient evidence to support a finding that the matter in question is what its proponent claims." *State v. Joyner*, 917 S.E.2d 297, 304 (2025) (quotation marks and citation omitted).

In *State v. Stager*, a recording was properly authenticated where four witnesses identified the voice on the recording as belonging to who the State claimed it did, even though other witnesses testified to the contrary. 329 N.C. 278, 317 (1991). There, the Court stated that, "[u]nder Rule 901, testimony as to accuracy based on personal knowledge is all that is required to authenticate a tape recording, and a recording so authenticated is admissible if it was legally obtained and contains otherwise competent evidence." *Id.* The Court further stated that "[t]he conflict in the evidence goes to the weight and credibility of the evidence not its admissibility." *Id.*

Defendant argues that under *State v. Lynch*, 279 N.C. 1, 17 (1971), authentication of a recording requires the proponent to show "that the recording was complete and had not been altered." However, the seven-prong test for authentication articulated in *Lynch* is no longer good law, as it was superseded by Rule 901. *Stager*, 329 N.C. at 317.

Here, Defendant's sister testified that she received a voicemail from her mother's phone number on 24 May 2017 while at school and "listened to the voicemail as [she] was sitting in class[.]" She "recognized [her] mother Geraldine and [Defendant's] voice in the voicemail" based on personal knowledge. She listened to the same voicemail the morning before she testified. Although she "recall[ed] the message being longer," she believed it was accurate.

Additionally, the State's forensic data analyst testified as to the process for extraction of data from Defendant's sister's phone. The State also introduced an excerpt from the data extraction report that showed that the voicemail in question was the same length as the one admitted by the trial court.

The testimony in this case was sufficient to authenticate the voicemail under Rule 901. And any conflicting evidence regarding its completeness "goes to the weight and credibility of the evidence not its admissibility." *Id.*

III. Conclusion

For the reasons stated above, Defendant received a fair trial free of error.

NO ERROR.

Judges STROUD and GRIFFIN concur.

STATE v. PHILLIPS

[302 N.C. App. 392 (2026)]

STATE OF NORTH CAROLINA
v.
EARL MITCHELL PHILLIPS

No. COA25-275

Filed 7 January 2026

1. Indictment and Information—felony stalking with a court order in effect—sufficiency—plain and concise factual statement of charge

The trial court did not err by failing to dismiss a charge of felony stalking with a court order in effect where the indictment charging that offense was not fatally flawed—as contended by defendant, who argued that it did not include a plain and concise factual statement putting defendant on notice of the crime charged—or, if the indictment was deficient, defendant failed to allege, much less prove, that any error was prejudicial. Moreover, if defendant required clarification of the exact nature of the stalking charge, his proper recourse was to file a motion for a bill of particulars.

2. Criminal Law—jury instructions—assault with a firearm on a law enforcement officer—"without justification or excuse"—optional phrase not supported

In a prosecution for assault with a firearm on a law enforcement officer, felony stalking with a court order in effect, and resisting a public officer, the trial court did not err by declining to add the phrase "without justification or excuse" to the jury instructions on the assault charge because the optional phrase from the pattern jury instruction was not supported by the evidence. For one thing, defendant did not raise any affirmative defenses and instead argued that he had been unaware of the officers' identities when they approached his car. Further, although defendant argued that his act of pointing his gun at the officers was involuntary, there was evidence that defendant was awake when the officers approached him, and that the officers were wearing their uniforms, they loudly announced their presence and identified themselves, and they had to draw their guns and tell defendant twice to drop his gun or they would shoot before he lowered his weapon.

Appeal by Defendant from judgments entered 10 July 2024 by Judge William T. Stetzer in Haywood County Superior Court. Heard in the Court of Appeals 15 October 2025.

Attorney General Jeff Jackson, by Assistant Attorney General Megan Shook, for the State-Appellee.

Drew Nelson for Defendant-Appellant.

COLLINS, Judge.

Defendant Earl Mitchell Phillips appeals from judgments entered upon a jury's verdicts of guilty of assault with a firearm on a law enforcement officer, stalking with a court order in effect, and resisting a public officer. Defendant argues that the trial court erred by denying his (1) motion to dismiss the stalking charge due to a fatal flaw in the indictment and (2) request for a specific instruction on the assault charge. Because the indictment sufficiently identifies the crime being charged, the trial court did not err by denying Defendant's motion to dismiss. And because the requested jury instruction was not supported by the evidence, the trial court did not err by refusing to give the requested jury instruction. We find no error.

I. Background

Defendant was indicted on 6 March 2023 on the charges of assault with a firearm on a law enforcement officer, felony stalking with a court order in effect, and resisting a public officer. The initial indictment alleged that Defendant committed the offenses on 11 February 2023, and the stalking charge in the indictment alleged that Defendant

> unlawfully, willfully and feloniously did . . . knowingly on more than one occasion harass Christopher Berghout and/or Jaime Berghout without legal purpose, and/or did knowingly engage in a course of conduct directed at Christopher Berghout and/or Jaime Berghout without legal purpose, as the case may be.
>
> At the time of this offense, Defendant knew and should have known that the harassment and/or the course of conduct would cause a reasonable person to fear for that person's safety and fear for the safety of that person's immediate family, and/or Defendant knew and should have known that the harassment and/or course of conduct would cause a reasonable person to suffer substantial emotional distress by placing that person in fear of death, bodily injury, and/or continued harassment.

> Also at the time of this offense, there was a valid court order in effect prohibiting this conduct . . . , entered . . . on December 19, 2022 in Haywood County, North Carolina, and Defendant had knowledge of this order.

Prior to trial, Defendant filed a motion to dismiss the stalking charge in the indictment, arguing it was fatally defective. The trial court found that Defendant had sufficient notice of the stalking charge and denied the motion. On the first day of trial, the State moved to amend the date of the stalking charge in the indictment from 11 February 2023 to a date range of 7-11 February 2023; the trial court granted the motion. Defendant did not move for a bill of particulars.

The evidence presented at trial tended to show the following:

Christopher and Jaime Berghout moved to Haywood County in the fall of 2019 and met Defendant and his wife shortly after their arrival. Defendant and his wife began stopping by the Berghouts' home uninvited, despite the Berghouts' eventual request that they cease doing so. On 21 July 2020, Jaime filed a report with the Haywood County Sheriff's Office asking law enforcement to communicate to Defendant to stop the unwanted contact, but it continued. Tensions between the Berghouts and Defendant and his wife continued over the next couple of years.

Approximately two years later, in June 2022, Defendant and two other men drove to the Berghouts' home in Defendant's truck and had an altercation with Christopher; Christopher took the first "swing" at one of the men. Christopher was "beaten to a pulp," suffering a broken nose, swollen eyes, and bruises and cuts across his body. Defendant and the two other men got back into Defendant's truck; Defendant then drove his truck into Jaime, who was standing in front of it. Jaime suffered severe bruising on her thigh and arm from "where the vehicle struck [her]."

Defendant was arrested, and a magistrate entered a "conditions of release and release order" the following day. As a condition of his release, Defendant was ordered to have no contact with Jaime. Defendant and the two other men later pled guilty to simple assault on Christopher. On 19 December 2022, a district court judge in Haywood County entered a judgment against Defendant for simple assault. The special conditions of his probation included a no-contact order, prohibiting Defendant from assaulting, threatening, harassing, being in or on the premises or workplace of, or having any contact with Christopher and Jaime Berghout. The no-contact order further ordered Defendant

> not to be within 100 yards of Berghout's residence located at 47 Whistle Ridge Road, and stay off Whistle Ridge Road. If traveling on Dick's Trail, do not stop, slow down, or otherwise harass Berghout if traveling on the portion of Dick's Trail which borders Berghout's property; Defendant is allowed to go directly to and from his well.

The no-contact order was effective for eighteen months, until 19 June 2024. A redacted copy of the judgment including the no-contact order was admitted as State's Exhibit 2 and published to the jury.

On 7 and 8 February 2023, Christopher called 911 because he saw Defendant "driving by, slowing down, [and] staring" at the Berghouts' home. Christopher's recorded 911 calls were admitted as State's Exhibits 28 and 29 and published to the jury. Christopher also recorded one video of Defendant slowly driving by the Berghouts' home on 7 February 2023 and one video of Defendant sitting inside his truck near the Berghouts' home on 8 February 2023. Those videos were admitted as State's Exhibit 30 and published to the jury.

Christopher testified that Defendant had driven on Dick's Trail on 8 February 2023 "at least half a dozen times" and that, when he approached Defendant to write down his license plate, Defendant stopped driving and asked Christopher about his daughter. Christopher further testified that a few days later, on 11 February 2023, he heard gunshots in his backyard; when he shined a light outside, he saw Defendant. Jaime called 911, and her recorded 911 call was published to the jury.

Deputy Wood and Deputy Elkins with the Haywood County Sheriff's Office were dispatched to the Berghouts' home that night and arrived shortly before 9:00 p.m. Both deputies testified that it was dark and raining a little bit, and that they were wearing their standard uniforms, which included their vests, stars, nameplates, sheriff's office badges, and duty belts. Deputy Elkins was also wearing a black sheriff's office raincoat, which had a reflective Haywood County Sheriff's Office badge and two shoulder insignias. The deputies drove separately, and both drove marked patrol cars with their headlights and overhead light bars activated. When Deputy Elkins parked his marked patrol car, his headlights and overhead light bars shined on Deputy Wood's marked patrol car and illuminated the words "Sheriff" and "Haywood County Sheriff." Photographs of Deputy Wood's marked patrol car were admitted as State's Exhibits 31 and 32 and published to the jury for illustrative purposes.

Upon the deputies' arrival at the Berghouts' home, Christopher told Deputy Wood that Defendant had been behind his home "shooting off rounds" in his backyard. The deputies looked for Defendant near his home on Elkhound Road and found him sitting in his truck parked on the road. The deputies approached Defendant's truck; Deputy Wood approached on the driver's side, and Deputy Elkins approached on the passenger's side. Deputy Wood could not tell if Defendant's eyes were open or closed because Defendant was looking towards the steering wheel. Deputy Elkins could see Defendant's eyes and that Defendant was "looking at" them as they approached him. Deputy Wood greeted Defendant loudly, stating either, "Hey, Mr. Phillips, it's me, Deputy Zach Wood" or "Hey, Mr. Phillips, it's me, Deputy Wood, with the Haywood County Sheriff's Office." At this point, Defendant lifted his head, extended his arm, and pointed a revolver at Deputy Wood's "upper chest, neck, face area."

In response, both deputies drew their weapons, shined flashlights into Defendant's eyes, and ordered Defendant to drop his revolver. Defendant "slowly" set his revolver down in his lap when commanded to drop the weapon, and Defendant replied that "he would point his gun at whoever he wanted." Deputy Elkins confiscated Defendant's revolver; it was admitted as State's Exhibit 33 and published to the jury.

Deputy Wood ordered Defendant out of his truck multiple times, but Defendant verbally and physically resisted. Defendant said that he was not getting out of the truck, braced his hands on the steering wheel, pushed his feet into the floorboard of the truck, and had to be pulled out of his truck through the passenger's side. Defendant then tried to stop the deputies from placing him in the back seat of the patrol car, and the deputies had to take Defendant to the ground and restrain him. Deputy Elkins found a Miller Lite beer sitting in the center console of Defendant's truck and smelled alcohol on Defendant.

At the close of the State's case, Defendant moved to dismiss the charges against him, and the trial court denied the motion. At the close of all the evidence, Defendant again moved to dismiss the charges against him, and the trial court denied the motion and began conducting a jury charge conference. Defendant requested that the jury instruction for the charge of assault with a firearm on a law enforcement officer include the optional language "without justification or excuse[,]" as provided by North Carolina Pattern Jury Instruction Criminal 208.95. The trial court denied Defendant's request to include this optional language.

On 10 July 2024, the jury found Defendant guilty on all charges. As to the stalking charge, the jury found Defendant guilty of stalking with a court order in effect. It returned special verdicts finding Defendant guilty of stalking both Christopher and Jaime by harassing them on more than one occasion and by engaging in a course of conduct directed at both. The trial court consolidated the convictions for assault with a firearm on a law enforcement officer and resisting a public officer into one judgment, and it sentenced Defendant to 60-84 months' imprisonment. On the conviction for felony stalking, the trial court entered a second judgment, sentencing Defendant to 6-17 months' imprisonment; it then suspended the sentence and placed Defendant on 36 months' supervised probation to begin upon Defendant's release from incarceration. Defendant appealed.

II. Discussion

Defendant argues that the trial court erred by (1) failing to dismiss the stalking charge because the indictment was fatally defective and (2) "failing to include the 'without justification or excuse' language when instructing the jury concerning the assault charge."

A. Indictment

[1] Defendant first argues that the trial court erred by failing to dismiss the stalking charge in the indictment because it "does not include a plain and concise factual statement."

This Court reviews de novo a trial court's decision to deny a motion to dismiss a charge based on a fatal defect in the indictment. *State v. Stewart*, 386 N.C. 237, 240 (2024). "Under a de novo review, the court considers the matter anew and freely substitutes its own judgment for that of the lower tribunal." *State v. Williams*, 362 N.C. 628, 632-33 (2008) (cleaned up).

An indictment must include a "plain and concise factual statement in each count which, without allegations of an evidentiary nature, asserts facts supporting every element of a criminal offense and the defendant's commission thereof" and does so "with sufficient precision clearly to apprise the defendant . . . of the conduct which is the subject of the accusation." N.C. Gen. Stat. § 15A-924(a)(5) (2024). The "purposes" of an indictment "are to identify clearly the crime being charged, thereby putting the accused on reasonable notice to defend against it and prepare for trial, and to protect the accused from being jeopardized by the State more than once for the same crime." *State v. Creason*, 313 N.C. 122, 130 (1985) (citation omitted). "It is generally held that the language in a statutorily prescribed form of criminal pleading is sufficient if the act . . . is clearly set forth so that a person of common understanding may know what is intended." *State v. Coker*, 312 N.C. 432, 435 (1984); *see also State v. James*, 321 N.C. 676, 680-81 (1988) ("The general rule is that an indictment for a statutory offense is facially sufficient if the offense is charged in the words of the statute, either literally or substantially, or in equivalent words.").

Our Supreme Court has clarified the law on indictments in *State v. Singleton*, issued in May 2024. 386 N.C. 183, 184-85 (2024). "[A]n indictment raises jurisdictional concerns only when it wholly fails to charge a crime[.]" *Id.* at 185. "[B]ills of indictment that contain non-jurisdictional deficiencies will not be quashed or cast aside 'by any reason of any informality' when they express the crime charged 'in a plain, intelligible, and explicit manner' such that the defendant has 'notice sufficient to prepare a defense and to protect against double jeopardy.' " *Id.* (citations omitted). While the State has "a duty to draft indictments in a manner that satisfies both statutory strictures and . . . constitutional purposes[,]" "a defendant seeking relief must demonstrate not only that such an error occurred, but also that such error was prejudicial." *Id.* at 210 (cleaned up).

Prior to trial, Defendant moved to dismiss the stalking charge and specifically argued that *Singleton* could be distinguished from the current case. However, on appeal, Defendant has failed to cite *Singleton* and has failed to argue, much less demonstrate, that he was prejudiced by the alleged error in the indictment. *See id.* Defendant's reliance on an unpublished Court of Appeals case from 2019 and *State v. Duncan*, 30 N.C. App. 112, 114 (1976), to support his argument that the indictment must be quashed is unavailing. Further, we note that, if Defendant did not understand the exact nature of the stalking charge filed against him, he should have filed a motion for a bill of particulars. *See State v. Brown*, 320 N.C. 179, 192 (1987) ("[I]f, despite the sufficiency of the indictment, defendant was at a loss to determine the specific facts underlying the charge[] . . . his proper recourse was to move for a bill of particulars."). For these reasons, Defendant's argument lacks merit.

B. Jury Charge

[2] Defendant next argues that the trial court erred by failing to include the "without justification or excuse" language when instructing the jury on assault with a firearm on a law enforcement officer.

This Court reviews de novo a trial court's decision regarding a request for a jury instruction. *State v. McGee*, 234 N.C. App. 285, 287 (2014) (italics omitted). "Under a de novo review, the court considers the matter anew and freely substitutes its own judgment for that of the lower tribunal." *Williams*, 362 N.C. at 632-33 (cleaned up). "[A]n error in jury instructions is prejudicial and requires a new trial only if there is a reasonable possibility that, had the error in question not been committed, a different result would have been reached at the trial . . . ." *State v. Castenada*, 196 N.C. App. 109, 116 (2009) (cleaned up).

"It is the duty of the trial court to instruct the jury on all substantial features of a case raised by the evidence." *State v. Shaw*, 322 N.C. 797, 803 (1988). A trial court must give a requested jury instruction only if it is "correct in itself and supported by [the] evidence[.]" *State v. Locklear*, 363 N.C. 438, 464 (2009) (citation omitted). "When determining whether the evidence is sufficient to entitle a defendant to jury instructions on a defense or mitigating factor, courts must consider the evidence in the light most favorable to defendant." *State v. Mash*, 323 N.C. 339, 348 (1988).

The North Carolina pattern jury instruction for assault with a firearm on a law enforcement officer states that "[t]he defendant has been charged with assault with a deadly weapon upon an officer of the State" and, for the jury "to find the defendant guilty of this offense, the State must prove four things beyond a reasonable doubt." N.C.P.I.—Crim. 208.95. "<u>First</u>, that the defendant assaulted the alleged victim by intentionally . . . ." *Id.* (emphasis in original). After the word "intentionally," the instruction includes the parenthetical phrase "and without justification or excuse" and a footnote instructing the trial court that the "parenthetical phrase should be used only where there is evidence of justification or excuse, . . ." *See id.* n.3.

Defendant first argues that the trial court should have included the parenthetical phrase "and without justification or excuse" because he presented an affirmative defense of automatism, or a state of involuntariness, at trial. However, our review of the transcript shows that Defendant agreed during the charge conference that he was not raising any affirmative defenses and instead merely alleged that Defendant was "unaware" of the deputies' identities. Further, Defendant did not present any evidence at trial that he involuntarily pointed his revolver at Deputy Wood, and Defendant even argued that his "motion" of pointing the gun at Deputy Wood was "intentional, but . . . not unlawful." We thus disagree that Defendant presented an affirmative defense at trial. *See State v. Hageman*, 307 N.C. 1, 27 (1982) (determining that "the burden of raising and proving affirmative defenses [is] on the defendant" in a criminal trial).

Further, Defendant's argument that he could have been asleep and thus reacted involuntarily to the deputies is not supported by any record evidence. The only evidence of Defendant's consciousness when approached by the deputies came from the testimony of Deputy Wood and Deputy Elkins. While Deputy Wood testified that he could not tell whether Defendant's eyes were open or closed because Defendant was "looking down towards his lap," Deputy Elkins testified that he saw Deputy Wood shine a light onto Defendant and that he was able to "see [Defendant's] eyes at that time." Deputy Elkins stated that Defendant was "sit[ting] up. He's looking at us as we're making our approach. . . . His eyes were open before we got to the front of the truck."

Deputy Elkins testified that Deputy Wood "loud[ly]" announced their presence and identified himself as a deputy with the Haywood County Sheriff's Office, and both deputies testified that Defendant's arm extended out of the truck while pointing a revolver at Deputy Wood's "upper chest, neck, face area." The deputies then drew their weapons on Defendant and gave Defendant commands "to drop the gun or [they] would kill him." The deputies had to tell Defendant to drop the gun "twice before he put it down[,]" and Defendant responded to Deputy Wood, stating that he "would point it to whoever he wanted to." Defendant then "slowly" lowered the revolver onto his lap. There is no record evidence to support that Defendant was asleep when the deputies approached his truck or that Defendant acted involuntarily when pointing his revolver at Deputy Wood, and we disagree that the deputies' testimony constitutes "conflicting evidence" of Defendant's state of consciousness to warrant the inclusion of the parenthetical phrase "and without justification or excuse."

Even "consider[ing] the evidence in the light most favorable to [D]efendant," *Mash*, 323 N.C. at 348, the record evidence here shows that Defendant was awake when the deputies approached his truck, that he pointed his revolver at Deputy Wood after Deputy Wood "loudly" announced himself, and that Defendant did not lower his weapon when first ordered to do so and only then lowered it slowly; this record evidence does not support Defendant's argument that he did not act voluntarily when he pointed his revolver at Deputy Wood. We thus determine that Defendant's requested jury instruction was not "supported by [the] evidence," *Locklear*, 363 N.C. at 464, and the trial court did not err by failing to include the parenthetical phrase "and without justification or excuse" in the jury charge.

III. Conclusion

For the reasons stated above, the trial court did not err.

NO ERROR.

Judges GORE and STADING concur.

[302 N.C. App. 401 (2026)]

STATE OF NORTH CAROLINA
v.
CHADIEZ WHITE, Defendant

No. COA25-470

Filed 7 January 2026

1. Search and Seizure—motion to suppress—challenged findings of fact—supported by competent evidence

In a possession of a firearm by a felon prosecution, competent evidence supported each of the challenged findings of fact in the order denying defendant's motions to suppress evidence—obtained at a traffic checkpoint during which defendant acknowledged not having a driver's license, displayed a partially smoked joint when asked about a strong odor of marijuana, and later admitted that he was a felon and had a firearm in the vehicle—including that: the checkpoint utilized the Governor's Highway Safety Program template, the checkpoint was authorized by the local chief of police, the supervising officer complied with statutory requirements in placing the checkpoint, defendant did not deny that marijuana was the source of the odor detected, defendant admitted to possessing a gun and being a felon after being ordered to exit his car, and an SBI Memo described "difficulties" in distinguishing between hemp and marijuana.

2. Search and Seizure—motion to suppress—traffic checkpoint—lawful primary programmatic purpose—reasonable under Fourth Amendment

In a possession of a firearm by a felon prosecution, the trial court properly denied defendant's motion to suppress evidence obtained at a traffic checkpoint during which defendant: acknowledged not having a driver's license, displayed a partially smoked joint when asked about a strong odor of marijuana, and later admitted that he was a felon and had a firearm in the vehicle. The court's conclusion that the checkpoint had a lawful primary programmatic purpose (detecting and deterring violations of the state's motor vehicle code) was supported by testimony to that effect from the checkpoint's supervising officer, which, because defendant presented no conflicting evidence, was sufficient for the trial court to rely upon. Further, competent evidence supported the court's conclusion that the checkpoint was reasonable under the Fourth Amendment because its advancement of the public interest—as shown by its location, timing, and operation in accordance with the checkpoint plan—outweighed the severity of its interference with individual liberty in that it: did not interfere with legitimate traffic; was signaled by police cars with blue lights and officers in safety vests; stopped every vehicle traveling in both directions; and was otherwise appropriately sited, authorized, and conducted.

3. Search and Seizure—motion to suppress—probable cause—odor and sight of burnt marijuana

In a possession of a firearm by a felon prosecution, the trial court properly denied defendant's motion to suppress evidence obtained at a traffic checkpoint—during which defendant acknowledged not having a driver's license and displayed a partially smoked joint when asked about a strong odor of marijuana—where defendant argued that the law enforcement officer supervising the checkpoint lacked probable cause to search the car because illegal marijuana could not be distinguished from legal hemp by sight or scent. The officer testified that, based upon his training and experience, he saw and smelled burnt marijuana, and defendant did not claim to possess hemp.

Appeal by Defendant from an order entered 28 October 2024 by Judge G. Frank Jones in Robeson County Superior Court. Heard in the Court of Appeals 28 October 2025.

Attorney General Jeff Jackson, by Special Deputy Attorney General Sharon Patrick-Wilson, for the State.

Attorney Joseph Gerber, for Defendant-Appellant.

MURRY, Judge.

Chadiez White (Defendant) appeals the trial court's denials of his motions to suppress for improper checkpoint and for lack of probable cause, which followed his conditional guilty plea to possession of firearm by a felon. Defendant challenges several of the trial court's findings of fact as unsupported by competent evidence and argues that the trial court erred by denying his motions to suppress. For the reasons below, we disagree with Defendant and affirm the trial court.

I. Background

Captain Michael Seago of the Saint Pauls' Police Department has over thirty-two years of law enforcement experience, including extensive training in criminal investigations, drug enforcement, and narcotics.

On 11 September 2022, Captain Seago organized a police checkpoint (or "checking station") on South Old Stage Road in Robeson County. As required by department policy, he prepared a Chapter 20 "Checking Station Plan and Authorization" form for Chief of Police Michael Owens to sign in advance (Authorization Form). The Authorization Form stated the purpose of the checkpoint was to detect violations of the North Carolina motor-vehicle code, N.C.G.S. Chapter 20, including violations of license, registration, and insurance requirements. Although it lacked a written policy, Captain Seago's checkpoint followed the Governor's Highway Safety Program written memorandum (GHSP Template) as a template for establishing checkpoints.

Captain Seago supervised the checkpoint, which operated from approximately 3:00 p.m. to 5:00 p.m. that same day. The checkpoint staffed two marked patrol cars positioned on either side of the road with blue lights activated and visible to approaching traffic, as well as four uniformed officers wearing reflective safety vests. These officers stopped every northbound and southbound vehicle on South Old Stage Road to check for Chapter 20 violations.

Defendant drove up to the checkpoint at approximately 4:24 p.m. When Captain Seago asked Defendant for his driver's license, Defendant replied that he did not have one. As Captain Seago leaned toward Defendant's driver-side window, he detected a "strong odor of burnt marijuana." After Captain Seago asked about the odor, Defendant showed him a partially smoked joint. Believing the substance within to be marijuana, Captain Seago asked Defendant "if he had anymore marijuana in the vehicle," to which Defendant replied, "No, sir."

Captain Seago instructed Defendant to pull over to the shoulder, exit the car, and stand near the patrol vehicles while officers investigated further. After Defendant exited the car, Captain Seago asked him whether there were any additional drugs or firearms, to which Defendant admitted that he possessed a firearm inside the vehicle and was a convicted felon. Captain Seago searched Defendant's vehicle, finding an assault rifle and a small plastic bag containing what he believed to be marijuana buds. He arrested Defendant at the scene.

On 5 September 2023, a grand jury indicted Defendant for possession of firearm by felon.[1] On 9 October 2024, Defendant filed two motions to suppress the firearm. The first motion argued that Captain

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1. Defendant was also charged with driving with license revoked, possession of marijuana, and carrying a concealed weapon. The State later dropped these charges.

Seago's checkpoint was an illegal seizure under the Fourth Amendment to the Federal Constitution, and the second argued that Captain Seago lacked probable cause to search the car because the odor and sight of the legal cannabis product, hemp, is indistinguishable from those of the illegal cannabis product, marijuana. The trial court heard both motions to suppress on 21 October 2024 and reconvened on 28 October 2024 for additional testimony.

At the 21 October 2024 hearing, Captain Seago testified that the checkpoint complied with statutory and constitutional requirements based on the Department's use of the GHSP Template and Chief Owens's pre-approval. When asked about obtaining proper authorization for this checkpoint, Captain Seago replied that "We—I set up a license check," explaining that the "license check [was] authorized by myself." The State introduced the signed Authorization Form into evidence.

Defendant argued that the checkpoint was improper because it had no independent written policy governing checkpoint procedures, no contemporaneous documentation of Chief Owens's approval, and no statistical or empirical basis for choosing the particular checkpoint location. Defendant further argued that the search of his vehicle violated the Fourth Amendment because the odor and sight of marijuana are insufficient to establish probable cause following North Carolina's legalization of hemp in 2019. In support, he introduced a North Carolina State Bureau of Investigation memorandum (SBI Memorandum) acknowledging "significant difficulty" in visually and olfactorily distinguishing marijuana from legal hemp. On 28 October 2024, Captain Seago gave additional testimony at the reconvened hearing, and the State offered the GHSP Template into evidence.

On 4 November 2024, the trial court entered an order denying both motions to suppress, finding in relevant part that:

> 3) On 11 September 2022 Captain Seago was a sworn law enforcement officer with more than 30 years' law enforcement experience, including training and experience in detecting the odor of burnt and unburnt marijuana by sight and by smell.
>
> 4) As of 11 September 2022, Captain Seago had over 500 previous encounters of people possessing marijuana, in which he made arrests, seized the substances for testing, and had the substances found by laboratory analysis to be marijuana.

5) On 11 September 2022, the Town of Saint Pauls, North Carolina did not have an independent written policy governing the conduct of checking stations but utilized and adopted the GHSP Template.

6) On 11 September 2022, Captain Seago organized a checking station to be conducted on South Old Stage Rd., Saint Pauls, North Carolina from 3:00pm to 5:00pm, staffed by three officers and himself. The checking station was approved in advance by Chief Owens.

7) Statistical information was considered in the selection of the location for the checking station.

8) Captain Seago was in charge of the checking station and no subordinate officer had permission or discretion to deviate from the checkpoint plan or policy.

9) Neither Captain Seago nor any subordinate officer deviated from the checking station plan or checking station policy.

10) The purpose of the checking station was to detect Chapter 20 violations.

11) Every vehicle travelling up on South Old Stage Rd. regardless of direction of travel within the perimeter of the checking station was stopped pursuant to the checkpoint plan and policy.

12) The checking station designated in advance the pattern for stopping vehicles (every vehicle traveling upon South Old Stage Rd. regardless of direction of travel within the perimeter of the checking station) and for requesting drivers thus stopped to produce driver's license, vehicle registration, and proof of automobile liability insurance.

13) Although there was no signage, the checking station advised the public that a checking station was being conducted in that two patrol vehicles had blue lights operational during the conduct of the checking station. Additionally, officers conducting the checking station wore police uniforms and safety vests with the word "POLICE" thereupon.

14) Traffic upon South Old Stage Rd. during the operation of the checking station was moderate, and the movement of traffic was unaffected save and for momentary stops of legitimate motorists.

15) During the conduct of the checking station, every northbound and southbound vehicle traveling upon South Old State Rd. was stopped pursuant to the checkpoint plan and checkpoint policy.

16) An automobile driven by Defendant entered the perimeter of the checking station during its operation and was stopped by Captain Seago.

17) Captain Seago detected, based upon his training and experience, a strong odor of burnt marijuana coming from within the vehicle.

18) Captain Seago asked Defendant to produce his driver's license and registration and Defendant stated that he did not have a license.

19) Captain Seago asked Defendant about the marijuana odor emanating from within the vehicle. In response, Defendant provided to Captain Seago, based upon his training and experience, a marijuana joint that Defendant had been smoking.

20) Defendant did not deny the presence of marijuana or contend that the odor derived from hemp or a source other than marijuana.

21) Captain Seago directed Defendant to pull his vehicle off of the roadway to the shoulder, and the checking station continued uninterrupted while Captain Seago dealt with Defendant.

22) Once Defendant had parked his vehicle on the shoulder, Captain Seago directed Defendant to step out of the vehicle. Captain Seago asked Defendant if there were any other drugs or weapons in the car that might harm the officer. Defendant replied, "*No, but there is a gun in the car, and I am a convicted felon.*"

23) Captain Seago searched the interior of the automobile and located a baggie which, based upon his training and experience, contained unburnt marijuana.

> Captain Seago also located within the interior of the automobile a 5.56 caliber Delton AR-15 assault rifle under the passenger seat.
>
> 24) Defendant did not present evidence apart from the introduction of an SBI Memorandum explaining the difficulties in differentiating between legal hemp versus illegal marijuana due to the similarities in odor and appearance.

(Quotation modified.) The trial court concluded as a matter of law, in relevant part that:

> 3) The primary programmatic purpose of the checking station was to detect and deter Chapter 20 violations, which is a valid public safety concern, and the use of checking stations for these purposes is authorized by N.C.G.S. § 20-16.3A.
>
> . . . .
>
> 7) Upon consideration of the foregoing factors, the checking station advanced a public interest.
>
> . . . .
>
> 9) In the totality of circumstances, the restrictions on the discretion of the officers conducting the checking station were sufficient to ensure that the intrusion on individual liberty was no greater than necessary to achieve the checking station's objectives.
>
> 10) The checking station was organized and conducted in conformity with North Carolina law and did not deprive Defendant of the rights guaranteed him under the Constitutions of the United States or State of North Carolina, respectively.
>
> . . . .
>
> 14) The odor of marijuana alone is sufficient to establish probable cause to search a vehicle.

(Quotation modified.) Following the denial of his motions, Defendant entered a conditional guilty plea to possession of a firearm by a felon, expressly reserving his right to appeal the suppression rulings under

N.C.G.S. § 15A-979(b).[2] The trial court sentenced Defendant to an active term of 12 to 24 months' imprisonment. Defendant timely appealed.

II. Jurisdiction

This Court has jurisdiction to hear Defendant's appeal of the denial of his motions to suppress under N.C.G.S. §§ 7A-27(b) and 15A-979(b). *See State v. Reynolds*, 298 N.C. 380, 397 (1979) (allowing defendant's appeal of denial of pretrial suppression motion despite his guilty plea).

III. Analysis

In contesting the denial of his motions to suppress, Defendant challenges several of the trial court's findings of fact as unsupported by competent evidence and argues that the trial court erred by denying his motions to dismiss. For the following reasons, we disagree and affirm the trial court's denial of Defendant's suppression motions.

This Court gives "great deference to the trial court's ruling on a motion to suppress," *State v. Parker*, 277 N.C. App. 531, 538–39 (2021), and "strictly limit[s]" our review of a trial court's denial of a motion to suppress to "determining whether the trial judge's underlying findings of fact are supported by competent evidence, in which event they are conclusively binding on appeal, and whether those factual findings in turn support the [trial court's] ultimate conclusions of law," *State v. Cooke*, 306 N.C. 132, 134 (1982). "Competent evidence is evidence that a reasonable mind might accept as adequate to support the finding." *State v. Ashworth*, 248 N.C. App. 649, 651 (2016). Unchallenged findings of fact "are presumed to be supported by competent evidence and are binding on appeal," *State v. Baker*, 312 N.C. 34, 37 (1984), "even if the evidence is conflicting," *State v. Buchanan*, 353 N.C. 332, 336 (2001). This Court may "also consider any uncontroverted evidence which was presented at the suppression hearing which would support the trial court's conclusions of law." *State v. Rollins*, 226 N.C. App. 129, 144 (2013). We review the trial court's conclusions of law *de novo*. *State v. Williams*, 362 N.C. 628, 632–33 (2008).

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2. A defendant who pleads guilty may nonetheless appeal the denial of a motion to suppress if the plea is expressly conditioned on that right. *See* N.C.G.S. § 15A-979(b) (2025); *State v. Reynolds*, 298 N.C. 380, 395 (1979). Here, Defendant's written plea agreement and the transcript of plea proceedings both conditioned his plea on preserving appellate review of the trial court's suppression rulings.

A. Challenged Findings of Fact

[1] Defendant challenges Findings of Fact 5–7, 20, 22, and 24 as unsupported by competent evidence. Because he fails to challenge the trial court's remaining findings, we deem them supported by competent evidence and binding on appeal. *See State v. Biber*, 365 N.C. 162, 168 (2011). We review each of the challenged findings in turn. Foremost, we recognize that "the trial court determines the credibility of the witnesses, the weight to be given to the testimony, and the reasonable inferences to be drawn therefrom." *State v. Fields*, 268 N.C. App. 561, 568 (2019) (quotations omitted).

1. Findings of Fact 5 and 15

Defendant argues that no competent evidence supports Findings of Fact 5 and 15, which find that, in light of Captain Seago's testimony, the checkpoint "utilized and adopted" the written GHSP Template and stopped traffic "pursuant to the checkpoint plan and policy." He contends that Captain Seago's testimony that the department uses "an unwritten policy" and goes "by the North Carolina Crime Patrol and Public Safety . . . Governor's Highway Safety Program" is insufficient to support these findings.

Section 20-16.3A requires police checkpoints to "[o]perate under a written policy that provides guidelines for the pattern, which need not be in writing" so long as "no individual officer . . . [has] discretion as to which vehicle is stopped or, of the vehicles stopped, which driver is requested to produce [a driver's] license, registration, or insurance information." N.C.G.S. § 20-16.3A(a)(2a) (2025). The written "policy may be either the agency's own . . . or . . . of another law enforcement agency." *Id.* But "[i]f officers of a law enforcement agency . . . operat[e] under another agency's policy, it must be stated in writing." *Id.*

Here, the State's GHSP Template and Authorization Form showed a written plan to initiate a checkpoint on South Old Stage Road on 11 September 2022 from 3:00 p.m. to 5:00 pm. The plan states that, at this checkpoint, "officers shall ask the drivers of every vehicle for" their license, registration, and proof of insurance for the purpose of checking "Chapter 20 violations." Further, Captain Seago testified to conducting the checkpoint in accordance with the GHSP Template. He also testified that he prepared the Authorization Form before the operation. He then identified the supervising officer; the date, time, and location of the checkpoint; the number of participating officers; and instructions to stop each vehicle according to a predetermined pattern. He also confirmed that Chief Owens reviewed and signed the form on the same day.

The trial court found that the officers conducted the operation in accordance with that written plan—consistent with the GHSP Template—and that the officers followed it without deviation. Because competent evidence supports the trial court's finding that the checkpoint "utilized and adopted" the written GHSP Template and stopped traffic "pursuant to the checkpoint plan and policy," Findings of Fact 5 and 15 are binding on appeal. *See Fields*, 268 N.C. App. at 568.

2. Finding of Fact 6

Defendant argues that no competent evidence supports Finding of Fact 6 that Captain Seago "organized" the checkpoint, which Chief Owens "approved in advance." Defendant argues that Captain Seago "set up his own checkpoint" because his testimony "corrected 'We' to 'I' in describing who set up the license check" and "used the awkward phrasing, 'A license check is authorized by myself.' " He further alleges that Captain Seago improperly signed the Authorization Form on Chief Owens's behalf because their signatures appeared to be "written by the same hand—which according to Captain Seago, was his own hand."

The assessment of witness credibility and evidence weight is left to the sole discretion of the trial court. *See Fields*, 268 N.C. App. at 568. Further, any contrary evidence does not negate otherwise competent evidence supporting these findings because "the trial [court] is in the best position to resolve the conflict." *Williams*, 362 N.C. at 632. (quotations omitted).

Here, the State introduced the Authorization Form containing Chief Owens's signature. It also offered Captain Seago's testimony that he organized the checkpoint by designating in advance a pattern for stopping vehicles along the highway. The existence of any contrary evidence does not foreclose the above evidence from supporting the finding that Chief Owens approved the checkpoint and Captain Seago organized it. Even assuming *arguendo* isolated instances of "awkward[ly] phras[ed]" testimony or similar signatures, we assume that the trial court assessed the weight and credibility of this information along with the rest of the evidence. *See State v. Veazey* (*Veazey II*), 201 N.C. App. 398, 402 (2009). Because competent evidence supports the trial court's finding that Chief Owens approved the checkpoint prior to Captain Seago organizing it, Finding of Fact 6 is binding on appeal. *See Fields*, 268 N.C. App. at 568.

3. Finding of Fact 7

Defendant argues that no competent evidence supports Finding of Fact 7 that Captain Seago provided "unchallenged testimony that [he considered] statistical information" when selecting the checkpoint's location. He asserts that Captain Seago's testimony to "follow[ing] policies" by "randomly plac[ing]" the checkpoint is inadequate to support this finding. Section 20-16.3A(d) requires checkpoints to be "random[ly] or statistically indicated" and instructs agencies to "avoid placing checkpoints repeatedly in the same location or proximity." N.C.G.S. § 20-16.3A(d). Thus, competent evidence supports the trial court's finding that Captain Seago complied with statutory requirements. Neither the Fourth Amendment nor § 20-16.3A requires evidence of empirical data or statistical justification for the checkpoint's location. *See State v. Cobb*, 381 N.C. 161, 168 (2022). In any event, § 20-16.3A forbids Defendant from using randomness as "grounds for a motion to suppress or a defense to any offense arising out of the operation of a checking station." N.C.G.S. § 20-16.3A(d). Therefore, Defendant's argument is without merit and Finding of Fact 7 is binding on appeal. *See Fields*, 268 N.C. App. at 568.

4. Finding of Fact 20

Defendant argues that no competent evidence supports Finding of Fact 20 that he "did not deny the presence of marijuana or contend that the odor derived from hemp or a source other than marijuana." At the suppression hearing, the trial court discussed with Captain Seago his drug-related questioning of Defendant. Captain Seago confirmed that he "asked [Defendant] about the odor of marijuana coming out of the vehicle," after which Defendant then showed him a partially smoked joint. When Captain Seago asked Defendant whether "he had anymore marijuana in the vehicle," Defendant replied that he did not.

Captain Seago's testimony indicates that he asked two questions: first about the marijuana odor and second about any additional marijuana. It also indicates that Defendant gave two answers: first, by showing his partially smoked joint, and second, by denying having any additional marijuana in the car. Contrary to Defendant's argument, the fact that he denied having "*anymore*" marijuana in the car does not negate his failure to deny having marijuana in the joint. (Emphasis added.) Furthermore, the record indicates that Defendant never stated or implied that the substance was anything other than marijuana. Because competent evidence supports Finding of Fact 20, it is binding on appeal. *See Fields*, 268 N.C. App. at 568.

5. Finding of Fact 22

Defendant argues that no competent evidence supports Finding of Fact 22 that Defendant confirmed his possession of "a gun in the car" and his status as "a convicted felon" after Captain Seago "directed

[him] to step out of the vehicle." (Emphasis omitted.) He believes that no competent evidence supports the trial court's "implied" finding that Defendant "might have admitted" to firearm possession "before Captain Seago initiated his search based on . . . probable cause." At the suppression hearing, Captain Seago testified to this exchange in full. Based on that testimony, we hold that competent evidence supports Finding of Fact 22. *See Veazey II*, 201 N.C. App. at 402. We are unpersuaded by Defendant's argument to the extent that he challenges this finding based on the argument that it "implied" that Defendant admitted to being a felon and possessing a firearm before Captain Seago began his search. Defendant notes that "the trial court did not . . . explicit[ly] find[ ] that Captain Seago had an alternative basis for probable cause to search [Defendant's] car." Absent such a finding, any analysis regarding evidentiary support for the trial court's "implications" would be mere conjecture. Thus, competent evidence supports Finding of Fact 22, and it is binding on appeal. *See Fields*, 268 N.C. App. at 568.

6. Finding of Fact 24

Defendant argues that no competent evidence supports Finding of Fact 24 that the SBI Memorandum "merely described the 'difficulties' in distinguishing between products that have 'similarities in order and appearance' " because it "stated the "impossib[ility]" of "distinguishing between the two along the lines of odor or sight." Defendant's purported challenge is merely semantic. The competent evidence supporting the trial court's finding that differentiating between hemp or marijuana is impossible would logically support a finding that doing so is merely "difficult[ ]." Moreover, Defendant's policy arguments regarding the SBI Memorandum do not implicate the competency of the evidence. *See State v. Little*, 295 N.C. App. 541, 555 (2024) (recognizing that trial court correctly refused to take judicial notice of SBI Memorandum with "status of binding law"). Defendant concedes as much in his brief. Thus, Defendant's argument is meritless, and Finding of Fact 24 is binding on appeal. *See*, *e.g.*, *State v. Rowdy*, 296 N.C. App. 272, 279 (2024), *disc. rev. allowed in part*, 387 N.C. 421 (2025) (defendant's argument of insufficient evidence that substance was marijuana based on the SBI Memorandum, "even if reasonable, do[es] not alter the scope of [this Court's] review").

For the reasons above, we reject all of Defendant's challenges to the trial court's findings of fact and hold that the trial court supported all challenged findings with competent evidence. Thus, all of its findings denying Defendant's motions to suppress are binding on appeal. *See State v. Byrd*, 287 N.C. App. 276, 279 (2002). As a result, we now review "whether those factual findings in turn support the [trial court's] ultimate conclusions of law." *Cooke*, 306 N.C. at 134.

B. Motion to Suppress for Improper Checkpoint

[2] Defendant challenges the trial court's legal conclusions that the checkpoint had a valid primary purpose of detecting and deterring Chapter 20 violations and was reasonable. We disagree.

Both our Federal and State Constitutions protect us "against unreasonable searches and seizures." U.S. Const. amend. IV; *see* N.C. Const. art. I, § 20. Police checkpoints are seizures. *See State v. Mitchell*, 358 N.C. 63, 66 (2004) ("[P]olice officers effectuate a seizure when they stop a vehicle at a checkpoint."). As with all seizures, the "ultimate question . . . is 'whether such seizures are "reasonable" under the Fourth Amendment.' " *Cobb*, 381 N.C. at 165 (quotation omitted). When reviewing the constitutionality of a checkpoint, this Court conducts a two-part inquiry to determine: (1) the checkpoint's primary programmatic purpose and (2) the reasonableness of the stop. *See State v. Veazey* (*Veazey I*), 191 N.C. App. 181, 186 (2008) ("[A] primary programmatic purpose . . . 'does not mean the stop is automatically, or even presumably constitutional' " because the checkpoint must also be reasonable "on the basis of the individual circumstances." (quoting *Illinois v. Lidster*, 540 U.S. 419, 426 (2004)).

1. Primary Programmatic Purpose

First, we determine whether the checkpoint served a lawful primary programmatic purpose. Defendant argues that the trial court erred in concluding that the checkpoint had a legitimate primary programmatic purpose because its findings were based on "an unexamined reliance on the officer's bare statements" as it "simply accepted Captain Seago's invocation of a permissible purpose without examining evidence to the contrary." For the following reasons, we disagree and affirm the trial court.

It is well-established that a "search or seizure is ordinarily unreasonable in the absence of individualized suspicion or wrongdoing." *City of Indianapolis v. Edmond*, 531 U.S. 32, 37 (2000); *see Terry v. Ohio*, 392 U.S. 1, 20–21 (1968). Checkpoints "can justify the intrusions on drivers' Fourth Amendment privacy interests occasioned by suspicionless stops" when "designed primarily to serve purposes closely related to . . . the necessity of ensuring roadway safety." *Edmond*, 531 U.S. at 41–43. But checkpoints meant to "uncover evidence of ordinary wrongdoing" violate the Fourth Amendment. *Id.* at 42. Furthermore, law enforcement officers may not validate a checkpoint with an unlawful primary purpose, *e.g.*, searching for illegal substances, by adding a lawful secondary purpose, *e.g.*, checking for drivers' licenses. *Id.* at 46. Otherwise, "law enforcement authorities [c]ould . . . establish checkpoints for virtually any purpose so long as they also included a license or sobriety check." *Id.* The trial court must "examine the available evidence to determine the primary purpose of the checkpoint program." *Id.* This examination, however, "is *not* an invitation to probe the minds of individual officers acting at the scene." *Id.* at 48 (emphasis added).

For this reason, "where there is no evidence in the record to contradict the State's proffered purpose for a checkpoint, a trial court may rely on the testifying police officer's assertion of a legitimate primary purpose." *Veazey I*, 191 N.C. App. at 187. But where the evidence "could support a finding of either a lawful or unlawful purpose, a trial court cannot rely solely on an officer's bare statements as to a checkpoint's purpose." *Id.* Instead, the trial court must "close[ly] review . . . the scheme at issue." *State v. Rose*, 170 N.C. App. 284, 289 (2005) (quotation omitted); *see Veazey I*, 191 N.C. App. at 190. Checkpoints that allow officers to identify "drivers' license and vehicle registration violations" serve a lawful primary programmatic purpose. *Id.* at 189; *Delaware v. Prouse*, 440 U.S. 648, 663 (1979) (holding a checkpoint for the purpose of checking drivers' licenses and vehicle registration constitutional). Section 20-16.3A permits checkpoints for the primary purpose of "determin[ing] compliance" with North Carolina's motor vehicle code. N.C.G.S. § 20-16.3A (motor vehicle code); *e.g.*, *id.* § 20-7(a) (driver must carry license); *id.* § 20-57(c) (vehicle owner must carry registration); *id.* § 20-313(a) (vehicle owner must maintain insurance policy).

Here, the trial court both found and concluded that the "primary purpose of the checking station was to detect and deter" Chapter 20 violations. At the suppression hearing, Captain Seago testified to "set[ting] up a license check," in which "all of the vehicles coming through" would have "their tags [and] driver license[s] . . . checked." Because Defendant did not present any conflicting evidence, the trial court did not err in relying on Captain Seago's "assertion of a legitimate primary purpose" for the checkpoint. *Veazey I*, 191 N.C. App. at 187. Thus, we hold that the trial court did not err in concluding that the checkpoint served a valid primary programmatic purpose. *See Edmond*, 531 U.S. at 47.

2. Reasonableness of the Stop

Second, we consider whether the checkpoint was reasonable—that is, "whether the individual stop at issue was itself constitutional." *State v. Burroughs*, 185 N.C. App. 496, 502 (2007). Defendant argues that the trial court erred in concluding that the checkpoint was reasonable because the evidence does not support the conclusion that "Captain Seago's checkpoint was in the public interest." For the following reasons, we disagree and affirm the trial court.

To determine a checkpoint's reasonableness, the reviewing "court must weigh the public's interest in the checkpoint against the individual's Fourth Amendment privacy interest." *Veazey I*, 191 N.C. App. at 186. In *Brown v. Texas*, 443 U.S. 47, 50 (1979), the U.S. Supreme Court held that the "reasonableness" of a checkpoint "depends on a balance between the public interest and the individual's right to personal security free from arbitrary inference by law officers." *Id.* We balance these interests by weighing (1) "the gravity of the public concerns served by the seizure," (2) "the degree to which the seizure advances the public interest," and (3) "the severity of the interference with individual liberty." *Id.* at 50–51. Where the "balance" of these factors "weigh[s] in favor of the public interest, the checkpoint is reasonable and therefore constitutional." *Veazey I*, 191 N.C. App. at 186. Defendant concedes that the checkpoint "advances the public interest" under *Brown*'s first prong, *Brown*, 443 U.S. at 50, but challenges "the trial court's weighing of the second and third" prongs as "rel[ying] extensively on incorrect findings of fact."

a. Advancement of Public Interest

Under *Brown*'s second prong, the trial court must assess "the degree to which the [checkpoint] advances the public interest." *Brown*, 443 U.S. at 51. The trial court should decide "whether the police appropriately tailored their checkpoint stops to fit their primary purpose." *Veazey I*, 191 N.C. App. at 191 (quotation omitted). To determine whether a checkpoint is "appropriately tailored," this Court recognizes several non-exhaustive factors, *e.g.*, "whether police spontaneously decided to set up the checkpoint," whether they "offered any reason why a particular . . . stretch of road was chosen," "whether the checkpoint had a predetermined starting or ending time," and whether they "offered any reason why that particular time span was selected." *Id.*

Here, the trial court found that three of the four suggested factors weighed in favor of the checkpoint's advancement of the public interest:

> A) The checking station was conducted pursuant to an organizational plan, staffed by a supervisor and three officers, received prior approval by a non-participant head of the law enforcement agency, and memorialized by advance completion of a written checking station authorization (Authorization Form).

> B) The Record is silent except for Captain Seago's unchallenged testimony that statistical information was considered in the selection of the location for this checking station.
>
> C) The Authorization Form demonstrates that a two-hour, operational window between 3:00pm and 5:00pm was selected.

(Quotation modified.) Here, Findings of Fact 5–7, and 15 are binding on appeal and support the trial court's determination that the department considered statistical information when it selected the area of road, planned the checkpoint, identified a specific time period, and operated the checkpoint in accordance with that plan; as well as its conclusion that the checkpoint was appropriately tailored. *See Veazey I*, 191 N.C. at 191. Thus, we hold that the trial court did not err in concluding that the checkpoint advanced the public interest under *Brown*'s second prong. *See id.*

b. Interference with Individual Liberty

Under *Brown*'s third prong, we consider "the severity of [the checkpoint's] interference with individual liberty." *Brown*, 443 U.S. at 51. Law enforcement officers must execute checkpoints "pursuant to a plan embodying explicit, neutral limitations on the conduct of individual officers." *Id.* We recognize the following non-exhaustive factors in reviewing a checkpoint's impact on individual liberty:

> [T]he checkpoint's potential interference with legitimate traffic; whether police took steps to put drivers on notice of an approaching checkpoint; whether the location of the checkpoint was selected by a supervising official, rather than by officers in the field; whether police stopped every vehicle that passed through the checkpoint, or stopped vehicles pursuant to a set pattern; whether drivers could see visible signs of the officers' authority; whether police operated the checkpoint pursuant to any written or oral guidelines; whether the officers were subject to any form of supervision; and whether the officers received permission from their supervising officer to conduct the checkpoint.

Veazey I, 191 N.C. at 193. These factors are "circumstances to be considered as part of the totality of the circumstances in examining the reasonableness of the checkpoint." *Id.* at 193 (citation modified).

Here, in considering the severity of interference with individual liberty, the trial court considered the following factors in relevant part:

> A) The checking station neither potentially nor actually interfered with legitimate traffic. The checking station was organized with brief questioning of motorists for limited purposes, thus posing only limited potential for interference with legitimate traffic;
>
> B) Although signage was absent, two patrol cars with operating blue lights coupled with uniformed officers wearing safety vests emblazoned with "POLICE" during daylight hours on a two-lane highway sufficiently noticed the public of the operation of this checking station.
>
> C) The checking station location was selected and approved in advance by the non-participant head of the employing law enforcement agency.
>
> D) Every Northbound and Southbound vehicle travelling upon South Old Stage Rd. during the conduct of the checking station was in fact stopped.
>
> . . . .
>
> F) The checking station was conducted in conformity with the Authorization Form and the GSHP Template respectively.
>
> . . . .
>
> H) The officers received permission from their supervising officer to conduct the checkpoint per the Authorization Form. Additionally, officers conducting the checking station were under the direct supervision of Captain Seago who was present on scene.

(Quotation modified.) Here, Findings of Fact 5–7 and 11–15 are binding on appeal and support the trial court's conclusion that the checkpoint's interference with individual liberty was not so severe as to make the checkpoint unreasonable. *See Baker*, 312 N.C. at 37. Thus, we hold that the trial court did not err in concluding that the checkpoint's "intrusion on individual liberty was no greater than necessary" under *Brown*'s third prong. *See id.*

Ultimately, the trial court's order denying Defendant's motion to suppress contained adequate findings of fact, supported by competent evidence, to identify the primary programmatic purpose of the checkpoint and to satisfy all three prongs of *Brown*'s reasonableness test. Those findings, in turn, support the trial court's conclusions of law, which demonstrate that trial court's proper determination of the stop's reasonableness. Therefore, the trial court did not err in concluding that Captain Seago's checkpoint served a lawful primary programmatic purpose and was reasonable. Accordingly, we affirm the trial court's order denying Defendant's motion to suppress for improper checkpoint.

C. Motion to Suppress for Lack of Probable Cause

[3] In the alternative, Defendant argues that the trial court erred by concluding that Captain Seago had probable cause to search his car. He contends that "the mere odor and sight of [Defendant's] burnt cannabis in itself was inadequate to give Captain Seago probable cause to search his car." For the following reasons, we disagree and affirm the trial court.

It is well-established that "searches conducted outside the judicial process, without prior approval by judge or magistrate, are per se unreasonable under the Fourth Amendment—subject only to a few specifically established and well delineated exceptions." *Coolidge v. New Hampshire*, 403 U.S. 443, 454–55 (1971) (quoting *Katz v. United States*, 389 U.S. 347, 357 (1967)). The automobile exception permits a warrantless "search of a motor vehicle which is on a public roadway . . . if it is based on probable cause." *State v. Isleib*, 319 N.C. 634, 637–38 (1987) (quotation omitted).

As a result, "an officer may search an automobile without a warrant if he has probable cause to believe the vehicle contains contraband." *State v. Springs*, 292 N.C. App. 207, 212–14 (2023). An officer has probable cause when "the facts and circumstances" are "sufficient in themselves to warrant a man of reasonable caution in the belief that an offense has been or is being committed." *State v. Downing*, 169 N.C. App. 790, 795, (2005) (quotation omitted). As part of the probable-cause determination, trial courts may consider a police officer's "plain" observations, *e.g.*, smell. *Id.* at 796.

In *State v. Dobson*, 293 N.C. App. 450, 454 (2024), *disc. rev. allowed in part*, 387 N.C. 420 (2025), this Court held that "the legalization of industrial hemp did not eliminate the significance of detecting 'the odor of marijuana' for the purposes of a motion to suppress. The legalization of industrial hemp 'has not changed the State's burden of proof to overcome a motion to suppress.' "*Dobson*, 293 N.C. App. at 450 (quoting

Teague, 286 N.C. App. at 179). And in *State v. Little*, this Court held that, "despite the liberalization of laws regarding possession of industrial hemp, and even if marijuana and industrial hemp smell and look the same," an officer has probable cause to search a vehicle "based upon the officer's reasonable belief that the substance he smelled and saw in the vehicle was marijuana." *Little*, 295 N.C. App. at 556. The Court further explained that "[p]robable cause did not require [an officer's] belief that the substance was illegal marijuana [to] be "correct or more likely true than false," but requires only a " 'practical, nontechnical' probability that incriminating evidence involved is all that is required." *Id.* (quoting *Brown*, 460 U.S. at 742). That is, though an officer's belief that what a defendant possessed smelled and looked like marijuana would not alone be sufficient to *convict* the defendant of a crime, that belief is legally sufficient to give the officer probable cause that the defendant was committing a crime. *See State v. Johnson*, 288 N.C. App. 441, 457–58 (2023), *disc. rev. denied*, 385 N.C. 886 (2024) ("[T]he smell of marijuana alone supports a determination of probable cause, even if some use of industrial hemp products is legal under North Carolina law.").

Here, the trial court's order also contains the unchallenged findings that Captain Seago has "training and experience in detecting the odor of burnt and unburnt marijuana by sight and by smell"; has made "over 500 previous encounters" with marijuana possession; and that he "detected, based upon his training and experience, a strong odor of burnt marijuana coming from within [Defendant's] vehicle." These findings include unchallenged Finding of Fact 19 that Captain Seago "asked [D]efendant about the marijuana odor emanating from within the vehicle. In response, [D]efendant provided to [him], based upon [Captain Seago's] training and experience, a marijuana joint that [D]efendant had been smoking." Here, as in *Little*, the State offered sufficient evidence suggesting that, based on Captain Seago's training and experience, he smelled the odor of burnt marijuana, and Defendant did not claim to possess only legal hemp.

Thus, we hold that the trial court's findings support its conclusion that Captain Seago had probable cause to search the car when he smelled and saw what he believed to be marijuana. *See Johnson*, 288 N.C. App. at 457–58 (The "smell of marijuana alone supports a determination of probable cause." (citation modified)). And because Defendant did not tell Captain Seago that the substance was legal hemp, Captain Seago had no reason to believe it was anything other than marijuana. *See Little*, 295 N.C. App. at 552–53 (noting that officers had no reason to believe substance was hemp because defendant did not say it was hemp when asked about marijuana odor).

Ultimately, the trial court's order denying Defendant's motion to suppress for lack of probable cause contained adequate findings of fact—supported by competent evidence—to show that Captain Seago reasonably believed that he smelled marijuana. Those findings, in turn, support the trial court's conclusions of law, which demonstrate that the trial court properly determined there was probable cause to search Defendant's vehicle. Therefore, we affirm the trial court's order denying Defendant's motion to suppress for lack of probable cause.

IV. Conclusion

For the reasons above, we hold that the trial court did not err by denying Defendant's motions to suppress for improper checkpoint and lack of probable cause.

NO ERROR.

Judges COLLINS and FLOOD concur.

JOSHUA H. STEIN, in his official capacity as GOVERNOR OF THE STATE OF NORTH CAROLINA, Plaintiff
v.
DESTIN C. HALL, in his official capacity as SPEAKER OF THE NORTH CAROLINA HOUSE OF REPRESENTATIVES; PHILIP E. BERGER, in his official capacity as PRESIDENT PRO TEMPORE OF THE NORTH CAROLINA SENATE, Defendants

No. COA25-745

Filed 7 January 2026

1. Constitutional Law—North Carolina—separation of powers clause—legislative appointment provisions—Building Code Council—Utilities Commission—facial challenge by Governor

Following principles established by prior case law, the appellate court determined that the General Assembly did not violate the separation of powers clause of the North Carolina Constitution by enacting laws altering the structures of and appointments to the Building Code Council and Utilities Commission, respectively, since the laws did not deprive the governor of his constitutionally sufficient control over either entity. In particular, the reassignment of one of the governor's appointments to the Utilities Commission to the State Treasurer was permissible under the constitution, which authorizes the legislature to appoint and confirm statutory officers, and since the reassigned appointment remained within the executive branch. Therefore, the three-judge panel assigned to hear the governor's facial constitutional challenge to both laws properly denied the governor's motion for summary judgment and properly granted the legislative defendants' motions for summary judgment on this issue.

2. Constitutional Law—North Carolina—separation of powers clause—legislative appointment provisions—judicial vacancies—facial challenge by Governor

The General Assembly did not violate the separation of powers clause of the North Carolina Constitution by enacting a law altering how appointments to appellate judicial vacancies are made—newly requiring the governor to select from a list of three qualified persons recommended by the political party executive committee of the political party with which the vacating judge was affiliated when elected—where the phrase in the constitution that judicial vacancies shall be filled "in a manner prescribed by law" clearly suggested and did not preclude legislative involvement. Therefore, since the three-judge panel erred by granting the governor's motion for summary judgment in his facial constitutional challenge, this portion of the panel's order was reversed and the matter was remanded with instructions for the panel to enter an order granting the legislative defendants' motions for summary judgment and denying the governor's motion.

Judge COLLINS concurring in part and dissenting in part.

Cross appeals by plaintiff and defendants from order entered 24 June 2025 by Judges James Floyd Ammons, Jr.; A. Graham Shirley; and Imelda J. Pate in Wake County Superior Court. Heard in the Court of Appeals 28 October 2025.

Brooks, Pierce, McLendon, Humphrey & Leonard, L.L.P., by Jim W. Phillips, Jr., Eric Fletcher, Amanda S. Hawkins, and Daniel F. E. Smith, and Wilmer, Cutler, Pickering, Hale & Dorr LLP, by W. Swain Wood, for the plaintiff-appellant.

Nelson Mullins Riley & Scarborough, LLP, by D. Martin Warf, Noah H. Huffstetler, III, and Womble Bond Dickinson (US) LLP, by Matthew F. Tilley, Mike Ingersoll, and Emmett Whelan for the defendant-appellants.

Dowling PLLC, by Craig D. Schauer and Troy D. Shelton, for the intervenor-appellee.

TYSON, Judge.

Joshua H. Stein, in his official capacity as Governor of the State of North Carolina and Philip E. Berger, in his official capacity as President *Pro Tempore* of the North Carolina Senate and Destin C. Hall, in his official capacity as Speaker of the North Carolina House of Representatives (collectively "Legislative Defendants") appeal from the 24 June 2025 order entered by a three-judge superior court panel.

The order granted in part and denied in part the motions for summary judgment filed by the Governor, the State Treasurer, and the Legislative Defendants. We affirm in part, reverse in part, and remand.

I. Background

The North Carolina General Assembly enacted N.C. Sess. L. 2024-49 and N.C. Sess. L. 2024-57, which amended N.C. Gen. Stat. § 143-136 and N.C. Gen. Stat. § 62-10. N.C. Gen. Stat. §§ 143-136; 62-10 (Supp. 2024). These amendments altered the structures of and appointments to the Building Code Council and the Utilities Commission respectively.

Senate Bill 382 amended N.C. Gen. Stat. § 163-9 ("Judicial Vacancies Provision"), which provides for the appointment and filling of appellate judicial vacancies on the Court of Appeals and the Supreme Court. N.C. Sess. L. 2024-57 § 3C.1.(a). This section mandates for the Governor to fill appellate judicial vacancies on the Court of Appeals and the Supreme Court "from a list of three qualified persons recommended by the political party executive committee of the political party with which the vacating judge was affiliated when elected." N.C. Gen. Stat. § 163-9 (Supp. 2024). If no recommendation is received within thirty (30) days or if the departing appellate judge or justice was not a member of a political party at the time of election, the Governor "shall appoint a qualified person to fill the vacancy." *Id.*

The Governor filed a verified complaint on 7 February 2025 in Wake County Superior Court, seeking a declaratory judgment and arguing: Section 3C.1 of Senate Bill 382 facially violates Article IV, Section 19 of the North Carolina Constitution; Section 3F.2 of Senate Bill 382 and Senate Bill 166 facially violate Article I, Section 6, the Separation of Powers Clause, Article III, Section 1, the Vesting Clause, and Article III, Section 5(4), the Faithful Execution Clause, of the North Carolina Constitution.

The Governor filed a motion for a temporary restraining order, preliminary injunction, and for transfer of the cause to a three-judge panel for hearing under N.C. Gen. Stat. § 1-267.1 (2023). The Legislative Defendants filed their answer on 22 April 2025. The superior court granted the Governor's motion to transfer the case to a three-judge panel on 24 April 2025. The Chief Justice of North Carolina assigned the panel of three superior court judges to hear the case.

Bradford B. Briner, in his official capacity as State Treasurer of North Carolina, intervened and filed a motion for summary judgment on 30 May 2025. The Governor and the Legislative Defendants also filed motions for summary judgment on 30 May 2025. The three-judge panel held a hearing on the cross motions for summary judgment on 24 June 2025. The panel unanimously held the Governor proved beyond a reasonable doubt the purported amendments to N.C. Gen. Stat. § 163-9 in Section 3C.1 of Session Law 2024-57, the Judicial Vacancies Provision, are unconstitutional. The three-judge panel granted the Governor's motion for summary judgment and denied the Legislative Defendants' motion for summary judgment on this issue.

The three-judge superior court panel also unanimously held the Governor had not proven beyond a reasonable doubt N.C. Sess. L. 2024-49, which amended N.C. Gen. Stat. § 143-136, the Building Code Council, and N.C. Sess. L. 2024-57, which amended N.C. Gen. Stat. § 62-10, the Utilities Commission, were unconstitutional. The panel denied the Governor's motion for summary judgment and granted the Legislative Defendants' motion for summary judgment on these issues. The summary judgment order did not mention the State Treasurer's motion for summary judgment on the Utilities Commission challenge, resolved in his favor. The Governor and the Legislative Defendants cross appeal.

II. Jurisdiction

This Court has jurisdiction pursuant to N.C. Gen. Stat. § 7A-27(b) (2023).

III. Issues

The Governor argues the three-judge superior court panel erred by denying his motion for summary judgment challenging the Building Code Council and Utilities Commission. The Legislative Defendants argue the three-judge superior court panel erred in denying their motion for summary judgment to uphold the Judicial Vacancies amendments.

IV. Standard of Review

North Carolina Rule of Civil Procedure 56(c) allows a moving party to obtain summary judgment upon demonstrating "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits" show "there is no genuine issue as to any material fact," and they are "entitled to a judgment as a matter of law." N.C. Gen. Stat. § 1A-1, Rule 56(c) (2023).

"The party moving for summary judgment bears the burden of establishing that there is no triable issue of material fact." *DeWitt v. Eveready Battery Co.*, 355 N.C. 672, 681, 565 S.E.2d 140, 146 (2002) (citation omitted). "This burden may be met by proving . . . an essential element of the opposing party's claim is nonextant, or by showing through discovery . . . opposing party cannot produce evidence to support an essential element of his claim or cannot surmount an affirmative defense[,] which would bar the claim." *Id.* (citation and internal quotation marks omitted). An order granting summary judgment is reviewed *de novo* on appeal. *Howerton v. Arai Helmet, Ltd.*, 358 N.C. 440, 470, 597 S.E.2d 674, 693 (2004).

We also review *de novo* a three-judge superior court panel's ruling on state constitutional questions. *Cooper v. Berger*, 370 N.C. 392, 413, 809 S.E.2d 98, 110-11 (2018). "When assessing a challenge to the constitutionality of legislation, this Court's duty is to determine whether the General Assembly has complied with the constitution. If constitutional requirements are met, the wisdom of the legislation is a question for the General Assembly." *Hart v. State*, 368 N.C. 122, 126, 774 S.E.2d 281, 284 (2015).

"In performing our task, we begin with a presumption that the laws duly enacted by the General Assembly are valid." *Id.* The three-judge panel properly concluded, "a law will be declared invalid only if its unconstitutionality is demonstrated beyond reasonable doubt." *Id.*

Our Supreme Court has held, when interpreting our State's Constitution: "provisions should be construed in consonance with the objects and purposes in contemplation at the time of their adoption." *State v. Webb*, 358 N.C. 92, 94, 591 S.E.2d 505, 509 (2004). "To ascertain the intent of those by whom the language was used, we must consider the conditions as they existed and the purpose sought to be accomplished." *Id.*

V. Facial Challenge

The Governor's declaratory judgment action is admittedly a facial challenge and our review is strictly limited to that basis. "A facial challenge is an attack on a statute itself as opposed to a particular application." *City of Los Angeles v. Patel*, 576 U.S. 409, 443, 192 L. Ed. 2d 435, 443 (2015). Facial challenges are "the most difficult challenge to mount" successfully. *United States v. Salerno*, 481 U.S. 739, 745, 95 L. Ed. 2d 697, 707 (1987).

"[A] plaintiff must establish that a law is unconstitutional in all of its applications." *Patel*, 576 U.S. at 418, 192 L. Ed. 2d at 445 (citation and internal quotation marks omitted). "In a facial challenge, the presumption [before the trial court and on appeal] is . . . the law is constitutional, and a court may not strike it down if it may be upheld on any reasonable ground." *Affordable Care, Inc. v. N.C. State Bd. of Dental Exam'rs*, 153 N.C. App. 527, 539, 571 S.E.2d 52, 61 (2002).

VI. Building Code Council and Utilities Commission

[1] Our Supreme Court has issued three recent precedents interpreting the separation of powers clause under the North Carolina Constitution: *State ex rel. McCrory v. Berger*, 368 N.C. 633, 781 S.E.2d 248 (2016); *Cooper v. Berger*, 370 N.C. 392, 809 S.E.2d 98 (2018); *Cooper v. Berger*, 371 N.C. 799, 822 S.E.2d 286 (2018) ("*Cooper Confirmation*"). We review each in turn.

A. *State ex rel. McCrory v. Berger*

In *McCrory*, the Governor challenged the General Assembly's enactment of and appointments under the Energy Modernization Act and the Coal Ash Management Act of 2014. *See* N.C. Gen. Stat. §§ 143B-290–293.6; 130A-309.200–309.231 (2014). The Energy Modernization and the Coal Ash Management Act of 2014 created three administrative commissions: the Oil and Gas Commission; the Mining Commission; and, the Coal Ash Management Commission. *Id.*

The Oil and Gas Commission is housed within the Department of Environmental and Natural Resources ("DENR"), and it "has the power to promulgate rules, make determinations, and issue orders consistent with the Oil and Gas Conservation Act." *McCrory*, 368 N.C. at 636-37, 781 S.E.2d at 251 (citation omitted) (DENR was renamed Department of Environmental Quality, however, "[b]ecause the Energy Modernization Act and the Coal Ash Management Act predate this name change . . . , we will continue to use this superseded name."). Nine members comprise the Oil and Gas Commission: three appointed by the Governor and six appointed by the General Assembly. *Id.* at 637, 781 S.E.2d at 251 (citation omitted).

The Mining Commission is also housed within DENR. *Id.* (citation omitted). It "has the power to promulgate mining rules and affirm, modify or overrule permit decisions that DENR makes." *Id.* The Mining Commission "has eight members: two appointed by the Governor; four appointed by the General Assembly; the chair of the North Carolina State University Minerals Research Laboratory Advisory Committee; and the State Geologist, who is ex officio and nonvoting." *Id.*

"The Coal Ash Management Commission is administratively located in the Division of Emergency Management of the Department of [Public] Safety but is expressly required to exercise its powers and duties 'independently,' without 'the supervision, direction, or control of the Division or Department.' " *Id.* (citation omitted). The Coal Ash Management Commission "has the power to review and approve coal ash surface impoundment classifications and closure plans that DENR proposes" and "has nine members: three appointed by the Governor and six appointed by the General Assembly." *Id.* (citations omitted).

The Governor can remove any member of all three commissions for "malfeasance, misfeasance, or nonfeasance." *Id.* at 637-38, 781 S.E.2d at 251. The Governor challenged the provisions, which allowed the General Assembly to appoint members to the commissions under both Article III, Section 5(8), the appointments clause, and Article I, Section 6, the separation of powers clause.

Chief Justice Martin, writing for the majority of the Court, addressed the constitutional tension between the legislative and executive branches: "The Governor's power to appoint officers under the [appointments clause] continues to extend only to constitutional officers" and "does not prohibit the General Assembly from appointing statutory officers to administrative commissions." *Id.* at 644, 781 S.E.2d at 255.

The Court's majority opinion then turned to the separation of powers arguments and clause, laying out an analytical framework, that is used to accomplish the task of determining "we must determine whether the actions of a coordinate branch 'unreasonably disrupt a core power of the executive.' " *Id.* at 645, 781 S.E.2d at 256 (citing *Bacon v. Lee*, 353 N.C. 696, 717, 549 S.E.2d 840, 854 (2021)). Article III, Section 5(4) of the North Carolina Constitution requires and mandates "the Governor [to] have enough control over the board or commission that" is "primarily administrative or executive in character" "to perform" its "constitutional duty." *Id.* at 645-46, 781 S.E.2d at 256. The Supreme Court's majority opinion further noted the General Assembly "insulate[d] the Coal Ash Management Commission from executive branch control even more by requiring the Commission to exercise its powers and duties 'independently,' without the 'supervision, direction or control' of the

Division of Emergency Management or Department of Public Safety." *Id*. at 646, 781 S.E.2d at 257.

Unlike in *State ex rel. Wallace v. Bone*, 304 N.C. 591, 286 S.E.2d 79 (1982), the Supreme Court in *McCrory* did not create a bright line rule:

> We cannot adopt a categorical rule that would resolve every separation of powers challenge to the legislative appointment of executive officers. Because each statutory scheme will vary the degree of control that legislative appointment provisions confer on the General Assembly, we must resolve each challenge by carefully examining its specific factual and legal context. While the General Assembly's ability to appoint an officer obviously does not give it the power to control what that officer does, we must examine the degree of control that the challenged legislation allows the General Assembly to exert over the execution of the laws.

McCrory, 368 N.C. at 646-47, 781 S.E.2d at 257.

In *Wallace*, the Supreme Court had considered a separation of powers challenge to a law appointing four sitting legislators to the Environmental Management Commission. *Wallace*, 304 N.C. at 606-07, 286 S.E.2d at 87. The General Assembly had created the cabinet-level Environmental Management Commission, whose responsibilities are "promulgat[ing] rules and regulations for air quality standards, emission control standards, and classifications for air contaminant sources . . . ; for water quality standards and classifications . . . ; to issue permits for water use within capacity areas; and for the protection of sand dunes[.]" *Id*. at 607-08, 286 S.E.2d at 88. The Court, in *Wallace*, held the Environmental Management Commission functions and duties were "administrative or executive in character." *Id*. at 608, 286 S.E.2d at 88. The Court further held the General Assembly "cannot create a special instrumentality of government to implement specific legislation and then retain some control over the process of implementation by appointing legislators to the governing body of the instrumentality." *Id*. This *per se* rule prohibits one branch of government from exercising powers, which are vested exclusively in another branch. This prohibition was violated by sitting legislators creating and appointing themselves to the Commission and wielding executive power. The Court held it was "crystal clear" the Environmental Management Commission's duties are "administrative or executive in character." *Id*.

The Court's majority in *McCrory*, further held: "As a part of the inquiry in this case, we must also consider whether the General Assembly has 'retain[ed] some control' over the executive branch's functions." *McCrory*, 368 N.C. at 646, 781 S.E.2d at 257 (citing *Wallace*, 304 N.C. at 608, 286 S.E.2d at 88). The sufficiency of the Governor's "degree of control" "[d]epends on his [or her] ability to appoint the commissioners, to supervise their day-to-day activities and to remove them from office." *Id.* at 646, 781 S.E.2d at 256.

The Supreme Court of North Carolina applied the above framework and held in *McCrory*:

> Using that approach here, we hold that the challenged appointment provisions violate the separation of powers clause. When the General Assembly appoints executive officers that the Governor has little power to remove, it can appoint them essentially without the Governor's influence. That leaves the Governor with little control over the views and priorities of the officers that the General Assembly appoints. When those officers form a majority on a commission that has the final say on how to execute the laws, the General Assembly, not the Governor, can exert most of the control over the executive policy that is implemented in any area of the law that the commission regulates. As a result, the Governor cannot take care that the laws are faithfully executed in that area. The separation of powers clause plainly and clearly does not allow the General Assembly to take this much control over the execution of the laws from the Governor and lodge it with itself.

Id. at 647, 781 S.E.2d at 257 (citations omitted).

The Court's majority opinion in *McCrory* specifically declined to address "how the separation of powers clause applies to those executive departments that are headed by the independently elected members of the Council of State." *Id.* at 646 n.5, 781 S.E.2d at 256 n.5.

B. *Cooper v. Berger*

Two years after *McCrory*, the Supreme Court decided another separation of powers case in *Cooper v. Berger*. 370 N.C. at 395, 809 S.E.2d at 99. The General Assembly had enacted Senate Bill 4 and House Bill 17, which abolished the separate State Board of Elections and State Ethics Commission and appointed the existing members of the State Board of Elections to a newly created Bipartisan State Board of Elections and Ethics Enforcement. *Id.* The General Assembly consolidated both boards' powers into the Bipartisan State Board of Elections and Ethics Enforcement. *Id.* After examining the political question and standing doctrines, the majority's opinion examined the Governor's argument asserting Senate Bill 4 and House Bill 17 "unconstitutionally infringe on the Governor's executive powers in violation of separation of powers." *Id.* at 413, 809 S.E.2d at 110 (alteration omitted).

The Supreme Court in *Cooper* applied the analytical framework from *McCrory*. The Court acknowledged its decision in *McCrory* did not define "control." *Id.* at 414, 809 S.E.2d at 111. The Bipartisan State Board of Elections and Ethics Enforcement "performs primarily executive, rather than legislative or judicial functions." *Id.* at 415, 809 S.E.2d at 112. The Bipartisan State Board of Elections and Ethics Enforcement consists of "eight members appointed by the Governor, four of whom must be members of the political party with the highest number of registered affiliates selected from a list of nominees provided by the chair of the party in question and four of whom must be members of the political party with the second highest number of registered affiliates selected from a list of nominees provided by the chair of the party in question." *Id.* (citation omitted).

The majority's opinion concluded the creation of the Bipartisan State Board of Elections and Ethics Enforcement "leave[s] the Governor with little control over the views and priorities . . . by requiring that a sufficient number of its members to block the implementation of the Governor's policy preferences and selected from a list of nominees chosen by the leader of the political party other than the one to which the Governor belongs" which "limit[s] the extent to which individuals supportive of the Governor's policy preferences have the ability to supervise the activities," thereby "significantly constraining the Governor's ability to remove members." *Id.* at 416, 809 S.E.2d at 112-13.

C. *Cooper Confirmation*

The same year as the Supreme Court of North Carolina decided *Cooper*, it also decided another separation of powers case in *Cooper Confirmation*. *Cooper Confirmation*, 371 N.C. at 801, 822 S.E.2d 290.

In *Cooper Confirmation*, the Governor challenged the appointments provision of N.C. Gen. Stat. § 143-9(a) under the separation of powers clause and the appointments clause, which granted the North Carolina Senate the power to confirm the Governor's nominees to serve in his cabinet, who head as secretaries the eleven statutorily created administrative departments. *Id.* The Court noted the Governor "is the Chief

Executive Officer of the State." *Id.* at 802, 822 S.E.2d at 290. "Cabinet members must provide the Governor with extensive information about the work of their respective departments." *Id.* The Governor can remove any member of their cabinet for any reason. *Id.*

Chief Justice Martin, writing for the Court's majority, as he had in *McCrory*, applied the *McCrory* analysis: "the degree of control that the Governor has over executive officers can be measured by considering 'his ability to appoint [them], to supervise their day-to-day activities, and to remove them from office.' " *Id.* at 806, 822 S.E.2d at 293. The Court's majority held "senatorial confirmation curtails the Governor's appointment power only minimally." *Id.* at 807, 822 S.E.2d at 294. The Governor can nominate any eligible person he or she wants. *Id.* The General Assembly "granted the Senate some piece of the appointment power" through confirmation, however, "the Governor retains the most important role in the process: the ability to choose, from the universe of all eligible people, the person on whom the Senate will have an up-or-down vote." *Id.* at 807-08, 822 S.E.2d at 294.

Chief Justice Martin's opinion distinguished the facts at hand from the earlier *Cooper* case, where the choice was from "two short lists" prepared "by the state party chair[s] of the two political parties with the highest number of registered affiliates." *Id.* (citation omitted). The Court noted the Governor's ability to control the views and priorities of cabinet members, and held "the Governor has extensive supervisory power, allowing him to directly manage his Cabinet members in virtually every aspect of their authority." *Id.* at 808, 822 S.E.2d at 294-95.

Finally, the Court noted the Governor retained the sole and "plenary authority to remove the members of his Cabinet." *Id.* at 809, 822 S.E.2d at 295. The Court held senatorial confirmation of Cabinet nominees does not violate the separation of powers clause. *Id.*

D. *Stein v. Berger*

On the day oral argument was originally scheduled in this case, this Court released its opinion in *Stein v. Berger*, 301 N.C. App. 237, 923 S.E.2d 579 (2025) ("*Stein Commissions*"). In *Stein Commissions*, a prior panel of this Court examined Senate Bill 512 and House Bill 488, which restructured the membership and composition of seven state boards and commissions: (1) the Board of Transportation; (2) the Economic Investment Committee; (3) the Commission for Public Health; (4) the Environmental Management Commission; (5) the Coastal Resources Commission; (6) the Wildlife Resources Commission; and, (7) the Building Code Council. N.C. Sess. Laws 2023-136, 2023-108.

The Governor argued the General Assembly's restructuring of the above boards and commissions violated the separation of powers clause of Article I, Section 6 of the North Carolina Constitution. This Court reasoned:

> Separation of powers is one of the " 'fundamental principles on which state government is constructed . . . .' " The separation of powers clause of the North Carolina Constitution mandates that the "legislative, executive, and supreme judicial powers of the State government shall be forever separate and distinct from each other." "[I]n other words, each branch is directed to perform its assigned duties and avoid encroaching on the duties of another branch."
>
> The North Carolina Constitution also provides that the "Governor shall take care that the laws be faithfully executed." But "the Governor is not alone in this task." In addition to the Governor, nine elected officers "assist the executive branch in fulfilling its purpose," including the: Lieutenant Governor, Secretary of State, Auditor, Treasurer, Superintendent of Public Instruction, Attorney General, Commissioner of Agriculture, Commissioner of Labor, and Commissioner of Insurance. Together, the Governor and the nine executive officers comprise the Council of State. As a result, "the Governor's duty to 'take care that the laws be faithfully executed' . . . is a nonexclusive duty conferred upon all ten Council of State members."
>
> When a branch is accused of violating separation of powers by encroaching upon the executive branch's authority, we consider whether the accused branch's actions " 'unreasonably disrupt a core power of the executive.' " Such action generally occurs when the accused branch " 'retains some control' over the executive branch's functions." There is, however, no "categorical rule that would resolve every separation of powers challenge" because "each statutory scheme" varies. Consequently, "we must resolve each challenge by carefully examining its specific factual and legal context." Separation of powers violations, therefore, can be "more nuanced" and occur "when the actions of one branch prevent another branch from performing its constitutional duties."

Id. at 241-42, 923 S.E.2d at 584-85 (internal citations omitted).

Judge Murry, concurring in full, but writing a separate concurrence, noted the non-unitary nature of the Executive Branch: "Article III divides our Executive Branch's powers among the plural Council of State, with the Governor chief among them." N.C. Const. art. III, § 1-2, 7-8." *Id.* at 252, 923 S.E.2d at 591 (Murry, J., concurring).

House Bill 488 took duties belonging to the Building Code Council and assigned them to the Residential Code Council. HB 488, § 1(a). The Residential Code Council is housed within the Department of Insurance. *Id.* The Commissioner of Insurance is a statewide elected Council of State member. The Residential Code Council consists of thirteen members: seven are appointed by the Governor and six are appointed by the General Assembly. *Id.* The Governor selects the chair and the chair assigns members to committees. The Residential Code Council requires nine members to take action and to form a quorum to conduct business. *Id.*

This Court unanimously held:

> By restructuring the BCC in this manner, the Governor controls the majority and the chair, who controls the composition of committees. While the change in size and voting structure does not guarantee the Governor total control over the RCC's actions, the Governor nonetheless retains "enough control" because his appointed members constitute seven of the nine members required for the quorum. *See McCrory*, 368 N.C. at 646, 781 S.E.2d at 256; *Cooper Confirmation*, 371 N.C. at 800, 822 S.E.2d at 289-90. Given the quorum requirement, it is not as though the General Assembly's six appointed members can take action without the approval of at least three of the Governor's appointed members. As the General Assembly did not violate separation of powers, the panel did not err by concluding that the restructuring of the BCC was constitutional.

Stein Commissions, 301 N.C. App. at 250, 923 S.E.2d at 590.

E. Building Code Council

Here, the Governor argues the restructuring of the Building Code Council's quorum and voting requirements violated the separation of powers clause by depriving the Governor of his constitutionally sufficient control over the Council. In *Stein Commissions*, this Court addressed the same issue with respect to the Residential Code Council.

Both the Supreme Court of North Carolina and this Court have long recognized "[w]here a panel of the Court of Appeals has decided the same issue, albeit in a different case, a subsequent panel of the same court is bound by that precedent, unless it has been overturned by a higher court." *In re Civil Penalty*, 324 N.C. 373, 384, 379 S.E.2d 30, 37 (1989). We are bound by this Court's holding in *Stein Commissions*. The Governor, in his supplemental brief on the impact of *Stein Commissions*, "recognizes the constitutional issues before this panel with respect to the Building Code Council are nearly identical to those addressed by the *Stein Commissions* panel with respect to the Residential Code Council. Accordingly, the Governor acknowledges this Court is now bound by panel precedent for purposes of resolving that aspect of this appeal." The Governor has also filed a response to the Legislative Defendants' petition for discretionary review before the Supreme Court requesting that Court to deny further review of *Stein Commissions*. *Id.*

The three-judge panel did not err in denying the Governor's motion for summary judgment and granting the Legislative Defendants' motion for summary judgment on the restructuring of the Building Code Council. *Id.*

F. Utilities Commission

The Governor argues Senate Bill 382 deprives the Governor of constitutionally sufficient control over the Utilities Commission. The Governor asserts Senate Bill 382 fails the "enough control" test the Supreme Court articulated in *McCrory*. *McCrory*, 368 N.C. at 646, 781 S.E.2d at 256. The Governor further asserts the State Treasurer and the Governor are not "fungible." He argues the General Assembly cannot reassign one Council of State member's core constitutional duties to another. When the General Assembly is able to reassign functions within the Council of State, Article III, Section 11 of the North Carolina Constitution requires the functions to be grouped together "according to major purposes." Finally, the Governor asserts Senate Bill 382 functionally gives the General Assembly *de facto* control of the State Treasurer's appointment to the Commission.

The Utilities Commission is composed of five members. N.C. Gen. Stat. § 62-10 (2023). Prior to the enactment of Senate Bill 382, the Governor was authorized to appoint three members and designate the chair. *Id.* The Legislative Defendants were authorized to appoint two members. *Id.* Senate Bill 382 transferred one of the Governor's three (3) appointments to the State Treasurer. N.C. Sess. L. 2024-57, § 3F.1(a).

The Governor asserts he is denied sufficient control over the Utilities Commission, citing *McCrory*. "[T]he Governor must have enough control over [the commissions] to perform his constitutional duty." *McCrory*, 368 N.C. at 646, 781 S.E.2d at 256. However, in *McCrory*, the Supreme Court did not address "how the separation of powers clause applies to those executive departments that are headed *by the independently elected members of the Council of State*." *Id.* (emphasis supplied).

The Governor maintains he "has little, possibly no authority to remove Commissioners." The Public Utilities Act provides "[m]embers of the Commission shall be liable to impeachment for the causes and in the manners provided for judges." N.C. Gen. Stat. § 62-10(i) (2023). This removal provision is not changed by Senate Bill 382, and it is instead governed by the Public Utilities Act. *Id.* This argument is without merit.

The Utilities Commission is "declared to be an administrative board or agency of the General Assembly." N.C. Gen. Stat. § 62-23 (2023). Our General Statutes further provide: "The [Utilities] Commission shall separate its administrative or executive functions, its rulemaking function, and its functions judicial in nature to such extent as it deems practical and divisible in the public interest." *Id.*

In *Stein Commissions*, this Court held, "[w]hile the Governor does not directly appoint a majority of each commission's members, the executive branch holds majority-appointment power." *Stein Commissions*, 301 N.C. App. at 249, 923 S.E.2d at 589. This Court in *Stein Commissions* held elected members of the Council of State, specifically, the Commissioner of Agriculture and Commissioner of Insurance, could make appointments to the Coastal Resources Commission, the Environmental Management Commission, and the Wildlife Resources Commission. *Id.* This Court held the General Assembly could restructure these commissions because the "executive branch holds the majority appointment power." *Id.*

The requisite analysis and issue, as Judge Murry further articulated in detail in his concurrence, was not whether the Governor alone appoints the majority, but whether *the executive branch* makes the majority of appointments. "[T]he Governor's duty to take care that the laws be faithfully executed . . . is a nonexclusive duty conferred upon all ten Council of State members." *Id.* (citation and internal quotation marks omitted).

Here, the Governor and the State Treasurer appointees hold the majority appointment power. The Governor asserts the General Assembly cannot reassign one Council of State member's core constitutional duties to another. Article III, Section 11 of the North Carolina Constitution provides:

> Not later than July 1, 1975, all administrative departments, agencies, and offices of the State and their respective functions, powers, and duties shall be allocated by law among and within not more than 25 principal administrative departments so as to group them as far as practicable according to major purposes. Regulatory, quasi-judicial, and temporary agencies may, but need not, be allocated within a principal department.

N.C. Const. art. III, § 11.

This section does not address the allocation of duties between Council of State members. The Governor asserts the State Treasurer's role does not revolve or resolve around the regulation of public utilities, citing Justice Dietz's separate concurrence in an order denying the Governor's petition for a writ of *supersedeas* and a petition for writ of *certiorari* and also dismissing the Governor's motion for a temporary stay in a challenge to the General Assembly's alteration of the structure and oversight of the State Board of Elections. *Stein v. Berger*, 387 N.C. 575, 575, 915 S.E.2d 146, 146 (2025). Justice Dietz wrote:

> In addition to each Council of State member's core constitutional roles, the General Assembly has long assigned other executive duties to each Council of State member that are related to that member's core functions. The authority to do so comes from the constitutional provisions authorizing the General Assembly to reorganize the executive branch however it sees fit, so long as administrative functions and duties are grouped together "as far as practicable according to major purposes." N.C. Const. art. III, §§ 5(10), 11.

Id. at 581-82, 915 S.E.2d at 150 (Dietz, J., concurring).

Article III, Section 5(10) grants the General Assembly the power to "prescribe the functions, powers, and duties of the administrative departments and agencies of the State and may alter them from time to time[.]" N.C. Const. art. III, § 5(10) ("Administrative reorganization. The *General* Assembly shall prescribe the functions, powers, and duties of the administrative departments and agencies of the State and may abolish and/or alter them from time to time, but the Governor may make such changes in the allocation of offices and agencies and in the allocation of those functions, powers, and duties as he considers necessary for efficient administration. If those changes affect existing law, they shall be set forth in executive orders, which shall be submitted to the General

Assembly not later than the sixtieth calendar day of its session, and shall become effective and shall have the force of law upon adjournment *sine die* of the session, unless specifically disapproved by resolution of either house of the General Assembly or specifically modified by joint resolution of both houses of the General Assembly." (emphasis supplied)).

The General Assembly holds the residual power of the People as their elected representatives and has made a choice. After the constitutional mandate, giving the General Assembly the right to reorganize State administrative departments by 1975, the Constitution expressly gives them the right to modify the departments' functions, powers, and duties "from time to time." N.C. Const. art. III, § 5(10).

The Governor argues and asserts Senate Bill 382 functionally gives the General Assembly control because of the ability to confirm. As our Supreme Court emphasized in *Cooper Confirmation*, the Governor has the power to appoint "all *constitutional* officers whose appointments are not otherwise provided for in the constitution." *Cooper Confirmation*, 371 N.C. at 805, 822 S.E.2d at 292 (citation omitted). The General Assembly can appoint and confirm statutory officers. *Id.* "[A]ppointing statutory officers is not an exclusively executive prerogative." *Id.* The "lesser power to confirm statutory officers is not vested in either branch." *Id.* Upon *de novo* review, the order of the three-judge superior court panel upholding the State Treasurer's appointment to the Utilities Commission is affirmed.

VII. Judicial Vacancies

[2] The Legislative Defendants argue the three-judge superior court panel erred by granting the Governor's motion for summary judgment and denying their motion for summary judgment by holding the amendments to N.C. Gen. Stat. § 163-9 in Section 3C.1 of Session Law 2024-57 were facially unconstitutional.

This section provides:

SUBPART III-C. JUDICIARY

> MODIFY THE APPOINTMENT PROCESS TO FILL SUPREME COURT AND COURT OF APPEALS VACANCIES
>
> SECTION 3C.1.(a) G.S. 163-9 reads as rewritten:
>
> "§ 163-9. Filling vacancies in State and district judicial offices.

> **"§ 163-9. Filling vacancies in State and district judicial offices.**
>
> (a) ~~Vacancies~~ The Governor shall apppoint persons to fill vacancies occurring in the offices of Justice of the Supreme ~~Court,~~ Court and judge of the Court of ~~Appeals, and the judge of the superior court~~ Appeals for causes other than expiration of term ~~shall be filled by appointment of the Governor.~~ from a list of three qualified persons recommended by the political party executive committee of the political party with which the vacating judge was affiliated when elected. If a political party fails to make recommendations under this subsection within 30 days of the occurrence of the vacancy, or if a vacating judge was not affiliated with a political party at the time of the judge's election, the Governor shall appoint a qualified person to fill the vacancy. For purposes of this subsection, a qualified person is a person who is a resident of the State who is duly authorized to practice law in this State. An appointee to the office of Justice of the Supreme Court or judge of the Court of Appeals shall hold office until January 1 next following the election for members of the General Assembly that is held more than 60 days after the vacancy occurs, at which time an election shall be held for an eight-year term and until a successor is elected and qualified.

N.C. Sess. L. 2024-57, § 3C.1.(a).

A. *Baker v. Martin*

The Supreme Court of North Carolina examined an amendment to N.C. Gen. Stat. § 7A-142, which governs the appointment of vacancies in the district court in *Baker v. Martin*, 330 N.C. 331, 410 S.E.2d 887 (1991). The challenged statute provided:

> A vacancy in the office of district judge shall be filled for the unexpired term by appointment of the Governor from nominations submitted by the bar of the judicial district. . . . If the district court judge was elected as the nominee of a political party, then the district bar shall submit to the Governor the names of three persons who are residents of

> the district court district who are duly authorized to practice law in the district and who are members of the same political party as the vacating judge[.]

Id. at 334, 410 S.E.2d at 889.

The plaintiff, an otherwise qualified candidate but who affiliated with the Republican Party, attended the district bar meeting convened to nominate three candidates for the departing registered Democrat judge's seat. The plaintiff was not considered for the slate of three candidates submitted, because his party affiliation was different from that of the departing judge. *Id.* at 333, 410 S.E.2d at 888. The plaintiff argued "certain provisions of the North Carolina Constitution set the qualifications for appointment to the office of district court judge and, by placing the additional qualification on candidates that they be members of the same political party as the vacating judge, N.C.G.S. § 7A-142 violate[d] the Constitution." *Id.* at 334, 410 S.E.2d at 889.

Our Supreme Court interpreted Article V, Section 6 to apply only to " 'election to office' . . . rather than to appointment to an 'elective office.' " *Id.* at 336, 410 S.E.2d at 890. The Supreme Court further examined Article VI, Section 8, holding it "does not necessarily imply that additional disqualifications cannot be added by the General Assembly for those persons not elected by the people. Instead, N.C. Const. art. VI, § 8 merely enumerates three disqualifications, one of which applies only to offices filled by election by the people." *Id.* at 339, 410 S.E.2d at 892.

The Court then examined the plaintiff's challenges under Article IV, Sections 10 and 19. The Court's majority opinion rejected the plaintiff's argument Article IV, Section 10 "provides for the creation of district courts and that vacancies on the district court bench shall be filled 'in a manner prescribed by law.' " *Id.* at 340, 410 S.E.2d at 892-93. The plaintiff asserted Article IV, Section 10 "prescribes the manner in which district court judges are appointed and nowhere in this section does it say that a person must be of a certain political party to be eligible for appointment as a district court judge." *Id.*

The Court's majority held "[t]he phrase 'in a manner prescribed by law' appears in two places in N.C. Const. art. IV, § 10." *Id. See* N.C. Const. art. IV, § 10 ("The General Assembly shall, from time to time, divide the State into a convenient number of local court districts and shall prescribe where the District Courts shall sit, but a District Court must sit in at least one place in each county. District Judges shall be elected for each district for a term of four years, *in a manner prescribed by law*. When more than one District Judge is authorized and elected for a district, the

Chief Justice of the Supreme Court shall designate one of the judges as Chief District Judge. Every District Judge shall reside in the district for which he is elected. For each county, the senior regular resident Judge of the Superior Court serving the county shall appoint from nominations submitted by the Clerk of the Superior Court of the county, one or more Magistrates who shall be officers of the District Court. The initial term of appointment for a magistrate shall be for two years and subsequent terms shall be for four years. The number of District Judges and Magistrates shall, from time to time, be determined by the General Assembly. Vacancies in the office of District Judge shall be filled for the unexpired term *in a manner prescribed by law*. Vacancies in the office of Magistrate shall be filled for the unexpired term in the manner provided for original appointment to the office, unless otherwise provided by the General Assembly." (emphasis supplied)).

The phrase "in a manner prescribed by law" "appears in that part of the section providing for the election of judges and that part of the section providing for the appointment of judges. It follows that the identical words used in the same section must have an identical meaning." *Baker*, 330 N.C. at 340, 410 S.E.2d at 892-93.

The Court's majority concluded the use of the phrase "in a manner prescribed by law" "means that the General Assembly must play some part. The complicated procedure governing elections is not set forth in the Constitution." *Id.* at 341, 410 S.E.2d at 893. The Court's majority noted: "The General Assembly in this case has chosen to protect the mandate of the previous election by providing that the appointed judge should be of the same political party as his or her predecessor." *Id.*

The Court's majority opinion cited the Supreme Court of the United States' opinion in *Rivera-Rodriguez v. Popular Democratic Party*, although it acknowledged the case had interpreted the Constitution of the United States instead of the North Carolina Constitution, 457 U.S. 1, 72 L. Ed. 2d 628 (1982). That case held: "it did not violate the United States Constitution for Puerto Rico to protect the mandate of the people by requiring a legislator to be of the same political party as his or her deceased predecessor." *Id.* The Supreme Court's opinion recognized *Rivera-Rodriguez* "does illustrate that the protection of the mandate of an election is a legitimate concern." *Id.*

The majority's opinion then addressed the plaintiff's argument the political party membership was an unconstitutional qualification for office. The plaintiff cited: *Starbuck v. Havelock*, 252 N.C. 176, 113 S.E.2d 278; *Cole v. Sanders*, 174 N.C. 112, 93 S.E. 476 (1917); *Spruill* *v. Bateman*, 162 N.C. 588, 77 S.E. 768 (1913); and, *State of N.C. by the At. Gen'l, Hargrove, ex rel. Lee v. Dunn*, 73 N.C. 595 (1875). Our Supreme Court overruled this argument by distinguishing the above cases as "election to office cases and not appointment to office." *Id.* at 341-42, 410 S.E.2d at 893. The Court upheld the statute's political party requirement. *Id.*

The Legislative Defendants assert our Supreme Court's holding in *Baker* supports their position, asserting the Court found a similar design did not violate Article IV, Section 19. In *Baker*, as examined above, the Supreme Court upheld a requirement that the Governor must appoint a member of the same political party as the departing judge. The General Assembly, as within its right and power, later amended N.C. Gen. Stat. § 7A-142 in 1999 to remove the challenged requirement in *Baker*. 1999 H.B. 168.

Our Supreme Court has not repudiated or overruled its analysis in *Baker* either expressly or implicitly. This Court is bound by the analysis in *Baker*. *See Cannon v. Miller*, 313 N.C. 324, 324, 327 S.E.2d 888, 888 (1985) (noting the Court of Appeals' "responsibility to follow th[e] decisions [of the Supreme Court of North Carolina], until otherwise ordered by the Supreme Court").

Section 3C.1 further provides the Governor "shall appoint" "from a list of three qualified persons recommended by the political party with which the vacating judge was affiliated when elected." The Governor asserts the provisions "transfers the core of the appointment power from the Governor to unrelated political operatives."

In *Baker*, as here, the Governor was free to select any member of the political party who was included in the district bar's list of three nominees. The Governor was required to appoint someone from the district bar's list of three nominees, who otherwise met the qualifications and requirements for office. The statutes still require the list of potential judicial appointees to be generated by a body outside of the Governor's control.

The state executive political party committees and other local political party leaders and committees are mentioned extensively in Chapter 163 to nominate individuals for appointment by the Governor to fill vacancies in both federal and state legislative offices. *See* N.C. Gen. Stat. § 163-11 (2023) ("[T]he Governor shall immediately appoint for the unexpired part of the term [in the General Assembly] the person recommended by the political party executive committee provided by this section. The Governor shall make the appointment within seven days of receiving the recommendation of the appropriate committee. If the Governor fails to make the appointment within the required period, he shall be presumed to have made the appointment and the legislative body to which the appointee was recommended is directed to seat the appointee as a member in good standing for the duration of the unexpired term."); N.C. Gen. Stat. § 163-12 (2023) ("If the [United States] Senator was elected as the nominee of a political party, the Governor shall appoint from a list of three persons recommended by the State executive committee of the political party with which the vacating member was affiliated when elected if that party executive committee makes recommendations within 30 days of the occurrence of the vacancy.").

The Governor argues and asserts the power to appoint is the ability to "select his nominees from a virtually unlimited pool of qualified people." *Cooper Confirmation*, 371 N.C. at 808, 822 S.E.2d at 294. This language refers to the ability of the Governor to select a nominee of his choice, who must be confirmed by the Senate to his Cabinet. The Governor wields substantial power over his Cabinet. *Id.* The Supreme Court held "Cabinet members are some of the Governor's closest deputies, and are critical to the Governor's ability to take care that the laws be faithfully executed." *Id.* at 807, 822 S.E.2d at 294. "In short, the Governor has extensive supervisory power, allowing him to directly manage his cabinet members in virtually every aspect of their authority," and the Cabinet members "serve at the Governor's pleasure." *Id.* at 808, 822 S.E.2d at 295 (citation omitted).

In *Cooper*, the Supreme Court rejected the statutory framework in which the Governor had to choose an equal number of his appointees from two short lists prepared "by the State party chair[s] of the two political parties with the highest number of registered affiliates." *Cooper*, 370 N.C. at 396, 809 S.E.2d at 101. However, the Bipartisan State Board of Elections and Ethics Enforcement "performs primarily executive, rather than legislative or judicial functions." *Id.* at 415, 809 S.E.2d at 112.

The Governor asserts "Article IV, Section 19 specifically prohibits the legislature from imposing any limits on the Governor's appointment authority beyond those found in Article IV itself." This assertion is patently incorrect based upon the plain language of the Supreme Court in *Baker*. *Baker* expressly addresses vacancy appointments in Article IV, Section 19, holding "N.C. Const. art. IV, § 19 *does not govern exclusively* the appointment of district court judges." *Baker*, 330 N.C. at 341, 410 S.E.2d at 893 (emphasis supplied).

In *Baker*, the Supreme Court of North Carolina rationalized and held the phrase "in a manner prescribed by law" grants the General Assembly "some part to play" in the appointment of judges. *Id.* The Governor's argument is overruled.

VIII. Conclusion

The General Assembly did not violate the separation of powers clause by restructuring the Building Code Council and Utilities Commission in Senate Bill 382. The three-judge superior court panel correctly granted the Legislative Defendants' and the State Treasurer's motions for summary judgment and correctly denied the Governor's motion for summary judgment.

The General Assembly did not violate the separation of powers clause by requiring the Governor to appoint appellate judges "from a list of three qualified persons recommended by the political party executive committee of the political party with which the vacating judge was affiliated when elected." N.C. Sess. L. 2024-57, § 3C.1.(a); *Baker*, 330 N.C. at 341, 410 S.E.2d at 893. The three-judge superior court panel erred as a matter of law by granting the Governor's motion for summary judgment and denying the Legislative Defendants' motion for summary judgment.

The order of the three-judge superior court panel is affirmed in part, reversed in part, and remanded with instructions to grant the Legislative Defendants' motion for summary judgment and to deny the Governor's motion for summary judgment. *It is so ordered.*

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.

Judge ZACHARY concurs.

Judge COLLINS concurs in part and dissents in part with separate opinion.

COLLINS, Judge, concurring in part and dissenting in part.

I concur in the majority opinion addressing the Building Code Council as we are bound by *Stein Commissions* for purposes of resolving that aspect of this appeal. For the reasons stated herein, I respectfully dissent from the majority opinion addressing the Utilities Commission and appellate judicial vacancies.

I. Utilities Commission

A. Background

Before Senate Bill 382, the Governor was authorized to appoint three of the Commission's five members and designate the Commission's chair. N.C. Gen. Stat. § 62-10. The General Assembly was authorized to appoint the remaining two Commissioners. *Id.* Commissioners were "liable to impeachment for the causes and in the manners provided for judges . . . ." *Id.* § 62-10(i).

With Senate Bill 382, the General Assembly transferred one of the Governor's appointments to the State Treasurer. N.C. Sess. Laws 2024-57, § 3F.1.(a) (amending N.C. Gen. Stat. § 62-10(a)). The Governor's appointees and the Treasurer's appointee remain subject to confirmation by the General Assembly. N.C. Gen. Stat. § 62-10(a). The Treasurer is independently elected and not subject to appointment or removal by the Governor. N.C. Const. art. III, § 7(1); N.C. Gen. Stat. § 147-4. The Governor and the Treasurer have no authority to remove any appointee; Commissioners remain removable only by impeachment, *id.* § 62-10(i).

Senate Bill 382 also eliminates the Governor's authority to appoint the Commission's chair. Instead, the chair is now selected by a majority of the Commissioners. N.C. Sess. Laws 2024-57 § 3F.1.(a). The chair is "the chief executive and administrative officer of the Commission." N.C. Gen. Stat. § 62-13(a). The chair decides whether matters are heard by the full Commission or a panel of three Commissioners and dictates the composition of any such panels; rules on procedural motions and petitions; and may unilaterally initiate investigations, complaints, or any other proceedings. *Id.* §§ 62-13(b)-(d).

B. Analysis

The Utilities Commission is "an administrative board or agency" that was "created for the principal purpose of carrying out the administration and enforcement of" the Public Utilities Act. N.C. Gen. Stat. § 62-23. It investigates utilities, issues certificates of public convenience, and approves transfers of franchises. *Id.* §§ 62-34, 62-37, 62-110, 62-111. These are quintessential executive tasks. *See Stein v. Berger*, 301 N.C. App. 237, 242 (2025) ("*Stein Commissions*"). Because the Commission is an executive agency, the Governor must retain "enough control" over the Commission to ensure that it faithfully executes the law. *State ex rel. McCrory v. Berger*, 368 N.C. 633, 646 (2016); N.C. Const. art. III, § 5(4) ("The Governor shall take care that the laws be faithfully executed."). The degree of control that the Governor has over the Commission "depends on his ability to appoint the commissioners, to supervise their day-to-day activities, and to remove them from office." *McCrory*, 368 N.C. at 646.

Under Senate Bill 382, the Governor appoints two of five Commissioners, the General Assembly appoints two, the General Assembly gives the remaining appointment to the State Treasurer, and the chair is chosen by a majority of the Commissioners. And neither the Governor nor the Treasurer may remove their appointees from office. The majority opinion concludes that this structure is constitutional because the Governor and the State Treasurer together hold the majority appointment power. I disagree for three independent reasons.

First, the Treasurer's appointment is not wholly an exercise of executive power; it exists only because the General Assembly gave it to him, and the General Assembly may take it away. The General Assembly's asserted authority to reassign appointments among Council of State members at any time, including immediately after an election, for any reason, or no reason at all, gives the General Assembly the power to determine which executive official controls the swing vote on the Commission, including the swing vote on the selection of the chair. This creates the separation-of-powers danger that *McCrory* forbids: legislative dominance over the execution of the laws. *Id.* at 646-47.

Second, the Treasurer's appointment bears no relationship to the Treasurer's constitutional role. The Constitution requires that duties assigned to Council of State members be "sufficiently related" to a "major purpose" of the member's "core constitutional role." *Stein v. Berger*, 387 N.C. 575, 582 (2025) (Dietz, J., concurring); *see* N.C. Const. art. III, §§ 5(10), 11. The Treasurer's core constitutional role concerns the custody, accounting, and management of State funds. *See* N.C. Const. art. V, § 7 (requiring an "accurate account of the receipts and expenditures of State funds" to be "published annually"); *see also Cooper v. Berger*, 376 N.C. 22, 43 (2020) (describing Article V, § 7 as the "definition[] of the . . . State Treasurer found in the State constitution"). None of the Treasurer's duties relate to utilities regulation. Assigning the Treasurer a decisive appointment to the Utilities Commission violates the "major purpose" doctrine. It also undermines democratic accountability: voters elect the Treasurer to manage the State's finances, not to regulate public utilities.

Third, *McCrory* requires the Governor to control agencies housed in Cabinet departments. *McCrory*, 368 N.C. at 646. The Utilities Commission is housed within the Department of Commerce, a principal department under N.C. Gen. Stat. § 143B-9. *See* N.C. Gen. Stat. §§ 143B-6(9), -431(a)(2)(b), -433(1)(b). Under *McCrory*, such departments "unquestionably fall under the Governor's purview." *McCrory*, 368 N.C. at 646 n.5.

The majority treats *Stein Commissions* as dispositive. But that case addressed different agencies, different statutory structures, and different constitutional concerns. Most importantly, it did not address: legislative manipulation of appointment authority immediately after an election; the constitutional requirement that duties assigned to Council of State members relate to their core functions; or *McCrory*'s rule that agencies housed in principal departments must remain under gubernatorial control. Because *Stein Commissions* did not resolve these issues, it does not bind us here.

For these reasons, I would hold that Senate Bill 382 is unconstitutional as it relates to the Utilities Commission. I would therefore reverse the three-judge panel's order granting summary judgment to Legislative Defendants and remand to the superior court to enter summary judgment to the Governor on this issue.

II. Appellate Judicial Vacancies

A. Background

Article IV of the North Carolina Constitution establishes the "General Court of Justice," divided into the Appellate, Superior Court, and District Court Divisions. N.C. Const. art. IV, §§ 1-2. The Appellate Division consists of the Supreme Court and Court of Appeals; justices and judges of those courts are chosen in statewide elections. *Id.* §§ 5, 16. Article IV, Section 19 governs the power to fill most judicial offices created in Article IV: "Unless otherwise provided in this Article, all vacancies occurring in the offices provided for by this Article shall be filled by appointment of the Governor." *Id.* § 19.

Various sections in Article IV "otherwise provide" different procedures for filling vacancies with respect to district court judges, special and emergency superior court judges, clerks of superior court, and magistrates. Vacancies in the office of district court judge "shall be filled for the unexpired term in a manner prescribed by law." *Id.* § 10. "The General Assembly may provide by general law for the selection or appointment of special or emergency superior court judges . . . ." *Id.* § 9(1). Vacancies in the offices of clerk of superior court and magistrates are filled as specified in Section 9(3) and Section 10. *Id.* §§ 9(3), 10. No such "manner prescribed by law" language appears with respect to justices of the Supreme Court, judges of the Court of Appeals, or regular superior court judges.

Article IV also contains the constitutional qualifications for judicial office. The General Assembly "shall prescribe maximum age limits for service as a Justice or Judge" of the General Court of Justice. *Id.* § 8. And "[o]nly persons duly authorized to practice law in the courts of this State shall be eligible for election or appointment as a Justice or Judge" of the General Court of Justice. *Id.* § 22.

Consistent with Article IV, Section 19, North Carolina law has long provided that vacancies on the Supreme Court, Court of Appeals, and superior court "shall be filled by appointment of the Governor" without further statutory restriction on whom the Governor could appoint, beyond the constitutional requirements of age and licensure. *See* N.C. Gen. Stat. § 163-9 (prior to 2024 amendment).

In 2024, the General Assembly enacted Session Law 2024-57, Section 3C.1.(a) ("Judicial Vacancies Provision") which amended Section 163-9 to require the Governor to fill appellate court vacancies from a partisan list:

> The Governor shall appoint persons to fill vacancies occurring in the offices of Justice of the Supreme Court and judge of the Court of Appeals for causes other than expiration of term from a list of three qualified persons recommended by the political party executive committee of the political party with which the vacating judge was affiliated when elected. If a political party fails to make recommendations under this subsection within 30 days of the occurrence of the vacancy, or if a vacating judge was not affiliated with a political party at the time of the judge's election, the Governor shall appoint a qualified person to fill the vacancy. For purposes of this subsection, a qualified person is a person who is a resident of the State who is duly authorized to practice law in this State.

N.C. Sess. Laws 2024-57, § 3C.1.(a).

The issue before us is whether the Judicial Vacancies Provision impermissibly infringes on the Governor's appointment authority in Article IV, Section 19. A three-judge panel of superior court judges unanimously concluded that the Judicial Vacancies Provision is unconstitutional and enjoined its enforcement. I agree with the three-judge panel.

B. Governing principles

To determine whether legislative acts conform to the Constitution, we look to constitutional text, structure, history, and precedent, always with the aim of effectuating the intent of the people who ratified the provision at issue. *Martin v. State*, 330 N.C. 412, 415-16 (1991). "The best way to ascertain the meaning of a word or sentence in the Constitution is to read it contextually and to compare it with other words and sentences with which it stands connected." *Id.* at 416 (quoting *State v. Emery*, 224 N.C. 581, 583 (1944)).

Our State Constitution is a limitation on, rather than a grant of, legislative power. *Cooper v. Berger*, 371 N.C. 799, 810 (2018) ("*Cooper Confirmation*"). "Unless the Constitution expressly or by necessary implication restricts the actions of the legislative branch, the General Assembly is free to implement legislation as long as that legislation does not offend some specific constitutional provision." *Id.* at 811 (quoting *Baker v. Martin*, 330 N.C. 331, 338-39 (1991)). Nonetheless, when a legislative act "plain[ly] and clear[ly]" exceeds an express or necessarily implied constitutional limit, courts must declare it invalid. *McCrory*, 368 N.C. at 639.

With these principles in mind, I turn to the constitutional question presented.

C. Analysis

1. Substantial displacement of the appointment power

As an initial matter, I reject Legislative Defendants' characterization of the Judicial Vacancies Provision as a modest regulation of "process" or "qualifications" that leaves the Governor's appointment power intact. It is more accurately characterized as a substantial displacement of the appointment power.

Under the Judicial Vacancies Provision, when a justice of the Supreme Court or a judge of the Court of Appeals who was elected as an affiliate of a political party vacates office, the executive committee of that political party selects three "qualified persons" and transmits that list to the Governor. *See* N.C. Sess. Laws 2024-57, § 3C.1.(a). The Governor must appoint one of those three people; he may not appoint any other eligible attorney in the State unless the party fails to submit a list within 30 days or the departing justice or judge was unaffiliated. *See id.*

Where the Constitution vests appointment power in the Governor, that power inherently includes the ability to select "from a virtually unlimited pool of qualified people" such that "the ultimate appointee will be a person that *he alone* has chosen." *Cooper Confirmation*, 371 N.C. at 808, 801 (emphasis added).

Here, the Judicial Vacancies Provision gives to a political party executive committee what the Supreme Court describes as the core substance of the appointment power: the power to choose from the pool of qualified people and to ensure that the ultimate appointee will be a person the Governor alone has chosen. *Id.* Under the Judicial Vacancy Provision, the political party executive committee–not the Governor–chooses which three individuals will be eligible for appointment. The Governor may conclude that each of the three is unqualified; he nonetheless must appoint one of them, so long as they satisfy the minimal constitutional prerequisites of age and bar membership. His "choice" is reduced to selecting the least objectionable of three individuals pre-screened by partisan actors.

Labeling this partisan-screening requirement a "qualification" does not transform it into one. A "qualification" for office ordinarily refers to "a quality or skill that fits a person (as for an office)." *Qualification*, Merriam-Webster (2025), https://www.merriam-webster.com/dictionary/qualification (last visited December 20, 2025). Being chosen by a political party executive committee is not a quality or skill that has any relationship to an individual's fitness to hold judicial office. The partisan-screening requirement is also, by design, a condition that can be satisfied by no more than three people at any given time. And as Legislative Defendants conceded at oral argument, there is nothing to prevent the General Assembly from even further limiting its gatekeeping requirements. In their view, the Governor need only be given a "choice" of two candidates, chosen for reasons unrelated to fitness to hold judicial office, to satisfy constitutional requirements.

I therefore view the Judicial Vacancies Provision as a substantial displacement of the appointment power Article IV, Section 19 vests in the Governor, not a minor implementation of that power. Whether that displacement is constitutional turns on the meaning of Section 19.

2. Plain text and structure

Article IV, Section 19 provides, in pertinent part, "Unless otherwise provided in this Article, all vacancies occurring in the offices provided for by this Article shall be filled by appointment of the Governor." N.C. Const. art. IV, § 19. This provision provides the general rule that vacancies in "the offices provided for by this Article," referring to the judicial offices created in Article IV, "shall be filled by appointment of the Governor." *Id.* This clause identifies both the mechanism (appointment) and the officer (the Governor) responsible for filling vacancies.

The general rule is expressly subject to the prefatory clause, "Unless otherwise provided in this Article." *Id.* That clause specifies that exceptions to the general rule may be found in Article IV and nowhere else. Thus, the plain language of Section 19 requires vacancies in Article IV offices to be filled by gubernatorial appointment, and any departure from the default rule, either as to the manner in which a vacancy is filled or who fills it, must be "otherwise provided in" Article IV. *Id.*

The structure of Article IV confirms this reading. Where the framers intended to permit the General Assembly to design the method of filling particular judicial vacancies, it said so explicitly. Section 9 authorizes the General Assembly to "*provide by general law* for the selection or appointment of special or emergency Superior Court Judges not selected for a particular judicial district." N.C. Const. art. IV, § 9(1) (emphasis added). Section 10 likewise provides that "[v]acancies in the office of District Judge shall be filled for the unexpired term *in a manner prescribed by law*," and that "[v]acancies in the office of Magistrate shall be filled for the unexpired term in the manner provided for original appointment to the office, *unless otherwise provided by the General Assembly*." *Id.* § 10 (emphases added). By contrast, for vacancies in the appellate courts and regular superior courts, the Constitution neither authorizes the General Assembly to prescribe the "manner" of filling those vacancies nor otherwise empowers it to constrain the Governor's choice of appointee. We generally presume that differences in constitutional text are purposeful and must be given effect. *See Silver v. Halifax Cnty. Bd. of Comm'rs*, 371 N.C. 855, 863 (2018) (emphasizing significance of framers' choice of "shall" in one subsection and "may" in another).

Defendants contend that the phrase "[u]nless otherwise provided in this Article" functions only to acknowledge that Sections 9 and 10 allocate appointment of special or emergency Superior Court judges, district court judges, and magistrates to other actors. But this narrow reading ignores its broader, limiting language. Section 19 does harmonize Sections 9 and 10, in that the Governor's appointment authority yields where Article IV provides "otherwise." Yet Section 19 also specifies that any deviation from the default rule, either as to the manner in which a vacancy is filled or who fills it, must be rooted in Article IV itself.

This construction is reinforced by *Baker v. Martin*. There, the Supreme Court considered a challenge to former North Carolina General Statute Section 7A-142, which required the Governor to appoint to district court vacancies a person of the same political party as the departing judge. *Baker*, 330 N.C. at 333-34. The plaintiff argued that this partisan requirement impermissibly added a new disqualification for office beyond those listed in Article VI, Section 8. *Id.* at 339. Section 8 provides, "The following persons shall be disqualified for office:" followed by an enumerated list of disqualifications. N.C. Const. art. VI, § 8.

The Court rejected that challenge, noting that Article VI, Section 8 does not contain language limiting disqualifications to those listed in the Constitution. *Id.* The Court explained:

> Had the framers wanted to limit the disqualifications to those outlined in N.C. Const. art. VI, § 8 and other constitutional provisions, they could have done so easily by rewriting the first sentence in N.C. Const. art. VI, § 8 to read: "Unless otherwise provided for in this Constitution, only the following persons shall be disqualified for office[.]"

Id. The Court treated "[u]nless otherwise provided for in this Constitution" as language that, if included in Article VI, Section 8, would have limited disqualifications to those listed in the Constitution and would have prohibited the General Assembly from adding more by statute.

Article IV, Section 19 employs materially similar language. It states that vacancies "shall be filled by appointment of the Governor" "[u]nless otherwise provided in this Article." N.C. Const. art. IV, § 19. While Section 19 does not include the word "only" that *Baker* used in its hypothetical re-drafting, the absence of that word is not dispositive. The Supreme Court in *Baker* held that the operative language in Article VI, Section 6, "Every qualified voter in North Carolina who is 21 years of age, except as in this Constitution disqualified, shall be eligible for election by the people to office," does limit the General Assembly's ability to add further disqualifications for elected office. *Id.* at 339. The limiting language is the clause directing that exceptions arise "in this Constitution," not from the word "only." Likewise, Article IV, Section 19 directs that exceptions to the gubernatorial appointment rule arise when "otherwise provided in this Article." Under *Baker*'s reasoning, that phrase necessarily signals that any constraint on the Governor's exercise of the appointment power must be found in Article IV itself, not in ordinary legislation.

Defendants argue that *Baker* supports their position because the Court ultimately upheld the partisan requirement in Section 7A-142. But the Court did so only after determining that Article IV, Section 19 "does not govern exclusively the appointment of district court judges." *Id.* at 341. Because Article IV, Section 10 expressly provides that "[v]acancies in the office of District Judge . . . shall be filled for the unexpired term *in a manner prescribed by law*," the General Assembly possessed constitutional authority to prescribe, by statute, how those vacancies would be filled. *Id.* at 340-41 (emphasis added). In other words, *Baker* reconciled Sections 19 and 10 of Article IV by recognizing that Section 10 "otherwise provided" a role for the General Assembly.

By contrast, no provision of Article IV "otherwise provide[s]" a role for the General Assembly in determining how vacancies on the Supreme Court and Court of Appeals are filled. For those offices, Article IV, Section 19 stands alone. Under *Baker*'s logic, the General Assembly may not impose additional constraints by statute.

Article IV, Section 19 is not silent on whether the General Assembly may limit the Governor's choice of appointee to the appellate courts. It speaks directly by confining any limits on that choice to those "otherwise provided in" Article IV. The Judicial Vacancies Provision imposes a significant, new limitation found nowhere in Article IV. Accordingly, it exceeds the General Assembly's constitutional authority.

3. Historical practice confirms the textual reading

Historical practice, while not controlling, may illuminate the meaning of constitutional provisions. *See Baker*, 330 N.C. at 416. The history of judicial vacancy appointments in North Carolina is consistent with the interpretation of Article IV, Section 19 outlined above and inconsistent with Legislative Defendants' position.

The people adopted a Constitution in 1868 that provided for the popular election of Supreme Court justices and vested the Governor with the power to fill judicial vacancies: "All vacancies occurring in the offices provided for by this article of this Constitution shall be filled by the appointment of the Governor, unless otherwise provided for, and the appointees shall hold their places until the next regular election." N.C. Const. art. IV, § 31 (1868). When Article IV was substantially revised, the people preserved this structure, again providing that vacancies in Article IV offices "shall be filled by appointment of the Governor" "[u]nless otherwise provided in this Article." N.C. Const. art. IV § 19 (1971).

When the General Assembly sought to impose the additional qualification that judicial officers be licensed to practice law in North Carolina, it did so not by statute but by proposing a constitutional amendment. *See* 1979 N.C. Sess. Laws, ch. 638, § 1 (H 1182) (proposing to amend Article IV to add Section 22). The voters accepted the proposed amendment, and Section 22 was added to Article IV. The General Assembly's choice reflects its understanding that for offices governed by Section 19, the Governor's appointment power is limited only by qualifications "otherwise provided in this Article," and that any new limit had to be added to Article IV itself.

Similarly, and more recently, when the General Assembly sought to fundamentally alter the process for filling judicial vacancies, it did so by proposing a constitutional amendment to repeal Article IV, Section 19 and replace it with a different system. *See* N.C. Sess. Laws 2018-132, §§ 4-6. The General Assembly presented the amendment to the voters with the explanation that repealing Section 19 was necessary because "the Governor has sole appointment power" to fill judicial vacancies that occur between judicial elections:

> Constitutional amendment to change the process for filling judicial vacancies that occur between judicial elections *from a process in which the Governor has sole appointment power* to a process in which the people of the State nominate individuals to fill vacancies by way of a commission comprised of appointees made by the judicial, executive, and legislative branches charged with making recommendations to the legislature as to which nominees are deemed qualified; then the legislature will recommend at least two nominees to the Governor via legislative action not subject to gubernatorial veto; and the Governor will appoint judges from among these nominees.

Id. § 6 (emphasis added).

The voters rejected that proposed amendment in the 2018 general election. Legislative Defendants now argue that, notwithstanding their explicit acknowledgement to the voters, Article IV, Section 19 allows the General Assembly, by statute alone, to direct how appellate judicial vacancies must be filled. Legislative Defendants' present stance is incongruent with the General Assembly's prior acknowledgement, and the text and structure of Article IV do not support it.

The General Assembly's own statutory enactments also align with its previous acknowledgment to the people and my own reading of Article IV, Section 19. When the General Assembly first enacted Section 163-9 in 1967, and when it later amended that statute to account for the creation of the Court of Appeals and various timing changes to elections, the General Assembly did not attempt to restrict the Governor's choice of appointee for appellate vacancies. It simply mirrored the Constitution's requirement that such vacancies "shall be filled by appointment of the Governor." N.C. Const. art. IV § 19. It also did not add a partisan list requirement for appellate courts in 1981 when it imposed such requirements for certain other offices, including district court judges, whose vacancies Article IV, Section 10 expressly provides for "in a manner prescribed by law." *See* 1981 N.C. Sess. Laws 763.

This longstanding practice of leaving the Governor free to choose from all constitutionally qualified attorneys when filling appellate judicial vacancies, coupled with the resort to constitutional amendment when the General Assembly sought to add new constraints, confirms that Article IV, Section 19 is understood as a limit on legislative authority.

D. Conclusion

For these reasons, I conclude the Judicial Vacancies Provision impermissibly infringes on the Governor's appointment authority in Article IV, Section 19. I would therefore affirm the three-judge panel's order granting summary judgment to the Governor on the Judicial Vacancies Provision issue.

US RIGHT TO KNOW, Plaintiff
v.
THE UNIVERSITY OF NORTH CAROLINA AT CHAPEL HILL, Defendant

No. COA25-420

Filed 7 January 2026

Public Records—Public Records Act exception—"research data, records, or information of a proprietary nature"—statutory interpretation

In an action filed against a state university (defendant) by an investigative research group (plaintiff) examining the origins of the global COVID-19 pandemic, defendant did not violate the Public Records Act when it withheld certain documents in response to plaintiff's request for records relating to one of the university's professors and, specifically, his work with the Wuhan Institute of Virology—the alleged origin site of the virus resulting in the pandemic. In ruling that these documents fell under the exception to the Public Records Act expressed in N.C.G.S. § 116-43.17, which exempts "[r]esearch data, records, or information of a proprietary nature" from public disclosure, the trial court properly concluded that: (1) under the last antecedent canon of statutory interpretation, the phrase "of a proprietary nature" only modified the word "information" and did not modify either "data" or "records;" and (2) the phrase "of a proprietary nature" referred broadly to information in which the owner had a protectable interest (not just to trade secrets, as plaintiff contended).

Appeal by Plaintiff from judgment entered 31 October 2024 by Judge Alyson Adams Grine in Orange County Superior Court. Heard in the Court of Appeals 14 October 2025.

Walker Kiger, PLLC, by David "Steven" Walker and Korey D. Kiger, for Plaintiff-Appellant.

Attorney General Jeff Jackson, by Deputy Solicitor General James W. Doggett and Special Deputy Attorney General Elizabeth Branch Jenkins, and University of North Carolina at Chapel Hill Office of University Counsel, by Marla S. Bowman, for Defendant-Appellee.

GRIFFIN, Judge.

Plaintiff appeals from the trial court's judgment entered on 31 October 2024 granting summary judgment in part to Plaintiff and in part to Defendant. Plaintiff contends the trial court erred in its interpretation of N.C. Gen. Stat. § 116-43.17. We disagree and affirm the trial court.

I. Factual and Procedural Background

Plaintiff describes itself as "an investigative research group that promotes transparency for public health[, which] has been investigating the origins of COVID-19 and the virus that causes it." Plaintiff's investigation "led [it] to request public records from [Defendant] regarding the work of Dr. Ralph Baric and his associations with the Wuhan Institute of Virology."[1] Plaintiff submitted eight public records requests to Defendant beginning in July 2020 and ending in October 2021, requesting records spanning from January 2009 to October 2021 from Dr. Baric and other personnel employed by Defendant. Defendant produced over 130,000 pages of "responsive documents" but withheld 5,205 documents pursuant to N.C. Gen. Stat. §§ 126-24, 132-1, 116-43.17, and the Federal Education Rights and Privacy Act.

On 18 April 2022, Plaintiff initiated this action, claiming Defendant violated the Public Records Act, N.C. Gen. Stat. § 132-1 (2023), believing

1. Dr. Ralph Baric is the William R. Kenan, Jr. Distinguished Professor in the Department of Epidemiology and Professor in the Department of Microbiology and Immunology.

Defendant "may be interpreting [N.C. Gen. Stat. § 116-43.17 (2023)] in an overly broad manner." On 13 March 2023, Defendant filed its answer, and, on 21 July 2023, Defendant filed its motion for judgment on the pleadings. On 21 November 2023, the trial court ordered the appointment of a referee before it would rule on Defendant's motion. On 11 December 2023, the trial court appointed a referee to determine whether the contested records were exempt from the Public Records Act, to whom the trial court ordered "[t]he parties shall submit . . . concise briefs detailing each party's interpretation of [section] 116-43.17 and any other related law." The trial court also ordered Defendant to provide specified documents and a document log to the referee, which were protected by a protective order.

On 30 July 2024, the referee issued his report. The referee explained the briefing he received from the parties, which he used to determine which documents would need to be produced under each of the competing definitions:

> 9. [Plaintiff], arguing for the narrowest interpretation of the statute, claims (1) "of a proprietary nature" applies to data, records, and information; and (2) "research" modifies data, records, and information.
>
> 10. [Defendant] likewise acknowledges that the term "research" should modify data, records, and information. However, it is [Defendant]'s position that "of proprietary nature" only applies to research information, with research data and research records being protected regardless of whether they are of a proprietary nature.
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> . . . .
>
> 13. [Plaintiff's] view is that "proprietary" in this context is equivalent to a trade secret. . . . .
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> . . . .
>
> 15. The definitions of "proprietary" offered by [Defendant] are broader, and include "ownership interest[s], whether characterized as property, protectable, or an exclusive right." [Defendant] specifically argues (1) copyrights which have not been registered fall within this definition of "proprietary," and (2) copyright protection attaches to the records at issue, making them protected from disclosure.

The referee then determined how many documents would have to be disclosed based on his review of the documents under each definition and did not adopt either party's definition.

On 31 October 2024, the trial court adopted the referee's report and granted summary judgment in part to Defendant and in part to Plaintiff, ruling, in relevant part:

> 10. The [c]ourt reads [section] 116-43.17 such that "Research" modifies each of "data," "records," and "information."
>
> 11. The [c]ourt reads [section] 116-43.17 such that "of a proprietary nature" only modifies "information," and does not modify either "data" or "records." This reading is consistent with *Lockhart v. United States*, 577 U.S. 347, 351 (2016), in which the Supreme Court applied the "last antecedent" rule of statutory interpretation, pursuant to which "limiting clause or phrase . . . should ordinarily be read as modifying only the noun or phrase that it immediately follows." The statute at issue in *Lockhart* is constructed similarly to [section] 116-43.17, and the Court's reasoning is therefore persuasive.
>
> 12. Accordingly, the [c]ourt concludes that pursuant to [section] 116-43.17, the following are not public records when they are produced or collected by or for state institutions of higher learning in the conduct of commercial, scientific, or technical research and have not been patented, published, or copyrighted:
>
> a. Research data
>
> b. Research records
>
> c. Research information of proprietary nature.
>
> 13. The phrase "of a proprietary nature" is not defined in [section] 116-43.17. In the absence of delineation, the [c]ourt interprets the phrase broadly to include information in which the owner has protectable interest. *See Proprietary Information*, Black's Law Dictionary (11th ed. 2019). This definition includes records to which copyright ownership attaches.

Plaintiff timely appeals.

II. Analysis

In this case, we are presented with a question of statutory interpretation regarding an exception from the Public Records Act, section 132-1, contained in section 116-43.17. Plaintiff presents two arguments on appeal regarding section 116-43.17. First, Plaintiff argues "the trial court erred in concluding that the phrase 'of a proprietary nature' in [section] 116-43.17 only modified the word 'information' and does not modify either 'data' or 'records.' " Second, Plaintiff argues "the trial court erred in interpreting the phrase 'proprietary nature' in [section] 116-43.17 broadly to 'to include information in which the owner has a protectable interest.' "[2] We disagree.

Our General Statutes provide for the public to access public records in section 132-1.

> (a) "Public record" or "public records" shall mean all documents, papers, letters, maps, books, photographs, films, sound recordings, magnetic or other tapes, electronic data-processing records, artifacts, or other documentary material, regardless of physical form or characteristics, made or received pursuant to law or ordinance in connection with the transaction of public business by any agency of North Carolina government or its subdivisions. Agency of North Carolina government or its subdivisions shall mean and include every public office, public officer or official (State or local, elected or appointed), institution,

2. Defendant presents us with a potential third issue of whether "the [trial] court ordered moot the issue of whether the last-antecedent canon applies to section 116-43.17." In support of this position, Defendant argues the trial court ordered it "to produce *all* documents that the referee had designated as not 'proprietary' under [Defendant]'s proposed 'definition' of proprietary. In line with the [trial] court's order and the referee's report, [Defendant] has since produced all such documents to [Plaintiff], no matter whether the documents qualify as non-proprietary data or records that could have been withheld if the canon applied." However, even though the trial court adopted the referee's report, the trial court then interpreted the statute after the referee's report, which expressly did not offer the referee's "view" on the statute. This legal conclusion by the trial court has been appealed.

Even assuming arguendo the "last antecedent canon issue" is moot, "[an appellate court] may, if it chooses, consider a question that involves a matter of public interest, is of general importance, and deserves prompt resolution." *130 of Chatham, LLC v. Rutherford Elec. Membership Corp.*, 241 N.C. App. 1, 8, 771 S.E.2d 920, 926 (2015) (alterations in original) (quoting *N.C. State Bar v. Randolph*, 325 N.C. 699, 701, 386 S.E.2d 185, 186 (1989)). Thus, we review the trial court's legal determination to use the last antecedent canon to interpret section 116-43.17.

> board, commission, bureau, council, department, authority or other unit of government of the State or of any county, unit, special district or other political subdivision of government.
>
> (b) The public records and public information compiled by the agencies of North Carolina government or its subdivisions are the property of the people. Therefore, it is the policy of this State that the people may obtain copies of their public records and public information free or at minimal cost unless otherwise specifically provided by law. As used herein, "minimal cost" shall mean the actual cost of reproducing the public record or public information.

N.C. Gen. Stat. § 132-1(a), (b).

"The [Public Records] Act is intended to be liberally construed to ensure that governmental records be open and made available to the public, subject only to a few limited exceptions." *DTH Media Corp. v. Folt*, 374 N.C. 292, 300, 841 S.E.2d 251, 257–58 (2020). "The Public Records Act thus allows access to all public records in an agency's possession unless either the agency or the record is specifically exempted from the statute's mandate." *Id.* at 300–01, 841 S.E.2d at 258 (citation modified). "Exceptions and exemptions to the Public Records Act must be construed narrowly." *Id.* (quoting *Carter-Hubbard Publ'g Co., Inc. v. WRMC Hosp. Operating Corp.*, 178 N.C. App. 621, 624, 633 S.E.2d 682, 684 (2006).

The exception at issue in this case is contained in section 116-43.17.

> Research data, records, or information of a proprietary nature, produced or collected by or for state institutions of higher learning in the conduct of commercial, scientific, or technical research where the data, records, or information has not been patented, published, or copyrighted are not public records as defined by G.S. 132-1.

N.C. Gen. Stat. § 116-43.17.

Our Supreme Court has clearly laid out how our Courts are to engage in statutory interpretation:

> The goal of statutory construction is to carry out the intent of the legislature. When construing a statute, we first examine the plain words of the statute because the text of the statute is the best indicia of legislative intent. If

> the plain language of the statute is unambiguous, we apply the statute as written. If the plain language of the statute is ambiguous, however, we then look to other methods of statutory construction such as the broader statutory context, the structure of the statute, and certain canons of statutory construction to ascertain the legislature's intent.

Jackson v. Home Depot U.S.A., *Inc.*, 388 N.C. 109, 114–15, 919 S.E.2d 199, 204 (2025) (citation modified).

We review the appealed issues de novo. *James H.Q. Davis Tr. v. JHD Props.*, *LLC*, 387 N.C. 19, 23, 910 S.E.2d 652, 657 (2025); *Philip Morris USA*, *Inc. v. N.C. Dep't of Revenue*, 386 N.C. 748, 751, 909 S.E.2d 197, 201 (2024).

A. Modification

Plaintiff first argues "the trial court erred in concluding that the phrase 'of a proprietary nature' in [section] 116-43.17 only modified the word 'information' and does not modify either 'data' or 'records.' " We turn to established methods of statutory construction to clarify any statutory ambiguity within the text. *See Jackson*, 388 N.C. at 114–15, 919 S.E.2d at 204.

In *Philip Morris*, our Supreme Court applied the "doctrine of the last antecedent," stating, "relative and qualifying words, phrases, and clauses ordinarily are to be applied to the word or phrase immediately preceding rather than extending to or including others more remote." 386 N.C. at 757, 909 S.E.2d at 204 (citation modified); *see also Wilkie v. City of Boiling Spring Lakes*, 370 N.C. 540, 548–49, 809 S.E.2d 853, 859 (2018) (applying the doctrine of the last antecedent); *HCA Crossroads Residential Ctrs.*, *Inc. v. N.C. Dep't of Hum. Res.*, *Div. of Facility Servs.*, *Certificate of Need Section*, 327 N.C. 573, 578, 398 S.E.2d 466, 469 (1990) (applying the doctrine of the last antecedent). Of course, "[c]anons of construction are interpretive guides, not metaphysical absolutes. They should not be applied to reach outcomes plainly at odds with legislative intent." *N.C. Dep't of Env't Quality*, *Div. of Water Res. v. N.C. Farm Bureau Fed'n*, *Inc.*, 388 N.C. 366, 921 S.E.2d 121, 128 (2025) (quoting *Town of Midland v. Harrell*, 385 N.C. 365, 376, 892 S.E.2d 845, 853 (2023)).

Our Supreme Court declined to use the canon of last antecedent in *N.C. Department of Environmental Quality*, *Division of Water Resources*, when evaluating a similar construction as the statutory construction at issue here. *See N.C. Dep't of Env't Quality*, *Div. of Water*

Res., 388 N.C. at 374, 921 S.E.2d at 128; *compare* N.C. Gen. Stat. § 150B-2 (2023) ("Any agency regulation, standard, or statement of general applicability. . . ."), *with* N.C. Gen. Stat. § 116-43.17 ("Research data, records, or information of a proprietary nature. . . ."). There, our Supreme Court held "of general applicability" to modify "regulation, standard, or statement." *N.C. Dep't of Env't Quality, Div. of Water Res.*, 388 N.C. at 374, 921 S.E.2d at 128. However, our Supreme Court did not completely reject the canon of last antecedent; rather, it held applying the canon of last antecedent specifically to section "150B-2(8a) would lead to extreme, if not absurd, results . . . . that the legislature could not have intended such an outcome." *Id.*

Here, the trial court read section "116-43.17 such that 'of a proprietary nature' only modifies 'information,' and does not modify either 'data' or 'records,' " citing the Supreme Court of the United States decision *Lockhart v. United States*, 577 U.S. 347 (2016).[3] In *Lockhart*, the Supreme Court evaluated a similarly constructed statute as the portion of section 116-43.17 at issue, 18 U.S.C. § 2252(b)(2), which stated "a prior conviction . . . under the laws of any State relating to aggravated sexual abuse, sexual abuse, or abusive sexual conduct involving a minor or ward." 577 U.S. at 349 (quoting 18 U.S.C. § 2252(b)(2) (2015)). Applying the last antecedent canon, the Supreme Court held "the phrase 'involving a minor or ward' modifies only the phrase that it immediately follows: 'abusive sexual conduct.' As a corollary, it also suggests that the phrases 'aggravated sexual abuse' and 'sexual abuse' are not so constrained." *Id.* at 352. Later, in *Wilkie*, our Supreme Court cited *Lockhart* as support in its application of the last antecedent canon to N.C. Gen. Stat. § 40A-51(a) (2017). 370 N.C. at 549, 809 S.E.2d at 859.

Plaintiff argues this Court should instead apply the series-qualifier canon found in *Facebook, Inc. v. Duguid*, 592 U.S. 395 (2021). The Supreme Court defined this canon as, "[u]nder conventional rules of grammar, '[w]hen there is a straightforward, parallel construction that involves all nouns or verbs in a series,' a modifier at the end of the list 'normally applies to the entire series.' " *Facebook*, 592 U.S. at 402–03 (quoting A. Scalia & B. Garner, Reading Law: The Interpretation of Legal Texts 147 (2012) (Scalia & Garner)). There, the Supreme Court decided

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3. "[I]t must be remembered that in construing and applying our laws and the Constitution of North Carolina, this Court is not bound by the decisions of federal courts, including the Supreme Court of the United States, although in our discretion we may conclude that the reasoning of such decisions is persuasive." *State ex rel. Martin v. Preston*, 325 N.C. 438, 449–50, 385 S.E.2d 473, 479 (1989).

whether "using a random or sequential number generator" modified "store" and "produce" or just "produce" in the statutory text "to store or produce telephone numbers to be called, using a random or sequential number generator." *Id.* at 402 (quoting 47 U.S.C. § 227(a)(1)).

The Supreme Court then applied the series-qualifier canon to the clause at issue in *Facebook* because "the modifier at issue immediately follow[ed] a concise, integrated clause," *id.* at 403 (citing *Cyan, Inc. v. Beaver Cnty. Emp. Ret. Fund*, 583 U.S. 416, 440 (2018)), and the interpretation "heed[ed] the commands of its punctuation" with the comma in the statute indicating "Congress intended the phrase 'using a random or sequential number generator' to apply equally to both preceding elements," *id.* at 403–04 (quoting *U.S. Nat. Bank of Ore. v. Indep. Ins. Agents of Am., Inc.*, 508 U.S. 439, 454 (1993)). The Supreme Court then addressed the series-qualifier canon's interplay with the canon of the last antecedent, saying "[t]he rule of the last antecedent is context dependent. This Court has declined to apply the rule where, like here, the modifying clause appears after an integrated list." *Id.* at 404 (citing *Jama v. Immigr. and Customs Enf't*, 543 U.S. 335, 344, n. 4 (2005)).[4]

We decline to apply the series-qualifier canon here because of section 116-43.17's text's context and intent. Rather, because the application of the last antecedent canon would not lead to absurd results as in *N.C. Department of Environmental Quality, Division of Water Resources*, we apply the last antecedent canon to the case at hand just as both the Supreme Courts of the United States and North Carolina did in *Philip Morris*, *Wilkie*, *HCA Crossroads Residential Centers*, and *Lockhart*.

First, the context of the plain text does not indicate the phrase "of a proprietary nature" modifies any other term apart from "information." Here, like in *Lockhart*, the phrase "or information of a proprietary nature" is grammatically separated by punctuation—commas—indicating that the prepositional phrase "of a proprietary nature" solely modifies the noun preceding it, "information." *See Lockhart*, 577 U.S. at 352 (applying the last antecedent canon to hold "the phrase 'involving a

4. Footnote 4 in *Jama* partially finds support in *United States v. Bass*, 404 U.S. 336 (1971). In *Bass*, the Supreme Court held the phrase "in commerce or affecting commerce" modified "receives, possesses, or transports" in the statutory text "receives, possesses, or transports in commerce or affecting commerce." *Id.* at 350; 18 U.S.C. § 1202(a)(1). However, the Supreme Court's basis for this interpretation was the rule of lenity, *id.* at 347, and "the federal-state balance," *id.* at 349; neither of which are at issue nor applicable here.

minor or ward' modifies only the phrase that it immediately follows: 'abusive sexual conduct' " in 18 U.S.C. § 2252(b)(2)).

Further, unlike in *Facebook*, the phrase "of a proprietary nature" is not set apart by a comma *after* an integrated clause or "*after* an integrated list." *See Facebook*, 592 U.S. at 396 (clarifying "the [Supreme] Court has declined to apply [the last antecedent canon] in the specific context where . . . the modifying clause appears after an integrated list"). Rather, "of a proprietary nature" is a part of the integrated list, which consists of (1) research data, (2) records, or (3) information of a proprietary nature. Thus, "the context [of section 116-43.17] does not clearly suggest that this reference ['of a proprietary nature'] is intended to apply to anything other than the immediately preceding expression," "information." *Wilkie*, 370 N.C. at 549, 809 S.E.2d at 859.

Second, the legislature's intent, as derived from the text, supports the application of the last antecedent canon. While the Public Records Act "is intended to be liberally construed" and "exemptions must be construed narrowly," *DTH Media Corp.*, 374 N.C. at 300–01, 841 S.E.2d at 257–58 (citation modified), "the text of the statute is the best indicia of legislative intent," *Jackson*, 388 N.C. at 114–15, 919 S.E.2d at 204. Moreover, "[w]hen multiple statutes address a single matter or subject, they must be construed together, *in pari materia*, to determine the legislature's intent." *DTH Media Corp.*, 374 N.C. at 300, 841 S.E.2d at 257 (quoting *Carter-Hubbard Publ'g Co., Inc.*, 178 N.C. App. at 624, 633 S.E.2d at 684).

As discussed, in section 116-43.17, the General Assembly placed "of a proprietary nature" within a clause with "information" separated by punctation, which by context indicated the phrase modified only "information." However, in other exceptions and exemptions from the Public Records Act, the General Assembly used the term "proprietary information" and clearly placed the term proprietary in positions at the beginning of the statutory text, indicating proprietary modified multiple terms or clauses. *See, e.g.*, N.C. Gen. Stat. § 132-1.2(9) (2025) (stating a public agency is not required to disclose anything that "[r]eveals proprietary design work or work product included in a proposal that is submitted to the Department of Transportation for consideration"); N.C. Gen. Stat. § 132-1.1(g) (2025) ("Proprietary computer code written by and for use by an agency of North Carolina government or its subdivisions is not a public record as defined in G.S. 132-1."); N.C. Gen. Stat. § 143B-1412 (2025) ("All proprietary information submitted to the 911 Board or the State Auditor is confidential. Proprietary information submitted pursuant to this Part is not subject to disclosure under Chapter 132 of the

General Statutes.”). Thus, the General Assembly exempted proprietary information in other contexts from the Public Records Act and used different sentence structures than the one at issue when conveying the term “proprietary” modified more than one term, supporting the General Assembly’s intent for the phrase “of a proprietary nature” to only modify “information” here.

Therefore, the phrase “of a proprietary nature” in section 116-43.17 solely modifies “information.”

B. Definition

Second, Plaintiff argues “the trial court erred in interpreting the phrase ‘proprietary nature’ in [section] 116-43.17 broadly ‘to include information in which the owner has a protectable interest.’ ” Specifically, Plaintiff argues “[t]reating the word ‘proprietary’ to be defined as a trade secret is an appropriate and straightforward reading that would advance the dual purposes of the legislature to have access to records as broad as possible while reading exclusions as narrow as possible.”

As addressed, the Public Records Act “is intended to be liberally construed” and “exemptions must be construed narrowly,” *DTH Media Corp.*, 374 N.C. at 300–01, 841 S.E.2d at 257–58 (citation modified), but “the text of the statute is the best indicia of legislative intent,” *Jackson*, 388 N.C. at 114–15, 919 S.E.2d at 204. “In the construction of any statute, . . . words must be given their common and ordinary meaning, nothing else appearing.” *Appeal of Clayton-Marcus Co., Inc.*, 286 N.C. 215, 219, 210 S.E.2d 199, 202–03 (1974) (citation omitted).

Here, in the absence of any statutory definition for “of a proprietary nature,” the trial court defined the phrase in section 116-43.17 to be “information in which the owner has a protectable interest,” citing *Proprietary Information*, Black’s Law Dictionary (11th ed. 2019).

Having decided “of a proprietary nature” modifies “information,” we look to the “common and ordinary meaning” of the proprietary information. Black’s Law Dictionary defines “proprietary information” as “[i]nformation in which the owner has a protectable interest.” *Proprietary Information*, Black’s Law Dictionary (12th ed. 2024). The American Heritage College Dictionary defines proprietary, in relevant part, as “[e]xclusively owned; private,” “[b]efitting an owner,” and “[o]wned by a private individual or corporation under a trademark or patent.” *Proprietary*, The American Heritage College Dictionary (3rd. ed. 1997). Further, The American Heritage College Dictionary defines, in relevant part, “information” as “[k]knowledge derived from study, experience, or instruction" and "a collection of facts or data." *Information*, The American Heritage College Dictionary (3rd. ed. 1997). Although not on appeal, the trial court also found research to modify information, thus the excluded information would be "[r]esearch information of proprietary nature," but this would not change the definition of "proprietary information." Rather, it confines the "information in which the owner has protectable interest" to the field of "scholarly or scientific investigation or inquiry," *Research*, The American Heritage College Dictionary (3rd. ed. 1997), or the "[s]erious study of a subject with the purpose of acquiring more knowledge, discovering new facts, or testing new ideas," *Research*, Black's Law Dictionary (12th ed. 2024). Therefore, the trial court was correct in finding "proprietary information" to be "information in which the owner has protectable interest" as it relates to research.

Plaintiff would have us define proprietary information as a trade secret, based in part on Black's Law Dictionary's citing "trade secret" as a related term for "proprietary information." *See Proprietary Information*, Black's Law Dictionary (12th ed. 2024) ("Information in which the owner has a protectable interest. See *TRADE SECRET*." (emphasis added)). However, our General Statutes define "trade secret" as,

> (3) "Trade secret" means business or technical information, including but not limited to a formula, pattern, program, device, compilation of information, method, technique, or process that:
>
> > a. Derives independent actual or potential commercial value from not being generally known or readily ascertainable through independent development or reverse engineering by persons who can obtain economic value from its disclosure or use; and
> >
> > b. Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

N.C. Gen. Stat. § 66-152 (2023). While "proprietary information" includes trade secrets, "proprietary information" extends beyond the definition of trade secrets. Thus, because the General Assembly chose to use "information of a proprietary nature" and not "trade secret," we decline to, and in fact cannot, swap the definition of "trade secret" for "proprietary information." *See State v. Piland*, 263 N.C. App. 323, 337, 822 S.E.2d 876, 887 (2018) ("[T]his Court cannot delete words or insert words not used in a statute." (quoting *State ex rel. Utils. Comm'n v. N.C. Sustainable Energy Ass'n*, 254 N.C. App. 761, 764, 803 S.E.2d 430, 433 (2017)).

Therefore, the trial court did not err in defining "proprietary information" pertaining to research to "include information in which the owner has protectable interest."

III. Conclusion

We hold there was no error in the trial court's 31 October 2024 judgment and affirm the trial court's interpretation of section 116-43.17.

AFFIRMED.

Chief Judge DILLON and Judge FLOOD concur.

CASES REPORTED WITHOUT PUBLISHED OPINIONS

(FILED 7 JANUARY 2026)

BLAYLOCK'S GLEN HOMEOWNERS ASS'N, INC. v. JONES No. 25-691	Wake (22CVS007629-910)	Affirmed
BROWN v. TAKE 5 LLC No. 25-497	Forsyth (24CVD005121-330)	Affirmed
BUTLER v. MILLENNIUM ADVISORS, LLC No. 25-166	Mecklenburg (23CVS001064-590)	Affirmed
IN RE C.D.W. No. 24-1088	Stanly (23JT000100-830)	Affirmed
IN RE M.B. No. 25-315	Iredell (22JT000276-480)	Affirmed
LEVINSKY v. LEVINSKY No. 25-245	Mecklenburg (22CVD019455-590)	Affirmed
MAR. ADVISORS, LLC v. HC COMPOSITES, LLC No. 25-40	Edgecombe (22CVS000007-320)	Dismissed
MOORE v. RICHMEN ENTERS., LLC No. 24-509	New Hanover (20CVS002997-640)	Affirmed
PEACE v. WILLIS No. 25-361	Cleveland (23CVD001171-220)	Affirmed
SANDERS P'SHIP, LLC v. CITY OF CHARLOTTE No. 24-604	Mecklenburg (23CVS015944-590)	Affirmed
SARGENT v. N.C. BD. OF NURSING No. 25-356	Wake (24CV004455-910)	Dismissed
STATE v. HAYES No. 25-380	Bertie (20CR050019-070) (20CR050020-070)	No Error.
STATE v. HOFFMAN No. 25-313	Ashe (23CR444237-040)	No Error

STATE v. INGRAM No. 23-748-2	Caswell (19CR050409-160) (19CR050454-160) (21CR000033-160)	No Error
STATE v. JENKINS No. 25-131	Wake (22CR200339-910)	No Error
STATE v. MILLER No. 25-95	Mecklenburg (19CR222119-590) (19CR222120-590) (19CR222123-590) (19CR222124-590) (19CR222118-590)	No Error
STATE v. RICHARDS No. 24-1037	Buncombe (21CR087888-100)	No Error
STATE v. STOCKTON No. 25-214	Cherokee (23CR440320-190) (23CR440425-190)	No Error
STATE v. WILLIAMS No. 24-838	Washington (19CR050294-930)	No Error
WHITAKER v. HALL No. 25-486	Pitt (23CVD002944-730)	Affirmed in Part; Vacated in Part and Remanded.