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CLIENT SECURITY FUND; BOARD OF LAW EXAMINERS

ADVANCE SHEETS

OF

CASES

ARGUED AND DETERMINED IN THE

SUPREME COURT

OF

NORTH CAROLINA

MARCH 5, 2026

MAILING ADDRESS: The Judicial Department
P. O. Box 2170, Raleigh, N. C. 27602-2170

THE SUPREME COURT

OF

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SUPREME COURT OF NORTH CAROLINA

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FILED 12 DECEMBER 2025

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ANIMALS

Cruelty to animals—felony offense—knowledge element—circumstantial evidence sufficient—In an appeal from defendant's conviction of felony cruelty to animals arising from defendant driving his truck into a baby stroller containing a pedestrian's cat, the Court of Appeals misstated the knowledge element of the offense—applying a "knew or should have known" standard, while the relevant statute required actual knowledge. Notwithstanding that error, the lower appellate court reached the correct result because the evidence presented, taken in the light most favorable to the State, was sufficient for the jury to reasonably infer that defendant actually knew the cat was in the stroller when he struck it with his truck: the pedestrian was known in the community as "Cat Man" and was often seen with his cat in the stroller; defendant had repeated interactions with the pedestrian; defendant's front-seat passenger saw the cat before the collision; and defendant was observed driving straight toward the stroller looking angry. Accordingly, the Supreme Court clarified, modified, and affirmed the Court of Appeals' opinion on the animal cruelty charge. **State v. Ford, 713.**

CLASS ACTIONS

Class certification—fees charged to developers by town—individualized issues predominating over common issues of law and fact—In a putative class action lawsuit seeking a declaration that a town's "recreation fees"—charged to developers constructing new subdivisions in the town in lieu of dedicating a portion of the subdivisions for use as public parks or other recreation areas—were illegal and must be refunded, the trial court's order certifying a class that included all of plaintiff's claims for declaratory relief was vacated because the class included several claims for which individualized issues predominated over common issues of law and fact, such as the fair market value of real property or the cost that a particular development imposed on the town. The matter was remanded for a new class certification analysis based on claims not involving individualized fact issues, including whether fracturing the declaratory judgment action would create potential claim-splitting concerns or would otherwise no longer be the superior means of adjudicating the remaining claims. **Empire Contractors, Inc. v. Town of Apex, 552.**

DECLARATORY JUDGMENTS

Business dispute—purported transfer of interests—noncompliance with operating agreement—In a designated complex business case involving a dispute between three investors over the membership and management of their real estate development limited liability company (LLC) (in which two of the investors were identified as the LLC's managers, and the investors' three individually controlled real estate companies as members), the Business Court did not err by granting summary judgment to defendants on plaintiff's declaratory judgment claim. Although plaintiff asserted that the real estate companies had transferred their membership interests before voting to oust him as manager, rendering their vote invalid, any transfer of interest had to be in accordance with the mandatory transfer provisions of the LLC's Operating Agreement. Plaintiff waived his argument regarding two of the three relevant provisions; as to the third, plaintiff's own assertions defeated his claim because he admitted to not completing steps necessary to effectuate the transfers. Thus, the purported transfers were null and void, and the vote to remove plaintiff as manager was valid. **Gvest Real Est., LLC v. JS Real Est. Invs., LLC, 563.**

EMINENT DOMAIN

Condemnation—Map Act—recordation of highway corridor map—rescinded years later—indefinite taking—measure of damages—In a condemnation case involving restrictions imposed upon plaintiffs' private property through the recordation of a highway corridor map pursuant to the Map Act, which remained in effect for nearly twenty years until the General Assembly rescinded all Map Act corridors in response to *Kirby v. N.C. Dep't of Transp.*, 368 N.C. 847 (2016), which held that Map Act restrictions constituted takings by eminent domain, the Court of Appeals' decision treating the restrictions on plaintiffs' property as temporary takings—for purposes of calculating just compensation—was reversed. Under *Kirby* and other binding precedent, corridor recordings under the Map Act constituted indefinite takings of fundamental property rights, and the corridors' rescission years later did not retroactively convert these takings into temporary ones, since the nature of a taking must be determined at the moment it occurs. Accordingly, the proper measure of damages in this case would have been the difference between the fair market value of plaintiffs' property immediately before and immediately after the corridor map was recorded, considering all pertinent factors including the indefinite nature of the restrictions and any effect of reduced ad valorem taxes. **Mata v. N.C. Dep't of Transp., 617.**

Restrictions recorded under the Roadway Corridor Official Map Act—damages not raised in condemnation action—right to damages abandoned— Although restrictions were imposed on private property by a highway corridor map recorded in 1992 pursuant the now-repealed Roadway Corridor Official Map Act—a taking by the North Carolina Department of Transportation (defendant) which entitled the landowner (plaintiff) to damages—plaintiff abandoned his right to seek such damages via his 2018 inverse condemnation action where he had failed to raise the issue in a prior condemnation action affecting the property: a complaint and declaration of taking concerning plaintiff's property (including portions of the land restricted by the 1992 map), filed by defendant in 2010 and settled by entry of a consent judgment in 2011. The Map Act provides for the waiver of further proceedings for compensation where pertinent affirmative defenses were not pleaded in earlier matters affecting the restricted property (N.C.G.S. § 136-106). Accordingly, the decision of the Court of Appeals, affirming trial court's application of N.C.G.S. § 136-111 (providing remedies where no complaint and declaration of taking was filed) to permit plaintiff to pursue damages, was reversed. **Sanders v. N.C. Dep't of Transp., 653.**

ESTOPPEL

Collateral estoppel—juvenile abuse petition—no privity—no factual determinations—doctrine inapplicable—Where a district court dismissed with prejudice a petition filed by the department of the social services (DSS) in August 2022 alleging sexual misconduct by respondent-father toward his minor child—including allegations that had been made, and deemed unsubstantiated, in 2021 and which were found to be false in a child custody order (CCO) entered in March 2022; and allegations made in March 2022 that led to an order dismissing an interference petition (IPO) filed by DSS against respondent-father—the Court of Appeals erred in concluding that the 2021 allegations and the March 2022 allegation were collaterally estopped by the CCO and IPO, respectively. As to the CCO, the requirement of privity was not satisfied because the only parties to the child custody action were the child's parents, and they did not represent the interests of DSS; accordingly, the district court was not collaterally estopped from adjudicating the DSS petition by the CCO. As to the IPO, its "findings of fact" concerning whether respondent-father had abused the child were not determinations by the district court, but rather were recitations of respondent-father's arguments; accordingly, the IPO did not preclude the proper adjudication of the juvenile petition. **In re A.D.H., 578.**

FIDUCIARY RELATIONSHIP

Limited liability company—duty between majority and minority members—no legal precedent—In a designated complex business case involving a dispute between three investors over the membership and management of their real estate development limited liability company (LLC) (in which two of the investors were identified as the LLC's managers, and the investors' three individually controlled companies as members), the Business Court did not err by granting summary judgment to defendants on plaintiff's claims for breach of fiduciary duty and constructive fraud (for which a fiduciary duty must be alleged) because there was no legally recognized fiduciary duty between a majority coalition of minority LLC members and other minority members. The Supreme Court declined to extend corporate shareholder oppression principles to LLCs in light of key distinctions between corporations and LLCs; given the basis of plaintiff's assertions, other claims may have been more suitable. Further, plaintiff did not assert an individual cause of action—

FIDUCIARY RELATIONSHIP—Continued

separate and distinct from any injury to the LLC itself—with regard to loans executed by defendants or to defendants' effort to oust plaintiff and his company from the business. **Gvest Real Est., LLC v. JS Real Est. Invs., LLC, 563.**

FIREARMS AND OTHER WEAPONS

Possession of stolen gun—knowledge or reasonable grounds to believe gun was stolen—sufficiency of evidence—In a prosecution for multiple offenses, the trial court properly denied defendant's motion to dismiss the charge of possession of a stolen firearm where the State presented substantial evidence from which a rational juror could infer that defendant knew or had reasonable grounds to know that the gun discovered by law enforcement in his car was stolen, including that: defendant fled from officers in an extended high-speed car chase and then, after crashing his car, continued to flee on foot; defendant lied to police about having a gun when asked; the gun was found hidden in an empty space behind a plastic panel under the steering wheel of defendant's car; and the gun was hidden in his car even though defendant left a gun holster in plain view. Even if the evidence could also support other inferences, the State was not required to eliminate alternative hypotheses in order to overcome defendant's motion. **State v. Bracey, 689.**

HOMICIDE

Defenses—statutory castle doctrine—inaccurate jury instructions—plain error analysis—After a jury convicted him of second-degree murder for fatally shooting someone who was standing in the doorway outside of his home, defendant was entitled to a new trial on the murder charge because the trial court improperly instructed the jury on the castle doctrine under N.C.G.S. § 14-51.2 by: (1) indicating that defendant had to prove he reasonably believed the victim would kill or inflict serious bodily harm and that deadly force was necessary, where the castle doctrine automatically presumes a reasonable fear of imminent death or serious bodily harm if the statutory criteria are met; (2) telling the jury that the presumption of reasonable fear could be rebutted by "any evidence to the contrary" when, in fact, it could only be rebutted by five specific circumstances listed in section 14-51.2(c); and (3) failing to instruct the jury that the curtilage of the home was protected under the castle doctrine. The court's inaccurate instructions amounted to plain error where: (1) defendant was deprived of a complete self-defense instruction—a fundamental error at trial, and (2) the error had a probable impact on the trial's outcome, since the jury could have found that defendant's actions were lawful under the correctly stated castle doctrine and therefore acquitted him. **State v. Allison, 664.**

INDECENT LIBERTIES

Multiple counts—based on separate kisses—distinct offenses—The trial court properly denied defendant's motion to dismiss multiple counts of taking indecent liberties with a child—based on three instances of defendant having kissed the victim—where, under the distinct interruption test, there was sufficient evidence to infer that an intervening event took place between each of the kisses, when defendant (1) kissed the victim's neck outside of defendant's van, (2) kissed the victim on the mouth inside the van, and (3) kissed the victim on the mouth inside the van six to seven minutes after the first kiss inside the van. Defendant's double jeopardy rights were not violated because the three instances were sufficiently distinct to support three convictions. **State v. Calderon, 700.**

INDECENT LIBERTIES—Continued

Multiple counts—proper standard—distinct interruption test—In a prosecution for multiple counts of taking indecent liberties with a child, based on multiple instances of defendant having kissed the victim, the Court of Appeals erred by adopting a four-factor test from another state to evaluate whether multiple "non-sexual acts" could support separate charges, because N.C.G.S. § 14-202.1(a) does not distinguish between touching (or non-sexual acts) and sexual acts. The intermediate appellate court should have utilized the distinct interruption test to determine whether defendant was properly charged with multiple offenses or whether his conduct constituted a single ongoing, continuous attack. **State v. Calderon, 700.**

Qualifying acts—statutory interpretation—no distinction between touching and sexual acts—In a prosecution for multiple counts of taking indecent liberties with a child, based on multiple instances of defendant having kissed the victim, the Court of Appeals erred by imposing a threshold inquiry of distinguishing between touching and sexual acts before addressing the central issue of whether the trial court properly denied defendant's motion to dismiss the charges. Where the plain language of N.C.G.S. § 14-202.1(a) does not distinguish between touching and sexual acts, the statute does not support a threshold requirement or different analytical paths depending on the conduct at issue. **State v. Calderon, 700.**

MEDICAL MALPRACTICE

Negligent retention claim—corporate medical practice—statutory definition of medical malpractice action met—barred under applicable statute of repose—In a case filed more than four years after a doctor performed unnecessary spinal surgeries on plaintiffs' teenage daughter, the trial court properly granted summary judgment to defendant (the orthopedic clinic that employed the doctor) on plaintiffs' negligent retention claim, which the court properly found to be time-barred under the four-year statute of repose applicable to medical malpractice actions under N.C.G.S. § 1-15(c) because the claim met the definition of a "medical malpractice action" under N.C.G.S. § 90-21.11(2). Firstly, defendant—as a corporate medical practice—met the statutory definition of a "health care provider" against whom a medical malpractice action could be filed, since said definition included "persons," which in turn included non-human corporate entities. Secondly, where plaintiffs alleged that defendant negligently exercised its clinical judgment by continuing to employ the doctor despite several internal reports of him providing substandard care to patients, plaintiffs' claim necessarily arose from defendant's delivery of "professional services in the performance of medical [...] care" as required under 90-21.11(2)(a). Accordingly, the Supreme Court reversed the Court of Appeals' decision (reversing the trial court's summary judgment order with respect to the negligent retention issue) and ruled that plaintiffs' conditional petition for discretionary review concerning additional issues in the case was improvidently allowed. **Cottle v. Mankin, 531.**

OBSTRUCTION OF JUSTICE

Motion to dismiss—existence of a business practice not a bar to obstruction—success of obstruction not an element—In a prosecution for felony obstruction of justice and felony cruelty to animals arising from defendant driving a work truck into a baby stroller containing a pedestrian's cat, the Court of Appeals properly affirmed the trial court's denial of defendant's motion to dismiss the obstruction charge (arising from the destruction of a physical copy of the schedule

identifying who was driving each work truck at defendant's business on the date of the offense). The evidence was substantial, including that: (1) the existence of a business practice—such as routinely discarding old daily schedules—did not foreclose the possibility of obstruction of justice; (2) defendant initially told investigators that no such schedule existed and that he did not know who drove the truck involved; (3) defendant had access to the daily schedules; and (4) when served with a search warrant, defendant showed investigators a bin containing a week's worth of discarded schedules, missing only the date sought. Further, the fact that defendant's destruction of the physical schedule did not impair the investigation—because investigators discovered a digital copy on defendant's cellphone—was irrelevant since success of obstruction is not an element of the offense. **State v. Ford, 713.**

SENTENCING

Resentencing of murder convictions—scope of mandate on remand—discretion regarding ancillary convictions not limited—In a first-degree murder case in which the Supreme Court vacated defendant's sentence of two consecutive terms of life with parole (for two first-degree murders he committed as a juvenile) as unconstitutional, the trial court did not exceed its authority on remand when, after complying with the Supreme Court's mandate to resentence defendant to two concurrent sentences of life with parole for the murders, the trial court decided to have defendant's ancillary convictions (for robbery with a dangerous weapon, which were not addressed in the higher court's mandate) run consecutive to the murder convictions. Pursuant to N.C.G.S. § 15A-1354(a), a sentencing court has discretion to run multiple sentences either concurrently or consecutively and the mandate on remand did not divest the trial court of its de novo sentencing authority. Further, defendant's sentence did not offend the higher court's determination that a sentence requiring a juvenile defendant to serve more than forty years constituted a de facto sentence of life without parole. **State v. Kelliher, 728.**

TAXATION

Sales tax—agency tax assessment—presumption of correctness—remanded for recalculation—In a contested tax case arising after the Department of Revenue conducted an audit and assessed a tax penalty against a wireless company that sold products on behalf of a mobile network brand, where the wireless company was properly assessed for real-time replenishments that qualified as "prepaid wireless calling services" under the North Carolina Sales and Use Tax Act (products that were sold during Period I of the audit, which were taxable at the point of sale), the Business Court did not err by determining that the final tax assessment properly credited the wireless company for sales taxes already remitted during Period I and, further, that the wireless company had not rebutted the presumption of correctness of the agency's assessment for that period. However, where the wireless company was not responsible for collecting and remitting sales taxes for replenishments that functioned as stored-value cards (products that were sold during Period II of the audit, which were taxable at the point of redemption), the matter was remanded for recalculation of the agency's tax assessment on Period II replenishments. **N.C. Dep't of Revenue v. Wireless Ctr. of NC, Inc., 630.**

Sales tax—digital property—Sales and Use Tax Act—"retailer"—In a contested tax case arising after the Department of Revenue conducted an audit and assessed a tax penalty against a wireless company that sold products on behalf of a

TAXATION—Continued

mobile network brand, the wireless company qualified as a "retailer" pursuant to the plain language of the North Carolina Sales and Use Tax Act and longstanding precedent, where its business involved routinely transferring title of real-time replenishments (which constituted digital property) to consumers in exchange for receiving a commission for these sales; therefore, the wireless company could be held responsible for collecting and remitting sales tax at the point of sale, depending on the type of product sold. **N.C. Dep't of Revenue v. Wireless Ctr. of NC, Inc., 630.**

Sales tax—time of collection—nature of digital property—prepaid wireless calling service versus stored-value card—In a contested tax case arising after the Department of Revenue conducted an audit and assessed a tax penalty against a wireless company that sold products on behalf of a mobile network brand, since the real-time replenishments sold by the wireless company (during Period I of the audit) could only be used to purchase wireless telecommunications services—and, upon purchase, resulted in the immediate upload of the prepaid airtime units to the customer's account—those replenishments constituted a "prepaid wireless calling service" under the North Carolina Sales and Use Tax Act; therefore, the wireless company was responsible for collecting and remitting sales tax at the point of sale. However, after the replenishments were modified (Period II of the audit) so that customers could use them to purchase any of a range of products offered by the mobile network brand, and not just wireless telecommunications services, those replenishments functioned as stored-value cards that were not subject to sales tax at point of purchase; for the Period II replenishments, the tax liability lay instead with the mobile network brand at the point of redemption by the customer. **N.C. Dep't of Revenue v. Wireless Ctr. of NC, Inc., 630.**

WORKERS' COMPENSATION

Jurisdiction—joint employment doctrine—control requirement—not satisfied—In a worker's compensation proceeding brought by plaintiff-employee—a Robeson County Sheriff's Office (RCSO) law enforcement officer (LEO) who was seriously injured while performing off-duty traffic control work for alleged-employer (a concrete services company)—the Supreme Court first clarified the distinction between the "nature of the work" element in the joint employment and lent employee doctrines. The latter doctrine requires that the employee's work "is essentially that of the special employer" to which the employee is being lent; under the joint employee doctrine, the "service for each employer is the same as, or is closely related to, that for the other." However, although two of the three elements of joint employment were satisfied—plaintiff-employee had an implied employment contract with alleged-employer and his service to alleged-employer (protecting public safety by directing traffic) was the same as his duty when working for the RCSO—the simultaneous control element was not. Alleged-employer did create a traffic control plan that designated locations and timeframes for the use of LEOs, but two RCSO employees were responsible for choosing LEOs for the project and assigning each to a specific location and shift, and they retained the authority to direct, reposition, or discharge any LEO in their sole discretion, without any input from alleged-employer. Accordingly, plaintiff-employee was not a joint employee of RCSO and alleged-employer. **Lassiter v. Robeson Cnty. Sheriff's Dep't, 594.**

ZONING

Unified development ordinance—notice of violation—description of alleged zoning violations—insufficient—After a flea market (plaintiff) was issued a notice of violation (NOV) stating that its property violated a city Unified Development Ordinance (UDO) by failing to comply with an approved site plan, a decision by the Court of Appeals holding that the NOV was properly issued was reversed and the case was remanded with instructions that the city dismiss the NOV because it did not adequately describe the zoning violations it alleged. The UDO's plain language required that the NOV specify (1) which UDO provisions were at issue and (2) which conditions on the property violated those provisions; instead, the NOV gave no details about the site plan deviations that resulted in the NOV's issuance, and then advised plaintiff to "remove all alterations inconsistent" with the approved site plan—or face harsh civil penalties—without specifying which alterations the NOV was referring to. Furthermore, the blurry photographs attached to the NOV (including an aerial view of the market and images of certain structures on the property) did not provide sufficient insight into what the alleged UDO violations were. **Durham Green Flea Market v. City of Durham, 543.**

SCHEDULE FOR HEARING APPEALS DURING 2026

NORTH CAROLINA SUPREME COURT

Appeals will be called for hearing on the following dates, which are subject to change.

February 10, 11, 12, 17, 18, 19
April 14, 15, 16, 21, 22, 23
September 8, 9, 10, 15, 16, 17
November 10, 12, 17, 18, 19

COTTLE v. MANKIN

[388 N.C. 531 (2025)]

BRITTANY JEANNE COTTLE, TERRY ALAN COTTLE,
AND CYNTHIA BALKCUM COTTLE
v.
KEITH PINKNEY MANKIN, MD; JEANNE HALL, RN, MSN, FNP-C; BRADLEY K. VAUGHN, MD; WALLACE F. ANDREW JR., MD; KARL STEIN; JOSEPH U. BARKER, MD; MARK R. MIKLES, MD; RALEIGH ORTHOPAEDIC CLINIC, P.A.; AND RALEIGH ORTHOPAEDIC RESEARCH FOUNDATION

No. 173PA24

Filed 12 December 2025

Medical Malpractice—negligent retention claim—corporate medical practice—statutory definition of medical malpractice action met—barred under applicable statute of repose

In a case filed more than four years after a doctor performed unnecessary spinal surgeries on plaintiffs' teenage daughter, the trial court properly granted summary judgment to defendant (the orthopedic clinic that employed the doctor) on plaintiffs' negligent retention claim, which the court properly found to be time-barred under the four-year statute of repose applicable to medical malpractice actions under N.C.G.S. § 1-15(c) because the claim met the definition of a "medical malpractice action" under N.C.G.S. § 90-21.11(2). Firstly, defendant—as a corporate medical practice—met the statutory definition of a "health care provider" against whom a medical malpractice action could be filed, since said definition included "persons," which in turn included non-human corporate entities. Secondly, where plaintiffs alleged that defendant negligently exercised its clinical judgment by continuing to employ the doctor despite several internal reports of him providing substandard care to patients, plaintiffs' claim necessarily arose from defendant's delivery of "professional services in the performance of medical [...] care" as required under 90-21.11(2)(a). Accordingly, the Supreme Court reversed the Court of Appeals' decision (reversing the trial court's summary judgment order with respect to the negligent retention issue) and ruled that plaintiffs' conditional petition for discretionary review concerning additional issues in the case was improvidently allowed.

On discretionary review pursuant to N.C.G.S. § 7A-31(c) of a unanimous decision of the Court of Appeals, 294 N.C. App. 20 (2024), affirming in part and reversing in part summary judgment entered on 16 March 2022 by Judge William R. Pittman in Superior Court, Wake County. On

21 March 2025, the Supreme Court allowed plaintiffs' cross-petition for discretionary review. Heard in the Supreme Court on 17 September 2025.

Mast, Johnson, Wright, Booker & Van Patten, P.A., by Charles Mast, Nichole G. Booker, and Caroline Parrish, for plaintiff-appellees.

Robinson, Bradshaw & Hinson, P.A., by Matthew W. Sawchak, Erik R. Zimmerman, Garrett A. Steadman, and Zachary A. Johnson; Huff, Powell & Bailey, LLC, by Pankaj Shere and Beth S. Reeves, pro hac vice, for Raleigh Orthopaedic Clinic, P.A., and Raleigh Orthopaedic Research Foundation, defendant-appellants.

Brown Moore & Associates, PLLC, by Jon R. Moore; Ward and Smith, P.A., by Christopher S. Edwards; and Tatum & Atkinson, PLLC, by Jon Ward, for North Carolina Advocates for Justice, amicus curiae.

Roberts & Stevens, PA, by David C. Hawisher, for North Carolina Association of Defense Attorneys, amicus curiae.

Sarah Motley Stone, for North Carolina Healthcare Association, Carolinas Medical Group Management Association, North Carolina Medical Society, and North Carolina Independent Physician Practice Association, amici curiae.

BARRINGER, Justice.

Informed by the text of the controlling statute, our rules of statutory construction, and the relevant caselaw, we hold plaintiffs' negligent retention claim against a corporate medical practice is a "medical malpractice action" as defined by N.C.G.S. § 90-21.11 (2023). Accordingly, plaintiffs' negligent retention claim is barred by the statute of repose. N.C.G.S. § 1-15(c) (2023).

I. Background

On behalf of their daughter, Brittany Cottle, plaintiffs Terry Cottle and Cynthia Cottle commenced this action against defendants for the alleged substandard medical care provided to Brittany during her time as a patient at Raleigh Orthopaedic Clinic (ROC).

A. Factual Background

Plaintiffs' complaint alleges the following events: In 2010, when Brittany was fourteen years old, she saw Dr. Keith Mankin, an orthopedist at ROC, seeking relief from her back pain. Dr. Mankin ordered an X-ray of Brittany's spine and diagnosed her with spinal stenosis and mild scoliosis. Three months later, an MRI indicated that Brittany did not suffer from spinal stenosis, but rather only minimal disc desiccation. Nevertheless, Dr. Mankin performed surgery on Brittany, removing a portion of her vertebra to relieve pressure ostensibly caused by spinal stenosis and fusing a portion of her spine in place.

Sometime in 2011, a father of one of Dr. Mankin's surgical patients made a complaint to Dr. Wallace Andrew, an orthopedist at ROC, and Karl Stein, the executive director of ROC. He claimed that Dr. Mankin had never actually performed a fusion surgery he claimed to have performed and that the patient never needed surgery in the first place. Despite this disturbing report, ROC took no formal action.

In early 2011, ROC hired Dr. Neil Vining as a pediatric orthopedic surgeon. Almost immediately upon joining the practice group, Dr. Vining recognized that ROC employees generally understood Dr. Mankin to be a substandard physician. Dr. Mankin's substandard care was so severe that Dr. Vining even noticed ROC doctors referring pediatric cases to outside practice groups, like UNC or Duke, in an attempt to steer those patients away from Dr. Mankin. Dr. Vining quickly became worried about how Dr. Mankin treated his patients.

By the end of the year, Dr. Vining's mounting concerns hit a breaking point. He arranged a meeting with Mr. Stein, Dr. Andrew, and an insurance representative. At the meeting, Dr. Vining presented three pediatric cases in which Dr. Mankin provided negligent medical care. He conveyed his opinion to the group that Dr. Mankin presented a significant risk to his patients and urged that corrective measures be implemented. Yet, still no action was taken—Dr. Mankin remained employed by ROC.

In July 2012, Brittany returned to Dr. Mankin with continuing back pain. Upon evaluation, Dr. Mankin diagnosed Brittany with an unstable sacroiliac joint and recommended that Brittany undergo a second surgery. Approximately four months later, Dr. Mankin performed that second surgery, attempting a left sacroiliac fusion and stabilization fixation with three screws. Dr. Mankin wrote in his operative report that the screws were properly affixed. However, the operating room imaging showed that two of the three screws were, in fact, not fixed to bone at all.

Concerns over Dr. Mankin reached a turning point in early 2013. In January of that year, Dr. Edmund Campion, a pediatric orthopedist at UNC School of Medicine, sent an email to Dr. Jeffrey Kobs, an orthopedist at ROC. The email included a letter detailing widely held concerns regarding Dr. Mankin's "pattern of incompetent, and even dangerous, care" provided to his patients. In that email, Dr. Campion expressed his intent to share the letter with the chief medical officer at WakeMed.[1] By March, Dr. Mankin had resigned from ROC.

After Dr. Mankin's resignation, Dr. Vining learned that Dr. Mankin was still treating patients—now through his own solo practice in Raleigh, North Carolina. Dr. Vining, troubled by the "highly dubious" and "consistently substandard" techniques of Dr. Mankin, decided that it was time to alert authorities. Dr. Vining wrote a letter to the North Carolina Medical Board. In that letter, Dr. Vining encouraged the North Carolina Medical Board to independently contact various pediatric orthopedists who were familiar with Dr. Mankin's care and to entertain the possibility of sanctions against him.

The Board opened an investigation into the quality of Dr. Mankin's care. At the conclusion of the investigation, Dr. Mankin entered a non-disciplinary consent order. In that order, Dr. Mankin voluntarily agreed to place his medical license on inactive status and move out of North Carolina to pursue non-medical interests. By 12 December 2015, Dr. Mankin officially ceased all practice of medicine in the State of North Carolina.

In 2016, Brittany's back pain returned. She called ROC to schedule an appointment. This time, she was seen by Dr. Mark Mikles, another orthopedist at ROC. Dr. Mikles saw Brittany for two visits before referring her to Dr. Joseph Barker, a hip specialist at ROC.

Following her visit with Dr. Barker, Brittany determined it was time to seek a second opinion. She visited Dr. William Richardson, an orthopedist at Duke. During her visit with Dr. Richardson, Brittany discovered that she had never suffered from spinal stenosis, that Dr. Mankin's surgical fusion had never been performed, and that the screws used to stabilize her sacroiliac joint had never connected to bone. Brittany underwent a third surgery to remove the useless screws. She then commenced this action.

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1. ROC physicians, including Dr. Mankin, relied upon WakeMed for its surgical facilities to execute their surgeries.

B. Procedural Background

On 21 November 2016, plaintiffs filed a Rule 9(j) extension motion expressing their intent to commence a medical malpractice action arising from the surgeries performed in 2010 and 2012 by Dr. Mankin. *See* N.C.G.S. § 1A-1, Rule 9(j) (2023). Through their subsequently filed complaint, plaintiffs sought to hold Dr. Mankin directly liable for medical malpractice. Plaintiffs also claimed the clinic was vicariously liable for Dr. Mankin's alleged malpractice and sued ROC directly for negligently retaining and supervising Dr. Mankin.[2] In addition, plaintiffs asserted various tort claims against Dr. Mankin, ROC, and ROC's employees.

All defendants moved to dismiss plaintiffs' claims that stemmed from Dr. Mankin's alleged malpractice, citing the four-year statute of repose. *See* N.C.G.S. § 1-15(c) (2023). The trial court dismissed plaintiffs' medical malpractice claims as well as other claims against ROC and its employees. However, the trial court allowed some claims to proceed, including the claims against ROC for negligent retention and negligent supervision.

On 14 February 2022, the remaining defendants moved for summary judgment, arguing that plaintiffs' remaining claims all stemmed from the malpractice claim and were therefore barred by the malpractice statute of repose. After a hearing on the matter, the trial court agreed, granting summary judgment for defendants on all remaining claims. Plaintiffs appealed the summary judgment order.

At the Court of Appeals, plaintiffs did not appeal the dismissal of their medical malpractice claims, conceding that those claims were barred by the statute of repose. *Cottle v. Mankin*, 294 N.C. App. 20, 22 (2024). However, plaintiffs did appeal the disposal of several other tort claims by the summary judgment order, including claims of negligent retention and supervision, fraud, breach of fiduciary duty, and infliction of emotional distress against ROC and several of its employees. *Id.* at 22–23.

The Court of Appeals affirmed summary judgment for defendants on most of plaintiffs' claims. *Id.* at 26. The court, however, reversed the trial court's grant of summary judgment on the negligent retention claim

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2. Plaintiffs' complaint alleges claims against ROC and/or Raleigh Orthopaedic Research Foundation (Foundation). However, the Foundation dissolved in 2016 and plaintiffs did not include the Foundation in their notice of appeal. Accordingly, this Court focuses its analysis solely on ROC.

against ROC.[3] *Id.* at 28. The Court of Appeals reasoned that the negligent retention claim falls outside of the statute of repose, because a corporate medical practice cannot satisfy the statutory definition of a "health care provider" in N.C.G.S. § 90-21.11(1), and because a negligent retention claim is not a "medical malpractice action" as defined by N.C.G.S. § 90-21.11(2). *Id.* at 27.

Defendants filed a petition for discretionary review, requesting this Court to review the Court of Appeals' conclusion that the statute of repose does not bar plaintiffs' negligent retention claim. Plaintiffs filed a conditional petition for discretionary review, requesting this Court to review the Court of Appeals' decision affirming dismissal of plaintiffs' fraud, breach of fiduciary duty, and infliction of emotional distress claims. We allowed both.

II. Standard of Review

This appeal arises from a trial court's order allowing summary judgment. "Summary judgment is appropriate when 'there is no genuine issue as to any material fact' and 'any party is entitled to a judgment as a matter of law.' " *Builders Mut. Ins. Co. v. N. Main Constr., Ltd.*, 361 N.C. 85, 88 (2006) (quoting N.C.G.S. § 1A-1, Rule 56(c) (2005)). "[W]hen considering a summary judgment motion, 'all inferences of fact . . . must be drawn against the movant and in favor of the party opposing the motion.' " *Craig ex rel. Craig v. New Hanover Cnty. Bd. of Educ.*, 363 N.C. 334, 337 (2009) (alteration in original) (quoting *Caldwell v. Deese*, 288 N.C. 375, 378 (1975)).

This Court applies de novo review to a trial court's order allowing summary judgment. *Builders Mut. Ins. Co.*, 361 N.C. at 88. To the extent this appeal involves issues of statutory interpretation, de novo review governs those issues as well. *See Cherry Cmty. Org. v. Sellars*, 381 N.C. 239, 247 (2022).

III. Analysis

Two distinct sets of claims are presented on appeal. The first set includes the negligent retention claim against ROC. The negligent

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3. The Court of Appeals only addressed plaintiffs' negligent retention claim, but not their negligent supervision claim. *Cottle*, 294 N.C. at 27 ("[W]e must conclude that Plaintiffs' claim against ROC for negligent retention is not barred by the statute of repose, as the claim is not one of malpractice under the relevant statute."). However, because the two claims are so factually intertwined, the court may have meant to revive the negligent supervision claim as well. Nevertheless, the analysis for both is the same. The lack of clarity on this point does not alter our outcome.

retention claim pertains to ROC's retention of Dr. Mankin despite numerous complaints. The second set, appealed by plaintiffs, are plaintiffs' claims of fraud, constructive fraud, breach of fiduciary duty, and negligent and/or intentional infliction of emotional distress against ROC and various ROC physicians and employees. This second set arises from a failure to inform Brittany of Dr. Mankin's history of care. We address each set in turn.

A. The Negligent Retention Claim

Plaintiffs allege ROC negligently retained Dr. Mankin as an employee of the clinic to perform pediatric surgeries. Defendants counter that plaintiffs' negligent retention claim qualifies as a medical malpractice action as defined by N.C.G.S. § 90-21.11(2)—and is therefore barred by the statute of repose.

North Carolina's statute of repose requires a malpractice action to be filed within four years of a defendant's last relevant act:

> Except where otherwise provided by statute, a cause of action for malpractice arising out of the performance of or failure to perform professional services shall be deemed to accrue at the time of the occurrence of the last act of the defendant giving rise to the cause of action . . . . [I]n no event shall an action be commenced more than four years from the last act of the defendant giving rise to the cause of action[.]

N.C.G.S. § 1-15(c) (2023).

Plaintiffs filed their original complaint in 2017, more than four years after Brittany's last surgery with Dr. Mankin in 2012. Plaintiffs do not deny that if the statute of repose applies to their negligent retention claim, that claim is untimely. Rather, plaintiffs contend, and the Court of Appeals agreed, that the negligent retention claim is not a "medical malpractice action" to which the statute of repose can apply.

"Medical malpractice action" is defined by statute. *Id.* § 90-21.11(2). Subdivision 90-21.11(2) states:

> Medical malpractice action. — Either of the following:
>
> a. A civil action for damages for personal injury or death arising out of the furnishing or failure to furnish professional services in the performance of medical, dental, or other health care *by a health care provider*.

> b. A civil action against a hospital, a nursing home licensed under Chapter 131E of the General Statutes, or an adult care home licensed under Chapter 131D of the General Statutes for damages for personal injury or death, when the civil action (i) alleges a breach of administrative or corporate duties to the patient, including, but not limited to, allegations of negligent credentialing or negligent monitoring and supervision and (ii) arises from the same facts or circumstances as a claim under sub-subdivision a. of this subdivision.

Id. (emphasis added). For an action to satisfy the statutory definition of medical malpractice action under sub-subdivision (2)(a), the acts giving rise to the action must have been furnished "by a health care provider." *Id.*

Health care provider is conveniently defined by the same statute. *Id.* § 90-21.11(1). Subdivision 90-21.11(1) states:

> Health care provider. — Without limitation, any of the following:
>
> a. A person who pursuant to the provisions of Chapter 90 of the General Statutes is licensed, or is otherwise registered or certified to engage in the practice of or otherwise performs duties associated with any of the following: medicine, surgery, dentistry, pharmacy, optometry, midwifery, osteopathy, podiatry, chiropractic, radiology, nursing, physiotherapy, pathology, anesthesiology, anesthesia, laboratory analysis, rendering assistance to a physician, dental hygiene, psychiatry, or psychology.
>
> b. A hospital, a nursing home licensed under Chapter 131E of the General Statutes, or an adult care home licensed under Chapter 131D of the General Statutes.
>
> c. Any other person who is legally responsible for the negligence of a person described by

sub-subdivision a. of this subdivision, a hospital, a nursing home licensed under Chapter 131E of the General Statutes, or an adult care home licensed under Chapter 131D of the General Statutes.

d. Any other person acting at the direction or under the supervision of a person described by sub-subdivision a. of this subdivision, a hospital, a nursing home licensed under Chapter 131E of the General Statutes, or an adult care home licensed under Chapter 131D of the General Statutes.

e. Any paramedic, as defined in [N.C.]G.S. 131E-155(15a).

Id.

1. Raleigh Orthopaedic Clinic As a Statutory Health Care Provider

We first examine whether ROC qualifies under § 90-21.11(1) as a statutory "health care provider." We hold that it does.

Defendants argue that ROC, a medical practice, fits squarely within the meaning of sub-subdivision (1)(c): "Any other person who is legally responsible for the negligence of a person described by sub-subdivision a. of this subdivision." *Id.* Meanwhile, plaintiffs counter that the word "person" does not include non-human entities. Plaintiffs explain that the only non-human entities recognized under the health care provider definition are those three explicitly listed: a hospital, a nursing home, and an adult care home. In plaintiffs' view, the listing of the three corporate bodies indicates the legislature's clear intent to only recognize those three entities under its definition of health care provider. We disagree.

Our General Assembly has provided rules for the construction of its statutes that must be observed "unless such construction would be inconsistent with the manifest intent of the General Assembly, or repugnant to the context of the same statute." N.C.G.S. § 12-3 (2023). One such rule is that "[t]he word 'person' shall extend and be applied to bodies politic and corporate, as well as to individuals, unless the context clearly shows to the contrary." *Id.* § 12-3(6). Thus, the word "person"

contained in § 90-21.11(1)(c) must be read as including corporate bodies, unless the context clearly shows to the contrary.[4]

As always, we begin with the text. Subdivision 90-21.11(1) explicitly directs courts to construe the definition of health care provider broadly. Indeed, the definition of health care provider is "[w]ithout limitation." N.C.G.S. § 90-21.11(1). Sub-subdivision (1)(c) reinforces an expansive reading of the statute as well. Sub-subdivision (1)(c) uses the word "any" before the term "other person," indicating that person includes entities other than the three listed. *Id.*

The Court of Appeals panel below seemingly embraced the negative-implication canon, *expressio unius*, in its reading of § 90-21.11. The negative-implication canon counsels, "[t]he expression of one thing implies the exclusion of others." Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 107 (2012) [hereinafter Scalia & Garner, *Reading Law*]. Applying this canon, the Court of Appeals reasoned that "[t]he only non-human entities incorporated within the definition of 'health care provider' are 'a hospital, a duly licensed nursing home and a duly licensed adult care home.' " *Cottle*, 294 N.C. App. at 26 (extraneity omitted).

However, the negative-implication canon is not appropriate where the plain text of the statute excludes its application. Subdivision 90-21.11(1)'s explicit "[w]ithout limitation" directive excludes application of the canon. *See* Scalia & Garner, *Reading Law* at 244 (noting that "adding words such as *without limitation* before each passage where [the] canon would otherwise apply" "has the same effect as" adding "[a] provision excluding application of the negative-implication canon"). Accordingly, the Court of Appeals' reliance on the three listed entities to define the term "person" was misplaced.

Sub-subdivision 90-21.11(1)(c)'s context further supports application of the statutory rule that the word "person" includes corporate bodies. According to sub-subdivision (1)(c), "[a]ny other person" refers to a person "who is *legally responsible* for the negligence of a person described by sub-subdivision a. of this subdivision." N.C.G.S. § 90-21.11(1)(c) (emphasis added). Sub-subdivision (1)(a) describes persons who are

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4. This statutory mandate tracks the traditional rule of statutory interpretation. *See* Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 273 (2012) ("Traditionally the word *person*—as well as *whoever*—denotes not only natural persons (human beings) but also artificial persons such as corporations, partnerships, associations, and both public and private organizations. Though surprising to nonlawyers, this legal meaning is age-old." (footnote omitted)).

licensed to engage in various practices of medicine, such as physicians, dentists, and pharmacists. *Id.* § 90-21.11(1)(a). Medical practices are routinely vicariously liable, and thus "legally responsible," for the negligence of their physicians and other health care professionals. *See, e.g.*, *Shuffler v. Blue Ridge Radiology Assocs., P.A.*, 73 N.C. App. 232 (1985); *King v. Bryant*, 369 N.C. 451 (2017); *Sharpe v. Worland*, 351 N.C. 159 (1999). A corporate medical practice therefore plainly aligns with sub-subdivision (1)(c)'s description. Thus, the context of sub-subdivision (1)(c) supports, rather than contradicts, § 12-3(6)'s instruction that the word "person" shall extend to bodies corporate.

The relevant North Carolina Court of Appeals caselaw supports this conclusion as well.[5] In *Sharpe v. Worland*, 137 N.C. App. 82 (2000), a previous panel of the Court of Appeals interpreted the word "person" in the very same chapter as that at issue here, Chapter 90. And the *Sharpe* court employed the very same reasoning that guides our analysis here. *Id.* As the panel aptly explained, "the general rule of statutory construction holds that, absent a clear legislative intent to the contrary, 'person' should be defined pursuant to [N.C.]G.S. § 12-3(6) (1999), which provides that the term 'person' applies to 'bodies politic and corporate, as well as to individuals.' " *Id.* at 89. Following this general rule, the court held, "[D]efendant Hospital, a corporate body, qualifies as a 'person' under [N.C.]G.S. § 90-21.22(e)." *Id.*

Even more to the point, the Court of Appeals has also opined that the word "person" contained in § 90-21.11(1) extends to entities not explicitly listed. In *Estate of Baldwin v. RHA Health Services, Inc.*, the court held that the word "person" appearing in § 90-21.11(1)(d) extended to an entity that ran a residential facility for developmentally disabled persons. 246 N.C. App. 58, 64–65 (2016). Significantly, a residential facility for developmentally disabled persons is not one of the three listed entities contained in § 90-21.11(1).[6] Our reading aligns with a principle repeatedly honored by this Court; "words used in one place in a statute have the same meaning in every other place in the statute." *In re L.L.*, 386 N.C. 706, 713 (2024) (quoting *State v. Rogers*, 371 N.C. 397,

5. Although these Court of Appeals cases are not controlling, this Court finds them to be persuasive.

6. A residential facility for developmentally disabled persons is licensed under Chapter 122C of the North Carolina General Statutes. It, therefore, would not qualify as an adult care home licensed under Chapter 131D of the General Statutes, which § 90-21.11(1) explicitly lists.

403 (2018)). Thus, as the *Baldwin* court concluded, the word "person" contained in § 90-21.11(1) extends to corporate bodies.

2. Plaintiffs' Negligent Retention Claim As a Medical Malpractice Action

Finally, plaintiffs' negligent retention claim against ROC satisfies the definition of a "medical malpractice action" under § 90-21.11(2). Sub-subdivision (2)(a) defines a medical malpractice action as "[a] civil action for damages for personal injury or death arising out of the furnishing or failure to furnish professional services in the performance of medical, dental, or other health care by a health care provider." N.C.G.S. § 90-21.11(2)(a). Plaintiffs' negligent retention claim arises out of ROC's delivery of its own professional services. Here, ROC allegedly engaged in the negligent exercise of its clinical judgment and professional skill when the clinic continued to retain Dr. Mankin despite the numerous internal reports of his misconduct.[7] Thus, the claim arises out of the furnishing of professional services in the performance of medical care by ROC. *See Gause v. New Hanover Reg'l Med. Ctr.*, 251 N.C. App. 413, 418 (2016) ("Our courts have classified as medical malpractice those claims alleging injury resulting from activity that required clinical judgment and intellectual skill.").

For these reasons, plaintiffs' negligent retention claim is a medical malpractice action under § 90-21.11. It is therefore barred by the statute of repose. *See* N.C.G.S. § 1-15(c).[8]

B. The Fraud, Constructive Fraud, Breach of Fiduciary Duty, and Negligent and/or Intentional Infliction of Emotional Distress Claims

Having carefully considered the opinion of the Court of Appeals, the record and briefs, and the oral arguments before us, we conclude that plaintiffs' conditional petition for discretionary review was improvidently allowed by order on 21 March 2025.

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7. Plaintiffs' negligent supervision claim arises out of ROC's alleged negligent exercise of clinical judgment and professional skill when the clinic declined to remedy Dr. Mankin's substandard care to his patients. Thus, it too is a medical malpractice action under the statute.

8. Defendants further request this Court to hold that a negligent retention claim is necessarily barred when the underlying tort claim—a medical malpractice action—is invalid. Having resolved this matter on statutory grounds, the Court need not address this additional issue.

IV. Conclusion

The facts as alleged in this case are deeply troubling. However, our concerns must yield to what our statutes instruct. The General Assembly has chosen to bar malpractice actions four years after a defendant's last relevant act. Further, the General Assembly has defined a medical malpractice action as an action encompassing negligent retention claims against corporate entities. Accordingly, we are compelled to reverse the Court of Appeals' decision and conclude that the trial court properly granted summary judgment on the negligent retention claim against ROC.

As to the additional claims, we hold that plaintiffs' conditional petition for discretionary review was improvidently allowed.

REVERSED; DISCRETIONARY REVIEW IMPROVIDENTLY ALLOWED.

DURHAM GREEN FLEA MARKET
v.
CITY OF DURHAM

No. 8A25

Filed 12 December 2025

Zoning—unified development ordinance—notice of violation—description of alleged zoning violations—insufficient

After a flea market (plaintiff) was issued a notice of violation (NOV) stating that its property violated a city Unified Development Ordinance (UDO) by failing to comply with an approved site plan, a decision by the Court of Appeals holding that the NOV was properly issued was reversed and the case was remanded with instructions that the city dismiss the NOV because it did not adequately describe the zoning violations it alleged. The UDO's plain language required that the NOV specify (1) which UDO provisions were at issue and (2) which conditions on the property violated those provisions; instead, the NOV gave no details about the site plan deviations that resulted in the NOV's issuance, and then advised plaintiff to "remove all alterations inconsistent" with the approved site plan—or face harsh civil penalties—without specifying which alterations the NOV was referring to. Furthermore, the blurry photographs attached to the NOV (including an aerial view of the market and images of certain

structures on the property) did not provide sufficient insight into what the alleged UDO violations were.

Appeal pursuant to N.C.G.S. § 7A-30(2) (2023) from the decision of a divided panel of the Court of Appeals, 296 N.C. App. 594 (2024), affirming an order entered on 9 June 2023 by Judge James E. Hardin Jr. in Superior Court, Durham County. Heard in the Supreme Court on 10 September 2025.

Troy D. Shelton and Robert T. Perry for plaintiff-appellant.

John Roseboro, Senior Assistant City Attorney, and Aarin K. Miles, Senior Assistant City Attorney, for defendant-appellee.

ALLEN, Justice.

"Local governments have a responsibility to enact clear, unambiguous zoning rules." *Arter v. Orange County*, 386 N.C. 352, 352 (2024). The plain language of the City of Durham's Unified Development Ordinance (UDO) required the notice of violation (NOV) issued to the Durham Green Flea Market (the Market) by the City's planning department to describe the Market's alleged zoning violations. Because the NOV failed to describe those alleged violations, we reverse the judgment of the Court of Appeals and remand this case with instructions to the City to dismiss the NOV.

I.

The Market owns and operates a flea market in the City of Durham. On 17 January 2020, a site compliance officer with the City's planning department conducted a field inspection of the flea market. The inspection resulted in an NOV dated 10 February 2020 and served on the Market by certified mail.

The NOV notified the Market that "[t]he following zoning violation was observed during a recent field inspection: . . . Failure to comply with an approved site plan (D1300045)." *See* N.C.G.S. § 160D-102(29) (2023) (defining a site plan as a "scaled drawing and supporting text showing the relationship between lot lines and the existing or proposed uses, buildings, or structures on the lot"). The NOV further stated that the "condition constitute[d] a violation of the Durham Unified Development Ordinance, Section 3.7.2, Applicability, Site Plan and 15.1.2 Violation."

The NOV also addressed corrective action and potential penalties. It informed the Market that it had thirty days from receipt of the NOV to "remove all alterations inconsistent with the approved site plan" and that failing to do so could result in "civil penalties in an amount up to $500.00 per day for each day the violation exist[ed] after the [thirty-day] deadline." Finally, the NOV stated that the Market had thirty days from receipt of the NOV to appeal to the City's board of adjustment (BOA).

The NOV came with several pages attached. They included black-and-white copies of four photographs. Although blurry, the copies appeared to depict various structures at the flea market. There was also a hard-to-read copy of the Market's site plan, as well as an aerial photograph of the flea market as of 1 November 2019.

The Market appealed the NOV to the BOA, which held a quasi-judicial hearing on 21 June 2022. During the hearing, planning department staff testified that "additional improvements have been made [to the flea market] without amendments to the site plan," such as "temporary structures . . . that [were] covering required parking." Planning department staff also testified that the Market had a history of making unauthorized expansions.

The Market "disputed the accuracy of the [NOV,] asserting that it was too general to place [the Market] on notice of the specific violations being cited." In explaining why the NOV did not list the Market's alleged deviations from the site plan, the planning department manager testified: "[W]e issued [the NOV] for numerous things. We didn't want to list just one thing because there were several different issues and things that [the Market] has done to the property without site plan approval."

In response, one BOA member remarked that, after reading the NOV, he "was unable to determine what the violation was." He asked the manager why the NOV failed to cite any "specific violations." The manager elaborated: "Because, like I said, there were several different violations . . . . We don't want to issue [an NOV] that says, 'Hey, fix this, this, this, and this,' when there [are] a whole lot of things that were improved on the site." If the NOV had listed specific violations, the manager continued, then the Market "could [have] fix[ed] those things and not fix[ed] the others." The manager then offered another justification for the NOV's vagueness:

> Basically, what the NOV says, in general, is submit a site plan showing the changes that were made. If you submit something showing the changes—all the changes that were made—we don't have a problem

> or no questions come up at the end saying, "Hey, you didn't fix this or you didn't show this." So, usually what we like to do is keep it very broad in that type of situation because there were several different things on the property that were improved.

The same BOA member asked Robert Perry—the Market's majority owner and legal counsel—whether he had been "able to determine [from the NOV] the specific violations that were alleged and what specific action [he] needed to take to correct the violations." Perry testified, "No, I did not."

During the BOA's deliberations, the member announced to his colleagues that he could not support the planning department's action "due to the wording of the [NOV]." In his opinion, "the [NOV] must list the violations. If there's 20 or 30, it must list 20 or 30. What this [NOV] is is a boilerplate form, and it doesn't meet the standards."

Unpersuaded by this view, the other six members of the BOA voted to deny the Market's appeal. The BOA's order formally denying the appeal recorded that the dissenting member "expressed his concern about the general nature of the NOV and felt that it should have specifically cited each and every violation on the [the Market's] [p]roperty."

The Market appealed to the Superior Court, Durham County, asserting due process and other arguments, including that the NOV was "facially defective" because it "did not detail the alleged violations committed and the specific remedies afforded to [the Market]." Rejecting the Market's assignments of error, the superior court entered an order filed on 9 June 2023 affirming the BOA's decision. The order gave the Market thirty-six months to come "into full compliance with a site plan, approved by the . . . [p]lanning [d]epartment."

The Market then appealed the superior court's order to the Court of Appeals, raising due process concerns and arguing that "the NOV was insufficient to inform [the Market] in advance of the basis of the proceedings against [the Market] . . . and [the Market] was not given notice and [an] opportunity to be heard." *Durham Green Flea Market v. City of Durham*, 296 N.C. App. 594, 597 (2024). The Market also maintained that the NOV "failed to adhere to UDO § 15.2.1.C, which requires, in relevant part: 'The notice shall include a description of the violation and its location, [and] the measures necessary to correct it.' " *Id.*

On 3 December 2024, a divided Court of Appeals panel filed an opinion affirming the superior court's order. *Id.* at 598–99. According to

the majority, the NOV contained the "necessary components" to satisfy UDO § 15.2.1.C:

> The written NOV describes the violation: "Failure to comply with an approved site plan (D130045)[,]" includes attached images with location for reference, and specifies, "correction of this violation will require" removal of "all alterations inconsistent with the approved site plan[.]"

Id. at 597 (alterations in original).

Based in part on its determination that the NOV satisfied UDO § 15.2.1.C, the majority also accepted the superior court's conclusion that the Market received due process. *Id.* at 598. The majority explained:

> [T]he NOV listed the violation and provided contact information with the option to reach [the planning department's] staff directly to inquire about the violation at issue. [The Market] had two opportunities to be heard on the violation. At a quasi-judicial hearing, an attorney appearing on [its] behalf presented argument and testimony.

Id.

The dissenting judge disagreed with the majority on multiple grounds.[1] Most significantly for purposes of our decision, he argued that the NOV did not comply with UDO § 15.2.1.C because it failed to describe the alleged violations and the measures necessary to correct them. *Id.* at 600 (Tyson, J., dissenting). In the dissenting judge's view, "[a] property owner in violation of a non-specific 'failure to comply' cannot be characterized as being 'on notice' of the violation itself or of the measures necessary to abate, correct, or cure the violation." *Id.* at 603. The dissenting judge further insisted: "The City failed to provide adequate advance notice of the specified site plan violations and, as such, [the Market] did not have the necessary information to abate, cure, or be adequately heard or present evidence at a fair and impartial hearing, in violation of [the Market's] Due Process rights." *Id.* at 603–04.

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1. The dissenting judge also argued that the Market did not receive its constitutionally guaranteed "impartial, quasi-judicial hearing" and that the superior court "abused its discretion" under N.C.G.S. § 160D-1402(k) by requiring the Market to come into compliance with the site plan within thirty-six months. *Id.* at 599, 604 (Tyson, J., dissenting).

On 6 January 2025, the Market filed a notice of appeal based on the dissent in the Court of Appeals. Because this case was pending at the Court of Appeals prior to the repeal of N.C.G.S. § 7A-30(2), the dissent below triggered an appeal of right to this Court. *See* Current Operations Appropriations Act of 2023, S.L. 2023-134, § 16.21(d)–(e), 2023 N.C. Sess. Laws 760, 1171.

II.

In an appeal from a local government board's quasi-judicial decision, "[t]he standard of review used by the superior court depends on the precise issues raised." *Schooldev E., LLC v. Town of Wake Forest*, 386 N.C. 775, 784 (2024). If the petition alleges an error of law, the court reviews the alleged error de novo, considering the matter afresh and freely substituting its own judgment for that of the board. *Id.* In an appeal from the judgment of the superior court, the Court of Appeals examines the superior court's order for errors of law by (1) determining whether the superior court exercised the appropriate scope of review and, if so, (2) deciding whether the superior court did so properly. *Id.* at 785. "In the event that the case . . . reaches this Court[,] . . . the issue . . . is whether the Court of Appeals committed any errors of law." *PHG Asheville, LLC v. City of Asheville*, 374 N.C. 133, 151 (2020).

Here, the Market's central argument is that the City failed to follow its own ordinance and in so doing violated the Market's due process rights. Such alleged errors of law receive de novo review. N.C.G.S. § 160D-1402(j)(2) (2023). While it appears that the trial court and the Court of Appeals applied the correct standard of review, they nonetheless reached the wrong conclusion.

III.

"It is a principle never to be lost sight of, that no person should be deprived of his property or rights without notice and an opportunity of defending them." *Hamilton v. Adams*, 6 N.C. (2 Mar.) 161, 162 (1812). Both the due process clause of the Fourteenth Amendment to the United States Constitution and the law of the land clause in Article I, Section 19 of the North Carolina Constitution "require notice and an opportunity to be heard before a citizen may be deprived of his property." *McMillan v. Robeson County*, 262 N.C. 413, 417–18 (1964). *See also* U.S. Const. amend. XIV, § 1 (declaring that no state may "deprive any person of life, liberty, or property, without due process of law"); N.C. Const. art. I, § 19 (stating that no person may be "deprived of his life, liberty, or property, but by the law of the land").

Due process notice and hearing requirements apply to the enforcement of municipal and county zoning ordinances. *See County of Lancaster v. Mecklenburg County*, 334 N.C. 496, 507 (1993) ("[D]ue process requirements for quasi-judicial zoning decisions mandate that all fair trial standards be observed when these decisions are made."). The statutory provisions governing the enforcement of such ordinances reflect the General Assembly's solicitude for the due process rights of property owners. Under N.C.G.S. § 160D-404, for example, a formal enforcement action begins with "a written [NOV] . . . delivered to the holder of the development approval and to the landowner of the property involved, if the landowner is not the holder of the development approval." N.C.G.S. § 160D-404(a) (2023).

Consistent with N.C.G.S. § 160D-404, the City's UDO directs that, "[w]hen a violation [of the UDO] is discovered, and is not remedied through informal means, written notice of the violation shall be given." UDO § 15.2.1.A. The UDO goes beyond N.C.G.S. § 160D-404, however, in articulating the required components of an NOV:

> The notice shall include a description of the violation and its location, the measures necessary to correct it, the possibility of civil penalties and judicial enforcement action, and notice of the right to appeal. The notice shall also state the time period allowed, if any, to correct the violation, which time period may vary depending on the nature of the violation and [the] knowledge of the violator.

UDO § 15.2.1.C.

In its primary brief to this Court, the Market argues that the NOV issued by the City's planning department "not only violated due process protections and [N.C.G.S. §] 160D-404, but it also violated the city's own ordinance."[2] Focusing on the requirement in UDO § 15.2.1.C that an NOV contain "a description of the violation," the Market asserts that "the [NOV] issued to the Market did not constitute a proper 'description of the violation' under any reasonable interpretation of that phrase." We

2. In arguing that the NOV violated N.C.G.S. § 160D-404, the Market ignores the fact that the statute did not take effect until after the NOV was served on the Market. *See* An Act to Complete the Consolidation of Land-Use Provisions into One Chapter of the General Statutes as Directed by S.L. 2019-111, as Recommended by the General Statutes Commission, S.L. 2020-25, § 51(a), (b), (d), 2020 N.C. Sess. Laws 152, 196 (establishing 19 June 2020 as the effective date for Chapter 160D).

agree that the NOV failed to describe the Market's alleged violations as mandated by UDO § 15.2.1.C.

"Courts interpret zoning ordinances largely in the same manner as statutes and other written laws." *Arter v. Orange County*, 386 N.C. 352, 354 (2024). "The basic rule is to ascertain and effectuate the intent of the legislative body." *Coastal Ready-Mix Concrete Co. v. Bd. of Comm'rs*, 299 N.C. 620, 629 (1980). "We begin with the text of the statute and, if that text is clear and unambiguous, we 'conclude that the legislature intended the statute to be implemented according to the plain meaning of its terms.' " *Arter*, 386 N.C. at 354 (quoting *Lanvale Props., LLC v. County of Cabarrus*, 366 N.C. 142, 154 (2012)).

In our view, by requiring each NOV to include a "description of the violation," the Durham City Council clearly and unambiguously indicated that property owners should not have to guess what UDO violations are being alleged. If we were to conclude otherwise, we would effectively render the description requirement in UDO § 15.2.1.C meaningless. *See Burgess v. Your House of Raleigh, Inc.*, 326 N.C. 205, 216 (1990) ("A statute must be construed, if possible, so as to give effect to every provision, it being presumed that the Legislature did not intend any of the statute's provisions to be surplusage." (cleaned up)). Hence, for an NOV to satisfy the description requirement, it must leave the property owner with a reasonable understanding of the alleged violation. To accomplish this, the NOV will normally have to specify (1) which UDO provisions are at issue and (2) what conditions on the owner's property violate those provisions.

Several of the UDO's other NOV-related provisions support our interpretation of the description requirement. As quoted above, UDO § 15.2.1.C also mandates that an NOV state "the measures necessary to correct" the violation and "the time period allowed, if any, to correct the violation." Obviously, a property owner must grasp the nature of an alleged violation if the owner is to take corrective action within a designated period.

Even if this Court were to regard the description requirement in UDO § 15.2.1.C as ambiguous, we would likely still construe it to demand significant detail. "[T]his Court will resolve any well-founded doubts about a [zoning ordinance] provision's meaning in favor of 'the free use of land.' " *Schooldev*, 386 N.C. at 776–77 (quoting *Westminster Homes, Inc. v. Town of Cary Zoning Bd. of Adjustment*, 354 N.C. 298, 308 (2001)). Zoning enforcement actions interfere with the free use of land. Consequently, in undertaking such actions, local governments

should be prepared to state with reasonable clarity the grounds for their interference.

Applied to the facts of this case, our reading of the description requirement in UDO § 15.2.1.C leads us to reverse the Court of Appeals. True, the NOV notified the Market that its property failed to comply with an approved site plan in violation of UDO § 3.7.2. Yet this general statement offered the Market no details whatsoever about the site plan deviations that prompted the planning department to issue the NOV. Similarly, with respect to corrective action, the NOV unhelpfully advised the Market "to remove all alterations inconsistent with the approved site plan within thirty (30) days of the receipt of this notice." Basically, the NOV told the Market, "You know what you did. Now fix it." We do not believe that this is the kind of notice the Durham City Council envisioned when it adopted UDO § 15.2.1.C.

It should be added that the planning department's approach was not just inconsistent with the description requirement; it was also unfair. As previously observed, the planning department deliberately kept the NOV vague because, in the words of its manager, "We don't want to issue [an NOV] that says, 'Hey, fix this, this, this, and this,' when there [are] a whole lot of things that were improved on the site [because the violator] could fix those things and not fix the others." At the same time, however, the NOV threatened the Market with civil penalties of up to $500.00 per day for each violation that existed after the thirty-day remedial period. The NOV thus left the Market guessing as to exactly which violations the planning department had in mind and facing potentially steep civil penalties if it guessed incorrectly.

In its brief to this Court, the City makes several objections to the Market's contention that the NOV did not describe any alleged violations. In particular, the City asserts that the Market has nowhere explained "why the photographs [attached to the NOV] combined with the other elements of the [NOV] do not sufficiently identify the violation and how the violation can be cured." Even if we assume that photographs can qualify as "written notice" under UDO § 15.2.1.A, the four blurry, black-and-white copies of photographs attached to the NOV and contained in the record on appeal cannot be said to provide effective notice of any UDO violations.

Furthermore, as the facts of this case show, compliance with the description requirement in UDO § 15.2.1.C does more than simply guarantee adequate notice to property owners. It also supplies the BOA with information necessary to evaluate the substance of NOV appeals.

When, as here, the NOV lacks essential information, the BOA can find itself analyzing the sufficiency of the NOV instead of devoting its full attention to whether the available evidence proves the existence of a UDO violation.

Since we hold that the NOV served on the Market failed to comply with UDO § 15.2.1.C, we need not consider the Market's remaining arguments, such as its assertion that the NOV violated due process. We thus decline to reach the merits of those claims.

IV.

The NOV in this case failed to describe the Market's alleged site plan violations as required by the City's UDO. Accordingly, we reverse the judgment of the Court of Appeals and remand this case with instructions to the City to dismiss the NOV.

REVERSED AND REMANDED.

EMPIRE CONTRACTORS, INC.
v.
TOWN OF APEX

No. 322A24

Filed 12 December 2025

Class Actions—class certification—fees charged to developers by town—individualized issues predominating over common issues of law and fact

In a putative class action lawsuit seeking a declaration that a town's "recreation fees"—charged to developers constructing new subdivisions in the town in lieu of dedicating a portion of the subdivisions for use as public parks or other recreation areas—were illegal and must be refunded, the trial court's order certifying a class that included all of plaintiff's claims for declaratory relief was vacated because the class included several claims for which individualized issues predominated over common issues of law and fact, such as the fair market value of real property or the cost that a particular development imposed on the town. The matter was remanded for a new class certification analysis based on claims not involving individualized fact issues, including whether fracturing the declaratory

judgment action would create potential claim-splitting concerns or would otherwise no longer be the superior means of adjudicating the remaining claims.

Justice BERGER concurring.

Appeal pursuant to N.C.G.S. § 7A-27(a)(4) from an order granting plaintiff's motion for class certification entered on 1 April 2024 by Judge Gale M. Adams in Superior Court, Wake County. Heard in the Supreme Court on 16 September 2025.

Milberg Coleman Bryson Phillips Grossman, PLLC, by James R. DeMay, Daniel K. Bryson, J. Hunter Bryson, and Amanda M. Memmler, for plaintiff-appellee.

Hartzog Law Group, LLP, by Katherine Barber-Jones and Dan M. Hartzog Jr., for defendant-appellant.

DIETZ, Justice.

For many years, the Town of Apex charged "recreation fees" to developers constructing new subdivisions in the rapidly growing town. These fees were a substitute for developers dedicating a portion of the subdivision for use as a public park or other recreation area. By law, the town was required to use the recreation fees to create or improve its own public recreation areas near the developments that paid for them.

Plaintiff Empire Contractors, Inc. brought this putative class action lawsuit seeking a declaration that the town's recreation fees are illegal and must be refunded. The trial court certified a class that included all of Empire's claims for declaratory relief. The town then appealed, arguing that the common issues for the putative class did not predominate over the many individualized issues. The town also argued that a class action was not the superior method of adjudicating these legal claims.

As explained below, we agree with the town that, in the class certified by the trial court, individualized issues predominate over the common issues of law and fact. In particular, the class includes several claims for declaratory relief that involve fact-intensive issues such as the fair market value of real property or the cost that a particular development imposes on the town. Resolving these fact issues would cause the case to "degenerate into a series of mini-trials" for each class

member that would vastly overshadow the common legal issues. *See Jackson v. Home Depot U.S.A., Inc.*, 388 N.C. 109, 114 (2025).

As a result, we vacate the trial court's class certification order and remand for further proceedings. On remand, the trial court should conduct a new class certification analysis based on the claims that do not involve individualized fact issues. In that analysis, the court should consider whether fracturing this declaratory judgment action—with some claims being pursued in a class action and others left to individual actions—creates potential claim-splitting concerns or is otherwise no longer the superior means of adjudicating the remaining claims.

Facts and Procedural History

The North Carolina General Statutes provide that a local government "may by ordinance regulate the subdivision of land within its planning and development regulation jurisdiction." N.C.G.S. § 160D-801 (2023). Among other permissible regulations, local governments may require developers to either dedicate a portion of the subdivision to create a public recreation area or, instead, pay a fee that the local government will use to create or improve recreation spaces "within the immediate area" of the subdivisions that paid for them:

> Recreation Areas and Open Space. — The regulation may provide for the dedication or reservation of recreation areas serving residents of the immediate neighborhood within the subdivision or, alternatively, for payment of funds to be used to acquire or develop recreation areas serving residents of the development or subdivision or more than one subdivision or development within the immediate area.

N.C.G.S. § 160D-804(d).

The statute requires any formula for calculating a fee in lieu of dedication to be "based on the value of the development or subdivision for property tax purposes." *Id.* But the General Assembly enacted a local law exempting the Town of Apex from this requirement and instead permitting the town to impose a recreation fee that is not based on property tax value so long as the fee does not "exceed the fair market value of the land area that would have otherwise been required to be dedicated." Act of June 21, 1996, ch. 722, § 1, 1995 N.C. Sess. Laws 408, 408. The town later enacted an ordinance creating a recreation fee consistent with this local act and began charging the fee to developers.

In 2017, Empire sought approval to develop a twenty-home subdivision in the town, known as Goldenview Acres. Empire alleges that, as part of the subdivision plan approval, the town charged Empire a recreation fee of $64,438 despite also requiring Empire to dedicate a portion of its development for a "greenway easement" and "open space areas." Empire alleges that the town did not use the recreation fee to create public recreation areas near Goldenview Acres and instead commingled the fees with other town revenue.

Empire later brought this putative class action lawsuit seeking a declaration that the town's recreation fees charged to all developers "exceed the lawful authority of the town" or, alternatively, are unconstitutional because the fees are not "roughly proportional" to each subdivision's impact on the town. Empire sought a refund of all illegally collected fees under N.C.G.S. § 160D-106, the statute that governs local development fees not authorized by law.

After a hearing, the trial court certified a class of all persons who paid recreation fees to the Town of Apex beginning in November 2017. In the class certification order, the trial court identified four common claims for declaratory judgment:

> a. Whether the Recreation Fees violate N.C.G.S. § 160D-804(d) because Class Members dedicate or reserve recreation or open space areas in their subdivisions for the benefit of the subdivision residents;
>
> b. Whether the Recreation Fees violate N.C.G.S. § 160D-804(d) and the Town's Charter because the amount of the Recreation Fees is not based on the property's fair market value at the time the initial development application submittal is made to the Town;
>
> c. Whether the Recreation Fees violate N.C.G.S. § 160D-804(d) because the Fees are not used by the Town to acquire and develop recreation or open space areas in the immediate area of the Class Member's subdivision, and/or the Fees are not used by the Town for the particular benefit of the Class Member's subdivision;
>
> d. Whether the Recreation Fees are an unconstitutional condition because they are not roughly

> proportional to the costs of any impact of the proposed development on the Town's parks and recreation facilities.

The trial court also found that if class members prevailed on any of these claims, there was an additional common question concerning whether class members are "entitled to a refund of all unlawful Recreation Fees charged and collected by the Town during the Class Period, plus interest at the rate of 6% per annum from the date of payment pursuant to N.C.G.S. § 160D-106."

After entry of the trial court's class certification order, the town appealed directly to this Court as provided by N.C.G.S. § 7A-27(a)(4).

Analysis

I. Standard of review for class certification

On appeal, the town points to two alleged errors in the trial court's class certification analysis: (1) the court's determination that "common issues predominate over issues affecting only individual class members," and (2) the court's determination that "a class action is superior to other available methods to adjudicate the controversy."

We begin by addressing the appropriate standard of review for these two arguments. The "general standard of review" for class certification is abuse of discretion. *Fisher v. Flue-Cured Tobacco Coop. Stabilization Corp.*, 369 N.C. 202, 209 (2016). We use the term "general" here because the trial court's ultimate decision to certify the class is a discretionary one. *Id.*

But within the class certification analysis, there are discrete components with different standards of review. *Id.*; *see also Jackson*, 388 N.C. at 113. One of these components involves the legal criteria that must be satisfied before a class can be certified. This includes the so-called "commonality" and "predominance" requirements, which examine whether there are common issues of law or fact and whether those common issues predominate over issues that are individualized and specific to each class member. *Jackson*, 388 N.C. at 113. These commonality and predominance requirements are questions of law that we review de novo. *Fisher*, 369 N.C. at 209.

The legal criteria for class certification also include a number of other court-created requirements designed to protect the absent class members, including "(1) that the class representatives have the ability to fairly and adequately represent the interest of all class members; (2)

that there are no conflicts of interest between the class representatives and the unnamed class members; (3) that the class representatives have a genuine personal interest in the outcome of the suit; and (4) that the class representatives have the ability to adequately represent class members outside of the jurisdiction; (5) that the proposed class members are so numerous that it is impractical to bring them all before the court; and (6) that it is possible to provide sufficient notice to all putative class members." *Jackson*, 388 N.C. at 113. These legal criteria are also questions of law. *Crow v. Citicorp Acceptance Co.*, 319 N.C. 274, 280 (1987); *Jackson*, 388 N.C. at 113. As with all questions of law, we review them de novo. *Beroth Oil Co. v. North Carolina Dep't of Transp.*, 367 N.C. 333, 338 (2014); *Jackson*, 388 N.C. at 114.

Beyond these legal criteria, there are also many discretionary components to class certification. This is because the trial court has broad discretion to determine whether, and how, class certification should take place. For example, although the question of whether adequate notice can be given to class members is a legal one, the "actual manner and form of the notice is largely within the discretion of the trial court." *Crow*, 319 N.C. at 283. Similarly, although the existence of disqualifying conflicts of interest among class members is a legal question, trial courts have discretion in "evaluating potential conflicts of interest between class members and weighing any potential conflicts" in order to craft an appropriate class and select appropriate class representatives. *Fisher*, 369 N.C. at 212. Finally, unlike the objective legal criteria that are necessary to certify a class, there are other, more subjective considerations in class certification such as the superiority of the class action mechanism. This superiority analysis "continues to be a matter left to the trial court's discretion." *Crow*, 319 N.C. at 284.

Applying this precedent here, we employ different standards of review when assessing the two different arguments raised by the town. The town first challenges the trial court's determination that "common issues predominate over issues affecting only individual class members." This is one of the legal criteria discussed above and is a question of law that we review de novo. *See Jackson*, 388 N.C. at 114. The town also challenges the trial court's determination that "a class action is superior to other available methods to adjudicate the controversy." This superiority determination is part of the discretionary component of class certification. *See Crow*, 319 N.C. at 284. We review this issue solely for abuse of discretion. *See Jackson*, 388 N.C. at 114.

II. The predominance requirement

Having set out the appropriate standard of review, we turn to the town's first argument, concerning predominance. As noted above, "class certification is appropriate only when there are common issues of law or fact that predominate over issues affecting only individual class members." *Id.* (cleaned up). "When examining the predominance question, courts typically evaluate whether, despite common issues of law or fact, there are individualized, fact-intensive determinations that would ultimately force the class action to degenerate into a series of mini-trials." *Id.* (cleaned up). Not all individualized issues will preclude class certification on predominance grounds. For example, there could be a fact issue specific to each class member but for which there is an "efficient means of resolving it on a class-wide basis." *Id.* at 120. The problematic fact issues typically are those so individualized that they will require separate evidence for each class member and then separate resolution by a factfinder.

In this case, Empire seeks a declaratory judgment that the town's recreation fees are unlawful and must be refunded. To support this claim, Empire asserts what are essentially a series of alternative legal claims, each of which independently supports the request for declaratory relief.

For example, as noted above, a local act modified N.C.G.S. § 160D-804(d) to permit the town to charge a recreation fee not based on property tax value so long as the fee does not "exceed the fair market value of the land area that would have otherwise been required to be dedicated." Act of June 21, 1996, § 1, 1995 N.C. Sess. Laws at 408. Empire alleges that the town's recreation fees are unlawful because they exceed this statutory cap.

In addition, N.C.G.S. § 160D-804(d) permits "a combination or partial payment of funds and partial dedication of land." N.C.G.S. § 160D-804(d). Empire alleges that the town's recreation fees are unlawful because they do not account for developers who chose to "dedicate or reserve recreation or open space areas in their subdivisions for the benefit of the subdivision residents" in addition to paying the fee.

Similarly, the statute provides that the recreation fees "shall be used only for the acquisition or development of recreation, park, or open space sites" and that these sites must be "within the immediate area" of the subdivisions that paid the fees. *Id.* Empire alleges that the fees are unlawful because the town commingled them with general town

revenue and did not use them to develop recreation spaces in the immediate area of the relevant subdivisions.

Finally, there is a constitutional limit on the scope of this sort of development fee: the fee must have an "essential nexus" and be "roughly proportional" to the impact of the specific development on nearby town parks, greenways, or other recreation areas. *See Anderson Creek Partners, L.P. v. County of Harnett*, 382 N.C. 1, 28–29 (2022). Empire alleges that the town's recreation fees are unconstitutional because they are not "roughly proportional to the costs of any impact of the proposed development" on the town's parks and recreation areas.

The trial court expressly held that each of these legal claims is a common issue that justifies class certification. The problem with this analysis is that the trial court never addressed the highly individualized issues that many of these claims present. Take, for example, Empire's claim that the recreation fees exceeded "the fair market value of the land area that would have otherwise been required to be dedicated." *See* Act of June 21, 1996, § 1, 1995 N.C. Sess. Laws at 408. This claim of declaratory relief would require calculation of the fair market value of each class member's property. After all, a court cannot determine if a recreation fee exceeded the fair market value of certain real property without knowing what that fair market value is.

Calculating the fair market value of real property is an intensely individualized, fact-specific endeavor. *See Dep't of Transp. v. M.M. Fowler, Inc.*, 361 N.C. 1, 5–7, 13 (2006). For this reason, we have previously rejected class certification on predominance grounds where the class members' claims involve calculating the fair market value of their property. *See Beroth Oil*, 367 N.C. at 335.

In *Beroth Oil*, the plaintiffs sought to certify a class of several hundred property owners impacted by a Map Act recording in Forsyth County. *Id.* at 335–36. The plaintiffs asserted that the Map Act was a taking and that they were entitled to just compensation. *Id.* at 335.

We affirmed the trial court's denial of class certification because a "discrete fact-specific inquiry is required" to calculate the fair market value of the property subject to a taking. *Id.* at 343. As a result, each property owner had a right "to present to the fact finder a comprehensive analysis of the value of the land subject to the condemnation." *Id.* This meant that "the individual factual issues tied to each unique parcel of land far outnumber the common issues." *Id.* at 347. We therefore held "that common issues of fact or of law would not predominate." *Id.*

The same is true here. Every putative class member in this case would have a right "to present to a fact finder" evidence supporting the valuation of the property it otherwise would have dedicated instead of paying the recreation fee. *See id.* at 343. The town would have a right to present its own counterevidence. The result is that calculating the fair market value of each class member's property would create a "series of mini-trials" that would dwarf the adjudication of the common issues in this declaratory judgment action and predominate the entire lawsuit. *See Jackson*, 388 N.C. at 114, 120. Accordingly, the inclusion of this claim for declaratory relief defeats the predominance prong of class certification.

Other claims in this case similarly present predominance problems. For example, to prevail on the claim that the recreation fees are unconstitutional, class members must show that the fees they paid are not "roughly proportional" to the impact of their specific developments on nearby town parks, greenways, or other recreation areas. *See Anderson Creek Partners*, 382 N.C. at 38. As we observed in *Anderson Creek*, this proportionality analysis is a fact-intensive one in which the parties are entitled "to conduct discovery and present evidence" concerning the alleged impact of the development on the surrounding town services. *Id.* at 43. As with the issue of fair market value, this proportionality issue ultimately will require individualized assessments and resolution by a factfinder. Thus, it too will predominate over the common issues raised in this declaratory judgment action. *See Jackson*, 388 N.C. at 114, 120.

In sum, the class certified by the trial court does not meet the legal criteria for class certification because it includes claims with highly individualized fact issues that defeat the predominance prong of class certification. We must therefore vacate the trial court's order and remand for further proceedings.

III. The superiority analysis

Because we vacate the trial court's order and remand this matter based on the trial court's predominance analysis, we need not address the town's challenge to the court's superiority analysis. As we have observed in several recent class certification cases, these arguments "may be mooted by entry of a new order on remand." *See Surgeon v. TKO Shelby, LLC*, 385 N.C. 772, 779 (2024); *Jackson*, 388 N.C. at 119. But as with those earlier cases, there are issues that arise from our ruling that "warrant further discussion to guide the trial court's analysis on remand." *Id.*

In particular, the inability to pursue all of the claims for declaratory relief in a class action may impact the trial court's superiority analysis on

remand. This Court has long recognized "the common law rule against claim-splitting" which prohibits multiple lawsuits based on claims all stemming from a single wrong. *Bockweg v. Anderson*, 333 N.C. 486, 492 (1993). This means that once a judgment is entered, that judgment's res judicata effect "extends not only to matters actually determined but also to other matters which in the exercise of due diligence could have been presented for determination in the prior action." *Gaither Corp. v. Skinner*, 241 N.C. 532, 535–36 (1955).

This claim-splitting rule, which is widely followed in the federal courts and our sister states as well, can create preclusion issues that prevent class certification. *See*, *e.g.*, *In re Teflon Prods. Liab. Litig.*, 254 F.R.D. 354, 366–68 (S.D. Iowa 2008); *In re Methyl Tertiary Butyl Ether Prods. Liab. Litig.*, 209 F.R.D. 323, 339 (S.D.N.Y. 2002). Here, for example, the resolution of the class action claim for declaratory relief might bar class members from pursuing the remaining claims in a second, individual declaratory judgment action. Likewise, class members who promptly pursue their individual claims might secure a judgment before resolution of the class claims, creating preclusion problems within the class.

The parties did not brief this claim-splitting issue on appeal, instead focusing solely on the superiority of the broader class initially certified by the trial court. We are therefore reluctant to resolve this question now, without the benefit of input from the parties. We leave it to the trial court, on remand, to hear the parties' arguments on this question and determine whether it creates a bar to class certification or whether other factors resulting from the fragmentation of this class action render it no longer a superior means of adjudicating the claims. *See Jackson*, 388 N.C. at 121.

Conclusion

We vacate the trial court's class certification order and remand for further proceedings.

VACATED AND REMANDED.

Justice BERGER concurring.

I concur with the majority but write separately to highlight the constitutionally suspect nature of the town's collection and management of the recreation fees at issue. Although not argued, Empire's allegations that the recreation fees have been commingled with general town

revenue and have not been used to develop recreation spaces near the subdivisions raise threats to this State's constitutional protections for economic liberty. *See* N.C. Const. art. I, § 1 ("We hold it to be self-evident that all persons are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, *the enjoyment of the fruits of their own labor*, and the pursuit of happiness." (emphasis added)); N.C. Const. art. I, § 19 ("No person shall be . . . in any manner deprived of his life, liberty, or property, but by the law of the land.").

"The fundamental right to property is as old as our state. From the very beginnings of our republic we have jealously guarded against the governmental taking of property." *In re Harris Teeter, LLC*, 378 N.C. 108, 132 (2021) (Berger, J., dissenting) (cleaned up). Indeed, the very "mission" of the law, "far from being able to oppress the people, or to plunder their property, even for a philanthropic end, . . . is to protect the people, and to secure to them the possession of their property." Frédéric Bastiat, *The Law* 50 (Ludwig von Mises Inst. 2007) (1850). The town's recreation fee scheme seems to be at odds with this principle.

"This Court's duty to protect fundamental rights includes preventing arbitrary government actions that interfere with the right to the fruits of one's own labor." *King v. Town of Chapel Hill*, 367 N.C. 400, 408 (2014). And even where the government acts in furtherance of a desirable goal, any state action burdening economic activity must be "reasonably necessary to promote the accomplishment of a public good, or to prevent the infliction of a public harm." *Kinsley v. Ace Speedway Racing, Ltd.*, 386 N.C. 418, 424 (2024) (cleaned up). In addition, even if the asserted purpose for the governmental interference is reasonable, a plaintiff "may rebut that assertion with evidence demonstrating that the State's asserted purpose is not the true one, and instead the State is pursuing a different, unstated purpose." *Id.* at 425.

If Empire's allegations are true, then the town has collected fees from developers under the premise that the money will be used for recreation purposes. The town chose to do this through the fees instead of tax collection. After all, politicians revel in limiting political accountability while delivering with other people's money. But even if extracting fees to build pickleball courts may be reasonably necessary, hoarding the money is not. The town appears to have leveraged a narrow statutory provision as a means for general revenue collection. Such a scheme cannot be a permissible interference with economic liberty, and this is, in reality, legal plunder under the guise of philanthropy. But here, the emperor truly has no pickleball courts.

GVEST REAL EST., LLC v. JS REAL EST. INVS., LLC

[388 N.C. 563 (2025)]

GVEST REAL ESTATE, LLC (FORMERLY GEE REAL ESTATE, LLC), PLAINTIFF
v.
JS REAL ESTATE INVESTMENTS, LLC; SHAW CAPITAL & GUARANTY, LLC; TR REAL ESTATE, LLC; LEVAN CAPITAL, LLC (FORMERLY KNOWN AS TRINVEST PARTNERS, LLC); JAMES SHAW; TYSON RHAME; AND YARDS AT NODA, LLC, DEFENDANTS
v.
JS REAL ESTATE INVESTMENTS, LLC.; TR REAL ESTATE, LLC; JAMES SHAW; TYSON RHAME; AND YARDS AT NODA, LLC, COUNTERCLAIM PLAINTIFFS
v.
GVEST REAL ESTATE, LLC (FORMERLY GEE REAL ESTATE, LLC), COUNTERCLAIM DEFENDANT

No. 308A24

Filed 12 December 2025

1. Declaratory Judgments—business dispute—purported transfer of interests—noncompliance with operating agreement

In a designated complex business case involving a dispute between three investors over the membership and management of their real estate development limited liability company (LLC) (in which two of the investors were identified as the LLC's managers, and the investors' three individually controlled real estate companies as members), the Business Court did not err by granting summary judgment to defendants on plaintiff's declaratory judgment claim. Although plaintiff asserted that the real estate companies had transferred their membership interests before voting to oust him as manager, rendering their vote invalid, any transfer of interest had to be in accordance with the mandatory transfer provisions of the LLC's Operating Agreement. Plaintiff waived his argument regarding two of the three relevant provisions; as to the third, plaintiff's own assertions defeated his claim because he admitted to not completing steps necessary to effectuate the transfers. Thus, the purported transfers were null and void, and the vote to remove plaintiff as manager was valid.

2. Fiduciary Relationship—limited liability company—duty between majority and minority members—no legal precedent

In a designated complex business case involving a dispute between three investors over the membership and management of their real estate development limited liability company (LLC) (in which two of the investors were identified as the LLC's managers, and the investors' three individually controlled companies as members), the Business Court did not err by granting summary judgment to defendants on plaintiff's claims for breach of fiduciary duty

and constructive fraud (for which a fiduciary duty must be alleged) because there was no legally recognized fiduciary duty between a majority coalition of minority LLC members and other minority members. The Supreme Court declined to extend corporate shareholder oppression principles to LLCs in light of key distinctions between corporations and LLCs; given the basis of plaintiff's assertions, other claims may have been more suitable. Further, plaintiff did not assert an individual cause of action—separate and distinct from any injury to the LLC itself—with regard to loans executed by defendants or to defendants' effort to oust plaintiff and his company from the business.

Appeal pursuant to N.C.G.S. § 7A-27(a)(2) from an order and opinion granting defendants' motion for summary judgment and granting in part and denying in part plaintiff's motion for partial summary judgment entered on 12 September 2023 by Judge Adam M. Conrad, Special Superior Court Judge for Complex Business Cases, in Superior Court, Mecklenburg County, after the case was designated a mandatory complex business case by the Chief Justice on 28 November 2016 pursuant to N.C.G.S. § 7A-45.4(b). Heard in the Supreme Court on 23 April 2025.

Rex C. Morgan and Jonathan Salmons for plaintiff-appellant.

Chelsea J. Corey for defendant-appellees.

RIGGS, Justice.

This case involves a dispute over the membership and management of Yards at NoDa, LLC (Yards at NoDa) between plaintiff, Gvest Real Estate, LLC (Gvest), and defendants, JS Real Estate Investments, LLC and TR Real Estate, LLC (collectively, the real estate companies) and the real estate companies' respective owners, James Shaw and Tyson Rhame. Before us is the issue of whether the Business Court erred in granting defendants' motion for summary judgment on Gvest's declaratory judgment claim and granting summary judgment to the extent brought by defendants on Gvest's claims for breach of fiduciary duty and constructive fraud. For the reasons set forth below, we conclude that the Business Court did not err and affirm its order and opinion.

I. Factual and Procedural Background

A. Establishment of Yards at NoDa and Subsequent Business Disputes

In 2011, Raymond Gee, a Charlotte businessman and real estate developer, identified a large tract of real estate in the North Davidson neighborhood of Charlotte that was ripe for multi-family residential redevelopment. Mr. Gee had a prior working relationship with Atlanta-based investor Mr. Shaw, and Mr. Gee contacted Mr. Shaw about investing in the venture. Mr. Shaw agreed that the development was a good business opportunity, and he contacted another Atlanta-based business associate, Mr. Rhame, about his potential investment in the project.

Mr. Gee, Mr. Shaw, and Mr. Rhame formed Yards at NoDa in 2012 to begin work on the development. Per the Operating Agreement, Mr. Gee and Mr. Shaw were identified as the two managers of the company, while three investment limited liability corporations were identified as the company's members: (1) plaintiff Gvest (then identified as Gee Real Estate, LLC), which was completely controlled by Mr. Gee, owned 25% of Yards at NoDa; (2) defendant JS Real Estate Investments, completely controlled by Mr. Shaw, owned 37.5% of Yards at NoDa; and (3) defendant TR Real Estate, completely controlled by Mr. Rhame, owned 37.5% of Yards at NoDa. Mr. Gee's more limited capital investment, reflected by the smaller ownership interest, was to be offset by his "sweat equity" expended shepherding the project along.

Relevant to this appeal, the Operating Agreement contained several mandatory provisions concerning the transfer of interests and removal of members. According to subsection 6.1.1.2 of the Operating Agreement, any transferee was required to "deliver[ ] to the Company a written instrument agreeing to be bound by the terms of Section VI of this Agreement." Subsection 6.1.1.5 required "[t]he transferor or the transferee [to] deliver[ ] the following information to the Company: (i) the transferee's taxpayer identification number; and (ii) the transferee's initial tax basis in the Transferred Interest." Finally, subsection 6.1.1.6 mandated that "the transferor . . . obtain[ ] the prior written consent of the Manager, which consent may be withheld in the Manager's sole discretion." The Operating Agreement explicitly defined the term "Manager" to mean both Mr. Gee and Mr. Shaw. Pursuant to the Operating Agreement, failure to comply with any of these mandatory transfer provisions would render the transfer "invalid, null and void, and of no force or effect."

Mr. Gee's relationship with his partners quickly deteriorated. In 2013, Mr. Shaw and Mr. Rhame began the process of attempting to freeze

Mr. Gee out of the venture, first by attempting to transfer JS Real Estate Investments' and TR Real Estate's membership interests in Yards at NoDa to a set of different holding companies, Shaw Capital and Levan Capital (collectively, the Capital companies). Mr. Shaw and Mr. Rhame also submitted a proposed amendment to the Operating Agreement that would have made the Capital companies members of Yards at NoDa in the place of the real estate companies; Gvest initially agreed to the amendment but subsequently withdrew that approval. Mr. Shaw and Mr. Rhame also issued a 2013 K-1, a federal tax document, to Mr. Gee that showed him possessing a reduced 16.78% ownership interest in Yards at NoDa, though it was subsequently amended and reissued to reflect Mr. Gee's correct 25% interest.

Of particular importance to this appeal, there are no executed documents in the record directly establishing that the transfer provisions of the Operating Agreement were followed. No "written instrument agreeing to be bound by the terms of Section VI," as required by subsection 6.1.1.2, was ever produced in discovery or testified to; no testimony or document directly established that the Capital companies ever delivered their "taxpayer identification number[s]" or "initial tax bas[e]s," as required by subsection 6.1.1.5, and there is no document showing "prior written consent of the Manager," i.e., Mr. Gee and Mr. Shaw, approving the transfers. Indeed, Mr. Gee acknowledged that he never executed such written consent.

Notwithstanding the absence of any evidence clearly establishing compliance with these formalities, the record does contain evidence suggesting that Mr. Shaw and Mr. Rhame did attempt and intended to effectuate membership transfers to the Capital companies. For example, Yards at NoDa's tax returns for 2014 and 2015 listed the members as Gvest and the Capital companies. Yards at NoDa's 2013 return was also amended in September 2014 to list the Capital companies as members. And Mr. Rhame—but, critically, not then-managers Mr. Gee or Mr. Shaw—signed two "Written Consent of Managers" documents dated 1 January 2013 purporting to consent to the transfers to the Capital companies.

Mr. Shaw and Mr. Rhame undertook other efforts to push Mr. Gee out of their business venture in connection with these intended transfers to the Capital companies. On 29 August 2014, Mr. Shaw and Mr. Rhame executed—on behalf of the real estate companies—a corporate resolution replacing as a manager Mr. Gee with Mr. Rhame. They also executed an "Agreement Regarding Managers" on behalf of the Capital companies, which stated that those two entities were members of Yards at NoDa pursuant to the Operating Agreement, that Mr. Shaw and Mr.

Rhame were the managers of the company, and that the Capital companies, as members, would not vote to remove either person as manager without the other entity's consent.

In 2015 and 2016, Mr. Shaw and Mr. Rhame were indicted on federal charges for wire and mail fraud and money laundering in connection with a currency trading business they jointly owned. A civil asset forfeiture action was also commenced against the two men. Both were subsequently convicted. During this period, in 2015, Yards at NoDa defaulted on a loan it had received from Wells Fargo; to cure the default, Mr. Shaw and Mr. Rhame—with the involvement of the United States Attorney—loaned Yards at NoDa roughly $7,885,000 at 15% interest (the mezzanine loans). Yards at NoDa ultimately paid off Wells Fargo via a no interest loan of roughly $3,269,000 from Mr. Shaw and Mr. Rhame to Yards at NoDa in July 2016.

B. Business Court Proceedings and Appeal

Gvest filed suit against Mr. Shaw and Mr. Rhame, as well as all the relevant companies, in November 2016. Of the claims relevant to this appeal, Gvest sought a declaratory judgment that: (1) the real estate companies transferred their membership interests to the Capital companies in 2013; (2) the real estate companies were therefore not actually members when they voted to remove Mr. Gee as a manager in August 2014; (3) the real estate companies ceased to be members under N.C.G.S. § 57D-3-02, which generally provides that a party is no longer a member if they abandon their economic interest in the LLC; and (4) Mr. Gee was therefore still a manager of Yards at NoDa, and Gvest was the sole member. In an amended complaint, Gvest subsequently brought claims for, *inter alia*, breach of fiduciary duty and constructive fraud, alleging Mr. Shaw, Mr. Rhame, and the real estate companies owed minority member Gvest a fiduciary duty as collective 75% majority owners of the Yards at NoDa and alleging that several commercial loan transactions and their efforts to exclude Mr. Gee and Gvest from the business constituted oppressive self-dealing that monetarily damaged Gvest by siphoning money from Yards at NoDa.

The real estate companies, Mr. Shaw, Mr. Rhame, and Yards at NoDa brought counterclaims for unfair or deceptive trade practices, constructive fraud, negligent misrepresentation, fraudulent inducement, and breach of fiduciary duty against Gvest, and the case proceeded through discovery in the Business Court to a hearing on competing motions for summary judgment.[1]

1. The counterclaim against Gvest for breach of fiduciary duty treats Mr. Gee as the owner and alter ego of Gvest.

The Business Court entered an Order and Opinion on Motions for Summary Judgment on 12 September 2023, entering summary judgment against Gvest on defendants' declaratory judgment claim for one reason: Gvest failed to forecast any evidence establishing that the required transfer provisions of the Operating Agreement—subsections 6.1.1.2, 6.1.1.5, and 6.1.1.6—were ever satisfied. As a result, and contrary to Gvest's requested declaratory relief, the real estate companies were never divested of Yards at NoDa and validly voted to oust Mr. Gee as manager by majority vote in August 2014. As for Gvest's claims alleging breach of fiduciary duty and constructive fraud, the Business Court acknowledged that given the contractual nature of LLCs and the lack of a singular majority member, there was no precedent or legal authority in North Carolina to impose a fiduciary duty on minority members who form a majority coalition and outvote the remaining minority membership. Because breach of fiduciary duty and constructive fraud claims both require the existence of such a fiduciary relationship, the Business Court granted defendants' motion for summary judgment against Gvest on those claims. Counterclaims for constructive fraud, negligent misrepresentation, and punitive damages remained outstanding following the Business Court's order.

Gvest subsequently filed a motion for reconsideration of the order and opinion, raising new arguments. The Business Court denied the motion, concluding that no new evidence had been presented, new arguments were improper on a motion to reconsider, and in any event, those new arguments were plainly without merit.

Defendants subsequently voluntarily dismissed all outstanding claims in June and August 2024. Gvest filed notice of appeal from the Business Court's order and opinion and its reconsideration order after the dismissal of the last outstanding claims. Alongside their appellee brief to this Court, defendants filed a motion to dismiss the appeal on narrow, technical grounds: defendants fully acknowledge that the order and opinion and reconsideration order were rendered final judgments by virtue of the dismissal of all their outstanding counterclaims in June and August 2024, but defendants nonetheless contend there has been no "entry of judgment" because no additional document was signed and filed by the Business Court after defendants voluntarily dismissed their claims, meaning that this Court would not have appellate jurisdiction.

On appeal before this Court, Gvest challenges the Business Court's rulings on two grounds. First, Gvest contends that the tax returns executed by Mr. Shaw, the 2013 Written Consent of Managers documents executed by Mr. Rhame, and the Agreement Regarding Managers

executed by the Capital companies (by Mr. Shaw and Mr. Rhame) are all substantial circumstantial evidence tending to show that Mr. Shaw and Mr. Rhame actually complied with the required transfer provisions of the Operating Agreement as early as 2013. Second, Gvest contends that minority shareholder oppression doctrines applicable to corporations should be extended to limited liability companies in this case, particularly because the Capital companies executed an agreement binding each other to vote together on any removal of Mr. Shaw and Mr. Rhame as managers.

II. Standard of Review

This Court has original appellate jurisdiction over final judgments from cases designated as mandatory complex business cases under N.C.G.S. § 7A-27. *See* N.C.G.S. § 7A-27(a)(2) (2023). On 28 November 2016, former Chief Justice of the Supreme Court of North Carolina, Mark Martin, designated this case as a mandatory complex business case pursuant to N.C.G.S. § 7A-45.4(b). The Business Court entered an Order and Opinion on Motions for Summary Judgment on 12 September 2023. The defendants voluntarily dismissed their remaining claims in June and August 2024, leaving no further claims in the matter and making the 12 September 2023 Order a final judgment. *See Veazey v. City of Durham*, 231 N.C. 357, 361 (1950) ("A final judgment is one which disposes of the cause as to all the parties, leaving nothing to be judicially determined between them in the trial court."). Thus, this Court has appellate jurisdiction to review the Business Court's order.

Summary judgment is reviewed de novo. *N.C. Farm Bureau Mut. Ins. Co. v. Martin*, 376 N.C. 280, 285 (2020). "When reviewing a matter de novo, this Court considers the matter anew and freely substitutes its own judgment for that of the lower courts." *N.C. Farm Bureau Mut. Ins. Co. v. Herring*, 385 N.C. 419, 422 (2023) (cleaned up). Entry is appropriate "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 judgment as a matter of law." *Id.* at 423 (quoting N.C.G.S. § 1A-1, Rule 56(c) (2021)).

III. Analysis

A. Summary judgment for defendants on Gvest's declaratory judgment claim was appropriate.

[1] Gvest sought a declaratory judgment that the real estate companies transferred their membership interests to the Capital companies in January 2013, and that the subsequent vote of the real estate companies

to oust Mr. Gee as a manager in 2014 was thus invalid. Defendants conceded that the real estate companies attempted to transfer their interests but that their attempt did not comply with subsections 6.1.1.2, 6.1.1.5, and 6.1.1.6 of the Operating Agreement, meaning that the membership of Yards at NoDa never changed, all three original members remain members, and that Mr. Gee's removal was valid as it had been effectuated by a majority of the members (two out of the three total).

1. Gvest waived any argument concerning compliance with the Operating Agreement.

Gvest's argument fails for several simple reasons: (1) Gvest was required to argue and show compliance with subsections 6.1.1.2, 6.1.1.5, and 6.1.1.6 in order to receive a declaratory judgment that the real estate companies validly transferred their interests to the Capital companies, but it waived any argument concerning compliance with the first two subsections before the Business Court; (2) subsection 6.1.1.6 required the prior written consent of all managers prior to any transfer between the real estate companies and the Capital companies; and (3) Mr. Gee, who was undisputably a manager for the entirety of 2013, fully admits that he never executed any written consent to such a transfer. In short, Gvest's argument that circumstantial evidence shows Mr. Shaw and Mr. Rhame did everything they needed to do to effectuate the transfers is entirely undercut by Mr. Gee's acknowledgment that he never did what *he* was required to do to effectuate the exchange.

On the other hand, defendants' brief in support of their motion for summary judgment argued that the parties failed to comply with all three relevant terms in section VI of the Operating Agreement, which rendered the proposed transfer of membership rights "invalid, null and void." The Business Court understood Gvest's brief as only asserting compliance with subsection 6.1.1.6. Consistent with Rule 7.2 of the North Carolina Business Court Rules, the Business Court concluded that Gvest had waived any argument asserting necessary compliance with subsections 6.1.1.2 and 6.1.1.5. *See* BCR 7.2.

In its principal brief on appeal, Gvest again has not argued that this waiver determination was in error—meaning it has again waived any argument of this issue. *See* N.C. R. App. P. 28(a). The Business Court's order and opinion is appropriately affirmed on this basis.

2. Alternatively, the evidence supported that the transfer of membership interests was invalid and there was a valid vote to oust Mr. Gee as manager.

Subsection 6.1.1.6 of Yards at NoDa's Operating Agreement plainly states that any membership transfer required "the prior written consent of the Manager." The Operating Agreement plainly defined "Manager" to mean both of Mr. Gee and Mr. Shaw: "Raymond M. Gee and James S. Shaw are hereby designated to serve as the initial Manager." Without compliance with subsection 6.1.1.6, subsection 6.1.3 rendered any attempted transfer between the real estate companies and the Capital companies "invalid, null and void, and of no force or effect." That subsection further provides, "Any Person to whom Membership Rights are attempted to be transferred in violation of this Section *shall not be entitled to vote on matters coming before the Members*."[2] (Emphasis added.)

Gvest's own complaint asserts that "in January 2013, the [real estate companies], through Shaw and Rhame, secretly transferred their entire membership interests to [the Capital companies], *without advising or notifying the Plaintiff*." (Emphasis added.) It further alleges, "In late Summer 2014, . . . *Gee was not aware that* [*the real estate companies*] *had transferred their membership interests to* [*the Capital companies*]." (Emphasis added.) Mr. Gee testified in his deposition that the earliest he could have possibly known of an intent for Mr. Rhame to transfer TR Real Estate's membership interest to the Capital companies was in May of 2014. Finally, the record contains no evidence establishing that Mr. Gee ever executed written consent for membership transfers from the real estate companies to the Capital companies prior to his removal as manager by the real estate companies in August 2014.

Gvest has no counterargument in either its principal brief or reply brief on appeal. While it argues that documents in the record—like the tax returns, the purported "consent" to the transfers by Mr. Rhame as a manager in a document dated January 2013 (before Mr. Rhame was ever made a manager), and the Capital companies' Agreement Regarding Managers—amount to adequate circumstantial evidence to establish that Mr. Shaw and Mr. Rhame executed whatever documents they could

2. The Business Court made this same series of determinations in its orders, and Gvest has not argued that the Business Court's interpretation and application of the Operating Agreement was in error.

to complete the transfers,[3] Gvest does not cite to anything establishing that Mr. Gee ever gave the *necessary* prior consent to the transfers; indeed, it disclaims that fact several times over throughout the record.

This evidentiary record is clear that Mr. Gee never gave his required consent to transfer the real estate companies' membership interests to the Capital companies prior to January 2013, let alone prior to the removal vote in August 2014. Without that consent, the real estate companies never validly transferred their membership interests to the Capital companies, and the real estate companies could—and did—validly vote to remove Mr. Gee as a manager in August 2014. The Business Court appropriately granted defendants' motion for summary judgment against Gvest on its declaratory judgment claim.

B. Summary judgment for defendants on Gvest's claims for breach of fiduciary duty and constructive fraud was also appropriate.

[2] Gvest concedes that there is no North Carolina precedent for creating a fiduciary duty between a majority coalition of minority LLC

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3. Even this argument is not particularly persuasive on the merits. Gvest argues we should presume that the various necessary transfer documents were created, executed, and delivered as required by the Operating Agreement because they would have been in the exclusive control of defendants. But Gvest acknowledged that defendants had provided all documents requested, and the Business Court found that defendants "have satisfied every document demand made by Gvest and that no further demands have been made." Absent any spoliation or discovery violation arguments, there is no reason to presume that the necessary documents existed but were destroyed or withheld. At best, then, Gvest's evidence discloses an (uncontested) intent by Mr. Shaw and Mr. Rhame to transfer the relevant membership interests—not a further and entirely speculative inference that defendants actually effectuated the transfer consistent with the Operating Agreement. The cases cited by Gvest for the contrary position are clearly distinguishable; for example, it relies heavily on *Eggleston v. Eggleston*, 228 N.C. 668 (1948), for the proposition that tax returns are competent evidence of ownership in a partnership. The obvious distinction is that partnerships are *unincorporated* and thus can be created by *implied* contract. As such, a partnership can be created "orally . . . [or] by the agreement or conduct of the parties, either express or implied." *Id.* at 674 (cleaned up). This is not the case with LLCs, which must be formally incorporated consistent with the statutory requirements and cannot be implied from mere conduct. *See, e.g.*, N.C.G.S. § 57D-2-20(a) (2023) ("One or more persons may cause an LLC to be formed by delivering executed articles of organization to the Secretary of State for filing . . . ."). Gvest's other proffered cases deal with issues unique to spousal business operations and/or do not address whether tax returns are competent to show compliance with binding transfer provisions in an LLC's operating agreement. *See, e.g.*, *Penley v. Penley*, 314 N.C. 1, 18 (1985) (noting a tax return was relevant to the issue of whether the spouse participated in a business gratuitously or in exchange for stock in a corporation); *Woodward v. Pressley*, 39 N.C. App. 61, 63 (1978) (holding tax returns disclosing business profits were relevant to show that profit and loss statements containing different amounts were fraudulent).

members and other minority members.[4] To the contrary, our courts have generally refused to fashion such a relationship in this context unless a singular majority member is able to exercise sole control under the terms of the LLC's operating agreement. *See Vanguard Pai Lung, LLC v. Moody*, No. 18CVS13891, 2019 WL 2526461, *6–7 (N.C. Super. Ct. June 19, 2019) (noting a fiduciary duty exists when a majority member of an LLC is afforded control over the LLC via the operating agreement, but not when a group of minority members join together to outvote the other minority members), *aff'd*, 387 N.C. 376 (2025) (affirming the Business Court's order). Our reluctance to extend ordinary corporate shareholder oppression doctrine to LLCs derives from one of the key central distinctions between corporations and LLCs: a majority interest does not necessarily equate to control in an LLC. Control depends entirely on what the LLC's members agree to in the operating agreement. Because an LLC is primarily a creature of contract, the members are generally free to arrange their relationship however they wish. Among other things, they may depart from statutory default rules, require supermajority votes for some or all company matters, and impose or eliminate fiduciary duties for members and managers. This is one of the principal differences between LLC members and corporate shareholders: minority members of an LLC have a much stronger position because, through the freedom of contract, they are able to obtain minority protections not available to shareholders of a closely-held corporation. *Id.* at *6.

Gvest argues we should use this case to extend shareholder oppression claims first to LLCs and then again to minority coalitions to create a fiduciary duty here for three principal reasons. First, the Agreement Regarding Managers executed by the Capital companies "deprived Plaintiff of the ability to meaningfully participate in Yards [at NoDa]" and violated the covenants of good faith and fair dealing. Second, Gvest

4. Gvest cites seven cases from other jurisdictions for the proposition that there is a trend among our sister states of extending fiduciary duties to a majority coalition of minority LLC members. While we cannot foreclose that such a trend may be on the horizon, the specific cases cited by Gvest do not establish one, as only one of the cited cases, *Wilson v. Gandis*, 844 S.E.2d 631 (S.C. 2020), actually involved a breach of fiduciary duty claim brought by a minority member against a majority coalition of other minority members. Almost all of the cited cases are distinguishable on this or other bases. *See Weiner v. Weiner*, No. 1:06-CV-642, 2008 WL 746960 (W.D. Mich. Mar. 18, 2008) (addressing a minority member oppression claim where a Michigan statute explicitly authorized such claims between minority and majority LLC members); *Baker v. Wilmer Culter Pickering Hale & Dorr LLP*, 81 N.E.3d 782 (Mass. App. Ct. 2017) (holding minority members could bring a breach of fiduciary duty claim against *attorneys* hired to represent the LLC by majority members). And *Wilson* was itself premised on a provision of South Carolina state law authorizing minority member oppression claims. 844 S.E.2d at 642.

claims Mr. Gee was oppressed when he was voted out as manager and was "harass[ed] . . . with unusual document requests." Finally, Gvest claims defendants engaged in self-dealing when they gave Yards at NoDa the mezzanine loans at 15% interest.

The Agreement Regarding Managers is ultimately not the hook Gvest believes it is. As noted above, the Capital companies were never actually made members of Yards at NoDa because of the failure to comply with section VI of the Operating Agreement; as a result, the Agreement Regarding Managers is a voting arrangement between two entities *who have no actual right to vote in the operation of the LLC*. It is hard to see how an agreement that is of no practical effect is in actuality an oppressive action. Gvest's subsequent retreat to the implied covenants is of no real help because any breach of those implied covenants suffices to establish only *a breach of contract and/or a breach of implied covenants* claim—neither of which were made the basis of any appeal, to the extent they were even pleaded below. In other words, if defendants breached the implied covenants, Gvest had the opportunity to allege and establish such a claim; it is not a basis to conjure up an otherwise nonexistent fiduciary relationship to support additional claims for breach of fiduciary duty and constructive fraud.

Gvest's two additional arguments are thin. That Mr. Gee had to respond to an inordinate number of document requests is neither so damaging nor oppressive as to justify the creation of a fiduciary duty necessary to support the alleged breach of fiduciary duty and constructive fraud claims. And, to the extent that Mr. Shaw and Mr. Rhame breached any fiduciary duties in the execution of the mezzanine loans, such claims belong to the LLC, not Mr. Gee or Gvest. *See*, *e.g.*, *Kaplan v. O.K. Techs., L.L.C.*, 196 N.C. App. 469, 474 (2009) (recognizing that managers of LLCs who breach their fiduciary duties are liable to the LLC and not members because "managers of a limited liability company . . . owe a fiduciary duty to the company, and not to individual members"). Gvest even acknowledges that such a claim is available but went unpursued, as did the Business Court.

In short, Gvest and Mr. Gee have not argued to this Court that they have been injured separately and distinctly from the underlying LLC in the issuance of the mezzanine loans. *Chisum v. Campagna*, 376 N.C. 680, 723 (2021) (noting that a minority member in an LLC may bring individual claims against majority members for breach of fiduciary duty and constructive fraud in addition to any underlying derivative claims belonging to the LLC where he can show "he suffered an injury that was separate and distinct from that suffered by [the LLC]"). That recovery by

the LLC might also ultimately benefit Mr. Shaw and Mr. Rhame by mere incident of their collective majority ownership interest in the entity is not a basis in-and-of itself to recognize an individual cause of action. *See Outen v. Mical*, 118 N.C. App. 263, 266–67 (1995) (holding a trial court erred in awarding damages for misappropriation of corporate funds to a plaintiff 50% owner individually in suit brought against a defendant 50% owner on a derivative claim).

Finally, the majority members' efforts to freeze Mr. Gee and Gvest out of the operation of the business do not inherently establish bases for individual breach of fiduciary duty or constructive fraud claims. *See Chisum*, 376 N.C. at 724 (holding a minority member of an LLC failed to assert cognizable individual claims for breach of fiduciary duty and constructive fraud against majority members in addition to valid derivative claims where the plaintiff's alleged injuries simply "describe[d] the specific steps that the [majority members] took to deprive [the plaintiff] of his ownership interests . . . and do not show the sort of injury that is necessary to support claims for breach of fiduciary duty and constructive fraud"). At bottom, then, Gvest has established that any "damages" flowing from the breach of fiduciary duty and constructive fraud claims took the form of alleged usurious interest rates imposed on the LLC through the self-dealing of Mr. Shaw and Mr. Rhame. This injury is indistinguishable from the LLC's, and it should not serve as the basis for individual claims by Gvest.

None of this is to say that the Agreement Regarding Managers is not problematic. As discussed earlier, we may eventually, due to changes in business practices and realities, have reason to consider (or reconsider) whether a fiduciary duty arises between majority members and minority members of LLCs, particularly when those majority members control the appointment of managers in a manager-managed LLC. *See* J. William Callison & Maureen A. Sullivan, *Limited Liability Companies* § 8:7 (2025 ed.) ("[N]on-manager members who have the power to appoint managers may have fiduciary duties. Members owning a majority interest in an LLC likely have fiduciary duties not to oppress minority members." (footnote omitted)). And Gvest might very well be oppressed, at least insofar as its ability to meaningfully participate in a vote on the removal of managers is concerned. But in this particular case, we can and do affirm the Business Court's order and opinion without the need to extend the law in a novel direction or to create a new form of LLC liability and remedy.

IV. Conclusion

Gvest has failed to establish error in the Business Court's rulings. It has waived any challenge to the Business Court's conclusion that entry of summary judgment for defendants on Gvest's declaratory judgment claim was proper due to Gvest's failure to argue compliance with subsections 6.1.1.2 and 6.1.1.5 of the Operating Agreement, and Gvest's own evidence defeats its argument concerning subsection 6.1.1.6. As for its breach of fiduciary duty and constructive fraud claims, the Agreement Regarding Managers executed by the Capital companies did not actually bind the members of Yards at NoDa and thus did not establish a fiduciary duty between coalition majority members—the real estate companies—and minority member Gvest. For these reasons, we affirm the Business Court's order and opinion.

AFFIRMED.

DEBBIE HAYTHE
v.
JAMES HAYTHE, JR.

No. 158A24

Filed 12 December 2025

Appeal pursuant to N.C.G.S. § 7A-30(2) (2023) and N.C.G.S. § 7A-31 (2023) from the decision of a divided panel of the Court of Appeals, 293 N.C. App. 497 (2024), affirming in part and remanding in part an order entered on 17 January 2023 by Judge Joseph Williams in District Court, Union County. On 27 June 2025, the Supreme Court allowed defendant's petition for discretionary review as to additional issues. This matter was calendared for argument in the Supreme Court on 6 November 2025 but determined on the record and briefs without oral argument pursuant to Rule 30(f) of the North Carolina Rules of Appellate Procedure.

No brief filed for pro se plaintiff-appellee.

Plumides, Romano, & Johnson, P.C., by Richard B. Johnson, for defendant-appellant.

PER CURIAM.

Defendant appealed from an order of the district court entered on 17 January 2023. The Court of Appeals affirmed in part but remanded for additional findings related to the calculation of alimony and attorney fees. *Haythe v. Haythe*, 293 N.C. App. 497, 510 (2024). Defendant appealed to this Court based on the dissent in part at the Court of Appeals, *Haythe*, 293 N.C. App. at 510 (Tyson, J., dissenting), and we granted defendant's petition for discretionary review of additional issues.

Having considered the opinion of the Court of Appeals, the record, and defendant's brief, we affirm the decision of the Court of Appeals for the reasons stated in that decision and conclude that defendant's petition for discretionary review of additional issues was improvidently allowed.

AFFIRMED; DISCRETIONARY REVIEW IMPROVIDENTLY ALLOWED.

KELLY C. HOWARD AND FIFTH THIRD BANK, NATIONAL ASSOCIATION, AS CO-TRUSTEES OF THE RONALD E. HOWARD REVOCABLE TRUST U/A DATED FEBRUARY 9, 2016, AS AMENDED AND RESTATED

v.

IOMAXIS, LLC N/K/A MAXISIQ, INC.; FIVE INSIGHTS, LLC; BRAD C. BOOR A/K/A BRAD C. BUHR; JOHN SPADE, JR.; WILLIAM P. GRIFFIN, III; NICHOLAS HURYSH, JR.; AND ROBERT A. BURLESON

No. 134A25

Filed 12 December 2025

Appeal pursuant to N.C.G.S. § 7A-27(a)(3)(a) from an order and opinion denying defendants' motion to dismiss plaintiffs' second amended complaint entered on 27 November 2024 by Judge Julianna Theall Earp, Special Superior Court Judge for Complex Business Cases, in Superior Court, Mecklenburg County, after the case was designated a mandatory complex business case by the Chief Justice pursuant to N.C.G.S. § 7A-45.4(a). Heard in the Supreme Court on 5 November 2025.

Womble Bond Dickinson (US) LLP, by Scott D. Anderson, Lawrence A. Moye IV, and Miriam D. Colón, for Fifth Third Bank, as Co-Trustee of the Ronald E. Howard Revocable Trust U/A dated February 9, 2016, as amended and restated, plaintiff-appellee; and Johnston, Allison & Hord, P.A., by Kathleen D.B. Burchette, Patrick E. Kelly, Alexandra P. Nibert, and Austin R. Walsh, for

IN RE A.D.H.

[388 N.C. 578 (2025)]

Kelly C. Howard, as Co-Trustee of the Ronald E. Howard Revocable Trust U/A dated February 9, 2016, as amended and restated, plaintiff-appellee.

Brooks, Pierce, McLendon, Humphrey & Leonard, L.L.P., by Benjamin S. Chesson, David N. Allen, Anna C. Majestro, and Amanda S. Hawkins; and Nelson, Mullins, Riley & Scarborough, LLP, by Travis A. Bustamante, for defendant-appellants Robert A. Burleson and Five Insights, LLC.

PER CURIAM.

AFFIRMED.

IN THE MATTER OF A.D.H.

No. 265PA24

Filed 12 December 2025

Estoppel—collateral estoppel—juvenile abuse petition—no privity—no factual determinations—doctrine inapplicable

Where a district court dismissed with prejudice a petition filed by the department of the social services (DSS) in August 2022 alleging sexual misconduct by respondent-father toward his minor child—including allegations that had been made, and deemed unsubstantiated, in 2021 and which were found to be false in a child custody order (CCO) entered in March 2022; and allegations made in March 2022 that led to an order dismissing an interference petition (IPO) filed by DSS against respondent-father—the Court of Appeals erred in concluding that the 2021 allegations and the March 2022 allegation were collaterally estopped by the CCO and IPO, respectively. As to the CCO, the requirement of privity was not satisfied because the only parties to the child custody action were the child's parents, and they did not represent the interests of DSS; accordingly, the district court was not collaterally estopped from adjudicating the DSS petition by the CCO. As to the IPO, its "findings of fact" concerning whether respondent-father had abused the child were not determinations by the district court, but rather were recitations of respondent-father's arguments; accordingly, the IPO did not preclude the proper adjudication of the juvenile petition.

Justice RIGGS concurring.

On discretionary review pursuant to N.C.G.S. § 7A-31 of a unanimous decision of the Court of Appeals, 295 N.C. App. 480 (2024), vacating and remanding an order entered on 19 September 2022 by Judge W. David McFadyen III in District Court, Carteret County. Heard in the Supreme Court on 28 October 2025.

Carolina Law Group, by Kirby H. Smith III, for petitioner-appellant Carteret County Department of Social Services.

Matthew D. Wunsche for appellant Guardian ad Litem.

Sundee G. Stephenson and Bradley N. Schulz for respondent-appellee father.

No brief for respondent-appellee mother.

Marc S. Gentile, Jason Hicks, Melissa Livesay, Mary Holliday, Mona Leipold, Rachael Hawes, and Brian Godfrey for North Carolina Association of Social Services Attorneys, amicus curiae.

Jeff Jackson, Attorney General, by Nicholas S. Brod, Solicitor General, Andrew L. Hayes, Assistant Attorney General, and Maria B. Lattimore, Assistant Attorney General, for North Carolina Department of Health and Human Services, amicus curiae.

BARRINGER, Justice.

In this case, we must decide whether the Court of Appeals erred by holding the juvenile petition at issue was barred by the doctrine of collateral estoppel. After bringing our collateral estoppel doctrine into sharper focus, we reverse the Court of Appeals' conclusion that collateral estoppel is applicable and remand to the trial court for further proceedings.

I. Background

Minor child, Alice,[1] was born to respondent-mother (Mother) and respondent-father (Father) on 17 June 2013. Although the two never married, they resided together with Alice from the time she was born

1. Alice is a pseudonym to protect the juvenile's identity.

until the time they separated in 2018. In February 2021, Mother filed a complaint seeking primary custody of Alice with Father having secondary placement. The Carteret County District Court entered a temporary child custody order granting joint legal custody of Alice to both parents, with Mother having primary physical custody and Father having visitation.

One month later, in March 2021, Alice made concerning statements to one of her classmates on the playground. Alice told the classmate that she and Father had engaged in inappropriate sexual misconduct. The next day, the classmate's parent called the elementary school and reported Alice's statements to the school counselor. Alice's school counselor interviewed Alice several times throughout the day. Each time, Alice expanded on her statements, sharing more information about the inappropriate misconduct between her and Father. A formal report was made to Carteret County Department of Social Services (Carteret County DSS).

Mother's aunt was a former Carteret County DSS employee with continued relationships with those on staff at the department. Therefore, Carteret County DSS referred Alice's report to Craven County Department of Social Services (Craven County DSS). Craven County DSS then launched an investigation, which stretched from March 2021 through the end of July 2021.

During Craven County DSS's investigation, Alice underwent a trauma screening by the Child Advocacy Center where Alice made no disclosures regarding the alleged inappropriate misconduct. A Child Medical Evaluation was also performed on Alice, which revealed no physical signs of sexual abuse. And again, Alice made no disclosures regarding the purported abuse during the Child Medical Evaluation. A Child and Family Evaluation was also completed as part of the investigation to assess possible sources of and solutions to the alleged abuse. As the investigation unfolded, however, the staff involved grew concerned that Alice had not been abused by Father but instead had been coached by Mother to provide false accusations. Craven County DSS social worker Rondy Johnson suspected that Mother was encouraging Alice's false narrative to secure a higher child support award from Father. Consequently, Craven County DSS deemed the March 2021 allegations unsubstantiated and closed its case on 30 July 2021.

Despite the investigation's conclusions, Mother continued to deny Father contact with Alice. Mother also enrolled Alice in therapy with a substance abuse counselor that the trial court found to be unqualified to counsel minor children and, as the trial court put it, "was quite possibly

[e]ndorsing a false narrative when counseling [Alice]." Father filed four show cause motions, formally requesting visitation. Yet Mother denied Alice contact with Father.

As soon as these formal visitation requests were filed, a second report was made to DSS, alleging the same unsubstantiated sexual misconduct that Alice shared back in March 2021. However, this time, the report came from the unqualified therapist. In response, Craven County DSS opened a second investigation into the matter. The second investigation produced findings identical to the first: Mother was coaching Alice, Father had done nothing wrong, and the therapist was unqualified to counsel Alice.

The permanent child custody action came on for a hearing in November 2021 and was continued into March 2022. The parties to the child custody action, Father and Mother, were both represented by counsel. During the hearing, the trial court heard testimony from various witnesses, including Craven County DSS social workers, an expert in child abuse and trauma, and both parents. At the conclusion of the child custody hearing, the trial court, by child custody order (CCO), found that "[F]ather did not abuse [Alice] in any way," "[M]other when testifying made clear that she had willfully and intentionally denied [Father] contact and visitation with [Alice] and [Mother] knew she was in violation of the [c]ourt's [order]," and "[M]other's testimony at the hearing in this matter was untruthful." The CCO ordered Father to have primary legal and physical custody of Alice, and Mother to be punished for her untruthful testimony and be found in contempt for denying Father visitation.

Soon after, on 28 March 2022, Alice's school counselor made another report of inappropriate sexual misconduct by Father to Carteret County DSS. This abuse allegedly occurred the previous weekend. Carteret County DSS interviewed Alice at the Child Advocacy Center. Following the interview, Carteret County DSS recommended that Alice participate in another Child Medical Examination. Father refused to subject Alice to yet another physical examination and pointed to the CCO's directive that "[n]o one, other than the child's current, qualified therapist shall discuss any aspect of . . . the past allegations against [Father] with the minor child. This includes the child's guidance counselor(s)."

Father's refusal prompted Craven County DSS to file an interference petition requesting, among other things, an order to complete the medical examination. Father moved for dismissal. A hearing for the interference petition was held on 17 June 2022, and the trial court issued an

interference petition order (IPO). The IPO observed that the "Craven County DSS attorney . . . stated to the [c]ourt that DSS could complete its[ ] investigation without requiring a medical evaluation of the child." The IPO therefore concluded, "[g]ood cause exist[ed] to grant [Father's] Motion to Dismiss [the interference petition], with prejudice."

Shortly after the hearing, Alice attended a sleepover. At the sleepover, Alice shared with one of her friends another allegation of sexual misconduct between her and Father. On 11 July 2022, the friend's mother made a report to Carteret County DSS. Although it was entirely unclear when this newly alleged sexual misconduct occurred, Carteret County DSS attempted to conduct another investigation.

Father refused to cooperate, again citing the CCO. On 15 July 2022, upon Father's motion, the trial court entered a temporary emergency custody order, awarding him emergency temporary custody of Alice and restraining Mother from removing Alice from his custody.

On 29 August 2022—Alice's first day of school—Kelly Dorman, a social worker with Carteret County DSS, removed Alice from her class and questioned her about all prior allegations of abuse by Father. Based on Alice's responses to social worker Dorman's questions, Carteret County DSS filed a juvenile petition alleging Alice was an abused, neglected, and dependent juvenile. Before filing its juvenile petition, Carteret County DSS attempted to refer the matter again to Craven County DSS due to Carteret County DSS's conflict of interest. However, Craven County DSS refused to involve itself any further given the lack of evidence of abuse. Accordingly, Carteret County DSS took the lead on the juvenile petition.[2]

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2. This Court is seriously troubled by the apparent conflict of interest possessed by Carteret County DSS. In its juvenile petition order, the trial court found that:

> Social Worker Dorman used to work with [Mother's] Aunt, Ms. Blalock, when Ms. Blalock worked at Carteret County DSS. Further, Social Worker Dorman has been friends with Ms. Blalock on social media . . . and was tagged by Ms. Blalock in fund raising posts related directly to [Mother]. Several other Carteret County DSS employees were also tagged by Ms. Blalock on social media in fund raising posts directed at raising funds to pay legal fees for [Mother] as it relates to child custody of [Alice].

In light of this conflict, Carteret County DSS's continued participation in this matter is wholly inappropriate.

The juvenile petition alleged the same, unsubstantiated sexual misconduct that Alice shared back in March 2021 to her classmate on the playground and again in September 2021 to her unqualified therapist. These were the allegations addressed by the CCO. Additionally, the juvenile petition alleged the 28 March 2022 allegation, which had prompted Craven County DSS to file the interference petition. Finally, the juvenile petition alleged the disclosure made at the sleepover in July 2022 and the additional statements made to social worker Dorman in her 29 August 2022 interview of Alice. The July sleepover disclosure and the 29 August 2022 interview statements were the only allegations that had not already come before the trial court. However, it is unclear when the abuse described in the new disclosures purportedly occurred.

Two days later, Father filed a response and motion to Carteret County DSS's juvenile petition. As part of the response and motion, Father argued that

> [p]ursuant to the doctrines of res judicata and collateral estoppel, [the juvenile petition] should be dismissed as [Carteret County DSS] is attempting to relitigate issues existing prior to this [c]ourt's [CCO], as well as the [IPO]. Additionally, this [c]ourt, after hearing arguments of counsel, entered its Temporary Emergency Custody Order . . . [where the trial court] concluded as a matter of law that "The best interest of the minor child would be served by placing her temporary custody in and with [Father] . . . ."

On 19 September 2022, the trial court filed its juvenile petition order (JPO) dismissing Carteret County DSS's juvenile petition with prejudice "pursuant to the doctrines of [r]es [j]udicata and [c]ollateral [e]stoppel." Carteret County DSS appealed the JPO.

The Court of Appeals first determined that the dispute was "most squarely governed by collateral estoppel," rather than res judicata. *In re A.D.H.*, 295 N.C. App. 480, 487 (2024). The court then summarily concluded that, as to both the CCO and the IPO, the requirements under the doctrine of collateral estoppel had been met. *Id.* Thus, the finding that Father had not been shown to abuse Alice contained in the CCO and IPO precluded those same abuse allegations in Carteret County DSS's juvenile petition. *Id.* at 491. However, the Court of Appeals disagreed with the trial court's conclusion that *all* factual allegations contained in the juvenile petition were precluded. *Id.* That ruling, it believed, "was too broad." *Id.* Instead, the Court of Appeals held that the more recent

allegations (those made at the July sleepover and during the 29 August 2022 questioning) could not be estopped by the earlier CCO and IPO. *Id.* at 491–92. Therefore, the trial court erred in dismissing the entire juvenile petition. *Id.* at 492. The Court of Appeals then vacated and remanded the case for further proceedings. *Id.* at 494.

Carteret County DSS filed a petition for discretionary review, seeking this Court to review the applicability of collateral estoppel to the CCO and IPO. We allowed review.

II. Standard of Review

Whether a court is barred from hearing a specific issue under the doctrine of collateral estoppel is a question of law. Questions of law are reviewed de novo. *Philip Morris USA, Inc. v. N.C. Dep't of Revenue*, 386 N.C. 748, 751 (2024). "De novo means fresh or anew; for a second time." *Id.* (extraneities omitted).

III. Analysis

The doctrine of collateral estoppel, also referred to as "issue preclusion," is a common law doctrine "developed by the courts of our legal system during their march down the corridors of time." *Thomas M. McInnis & Assocs. v. Hall*, 318 N.C. 421, 427 (1986). The doctrine is designed to "protect[ ] litigants from the burden of relitigating previously decided matters and [to] promot[e] judicial economy by preventing needless litigation." *Id.*

Our precedents articulating the doctrine have hardly been models of clarity. Even still, our Court has consistently observed that the doctrine of collateral estoppel "precludes relitigation of a fact, question or right in issue" when the following requirements are met:

> there has been a final judgment or decree, necessarily determining [the] fact, question or right in issue, rendered by a court of record and of competent jurisdiction, and there is a later suit involving an issue as to the identical fact, question or right theretofore determined, and involving identical parties or parties in privity with a party or parties to the prior suit.

State v. Summers, 351 N.C. 620, 622 (2000) (alteration in original) (quoting *King v. Grindstaff*, 284 N.C. 348, 355 (1973)); *see also State ex rel. Tucker v. Frinzi*, 344 N.C. 411, 414 (1996) (stating the same).

From this general rule statement, well-delineated elements have emerged. For instance, to apply collateral estoppel to particular issues,

those issues must: (1) "be the same as those involved in the prior action"; (2) "have been raised and actually litigated in the prior action"; (3) "have been material and relevant to the disposition of the prior action"; and (4) have had a determination in the prior action that was "necessary and essential to the resulting judgment." *Summers*, 351 N.C. at 623.

The difficulty arises in defining the privity requirement. *Id.* ("Unlike issue identity, the rules for determining whether the parties in question are or were in privity with parties in the prior action are not as well defined."). Indeed, privity is "somewhat elusive" as "there is no definition of the word 'privity' which can be applied in all cases." *Id.* (quoting *Hales v. N.C. Ins. Guar. Ass'n*, 337 N.C. 329, 333–34 (1994)) (extraneities omitted). Privity has been generally defined by our Court as "a person so identified in interest with another that he represents the same legal right." *Whitacre P'ship v. Biosignia, Inc.*, 358 N.C. 1, 36 (2004) (quoting *Tucker*, 344 N.C. at 417). The privity requirement is a constitutionally necessary due process protection. *See Postal Tel. Cable Co. v. Newport*, 247 U.S. 464, 476 (1918) ("The opportunity to be heard is an essential requisite of due process of law in judicial proceedings . . . so [a state] cannot, without disregarding the requirement of due process, give a conclusive effect to a prior judgment against one who is neither a party nor in privity with a party therein."). Privity concerns who can be bound by collateral estoppel; in other words, it identifies the party against whom the doctrine can be asserted.

Closely related to privity is the mutuality requirement. Unlike privity, which determines who can be *bound* by collateral estoppel, mutuality governs the scope of those entitled to *invoke* the doctrine. As originally understood, the availability of the preclusive effects of a prior judgment had to be mutual between the parties to that prior suit. That is to say, mutuality was satisfied only "if the one taking advantage of the earlier adjudication would have been bound by it, had it gone against him." *Bernhard v. Bank of Am. Nat'l Tr. & Savs. Ass'n*, 122 P.2d 892, 894 (Cal. 1942).[3] Thus, the rule of mutuality "established a pleasing symmetry—a judgment was binding only on parties and persons in privity with them, and a judgment could be invoked only by parties and their privies." 18A *Wright & Miller's Federal Practice and Procedure* § 4463 (3d ed. 2017).

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3. The Supreme Court of California's *Bernhard* opinion is widely acknowledged as "the leading decision abandoning the mutuality requirement." 18A *Wright & Miller's Federal Practice and Procedure* § 4463 (3d ed. 2017); *see also Blonder-Tongue Lab'ys, Inc. v. Univ. of Ill. Found.*, 402 U.S. 313, 349–50 (1971) (adopting *Bernhard*'s position); *McInnis*, 318 N.C. at 433–34 (adopting *Bernhard*'s position).

However, this symmetry proved too restrictive. Courts began recognizing that under a strict mutuality requirement, a party "who has had his day in court" would be permitted "to reopen identical issues by merely switching adversaries." *Bernhard*, 122 P.2d at 895. The mutuality requirement was described as "a maxim which one would suppose to have found its way from the gaming-table to the bench." *McInnis*, 318 N.C. at 432 (quoting *Zdanok v. Glidden Co.*, 327 F.2d 944, 954 (2d Cir. 1964)). In essence, it proved a handy tool for litigants to secure do-overs. As one might expect, it was not long before "the force of the mutuality rule had been diminished by exceptions." *Blonder-Tongue Lab'ys*, 402 U.S. at 324. Yet even the exceptions proved inadequate, and soon "[t]he modern trend in both federal and state courts" became "to abandon the requirement of mutuality for collateral estoppel[ ]" altogether. *McInnis*, 318 N.C. at 432.

This Court followed that trend, disposing entirely of the mutuality requirement for the defensive-use of collateral estoppel. *Id.* at 434. In its place, the *McInnis* Court installed the requirement that the party to be collaterally estopped had "a full and fair opportunity to litigate th[e] issue in the [earlier] action." *Id. McInnis*, therefore, removed any limitation upon who could defensively invoke collateral estoppel, and installed an additional due process limitation against whom the doctrine could be asserted. The *McInnis* Court's new installment seemingly rested on the simple fact that the mutuality requirement had no persuasive justification, while the privity requirement served weighty due process interests. *See id.* ("[W]e see no good reason for continuing to require mutuality of estoppel in cases like this case."); *see also Bernhard*, 122 P.2d at 895 ("No satisfactory rationalization has been advanced for the requirement of mutuality.").

From this then, it follows that our precedents have developed a defensive-use collateral estoppel doctrine requiring the following: (1) a valid final judgment on the merits in a previous suit; (2) the later suit involves identical issues; (3) the issue was actually litigated in the prior suit and necessary to the judgment; (4) the issue was actually determined; and (5) the party to be collaterally estopped was a party or in privity with a party to the prior suit, who had a full and fair opportunity to litigate the issue in the earlier action.[4]

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4. To reiterate, "there is no definition of the word 'privity' which can be applied in all cases." *Summers*, 351 N.C. at 623 (extraneities omitted). Even still, the general requirements under the doctrine remain constant. In other words, the facts here do not influence our rule statement.

Having brought our collateral estoppel doctrine into sharper focus, we turn now to its application in the matter before us. Below, the Court of Appeals believed that the "more meaningful dispute" was "whether collateral estoppel applies in this case given the discrepancy in the standard of review between the CCO and the present litigation." *In re A.D.H.*, 295 N.C. App. at 488. The court then dedicated almost the entirety of its collateral estoppel analysis to this point. In doing so, it glossed over the question of whether the doctrine's requirements were met. After a more detailed examination of the elements, however, we conclude that neither the child custody action nor the interference petition action offers a sufficient basis for the application of collateral estoppel.

A. The Child Custody Action

The Court of Appeals reasoned that collateral estoppel applies to the CCO, because "for purposes of privity, we note that both Carteret and Craven County DSS intervened in the custody action." *In re A.D.H.*, 295 N.C. App. at 488. This statement has no basis in the record.

The only parties to the child custody action were Mother and Father. While Craven County DSS social workers testified at the hearing, merely serving as a witness does not render one a party to the action. Nor can it be said that Mother and Father represent the interests of Carteret County DSS in any way to establish privity. *Whitacre P'ship*, 358 N.C. at 36 ("In general, privity involves a person so identified in interest with another that he represents the same legal right." (extraneities omitted)). Carteret County DSS's sole interest is in fulfilling its statutory duty to investigate Alice's repeated claims of sexual abuse, to assess her circumstances, and to remove her from the home or provide protective services, if necessary. *See* N.C.G.S. § 7B-302(a) (2023). Indeed, pursuant to this statutory duty, it is not uncommon for the department of social services to take a position entirely at odds with a juvenile's parents. *See, e.g.*, *In re Z.O.M.*, 373 N.C. 87 (2019); *In re D.I.L.*, 380 N.C. 723 (2022).

Accordingly, the Court of Appeals erred in holding that the party to be collaterally estopped (Carteret County DSS) was a party or in privity with a party to the prior child custody action (Mother or Father). The trial court was not collaterally estopped from adjudicating the allegations of sexual abuse because of the CCO.

B. The Interference Petition Action

The Court of Appeals summarily concluded, "[f]or present purposes we see no meaningful dispute that both the CCO and IPO . . . contained at least some overlapping factual issues with the present juvenile petition

[ ] and were actually litigated and determined." *In re A.D.H.*, 295 N.C. App. at 487. As to the IPO, we disagree.

All "findings of fact" contained in the IPO regarding the issue of whether Father had abused Alice were not "actually determined" by the trial court. Instead, the trial court merely observed that "*Counsel for [Father] argued* the following to the [c]ourt" before proceeding to list the abuse allegations that Father contended were unsubstantiated. (Emphasis added.) A trial court's recitation of arguments is not a finding of fact. While "[t]here is nothing impermissible about describing testimony," the court still must "ultimately makes its own findings, resolving any material disputes." *In re C.L.C.*, 171 N.C. App. 438, 446 (2005); *see also In re L.C.*, 387 N.C. 475, 482 (2025) ("The Court of Appeals correctly recognized that the trial court is required to 'resolve any material disputes' when making findings of fact." (extraneity omitted)).[5] Here, the trial court failed to make "actually determined" findings of fact regarding the issue of whether Father abused Alice. Accordingly, the recitation of arguments contained in the IPO cannot preclude proper adjudication of the juvenile petition.

IV. Conclusion

For these reasons, we hold that the trial court erred in dismissing Carteret County DSS's juvenile petition pursuant to the doctrine of collateral estoppel. Accordingly, we reverse the Court of Appeals' opinion and remand to the trial court for further proceedings on the juvenile petition. We further observe that Carteret County DSS possesses a substantial conflict of interest in this dispute. In light of this conflict, Carteret County DSS's continued participation in this matter is wholly inappropriate.

REVERSED AND REMANDED.

Justice RIGGS concurring.

I concur with the result reached by the majority, and I concur wholeheartedly with the majority's conclusion that Carteret County

5. We recognize that this Court has provided some leeway for the trial court to properly recite the evidence in its findings of fact without stating whether it found that evidence credible. *In re L.C.*, 387 N.C. at 482. However, such leeway has been limited to "when the recited evidence is a statement against interest." *Id.* (citing N.C.G.S. § 8C-1, Rule 804(b)(3) (2023)). An argument made in support of a party's requested relief is not a statement against interest. Thus, *In re L.C.* has no bearing here.

Department of Social Services' (Carteret County DSS) future involvement in this matter is wholly inappropriate given the obvious conflict the agency has. I write separately to emphasize that the factually dependent nature of the privity inquiry, combined with the extreme and unusual facts in this case, limits the applicability this case has for future cases involving privity in collateral estoppel analyses.

While there are other considerations to the collateral estoppel analysis than just the privity question, the key inquiry on whether the privity requirement of collateral estoppel is met is whether Carteret County DSS is in privity with either the parties in the Child Custody Order (CCO) proceeding or the parties in the Interference Petition Order (IPO). More specifically, the question is whether Carteret County DSS is in privity with either the parents or the Craven County DSS and is therefore precluded from litigating the issues it alleges in its juvenile petition filed on 29 August 2022 because issues raised in the new juvenile petition were previously litigated in the preceding child custody action and interference petition action.

The majority rightly acknowledges that privity does not have a well-defined definition in collateral estoppel analyses, with our prior cases stating that "the meaning of 'privity' for purposes of res judicata and collateral estoppel is somewhat elusive." *Hales v. N.C. Ins. Guar. Ass'n*, 337 N.C. 329, 333 (1994) (citing *Settle v. Beasley*, 309 N.C. 616, 620 (1983)). The Court of Appeals even acknowledged as much below stating that "[w]e note that the significance of privity as a component of collateral estoppel has been somewhat murky as applied by our Court, with some cases acknowledging privity as an essential element of collateral estoppel . . . and others omitting mention of it altogether." *In re A.D.H.*, 295 N.C. App. 480, 488 n.4 (2024). The Court of Appeals further speculated that "[t]he cause may be that, when our Supreme Court last spoke at length on the topic, it was unclear whether the concept of privity was subsumed into the requirement that 'the party against whom the estoppel is asserted enjoyed a full and fair opportunity to litigate that issue in the earlier proceeding.' " *Id.* (quoting *Whitacre P'ship v. Biosignia, Inc.*, 358 N.C. 1, 15 (2024)).

Our Court has stated that in determining whether such a privity relation exists, "courts will look beyond the nominal party whose name appears on the record as plaintiff and consider the legal questions raised as they may affect the real party or parties in interest." *State v. Summers*, 351 N.C. 620, 623–24 (2000) (cleaned up). The rationale for applying privity in the collateral estoppel context is that due process requires that persons be given a fair opportunity to litigate their

legal rights. *Whitacre P'ship*, 358 N.C. at 36. Due process is not offended when there is a sufficiently close relationship—privity—between the party to a prior action and the party to be estopped in a later action if the prior party had a full and fair opportunity to litigate the matter to be precluded. *Id.* at 37. Given the unique facts of this case, I would not point to this as a case upon which future litigants should rely upon for clarification of either collateral estoppel law or privity (although both areas of law undoubtedly would be well-served by this Court's guidance in a more useful vehicle of a case).

Turning to the majority's analysis, the majority concludes that collateral estoppel does not apply to issues litigated in the child custody action or issues litigated in the interference petition action. On the factual findings we have in this case, I agree with this outcome, but I think on the topic of privity, these issues are closer calls than the majority's analysis suggests. And that contributes to my hesitance to fully embrace the majority's assertion that this case provides clarity and guidance that future parties should rely upon for the doctrine of collateral estoppel and privity. For example, while I agree that neither of the DSS agencies were parties to the litigation resulting in the CCO, I am troubled by the extent to which the conflict between Carteret County DSS and respondent-mother (Mother) could impact the privity analysis. The fundraising that Mother's aunt, a former Carteret County DSS worker, did for Mother's legal efforts clearly creates a conflict for Carteret County DSS in this matter, *see* majority *supra* n.2 (noting that the Carteret County DSS social worker on the case and other workers were well acquainted with Mother's aunt and her fundraising efforts). But to the extent a former agent of a DSS is funding and directing a parent's effort in a child custody case, that would change the privity analysis (even if it did not ultimately change the final collateral estoppel conclusion). In my mind, this case comes dangerously close to this hypothetical, and for that reason, this case should not be looked to as one providing clarity on either privity or collateral estoppel. Rather, the majority correct states the law and applies it to extremely unusual—and therefore narrow—circumstances. Therefore, because bad facts make bad law, the majority's application of the doctrine of collateral estoppel and privity here should remain cabined to the unique facts of this case only. *See*, *e.g.*, *Town of Apex v. Rubin*, 388 N.C. 236, 256 (2025) (Newby, C.J., concurring in part) (acknowledging the legal maxim that "bad cases make bad law" and emphasizing that the case in question was "abnormal" and thus "should not serve as a model for future litigants involved in [similar] disputes").

Similarly, I think the privity question in the interference matter is an even closer call because, at least arguably under our child welfare

statutes, Craven County DSS was acting as an agent of Carteret County DSS because Carteret County DSS asked Craven County DSS to take this matter.[1] To be sure, I do not think that any time a county DSS refers a case to another county, that referring county should be collaterally estopped in a different action. But I think we do need to acknowledge that this area is more nuanced in practice and we should be careful to allow ourselves the room to consider nuanced facts in difficult cases.

Finally, I agree with the majority that the trial court failed to make affirmative findings of fact and instead merely recited the arguments made by counsel for the Father, and that doing so was an error. *See* majority *supra* Section III.B. But this case is deeply troubling because getting continuity in judges overseeing these cases and our deference to the trial court judges who are closer to the facts can often serve to prevent the weaponization of false child abuse allegations, and that ultimately protects children, too. It bears noting that the same district court judge, the Honorable W. David McFadyen III, presided over both the permanent child custody hearing, which spanned multiple days, and the interference petition hearing. Thus, Judge McFadyen was therefore familiar with the parties and the history of the case. And it further bears noting that the interference petition action dealt with many of the facts that were litigated and determined at the child custody hearing. This includes, among other parallels, that the allegations underlying the interference petition were made to the same school counselor who Alice allegedly made allegations to prior to the custody hearing that were eventually dismissed and found to be unsubstantiated after two DSS investigations. Accordingly, while the majority only points to the deficiencies in the trial court's finding of facts in the IPO to conclude that the IPO cannot preclude proper adjudication of the juvenile petition, the issue becomes a closer one when examining the whole procedural history of the dispute.

Again, I do agree with the outcome that the Court reaches, and I think the majority's clear admonishment on conflicts is well stated and important for the integrity of the child welfare system. This case, however, should be viewed as an instance where the Court is applying

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1. Under N.C.G.S. § 7B-302.1, where a conflict exists, the director of the DSS with the conflict "shall request that another county department conduct the assessment" on the reported abuse, neglect, or dependency. Thereafter, the county that accepts the matter "assumes the management of the case." An Act to Make Various Changes to the Laws Affecting Juveniles and Associated Services, S.L. 2025-16, § 1.4(a), https://www.ncleg.gov/EnactedLegislation/SessionLaws/PDF/2025-2026/SL2025-16.pdf.

the law to narrow circumstances and thus has limited applicability for future litigants. This is a complex child custody case interwoven with multiple unsubstantiated allegations of child abuse and very troubling findings of a mother coaching a child (and the child being subjected then to likely unnecessary physical and psychological examinations). Further, the transfer of the case to another county due to a conflict of interest and multiple unsubstantiated DSS investigations contribute to the substantial list of tragic facts. To conclude, the question of privity in collateral estoppel cases will likely arise again under a case providing this Court with a more meaningful opportunity, with broader reaching facts than the unique facts presented in this case, to clarify this area of the law.

IN THE MATTER OF

FORECLOSURE OF REAL PROPERTY UNDER DEED OF TRUST FROM VIRGINIA LEE GODFREY AND HARRY CRAIG DEES, II A/K/A H. CRAIG DEES, II, IN THE ORIGINAL AMOUNT OF $150,000.00, PAYABLE TO RBC CENTURA BANK, DATED OCTOBER 31, 2003 AND RECORDED ON NOVEMBER 11, 2003 IN BOOK RB 3260 AT PAGE 103, ORANGE COUNTY REGISTRY; TRUSTEE SERVICES OF CAROLINA, LLC, SUBSTITUTE TRUSTEE

No. 92A25

Filed 12 December 2025

Appeal pursuant to N.C.G.S. § 7A-30(2) (2023) from the decision of a divided panel of the Court of Appeals, 298 N.C. App. 29, 914 S.E.2d 14 (2025), reversing an order entered on 30 May 2023 by Judge Alyson Adams Grine in Superior Court, Orange County, and remanding with instructions to enter an order authorizing foreclosure. Heard in the Supreme Court on 5 November 2025.

Brock & Scott, PLLC, by Alan M. Presel, for petitioner-appellee Paper Profits LLC.

Buckmiller & Frost, PLLC, by Joseph Z. Frost, for respondent-appellant Virginia Lee Godfrey.

PER CURIAM.

AFFIRMED.

IN RE S.W.

[388 N.C. 593 (2025)]

IN THE MATTER OF S.W.

No. 95PA25

Filed 12 December 2025

On discretionary review pursuant to N.C.G.S. § 7A-31 of a unanimous decision of the Court of Appeals, 298 N.C. App. 39 (2025), affirming orders entered on 16 May 2024 denying the guardian ad litem's motion to hold the matter in abeyance, motion to dismiss, and motion to transfer venue, by Judge Pauline Hankins in District Court, Brunswick County. This matter was calendared for argument in the Supreme Court on 6 November 2025 but determined on the record and briefs without oral argument pursuant to Rule 30(f) of the North Carolina Rules of Appellate Procedure.

No brief for petitioner-appellee Sharon Lee.

Matthew D. Wunsche and Hope Connie Wertz for appellant Guardian ad Litem.

No brief for respondent-appellee mother.

No brief for respondent-appellee father.

PER CURIAM.

Having carefully considered the opinion of the Court of Appeals, the record, and the guardian ad litem's brief, we conclude that the guardian ad litem's petition for discretionary review was improvidently allowed by order on 23 May 2025.

DISCRETIONARY REVIEW IMPROVIDENTLY ALLOWED.

LASSITER v. ROBESON CNTY. SHERIFF'S DEP'T

[388 N.C. 594 (2025)]

STEPHEN MATTHEW LASSITER, EMPLOYEE
v.
ROBESON COUNTY SHERIFF'S DEPARTMENT, ALLEGED-EMPLOYER, SYNERGY COVERAGE SOLUTIONS, ALLEGED-CARRIER, AND TRUESDELL CORPORATION, ALLEGED-EMPLOYER, THE PHOENIX INSURANCE CO., ALLEGED-CARRIER

No. 54PA24

Filed 12 December 2025

Workers' Compensation—jurisdiction—joint employment doctrine—control requirement—not satisfied

In a worker's compensation proceeding brought by plaintiff-employee—a Robeson County Sheriff's Office (RCSO) law enforcement officer (LEO) who was seriously injured while performing off-duty traffic control work for alleged-employer (a concrete services company)—the Supreme Court first clarified the distinction between the "nature of the work" element in the joint employment and lent employee doctrines. The latter doctrine requires that the employee's work "is essentially that of the special employer" to which the employee is being lent; under the joint employee doctrine, the "service for each employer is the same as, or is closely related to, that for the other." However, although two of the three elements of joint employment were satisfied—plaintiff-employee had an implied employment contract with alleged-employer and his service to alleged-employer (protecting public safety by directing traffic) was the same as his duty when working for the RCSO—the simultaneous control element was not. Alleged-employer did create a traffic control plan that designated locations and timeframes for the use of LEOs, but two RCSO employees were responsible for choosing LEOs for the project and assigning each to a specific location and shift, and they retained the authority to direct, reposition, or discharge any LEO in their sole discretion, without any input from alleged-employer. Accordingly, plaintiff-employee was not a joint employee of RCSO and alleged-employer.

Chief Justice NEWBY concurring in part and dissenting in part.

Justice RIGGS dissenting.

Justice EARLS joins in this dissenting opinion.

On discretionary review pursuant to N.C.G.S. § 7A-31 of a unanimous decision of the Court of Appeals, 291 N.C. App. 579 (2023), affirming in part and reversing in part an opinion and award entered 17 November 2022 by the North Carolina Industrial Commission. Heard in the Supreme Court on 17 April 2025.

McIntyre Law Office, PLLC, by Stephen C. McIntyre, for plaintiff-appellee.

Hedrick Gardner Kincheloe & Garofalo LLP, by M. Duane Jones and Neil P. Andrews, for defendant-appellants Truesdell Corporation and The Phoenix Insurance Company.

Goldberg Segalla LLP, by Allegra A. Sinclair and Gregory S. Horner, for defendant-appellees Robeson County Sheriff's Department and Synergy Coverage Solutions.

Wilson Ratledge, PLLC, by Frances M. Clement, for American Property Casualty Insurance Association, amicus curiae.

BARRINGER, Justice.

This case asks us to clarify the North Carolina joint employment doctrine and apply it to the facts presented. Based upon this clarified doctrine, we hold that plaintiff-employee does not satisfy the control requirement for joint employment. Accordingly, we reverse the decision of the Court of Appeals to the extent that the court held Truesdell Corporation qualified as a joint employer.

I. Background

A. Relevant Facts

Plaintiff, Stephen Matthew Lassiter, began working for defendant, the Robeson County Sheriff's Office (RCSO), as a law enforcement officer (LEO) in March 2008. As an employee of RCSO, plaintiff was able to earn additional income by accepting approved off-duty employment opportunities. Pursuant to RCSO's written policy for off-duty work, RCSO employees were required to obtain prior approval of the Sheriff or his designee before accepting such off-duty assignments. LEOs, like plaintiff, often pursued these off-duty opportunities to meaningfully supplement their primary income.

Defendant Truesdell Corporation (Truesdell) performs concrete restoration and repair services. In October 2017, the North Carolina Department of Transportation (NC DOT) awarded Truesdell a bid to complete repair work to bridges and overpasses along I-95 in Cumberland and Robeson Counties. Truesdell and NC DOT subsequently entered into State Highway Contract DF00182 (the Contract) for this repair work.

As part of the Contract, subcontracting was permissible, and importantly, Truesdell was required to design and implement a traffic control and detour plan for the completion of the road work. A special provision of the Contract required Truesdell to "[f]urnish" and "[u]se uniformed Law Enforcement Officers and marked Law Enforcement vehicles . . . to direct or control traffic as required by the [traffic control] plans and the Engineer." NC DOT contracted with Summit Design and Engineering (Summit) to oversee compliance with the Contract, including traffic control.

The traffic control plan required NC DOT's approval, and any subsequent changes required further approval from NC DOT or its representative. Truesdell, by way of subcontractors, developed a traffic control plan that received NC DOT approval. The traffic control plan designated locations where LEOs were to be assigned and the timeframe when LEOs would be required. Truesdell then contacted RCSO expressing its need for LEOs to direct traffic under the Contract.

Captain James Obershea and Deputy Jonathan Edwards were responsible for the approval and coordination of off-duty employment requests at RCSO. Truesdell informed Captain Obershea and Deputy Edwards of the rate of pay for LEOs pursuant to the NC DOT bid and RCSO agreed to assist with the traffic control responsibilities.

Since RCSO required that Truesdell pay LEOs directly, Truesdell requested a W-9 for each LEO. Deputy Edwards managed the distribution and collection of W-9 forms. When Truesdell issued payments, it did so based upon time sheets collected from RCSO. Captain Obershea had the authority to select which, and at what time, LEOs would report to the off-duty work for Truesdell. Captain Obershea also had the authority to discharge an RCSO LEO from the off-duty job site if necessary. In sum, Deputy Edwards and Captain Obershea were responsible for selecting LEOs for the job, assigning them a traffic control plan position, and getting paperwork back to Truesdell.

Each night, prior to the closure of I-95, Timothy Cullipher, a senior engineer with Summit, conducted a tailgate safety meeting on behalf of

NC DOT. At that meeting, Mr. Cullipher would review the traffic control plan with Truesdell's project engineer and Deputy Edwards. The parties would air concerns and make necessary adjustments to the plan conditioned upon the approval of Summit and NC DOT. This tailgate safety meeting lasted "anywhere from five minutes to ten minutes." Then, separately, Deputy Edwards would hold a meeting with only RCSO employees where LEOs were briefed and assigned by Deputy Edwards to a position on the traffic control route.

On the evening of 28 March 2019, Captain Obershea and Deputy Edwards determined that the traffic control plan required seven LEOs, rather than the six recommended by Truesdell. After Captain Obershea communicated the need for an additional LEO, Truesdell and NC DOT sent their approval. Captain Obershea then contacted plaintiff to ask if he wanted to perform off-duty traffic control work that night and plaintiff agreed. Captain Obershea instructed plaintiff to meet him at 8:00 p.m. at the location of the LEO meeting. At the meeting, plaintiff completed his W-9 on the hood of Deputy Edward's patrol car and returned it. Plaintiff then began his shift directing traffic.

In the late evening of plaintiff's shift, Captain Obershea told plaintiff to switch positions with him on the route. Plaintiff then moved his unmarked patrol car with blue lights activated to assume Captain Obershea's position directing traffic. While plaintiff was directing traffic at his new position, he was struck by a vehicle and thrown into the air. Plaintiff sustained serious injuries and received extensive medical treatment as a result. Plaintiff then sought to obtain workers' compensation from both RCSO and Truesdell.

B. Procedural History

On 15 April 2019, plaintiff filed a Form 18 Notice of Accident to Employer, listing both RCSO and Truesdell as his employers at the time of injury. RCSO and Truesdell each denied the existence of an employment relationship. Plaintiff then filed a Form 33 request for hearing before the North Carolina Industrial Commission.

Following a hearing on the matter, Deputy Commissioner William W. Peaslee entered an opinion and award, concluding that plaintiff was employed by RCSO at the time of his injury but not by Truesdell. Plaintiff appealed this decision to the Full Commission.

The Full Commission conducted its hearing on the matter and subsequently entered an opinion and award affirming the deputy commissioner's same conclusions.

On 12 December 2022, RCSO and its insurer, Synergy Coverage Solutions, (collectively, RCSO defendants) filed a notice of appeal to the Court of Appeals. The Court of Appeals affirmed in part and reversed in part the Full Commission's decision. *Lassiter v. Robeson Cnty. Sheriff's Dep't*, 291 N.C. App. 579, 590 (2023). The Court of Appeals held that the Full Commission correctly concluded plaintiff was not an independent contractor but erred in concluding Truesdell was not liable as a joint employer. *Id.*

Truesdell and its insurer, The Phoenix Insurance Company, (collectively, Truesdell defendants) filed a petition for discretionary review to this Court. We allowed Truesdell defendants' petition.

II. Standard of Review

The question of whether an employer-employee relationship existed within the meaning of the Workers' Compensation Act, N.C.G.S. §§ 97-1 to -200 (2023), at the time of injury, is a jurisdictional fact, *Williams v. ARL, Inc.*, 133 N.C. App. 625, 627 (1999); *see also Youngblood v. N. State Ford Truck Sales*, 321 N.C. 380, 383 (1988). When issues of jurisdiction arise on appeal, " 'the jurisdictional facts found by the Commission, though supported by competent evidence, are not binding on [the appellate courts],' and we are required to make independent findings with respect to jurisdictional facts." *Williams*, 133 N.C. App. at 628 (quoting *Cook v. Norvell-Mackorell Real Est. Co.*, 99 N.C. App. 307, 309 (1990)). Thus, this Court reviews issues as to whether an employment relationship existed between parties de novo. *McGuine v. Nat'l Copier Logistics, LLC*, 270 N.C. App. 694, 700 (2020).

III. Analysis

Neither Truesdell defendants nor RCSO defendants challenged the Court of Appeals' determination that plaintiff was an employee of RCSO, rather than an independent contractor. Thus, the sole issue before this Court is whether RCSO was plaintiff's sole employer or whether plaintiff was also jointly employed by Truesdell. After careful review of the record, we hold that RCSO was plaintiff's sole employer.

A. Joint Employment Doctrine vs. Lent Employee Doctrine

A "[p]laintiff may rely upon two doctrines to prove he is an employee of two different employers at the same time: the joint employment doctrine and the lent employee doctrine." *McGuine*, 270 N.C. App. at 700 (extraneity omitted); *see also Anderson v. Texas Gulf, Inc.*, 83 N.C. App. 634, 635 (1986).

The lent employee doctrine arises "[w]hen a[n] employer lends an employee to another party." 5 Lex K. Larson & Thomas A. Robinson, *Larson's Workers' Compensation Law* § 67.01[1] (rev. ed. 2022) [hereinafter *Larson's*]. "Under this doctrine, the lending employer is known as the 'general employer' and the borrowing employer, the 'special employer.' " *Id.* To satisfy the basic elements of the lent employee doctrine, it must be established that: "(a) the employee has made a contract of hire, express or implied, with the [special] employer; (b) the work being done is essentially that of the [special] employer; and (c) the [special] employer has the right to control the details of the work." *Id.*; *see also Collins v. James Paul Edwards, Inc.*, 21 N.C. App. 455, 459, *cert. denied*, 285 N.C. 589 (1974).

The joint employment doctrine arises in a different context. The doctrine applies when an employee simultaneously performs services for two employers in a single piece of work. *See Larson's* § 68.01. The joint employment doctrine requires that "a single employee, under contract with two employers, and under the simultaneous control of both, simultaneously performs services for both employers, and . . . the service for each employer is the same as, or is closely related to, that for the other." *Texas Gulf*, 83 N.C. App. at 636 (extraneity omitted) (emphasis omitted) (quoting 1C, Larson, *The Law of Workmen's Compensation* § 48.40, p. 8-511); *see also Larson's* § 68.01.

Under both doctrines, the first question is the same: Did the alleged employee make a contract of hire with the employer? *See Collins*, 21 N.C. App. at 459. Yet while the doctrines are related, they are still distinct. If the first question is answered in the affirmative, each doctrine then proceeds by its own elements.

North Carolina caselaw has repeatedly recognized the independent nature of the two doctrines. *See, e.g.*, *Henderson v. Manpower of Guilford Cnty., Inc.*, 70 N.C. App. 408, 413–14 (1984); *Texas Gulf*, 83 N.C. App. at 636; *McGuine*, 270 N.C. App. at 700–01.[1] However, in *Whicker v. Compass Group USA, Inc.*, a previous panel of the Court of Appeals seemingly blended the two. 246 N.C. App. 791, 800 (2016). Specifically, that panel announced, "[u]nder both the joint employment and lent employee doctrines, [a] [p]laintiff must show the work she was performing at the time of her injury was of the same nature as

1. Although these Court of Appeals cases are not controlling, this Court finds them to be persuasive.

the work performed by [the alleged employer]." *Id.* This announcement was in error.

Aligned with prior North Carolina caselaw, the joint employment doctrine requires that the "service for each employer is the same as, *or is closely related to*, that for the other." *Texas Gulf*, 83 N.C. App. at 636 (citation omitted) (emphasis added). Meanwhile, the lent employee doctrine requires that "the work being done *is essentially that of the special employer*." *Id.* at 636 (emphasis added) (quoting *Collins*, 21 N.C. App. at 459). We refer to this element as the "nature of the work" requirement.

By its plain terms, the joint employment doctrine's nature of the work requirement is different than that under the lent employee doctrine. The reason for this difference lies in the differing employment relationships recognized under the two doctrines. For example, in the joint employment context, an employee is subject to the concurrent control of two employers. Where there is concurrent control of an employee, the distinction between a general and special employer can be difficult to discern. Consequently, the nature of the work requirement for joint employment necessitates only that the service for each employer be closely related to that for the other. Thus, given the differing employment relationships and in furtherance of consistency, we disavow *Whicker* to the extent that it improperly conflates the two doctrines.

B. Applying the Joint Employment Doctrine

Plaintiff argues that the facts giving rise to his claim for employment by two different employers meet the requirements of the joint employment doctrine. Therefore, we analyze, in turn, the elements that comprise the joint employment doctrine, as applied to the facts at hand.

1. Contract for Hire

The first element of the joint employment doctrine is the existence of an employment contract between plaintiff and Truesdell. An employment contract may be "express or implied." N.C.G.S. § 97-2(2) (2023). An implied contract "arises where the intent of the parties is not expressed, but an agreement in fact, creating an obligation, is implied or presumed from their acts." *Creech v. Melnik*, 347 N.C. 520, 526 (1998) (citing *Snyder v. Freeman*, 300 N.C. 204, 217 (1980)). "[I]mplied contracts can be 'inferred from the circumstances, conduct, acts or relations of the parties, showing a tacit understanding.' " *McGuine*, 270 N.C. App. at 701 (quoting *Whicker*, 246 N.C. App. at 798).

Here, an implied contract for hire between plaintiff and Truesdell can be inferred from the circumstances. Plaintiff knew he would be

completing off-duty work for a company engaged in highway repair and that this company would pay him $55 per hour for his off-duty labor. Similarly, Truesdell was aware that LEOs like plaintiff were implementing its NC DOT-approved traffic control plan. In fact, Truesdell directly paid plaintiff a total of $275 for his work directing traffic on the night he was injured. The circumstances and conduct of the parties give rise to the tacit understanding that an agreement for hire existed. Accordingly, plaintiff has established an implied contract for hire between Truesdell and himself.

2. Under Simultaneous Control of Both Employers

The second element concerns the right to control or direct the workman's labor. As in the employer-versus-independent contractor context, there is no fixed standard for determining whether control over the worker is sufficient to constitute joint employment. Rather, courts will look to various factors indicating control. *See McGuine*, 270 N.C. App. at 703 (joint employment inquiry); *Hayes v. Bd. of Trs.*, 224 N.C. 11, 16 (1944) (independent contractor inquiry). Some of these factors include: (i) whether the alleged employer supplied materials or tools for the plaintiff's work; (ii) the degree to which the alleged employer supervised the plaintiff; (iii) whether the alleged employer retained discretion to terminate the plaintiff; (iv) the degree to which the alleged employer assigned duties to the plaintiff; and (v) the degree to which the alleged employer controlled the manner and method in which the plaintiff carried out his or her duties. *McGuine*, 270 N.C. App. at 703 (citing *Henderson*, 70 N.C. App. at 410–11).

When assessing these factors, we bear in mind that the ultimate inquiry seeks to determine whether the alleged employer exercised a "right to control or direct the details of the work or what the workmen should do as the work progressed." *Hayes*, 224 N.C. at 18. The right to control is especially consequential to establishing an employer-employee relationship. *See id.* at 15 ("The vital test is . . . the right of control or superintendence over the contractor or employee as to details."); *Anderson v. Demolition Dynamics, Inc.*, 136 N.C. App. 603, 609 (2000) ("[C]ontrol of the detail of the work[ ] may be the most significant."). Therefore, we must look closely at the facts presented for control.

When NC DOT awarded Truesdell the Contract to complete road repair, Truesdell agreed to design and implement a traffic control plan. To comply with the traffic control plan requirement, Truesdell subcontracted with two third parties. The first third party, TTCP Express, designed the plan. The second third party, AWP, supplied and placed

traffic control devices (such as cones, barrels, and signs) in accordance with the plan. Before implementation, the plan was sent to NC DOT for approval, and any changes to the plan required NC DOT's reapproval. NC DOT subcontracted the responsibility of overseeing compliance with the approved plan to Summit, which acted as NC DOT's "eyes and ears" on the project. Plaintiff argues that the complexity of the traffic control plan as required by NC DOT demonstrates that Truesdell exercised sufficient control to satisfy the joint employment doctrine. Even assuming that the plan conferred some level of control to Truesdell, the plan still did not confer control over the details of plaintiff's work —the "vital test." *See Hayes*, 224 N.C. at 15.

It is true that the traffic control plan designated locations where LEOs were to be assigned. However, Deputy Edwards and Captain Obershea chose which LEOs would report to the job site and assigned each LEO's designated location. Truesdell never knew which LEOs Deputy Edwards and Captain Obershea would recruit or where a particular LEO would be placed. As Deputy Edwards explained, "[Truesdell] just put in a[n] order for . . . officers, and we . . . filled it." Once recruited, Captain Obershea set the hours for each LEO's off-duty shift and retained the authority to discharge any LEO during a shift.

Truesdell, for its part, did not possess unilateral authority to discharge an LEO. Instead, Truesdell would "have to come through [RCSO]" to get an officer removed from the job site. Truesdell did not even possess the authority to reposition an officer. Deputy Edwards testified that "Truesdell couldn't move the officers without going to [him] or Captain Obershea [first]." Not only that, it made no difference if Truesdell thought an officer was performing well at the job site, because it was impermissible for Truesdell to retain a particular officer for another shift. Hiring, firing, assigning, and retaining staff was Deputy Edwards and Captain Obershea's independent responsibility.

These facts further highlight the considerable stretch it would be to characterize Deputy Edwards and Captain Obershea as representatives of Truesdell. It was *RCSO policy* that required Deputy Edwards and Captain Obershea to serve as project coordinators. Deputy Edwards and Captain Obershea did not sign any legal paperwork with Truesdell to serve in this role. Moreover, Truesdell never asked Deputy Edwards or Captain Obershea to "undergo any safety classes with [Truesdell]" or "any training" at all to be a project coordinator. And how could they? As Deputy Edwards explained, "Truesdell doesn't have any expertise or knowledge in traffic control" to specifically direct the officers. As Captain Obershea recognized, "They just contacted [us] and said,

'Th[ese] [are] the dates we're going to need some people,' and . . . [I] set that up." Captain Obershea even explained that if Truesdell gave him a traffic control plan that listed six officers, but he determined that it required seven, then RCSO, "as a team, could refuse to do the work." The project coordinators were wholly independent of Truesdell. And notably, not even plaintiff asks this Court to stretch our control inquiry this thin. Neither plaintiff nor the RCSO argued such a characterization to this Court.

As representatives of RCSO, Captain Obershea and Deputy Edwards orchestrated and commanded LEO staffing, therefore assigning the duties to LEOs. Indeed, on the night of the incident, it was Captain Obershea and Deputy Edwards who determined that the traffic control plan required an additional officer. Captain Obershea assessed and communicated this need, which was only then approved by both Truesdell and NC DOT. After approval, Captain Obershea called plaintiff to staff the additional position.

Moreover, at the job site, LEOs exercised considerable independence. The LEOs performing traffic control duties were able to take breaks as needed or even leave without Truesdell's permission. Breaks were coordinated internally with "no one at Truesdell directing [them]." In fact, in the event of a county-related emergency, LEOs could be called off the job site to respond. Moreover, LEOs had a duty to engage in law enforcement activities—to the exclusion of their traffic control duties—if they encountered someone committing a crime.

Truesdell neither directed nor instructed the manner and method in which plaintiff carried out his duties. Instead, plaintiff relied exclusively upon his law enforcement experience and training in managing the traffic flow. For instance, plaintiff would occasionally move into the lane of travel or move barrels off the roadway to execute the plan. These details of plaintiff's traffic control work were independent of Truesdell's instruction or supervision. No Truesdell representatives were present where traffic was being directed. Indeed, Deputy Edwards explained that on the night of the accident, RCSO and its officers "had no contact with any representative of Truesdell . . . until the accident [occurred]."

Furthermore, Truesdell did not supply plaintiff with tools or equipment. Plaintiff was equipped with his RCSO badge, his personal flashlight, a reflective jacket borrowed from another deputy, a county-owned vehicle with blue lights, a siren, and a radio.

On this record, the indicia of control fall short of establishing Truesdell as a joint employer. The extent of Truesdell's control was

twofold: Truesdell designated the locations to station LEOs and the direction to send traffic. However, assigning a worker both a place and a task, by itself, does not suffice to create an employer-employee relationship. *See Lewis v. Barnhill*, 267 N.C. 457, 466 (1966) (holding that directing a worker where to place steel joists was insufficient employer-like control, because "[h]ow he was to get the joist to that position was left to [worker]'s skill and judgment"); *Collins*, 21 N.C. App. at 461 ("The fact that [the defendant's] employee told [the plaintiff] where to deliver the first load of asphalt and drew him a route map to show him how to get there[ ] hardly amounts to such supervision and control over his activities as to . . . enter into some type of special employment relationship with [the defendant]."); *Demolition Dynamics*, 136 N.C. App. at 610 (observing a lack of control where although the "supervisor of the demolition project[ ] directed [the plaintiff] regarding what needed to be done, no evidence was presented that the latter was told *how* to do the specific tasks assigned").

Even where this Court has concluded an employer's control was sufficient, it required more indicia of control than that which is presented here. *See Leggette v. J.D. McCotter, Inc.*, 265 N.C. 617 (1965). For instance, in *Leggette*, a representative of the employer-company was present at the job site and giving active, specific instructions to the plaintiff-employee. *Id.* at 619. There, the employer's representative testified, "If I told [the plaintiff-employee] to move something else he did if he could. . . . I directed [the plaintiff-employee] what I wanted him to do." *Id.* The employer's representative further explained that at the time of the plaintiff-employee's accident, the representative "ordered" the plaintiff-employee to lower the beam that ultimately injured him. *Id.* Whereas here, it was Captain Obershea—not a representative of Truesdell—who ordered plaintiff to switch positions with him on the route, ultimately leading to plaintiff's injury. The record before us simply falls short in supplying facts that this Court has recognized as sufficient for establishing control.

Bound by the record and informed by the caselaw, we hold that plaintiff has failed to establish simultaneous control by both employers. Rather, plaintiff was supervised by Captain Obershea and Deputy Edwards from RCSO and independently exercised the manner in which he directed traffic. Such circumstances do not satisfy the "crucial test" of control by Truesdell. *See Lewis*, 267 N.C. at 465 ("The crucial test . . . is whether he passes under the [alleged employer]'s right of control with regard not only to the work to be done but also to the manner of performing it." (emphasis omitted) (quoting *Weaver v. Bennett*, 259 N.C. 16, 28 (1963))).

3. Nature of the Work Requirement

The third element is the nature of the work requirement. As clarified above, a plaintiff proceeding under the joint employment doctrine need only demonstrate that the "service for each employer is the same as, or is closely related to, that for the other." *Texas Gulf*, 83 N.C. App. at 636 (extraneity and citation omitted). Here, plaintiff was engaged in protecting the public safety by directing the route of traffic during road repairs. Importantly, plaintiff's traffic control work was in furtherance of both his duty as a police officer and Truesdell's road repair project. Therefore, the third element—the nature of the work requirement—has been satisfied.

* * *

The record and caselaw compel the conclusion that plaintiff was not subject to sufficient control to render Truesdell a joint employer. Before closing, we emphasize the indispensable function law enforcement provides to our community. The decision before us was a difficult one, but fidelity to the record, competent findings of the Industrial Commission, and North Carolina caselaw leave us no alternative. Therefore, we hold that RCSO was plaintiff's sole employer at the time of the accident. We observe that moving forward nothing in this opinion precludes sheriff and police offices from adopting contractual measures to better ensure joint workers' compensation benefits to those most dedicated to our safety. *See Est. of Belk v. Boise Cascade Wood Prods., L.L.C.*, 263 N.C. App. 597, 602 (2019) (recognizing that an explicit agreement regarding the right of control is "strong evidence" of establishing an employer-employee relationship).

IV. Conclusion

The joint employment doctrine is related to, yet distinct from, the lent employee doctrine. A joint employment relationship arises where a single employee, under contract with two employers, and under the simultaneous control of both, simultaneously performs services for both employers, and those services for each employer is the same as, or is closely related to, that for the other. A careful appraisal of the record reveals that plaintiff was not under sufficient control of Truesdell to create joint employment. Therefore, we must hold that RCSO was plaintiff's sole employer. We reverse the decision of the Court of Appeals to the extent that the court held Truesdell qualified as a joint employer.

REVERSED IN PART.

Chief Justice NEWBY concurring in part and dissenting in part.

I concur with most of the majority's analysis. I agree with the majority's distinction between the joint employment doctrine and the lent employee doctrine, the majority's determination that an implied employment contract existed between plaintiff and defendant Truesdell Corporation, and the majority's conclusion that the nature of plaintiff's work for each employer was closely related. I diverge with the majority on the element of control. For this element, I would affirm the Court of Appeals' determination that Truesdell exercised joint control over plaintiff alongside defendant Robeson County Sheriff's Office (RCSO). I believe our analysis regarding Truesdell's exercise of control is best informed by our decision in *Leggette v. J. D. McCotter, Inc.*, 265 N.C. 617, 144 S.E.2d 849 (1965). Based on *Leggette*, I would hold that plaintiff was a joint employee of Truesdell and RCSO, and that both can be liable for plaintiff's workers' compensation. I therefore respectfully concur in part and dissent in part.

Plaintiff, a law enforcement officer at RCSO, was injured off duty while directing traffic at a construction site for Truesdell. As a result, plaintiff filed workers' compensation claims against both RCSO and Truesdell. As this Court is only deciding whether Truesdell jointly employed plaintiff, the following facts focus primarily on Truesdell's relationship with off-duty law enforcement officers such as plaintiff who worked at Truesdell's construction site.

The Department of Transportation (NCDOT) awarded Truesdell a bid for repairing bridges along a highway. Knowing that this project would cause serious traffic disruptions, NCDOT required Truesdell to implement a traffic control plan and retain off-duty law enforcement officers for their specialized skill in directing traffic.

Truesdell's traffic control plan set out how traffic should be managed at different stages of the project. The plan laid out the role of law enforcement officers and dictated when, where, and how many officers were needed at the construction site to manage traffic in accordance with Truesdell's directives. This included, for example, rerouting traffic off of the highway, or slowing down traffic around the construction site.

Plaintiff's superiors at RCSO, Captain James Obershea and Deputy Jonathan Edwards, served as "project coordinators" to communicate with Truesdell, and recruit and oversee the law enforcement officers at Truesdell's construction site. Though Captain Obershea and Deputy Edwards determined which officers would work at the construction

site, Truesdell indirectly maintained the ability to terminate law enforcement officers' services. If Truesdell had requested that a certain officer not come to work at the construction site, Captain Obershea and Deputy Edwards would have simply asked a different officer to work instead of potentially losing the contract with Truesdell.

Truesdell communicated with Captain Obershea and/or Deputy Edwards daily to relay how many law enforcement officers were needed that day and what traffic patterns the officers needed to enforce. Truesdell showed Captain Obershea and Deputy Edwards where the law enforcement officers would be stationed by placing orange dots on a map and giving the map to Captain Obershea and Deputy Edwards. Once the officers arrived at the site, Captain Obershea and Deputy Edwards directed the officers on when and where to be in order to fulfill Truesdell's requests. Thus, through its traffic control plan, and indirectly through Captain Obershea and Deputy Edwards, Truesdell controlled what law enforcement officers generally needed to do, where the officers precisely needed to be, and how many officers needed to be there on a given night. Truesdell did not, however, control *how* the officers did their job. Rather, the law enforcement officers retained the ability to independently determine how best to direct traffic in accordance with Truesdell's traffic control plan.

Notably, Deputy Edwards testified that if he had concerns over the safeness of the directives contained in Truesdell's plan on a given day, he would bring these concerns up with Truesdell. These concerns included Captain Obershea and Deputy Edwards's belief that they needed an additional law enforcement officer, or their belief that they needed to alter the plan's directives to best manage traffic flow. Thereafter, Truesdell would have the final say on whether changes were needed. In fact, this is how plaintiff wound up at the construction site the night he was injured. Earlier that day, Captain Obershea and Deputy Edwards believed they needed an additional officer to fulfill their assignment that night in accordance with Truesdell's traffic control plan—namely, rerouting traffic off the highway. Unable to make this decision unilaterally, Captain Obershea and Deputy Edwards contacted Truesdell to approve their request. After Truesdell approved Captain Obershea and Deputy Edwards's request, Captain Obershea and Deputy Edwards asked plaintiff if he wanted to work that night. Plaintiff accepted and, that night, while in position to direct traffic off the highway in accordance with the traffic control plan, plaintiff was struck by a vehicle and suffered severe injuries.

Based on these facts, the dispositive question is whether Truesdell exercised sufficient control over plaintiff to render it a joint employer of

plaintiff. "Joint employment occurs when a single employee, under contracts with two employers, simultaneously performs the work of both under the control of both. In such a case, both employers are liable for work[ers'] compensation." *Leggette*, 265 N.C. at 621–22, 144 S.E.2d at 852 (quoting 1 Arthur Larson, *Workmen's Compensation Law* § 48.40 (1952)). As the majority points out, when assessing the element of control, courts should determine whether the alleged employer exercised a "right to control or direct the details of the work or what the workmen should do as the work progressed." *Hayes v. Bd. of Trs. of Elon Coll.*, 224 N.C. 11, 16, 18, 29 S.E.2d 137, 140, 141–42 (1944).

I believe that the analysis of the question of Truesdell's control should be guided by this Court's opinion in *Leggette*.[1] In *Leggette*, a building supply company rented out a piece of heavy machinery, along with the services of the machine's operator, to a construction company. 265 N.C. at 618, 144 S.E.2d at 850. This Court determined that the building supply company and the construction company exercised joint control over the operator. *Id.* at 623, 144 S.E.2d at 853. When comparing the employers in the present case to the employers in *Leggette*, RCSO is analogous to the building supply company, and Truesdell is analogous to the construction company. Because the present case concerns only whether Truesdell jointly employed plaintiff, when recounting this Court's decision in *Leggette*, I will focus primarily on this Court's discussion of the construction company's relationship with the operator. Then I will analogize the construction company's relationship with the operator to Truesdell's relationship with off-duty law enforcement officers such as plaintiff in the present case.

In *Leggette*, this Court relied on the following to determine that the construction company was a joint employer of the operator. First, this

1. The majority lists five factors to guide courts when determining whether an alleged employer exercised control over a worker. The majority pulls these five factors from a Court of Appeals decision in *McGuine v. National Copier Logistics, LLC*, 270 N.C. App. 694, 703, 841 S.E.2d 333, 340 (2020). In *McGuine*, to derive such factors, the Court of Appeals pointed to facts relied upon in an earlier Court of Appeals decision in *Henderson v. Manpower of Guilford County, Inc.*, 70 N.C. App. 408, 410–11, 319 S.E.2d 690, 692 (1984). *McGuine*, 270 N.C. App. at 703, 841 S.E.2d at 340. In *Henderson*, however, the Court of Appeals did not list out any factors to establish control. 70 N.C. App. at 409–15, 319 S.E.2d at 691–94. Instead, the Court of Appeals compared the facts of its case to those in *Leggette*. *Henderson*, 70 N.C. App. at 413, 319 S.E.2d at 693. It is from these facts that the Court of Appeals derived its list of factors. *See McGuine*, 270 N.C. App. at 703, 841 S.E.2d at 340. While I do not necessarily disagree with the five factors, and while I generally agree with my dissenting colleague's application of these factors, I point out the history of the factors to show that the factors can be traced back to *Leggette*.

Court observed that the construction company's superintendent directed the operator on where to go and to complete general tasks like "move [ ] earth" and "pour concrete." *Id.* at 622, 144 S.E.2d at 853. The operator, however, independently handled the machine and ensured that it was in working condition. *Id.* As the construction company's superintendent testified, "There was nobody [who] could even start [the machine] up. He . . . was in the entire charge of that machine and he was the . . . boss of that machine. I told him what I wanted done with the machine." *Id.* at 619, 144 S.E.2d at 850 (first alteration in original). In other words, the construction company's superintendent generally told the operator *what* tasks to complete but not *how* to accomplish such tasks.

The operator's actions on the day of his death illustrate the nature of his employment relationship with the construction company. That day, the operator volunteered to use his machine to assist other workers in lifting a 565-pound, 16-foot-long beam on top of 10-foot-high columns that sat 16 feet apart. *Id.* at 619, 144 S.E.2d at 851. This was an unusual job. The superintendent testified, "To my knowledge this machine hadn't been used to lift any beams prior to this." *Id.* Even though the operator volunteered to do so, the construction company maintained control over whether the operator lifted the beam; indeed, the superintendent testified, "If I had told him not to do it he wouldn't have done it." *Id.* With no instructions otherwise, the operator proceeded. *Id.* This dangerous endeavor took a group effort; several of the construction workers assisted in the process. *Id.* at 619–20, 144 S.E.2d at 851. When the operator attempted to place the beam a first time, the superintendent told the operator to lower the beam because it was not in place. *Id.* at 619, 144 S.E.2d at 851. Then the operator lowered the beam and independently placed tracks underneath it to try again. *Id.* All the while, even though the superintendent assisted the operator in placing the beam, the operator independently handled the machine. *Id.* It was when the operator incorrectly did so—when he "apparently pushed the wrong valve or lever"—that the beam swung around and hit him. *Id.* Despite the fact that the operator was killed while independently handling the machine, this Court determined that the construction company exercised sufficient control over the operator to render the operator a joint employee of the construction company. *Id.* at 623, 144 S.E.2d at 853.

Additionally, to show that the construction company exercised joint control over the operator, this Court pointed out that the construction company had the ability to terminate the operator. Specifically, this Court noted that while only the building supply company could "terminate [the operator's] general employment," the construction company

maintained the ability to terminate the operator's services at the jobsite. *Id.* at 618, 622, 144 S.E.2d at 850, 853.

Finally, this Court emphasized that the operator's work benefited both the building supply company and the construction company. *Id.* at 622, 144 S.E.2d at 852. The building supply company commonly rented its equipment to its customers, including the construction company. *Id.* at 622, 144 S.E.2d at 852–53. Then the construction company benefited from the operator's services and expertise with the machine. *Id.* at 622, 144 S.E.2d at 853.

The level of control exercised by Truesdell in the present case is similar to that exercised by the construction company in *Leggette*. Here, like the superintendent in *Leggette* who directed the operator to complete general tasks like moving earth and pouring concrete, Truesdell used its traffic control plan and communications with Captain Obershea and Deputy Edwards to direct law enforcement officers generally on what to do, like reroute traffic off the highway. *See id.* After being given such general tasks, like the operator in *Leggette* who independently handled the machine, law enforcement officers independently used their own equipment and specialized knowledge in law enforcement to direct traffic. *See id.* Thus, like the construction company in *Leggette*, Truesdell generally told the law enforcement officers *what* was needed on a nightly basis. Then the officers determined *how* this would be accomplished.

These similarities are apparent when comparing the circumstances surrounding plaintiff's injury in the present case to the circumstances surrounding the operator's injury in *Leggette*. Similar to the operator in *Leggette*, plaintiff was injured while independently doing his job. On the night of the accident, Truesdell, through its traffic control plan and through Captain Obershea and Deputy Edwards, assigned the law enforcement officers to reroute traffic off the highway. Captain Obershea told plaintiff where to position himself in accordance with Truesdell's traffic control plan. It was while plaintiff independently performed such task—i.e., by positioning himself in the road with his blue lights activated—that plaintiff was struck by a vehicle and seriously injured. This is similar to *Leggette*, where the construction company controlled whether the operator completed a certain task, namely, moving a heavy beam with the machine. *See id.* at 619, 144 S.E.2d at 851. Then the operator, like plaintiff here, was injured when independently completing such task—i.e., when he mishandled the machine. *See id.* The level of control exercised by the construction company is similar in that the operator would not have lifted the beam if the construction company's superintendent had told him not to, and plaintiff would

not have been where he was, directing traffic in such a manner, if not required by Truesdell.

Like this Court in *Leggette*, I would conclude that this level of control is sufficient to render Truesdell a joint employer of plaintiff. The majority, on the other hand, emphasizes that Truesdell did not control certain details of how law enforcement officers did their job. For instance, the majority points out that Truesdell would not direct officers to "move into the lane of travel or move barrels off the roadway to execute the plan." But this Court did not emphasize such details in *Leggette*. There the construction company hired the operator for his skill in operating heavy machinery. This Court determined it to be sufficient that the construction company assigned general tasks to the operator; it was not necessary that the construction company direct the operator on how to actually use the machinery to do the various tasks. *See id.* at 621, 144 S.E.2d at 852. Similarly, here Truesdell was required to hire the law enforcement officers specifically for their specialized skill in traffic management. Because of this skill, as Deputy Edwards testified, Truesdell did not need to "micromanag[e]" the officers and direct them on how to actually manage traffic to conform with Truesdell's traffic control plan. Therefore, based on *Leggette*, I would assign less weight than the majority to the fact that Truesdell did not micromanage how the law enforcement officers did their job.

There are additional circumstances in the present case that are consistent with those in *Leggette*. Like the construction company in *Leggette*, Truesdell maintained some ability, albeit indirectly, to terminate a certain law enforcement officer's services at the construction site, but could not terminate the officer's general employment. *See id.* at 618, 622, 144 S.E.2d at 850, 853. Deputy Edwards testified that if Truesdell had asked RCSO to stop sending a certain officer, then Deputy Edwards, "instead of sacrificing the whole contract," would not have asked that officer to return. Like in *Leggette*, any such termination of an officer's services at the jobsite, however, would not affect the officer's employment at RCSO. Thus, Truesdell's ability to terminate an officer's services at the jobsite weighs in favor of control.

Moreover, like the operator's work benefited the construction company in *Leggette*, the law enforcement officers' work benefited Truesdell. Truesdell was required to hire the officers for their specialized knowledge in traffic management. Truesdell, through its traffic control plan, dictated how to best utilize the officers' skillset to efficiently complete its construction job. The officers were necessary for Truesdell to complete its project.

Finally, in addition to the similarities between the present case and *Leggette*, I am persuaded by the fact that Truesdell was responsible for how many law enforcement officers were present at the jobsite. The traffic control plan set out how many officers were required each night. Truesdell had final approval over whether Captain Obershea and Deputy Edwards could bring additional officers. This is why plaintiff was asked to work on the night of the accident. If Truesdell had not controlled how many law enforcement officers were present each night, plaintiff would not have been at the site on the night of the accident. This fact weighs in favor of control.

The foregoing demonstrates that Truesdell, either directly through the traffic control plan or indirectly through plaintiff's superiors at RCSO, exercised a "right to control or direct the details of the work or what the workmen should do as the work progressed." *See Hayes*, 224 N.C. at 18, 29 S.E.2d at 141–42. Accordingly, I would hold that Truesdell and RCSO jointly employed plaintiff and can both be liable for plaintiff's workers' compensation. I therefore respectfully concur in part and dissent in part. Because the majority reaches the opposite conclusion on the issue of control, I will reiterate the majority's statement: "nothing in th[e] [majority] opinion precludes sheriff and police offices from adopting contractual measures to better ensure joint workers' compensation benefits to those most dedicated to our safety."

Justice RIGGS dissenting.

Truesdell Corporation (Truesdell) and the Robeson County Sherrif's Department (RCSO) jointly employed Deputy Stephen Lassiter when he was injured while directing traffic for Truesdell's highway construction project. I generally agree with the test articulated by the majority to clarify the joint employment doctrine, and I agree that the test applied by the Court of Appeals muddled the law. However, I do not think that error changes the ultimate outcome. I would hold that there is sufficient factual evidence Truesdell should be jointly liable for Deputy Lassiter's injuries because Truesdell had a "right to control or direct the details" of his work. *Hayes v. Bd. of Trs. of Elon College*, 224 N.C. 11, 18 (1944). As such, I would modify and affirm the Court of Appeals' holding that Deputy Lassiter was jointly employed by RCSO and Truesdell at the time of his injury.

In late 2017, the North Carolina Department of Transportation (NCDOT) awarded Truesdell a bid to repair bridges and overpasses

along I-95 in Cumberland and Robeson Counties. Truesdell agreed to "provide and furnish all materials, machinery, implements, appliances, and tools, and perform the work and required labor to construct and complete" the contract with NCDOT. Truesdell was responsible for coordinating a complicated highway construction project on I-95, which had the potential to cause traffic for several miles. The construction did not involve only minor traffic disruptions—Truesdell oversaw nightly lane closures, detours, and other serious traffic diversions. Given the complexity of the project, Truesdell's contract with NCDOT contained special provisions requiring it to design and implement a traffic control plan to ensure public safety during I-95 road closures. To meet these requirements, Truesdell supervised two subcontractors: TTCP Express to oversee the design of the traffic control and detour plan and AWP to supply and place traffic control devices. Even with the subcontractors, NCDOT still held Truesdell ultimately responsible for compliance with the traffic control plan—if NCDOT or its representatives observed non-compliance with the approved plan, it would report the issue to Truesdell, not to TTCP Express or AWP. Truesdell was solely responsible for ensuring traffic safety during a complex, technical construction project.

Deputy Lassiter was struck by a vehicle while performing off-duty traffic control work for Truesdell. At the time of the accident, Deputy Lassiter was employed by RCSO as a criminal investigator. He received training on traffic control during his Basic Law Enforcement Training, then assisted with traffic control as it arose in the course of his job, including while responding to car accidents and natural disasters. At the time of the accident, Deputy Lassiter was working in an off-duty capacity to direct traffic for Truesdell's highway construction project.

RCSO permitted its officers to engage in approved off-duty employment to supplement their RCSO income. Deputy Lassiter was told about the opportunity to direct traffic for Truesdell by his supervising officer, Captain James Obershea. When Deputy Lassiter arrived at the highway construction site, he met with other law enforcement officers and completed a W-9 form for Truesdell. Truesdell paid Deputy Lassiter directly for his off-duty work.

The joint employment doctrine applies when "a single employee, under contracts with two employers, simultaneously performs the work of both under the control of both. In such a case, both employers are liable for workmen's compensation." *Leggette v. J.D. McCotter, Inc.*, 265 N.C. 617, 621–22 (1965) (quoting 1 Arthur Larson, *Workmen's Compensation Law* § 48.40 (1952)). Under the joint employment doctrine, as clarified in the majority, plaintiffs must prove that they were

(1) under contract with both employers, (2) were subject to the control of the secondary employer, and (3) were engaged in the "nature of the work" of the secondary employer. I agree with the majority that Deputy Lassiter has met his burden on the first and third prongs but would hold that he has also satisfied the second prong.

The core of the second prong is whether the alleged employer had a "right to control or direct the details of the work." *Hayes*, 224 N.C. at 18. This is a fact-specific inquiry, measured by whether and to what degree the alleged employer: (i) supplied equipment, (ii) supervised putative employees, (iii) "retained discretion to terminate" putative employees, (iv) assigned duties to putative employees, and (v) controlled "the manner and method in which temporary employees carried out their duties." *McGuine v. Nat'l Copier Logistics, LLC*, 270 N.C. App. 694, 703 (2020) (cleaned up) (citing *Henderson v. Manpower of Guilford Cnty., Inc.*, 70 N.C. App. 408, 410–11 (1984)); *see Leggette*, 265 N.C. at 621–23. While on the facts of this case, these factors are not all equally important, each factor here points to Truesdell's sufficient right to control Deputy Lassiter's work.

Here, the supplied equipment factor does not overwhelmingly establish Truesdell's control, but it is consistent with a joint employment situation. Deputy Lassiter did not exclusively use RCSO equipment. His gun and flashlight were his personal equipment. He borrowed a reflective jacket from a coworker that was not issued by RCSO and did not have any RCSO markings on it. The primary RCSO-specific equipment Deputy Lassiter used was his unmarked RCSO car and his badge. Although Truesdell did not supply Deputy Lassiter with any equipment directly, it contracted to provide traffic control equipment, like barrels and road signs. While Truesdell did not provide Deputy Lassiter with any personal equipment, it contracted to provide equipment necessary to engage in traffic control work.

Truesdell also had the right to supervise the law enforcement officers employed in effectuating the traffic control plan. Chief Edwards testified that he "[took] direction from Truesdell of what they want" regarding the traffic route and set-up. Truesdell communicated "what they want[ed]" through technical traffic control plans and route maps shared with Chief Edwards and Captain Obershea at daily pre-shift meetings. On the night of Deputy Lassiter's injury, Truesdell's traffic plan included a full detour, closing the highway and taking drivers off of I-95. The traffic plans, routes, and assignments Truesdell provided to Captain Obershea and Chief Edwards were not minor suggestions—they were examples of Truesdell exercising supervision over RCSO

employees to execute their work on a dynamic, technical, and complex construction project.

Next, Truesdell retained the power to terminate the officers. If an officer left or performed poorly at the Truesdell job, it would have had no effect on their employment with RCSO and would not put the officer on their supervisor's "bad list." However, if Truesdell did not want to retain an officer who was not meeting performance expectations in this complex project, Chief Edwards testified that he would have "replaced that person with somebody else the next time." Captain Obershea, coordinating on behalf of Truesdell, testified that he would have told the officer that his services would "no longer be needed." In both *Leggette* and *Henderson*, a putative joint employer had sufficient termination power if it could request the termination or replacement of an unsatisfactory employee, even if the request was made to the other putative employer. *See Leggette*, 265 N.C. at 622–23 (reasoning that a construction company was a joint employer when it could stop another company's operator from using rented machinery if his work was unsatisfactory but could not unilaterally discharge or replace him); *see also Henderson*, 70 N.C. App. at 411–12 (holding that a company was a joint employer when they were "not obligated to keep any person on the job site sent over by [the other putative employer] if he was not satisfactory" and could call the other company to request they replace the unsatisfactory employee). Chief Edwards and Captain Obershea, in their role as "funnels" for Truesdell's instructions, had the authority to prevent officers from coming back if Truesdell requested their termination.

Each day, before each shift, Ethan Garner, the project engineer from Truesdell or another Truesdell employee communicated the assigned traffic pattern and planned route to Captain Obershea and Chief Edwards. A Truesdell engineer and the coordinating officers had daily "tailgate meetings" before each shift to discuss the traffic control plan and so the Truesdell engineer could update the officers on any changes. RCSO officers did not decide where the traffic control measures would be—Truesdell's engineers did. Each day, when Truesdell's engineer told Chief Edwards and Captain Obershea the traffic route, he would give them a map with orange dots where Truesdell wanted deputies. Once Truesdell's engineers communicated the work assignments to Chief Edwards and Captain Obershea, they acted as a "funnel" and communicated the location assignments to the law enforcement officers. Chief Edwards testified that he advised the officers where to go based on the Truesdell assignments, saying he told officers "Hey, this is what they want. Matt, if you'll go here. Obershea, if you'll go here." The fact that

Truesdell did not communicate these assignments directly to the officers or assign individual officers to each location it identified does not indicate a lack of assignment power, *see Leggette*, 265 N.C. at 618, 622–23 (reasoning that a construction company was a joint employer when its site coordinator gave plaintiff work assignments); rather Captain Obershea and Chief Edwards' communications with the officers were on behalf of Truesdell. This is emphasized by Captain Obershea's belief that he was working for Truesdell, not RCSO, because "[t]hey're the one that requested the . . . work be done, and they were the ones paying us." When Chief Edwards and Captain Obershea gave the officers assignments, they were acting not as supervising officers through RCSO, but as site coordinators and "funnels" for Truesdell's assignments. Truesdell exercised control over the assignment of the traffic route, plan, and traffic control locations.

Finally, Truesdell controlled the manner and method in which the law enforcement officers carried out their duties by creating the traffic plan, confirming any changes, and coordinating closely with the law enforcement officers. Truesdell's subcontractor, TTCP Express, drafted the certified traffic control plans under Truesdell's direction. Another Truesdell subcontractor, AWP, reviewed the traffic plans before they were sent to NCDOT for final review and approval. Once NCDOT approved the plan, Truesdell was responsible for ensuring its subcontractors accurately performed the traffic plan. The officers did not have the power to change the route or traffic plan—once assigned by Truesdell, the officers were required to direct traffic in accordance with Truesdell's traffic plan. Truesdell communicated to the officers whether the traffic control plan would involve a detour or a slowdown and where the traffic control was needed. The officers could not unilaterally decide to create a detour or slowdown, nor could they decide themselves where to put the traffic control measures. Instead, Truesdell controlled the traffic plan and route. If the officers wanted to make changes to the manner or method of the traffic control, they had to request the changes through Truesdell, who would consult with the project's safety inspector. Truesdell engineers spoke with the coordinating officers regularly by phone and met at least daily to discuss when the officers were needed and where the construction would occur. Truesdell could control the "method and manner" of Deputy Lassiter's work.

Across each of these factors, the primary question is whether Truesdell had the right to control the details of Deputy Lassiter's work. I agree with the majority that Deputy Lassiter has established that he had an employment contract with Truesdell and that the nature of the

work he performed for Truesdell was "the same as, or is closely related to" the work he completed for RCSO. *Anderson v. Texas Gulf, Inc.*, 83 N.C. App. 634, 636 (1986) (quoting 1C Arthur Larson, *Workmen's Compensation Law* § 48.40). However, Deputy Lassiter has also established that Truesdell exercised sufficient control to meet the second prong of the joint employment doctrine.

For the reasons above, I respectfully dissent. I would modify and affirm the Court of Appeals' holding that Truesdell and RCSO are jointly liable for Deputy Lassiter's injury.

Justice EARLS joins in this dissenting opinion.

ELIZABETH MATA AND THE MATA FAMILY, LLC
v.
NORTH CAROLINA DEPARTMENT OF TRANSPORTATION
AND NORTH CAROLINA TURNPIKE AUTHORITY

No. 217PA24

Filed 12 December 2025

Eminent Domain—condemnation—Map Act—recordation of highway corridor map—rescinded years later—indefinite taking—measure of damages

In a condemnation case involving restrictions imposed upon plaintiffs' private property through the recordation of a highway corridor map pursuant to the Map Act, which remained in effect for nearly twenty years until the General Assembly rescinded all Map Act corridors in response to *Kirby v. N.C. Dep't of Transp.*, 368 N.C. 847 (2016), which held that Map Act restrictions constituted takings by eminent domain, the Court of Appeals' decision treating the restrictions on plaintiffs' property as temporary takings—for purposes of calculating just compensation—was reversed. Under *Kirby* and other binding precedent, corridor recordings under the Map Act constituted indefinite takings of fundamental property rights, and the corridors' rescission years later did not retroactively convert these takings into temporary ones, since the nature of a taking must be determined at the moment it occurs. Accordingly, the proper measure of damages in this case would have been the difference between the fair market value of plaintiffs' property immediately before and immediately after the corridor map was recorded,

considering all pertinent factors including the indefinite nature of the restrictions and any effect of reduced ad valorem taxes.

Justice DIETZ concurring.

Justice BERGER joins in this concurring opinion.

On discretionary review pursuant to N.C.G.S. § 7A-31 of a divided decision of the Court of Appeals, 294 N.C. App. 705 (2024), affirming in part and reversing in part an order and judgment entered on 5 June 2023 by Judge G. Bryan Collins, Jr. in Superior Court, Wake County, and remanding for further proceedings. Heard in the Supreme Court on 16 September 2025.

Cranfill Sumner LLP, by George B. Autry, Jr., Stephanie H. Autry, and Jeremy P. Hopkins, for plaintiffs-appellees.

The Banks Law Firm, P.A., by Howard B. Rhodes; North Carolina Department of Justice, by Jeanne Washburn, Assistant Attorney General; Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan, LLP, by William H. Moss; and Skidmore Law Group, PLLC, by Matthew W. Skidmore, for defendant-appellant North Carolina Department of Transportation.

EARLS, Justice.

This case requires the Court to clarify two fundamental aspects of just compensation for takings effectuated under the now-repealed Transportation Corridor Official Map Act (Map Act), N.C.G.S. §§ 136-44.50 through 44.54 (repealed 2019). On 6 August 1996, the North Carolina Department of Transportation (DOT) recorded a corridor map covering approximately 9.93 acres of land owned by plaintiffs Elizabeth A. Mata and The Mata Family, LLC (collectively, Matas), restricting their fundamental rights to improve, develop, and subdivide the property. These restrictions remained in place for nearly twenty years until the General Assembly rescinded all Map Act corridors on 11 July 2016 in response to this Court's decision in *Kirby v. North Carolina Department of Transportation*, 368 N.C. 847 (2016), which held that Map Act restrictions constituted takings by eminent domain requiring just compensation. Plaintiffs filed an inverse condemnation action in 2019 seeking compensation for the twenty-year taking. After a hearing, the trial court

concluded that the proper measure of damages was fair rental value, the measure of damages for a temporary taking. The Court of Appeals agreed that the 2016 legislative rescission retroactively transformed what *Kirby*, and *Chappell v. North Carolina Department of Transportation*, 374 N.C. 273 (2020), characterized as an "indefinite" taking into a "temporary" taking, but reversed the trial court's damages determination, directing instead that damages be calculated as "the diminution in value . . . until 11 July 2016." *Mata v. N.C. Dep't of Transp.*, 294 N.C. App. 705, 713 (2024).

We hold that Map Act corridor recordings effectuate indefinite takings of fundamental property rights at the moment of recording, and subsequent legislative rescission does not retroactively transform an indefinite taking into a temporary one for purposes of calculating just compensation. The proper measure of damages is the difference between the fair market value of the property immediately before and immediately after the corridor map recording, considering all pertinent factors including the indefinite nature of the restrictions and any effect of reduced *ad valorem* taxes. *Chappell*, 374 N.C. at 284. Expert appraisers may employ various acceptable methodologies, including comparable sales, income capitalization (which may incorporate rental value considerations), or a cost approach to determine these before-and-after fair market values, provided the ultimate comparison is between fair market values as of the date of the taking. *Id.* at 283–85. Accordingly, we reverse the decision of the Court of Appeals and remand this case for proceedings consistent with this opinion.

I. Background

In 1987, the General Assembly enacted the Roadway Corridor Official Map Act. With its passage, the Map Act limited a landowner's rights to obtain a permit to build any structure or building on the affected land, for example, and prevented the property from being subdivided or developed in certain ways. *See* N.C.G.S. §§ 153A-335, 136-44.51(a) (1987). Importantly, the Act described these restrictions placed on property owners as permanent takings; however, when calculating the value of the land before the corridor map was recorded and the value of the land afterward, all pertinent factors were to be considered, including the restriction on each plaintiff's fundamental rights and any effect of the reduced *ad valorem* taxes on the subject property. *See id.*; *Kirby*, 368 N.C. 847 (2016).

On 1 June 1973, Elizabeth Mata acquired a fee simple interest in approximately 94 acres of real property in Apex, Wake County (the Mata

Property). On 20 November 2012, the Mata Property was deeded to The Mata Family, LLC.

On 6 August 1996, the DOT recorded a corridor map (1996 Corridor Map) pursuant to the Map Act for the I-540 highway project. That corridor map covered approximately 9.93 acres of the Mata Property. This recording imposed restrictions on plaintiffs' core property rights to improve, develop, or subdivide the designated portion of the Mata Property.

In *Kirby v. North Carolina Department of Transportation*, this Court clarified that the restrictions imposed under the Map Act constituted a taking by eminent domain for which just compensation was due. 368 N.C at 848. Specifically, we noted that the recorded corridor maps "restricted [the landowner's] rights to improve, develop, and subdivide their property for an indefinite period of time." *Id.* at 856. Even though the Act provided certain ways that a landowner could become exempt from the recorded restrictions, *id.* at 849–50, we concluded that "[i]n all instances, . . . the restrictions imposed upon the property remain indefinitely, absent affirmative action by the owner and either approval from the State or a certain lapse of time." *Id.* In light of that indefinite taking of fundamental property rights, the proper measure of damages was "the value of the land before the corridor map was recorded and the value of the land afterward, taking into account all pertinent factors, including the restriction on each plaintiff's fundamental rights, as well as any effect of the reduced *ad valorem* taxes." *Id.* at 856.

On 11 July 2016, the General Assembly rescinded all corridor maps recorded pursuant to the Map Act. The General Assembly later repealed the Map Act in its entirety, effective 13 June 2019. An Act to Repeal the Transportation Corridor Official Map Act, S.L 2019-35, § 1, 2019 N.C. Sess. Laws 211.

On 26 February 2019, Elizabeth Mata and The Mata Family, LLC filed an inverse condemnation action under N.C.G.S. § 136-111. Plaintiffs sought compensation for the Map Act restrictions which had encumbered the Mata Property from 6 August 1996 to 11 July 2016.

On 7 April 2020, DOT filed a direct condemnation action on the Mata Property pursuant to N.C.G.S. § 136-103 to acquire additional rights on both the same and other land covered by the 1996 Corridor Map for the purpose of building the I-540 project. At the time DOT filed its direct condemnation action, the Map Act restrictions no longer encumbered the Mata Property.

On 17 May 2023, the trial court held a hearing on DOT's motion to determine all preliminary issues other than just compensation, pursuant to N.C.G.S. §§ 136-108 and 136-111. Following the hearing, the trial court found and determined that the DOT had effectuated a temporary taking of the Mata Property from 6 August 1996 to 11 July 2016, by way of the Map Act corridor restrictions. The court decreed that the Matas were accordingly entitled to just compensation. The measure of that compensation, namely, should follow the appraisal method for so-called "temporary" takings: "[t]he difference in the value of the property immediately before and immediately after the taking." In making that calculation, "appraisers may use rental value to measure the value of the property during the duration of the taking."

The DOT, together with the North Carolina Turnpike Authority, appealed the trial court's order on 30 June 2023. The Court of Appeals affirmed in part and reversed in part. *Mata*, 294 N.C. App. at 713. The appellate court agreed with the trial court's determination that the eventual rescission of the corridor recording transformed the taking of the Mata's Property into a temporary taking, and further concluded that the trial court correctly found that the temporary taking "occurred between 6 August 1996 until 11 July 2016." *Id*. But the Court of Appeals reversed in part on the measure of just compensation:

> The proper measure of the damages to be proven by Plaintiff is the diminution in value on the date of the filing of the highway corridor on 6 August 1996 until 11 July 2016, "taking into account all pertinent factors" to include the reduction in assessed *ad valorem* taxes Plaintiffs benefitted from during the period of the relevant temporary taking. *Chappell*, 374 N.C. at 284, 841 S.E.2d at 522. The order of the trial court is reversed on the measure of damages Plaintiff must prove.

Id.

Judge Murphy concurred in part and dissented in part, and would have held that the property's rental value was the proper measure of damages in the case of a temporary taking, consistent with the Court of Appeals reasoning in *Sanders v. North Carolina Department of Transportation*, No. COA22-440, slip op. 23–25 (N.C. Ct. App. Feb. 6, 2024) (unpublished).[1]

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1. This Court simultaneously reverses the Court of Appeals *Sanders* decision in another decision filed today, *Sanders v. N.C. Dep't of Transp.*, No. 87PA24 (N.C. Dec. 12, 2025).

The DOT sought discretionary review of two issues: (1) whether the Court of Appeals erred by failing to follow this Court's decisions in *Kirby* and *Chappell* as to the nature of the taking, and (2) whether the Court of Appeals erred by failing to apply the correct measure of damages for a Map Act taking, which DOT argued "is the change in the property's fair market value from immediately before to immediately after the date of taking, plus interest from the date of taking to the date of final judgment." *Mata v. N.C. Dep't of Transp.*, 294 N.C. App. 705 (2024). This Court allowed discretionary review of both issues on 21 March 2025. We now reverse.

II. Analysis

The DOT advances three main arguments. First, it contends that the Court of Appeals mischaracterized Map Act takings as "temporary," contradicting *Kirby*'s holding that Map Act takings are indefinite in nature. In essence, DOT's position is that the subsequent legislative rescission of the corridor maps does not retroactively transform an indefinite taking into a temporary one—the character of what was taken must be determined at the moment of the taking, not by hindsight knowledge of events that occurred twenty years later. Second and relatedly, DOT asks this Court to reverse the Court of Appeals as to the correct measure of damages, which that court described as the ongoing "diminution in value . . . until 11 July 2016," *Mata*, 294 N.C. App. at 713, and to clarify that the proper measure of damages is fair market value before and after the taking together with the requisite award of interest. Third and finally, DOT asks this Court to reaffirm that rental value is an acceptable appraisal method under the income capitalization approach to determining fair market value, and to disavow any language in the Court of Appeals' opinion that could be read to prohibit consideration of rental value.

A. Standard of Review

Our review of a Court of Appeals decision after a final determination by that court is for errors of law. N.C. R. App. P. 16(a). Questions of law, including statutory interpretation and the constitutional dimensions of the State's taking power under eminent domain, are reviewed de novo. *See Wilkie v. City of Boiling Spring Lakes*, 370 N.C. 540, 547 (2018); *Chappell*, 374 N.C. at 281.

B. Nature of the Taking

This Court's precedent confirms that a Map Act restriction was an indefinite taking at the time the property was placed on the recording map. That conclusion is not altered in light of the later rescission of

the corridor maps by the General Assembly on 11 July 2016, because fundamentally the relevant indefinite "taking" of core property rights occurred at the point of the initial recording.

Kirby confirmed that DOT's use of the Map Act to record highway transportation corridor maps constituted an exercise of the Department's power of eminent domain and "effectuated a taking of fundamental property rights." 368 N.C. at 856. We characterized Map Act restrictions as creating an "indefinite restraint on fundamental property rights" that restricted landowners' rights for an unlimited period of time. *Id.* at 855.

The indefinite nature of the taking *at the point of the corridor recording* was central to *Kirby*'s holding. We explained that "[u]pon NCDOT's recording of the highway corridor maps at issue here, the Map Act restricted plaintiffs' fundamental rights to improve, develop, and subdivide their property for an unlimited period of time." *Id.* at 848. The Map Act imposed restrictions that "remain indefinitely, absent affirmative action by the owner and either approval from the State or a certain lapse of time." *Id.* at 850. The statute provided no guarantee that the highway would ever be built, and no deadline for DOT to act, and placed the burden on property owners to seek relief through administrative processes that themselves had no assured timeline.

Moreover, "[t]he Map Act's indefinite restraint on fundamental property rights is squarely outside the scope of the police power." *Id.* at 855. The nature of what the State restricted made this a taking, as opposed to a valid exercise of regulations imposed under the police power. The Court expressed concern that were the State to succeed in classifying these takings as mere temporary regulations, it would effectively grant itself the right to "hinder property rights indefinitely for a project that may never be built." *Id.*

In *Chappell v. North Carolina Department of Transportation*, we reaffirmed the indefinite nature of Map Act takings. 374 N.C. at 284. We observed that, such takings created "an indefinite negative easement" *id.*, and an "indefinite restraint on fundamental property rights." *Id.* (quoting *Kirby*, 368 N.C. at 855–56). Significantly, we stressed that judicial review of Map Act claims should focus on the substance of what was deprived to property owners; stating that "what matters is whether the trial court correctly applied the law concerning how just compensation is measured, not the label given by the trial court or the parties to the taking that occurred." *Id.* at 283.

Against this backdrop, the Court of Appeals, while understandably seeking to address a challenging circumstance, erred by concluding that

the 2016 rescission of corridor maps retroactively transformed the taking from indefinite to temporary. The court reasoned:

> The "indefinite period of time" referenced in *Kirby* continued until the DOT either released the property under the statute or filed a direct condemnation action to take title to the fee and complete the highway project. . . . In response to our Supreme Court's decision in *Kirby*, the North Carolina General Assembly rescinded all Map Act corridors on 11 July 2016. . . . The termination of all Map Act corridors removed the negative restrictions as of 11 July 2016. . . . The Map Act restrictions dates in effect were properly defined from DOT's recording the highway corridors on 6 August 1996 until the corridors were rescinded as of 11 July 2016. The taking was no longer "indefinite."

Mata, 294 N.C. App. at 712 (internal citations omitted).

In our view, this reasoning confuses the duration of a restriction with the nature of the property interest taken. When DOT recorded the 1996 Corridor Map on 6 August 1996, it effectuated a taking of Matas' fundamental rights to improve, develop, and subdivide 9.93 acres of their property. *See Kirby*, 368 N.C. at 856. That taking was, by its very nature and statutory design, indefinite—it imposed restrictions that would continue without expiration unless and until: (1) DOT acted to acquire the property or approve development; (2) the property owner successfully navigated lengthy administrative relief processes; or (3) the General Assembly intervened to rescind the maps.

The character of the property interest taken is determined at the time of the taking, not by subsequent events that may—or may not—occur decades later. Consider that, at the moment DOT recorded the 1996 Corridor Map, neither DOT nor plaintiffs could predict with certainty:

- Whether the I-540 project would ever be built;
- Whether DOT would eventually acquire the property in fee simple, and if so, when;
- Whether the Matas would successfully navigate the administrative relief processes and become exempt from the corridor restrictions;
- Whether the General Assembly would rescind the maps; or
- How long any restrictions would remain in place.

Those uncertainties are precisely what made the taking indefinite. The fact that the General Assembly ultimately rescinded the maps twenty years later does not change what was taken from plaintiffs in 1996: their fundamental rights to improve, develop, and subdivide their property for an unlimited period of time. *See Kirby*, 368 N.C. at 848.

Here, when DOT recorded the 1996 Corridor Map covering 9.93 acres of the Mata Property, it took indefinitely the Mata's right to improve, develop, and subdivide that portion of the property. This taking occurred on 6 August 1996. The accompanying restrictions remained in place until the General Assembly rescinded all corridor maps on 11 July 2016—a period of nearly twenty years. The nearly twenty-year duration is a factual consequence of the indefinite restriction DOT imposed; the eventual rescission of the subject corridor map and the Map Act generally did not transform the indefinite taking of restricted property into a temporary one.

We affirm the trial court's factual finding regarding the applicable dates but clarify that the taking here was indefinite in nature as established by *Kirby* and *Chappell*, notwithstanding that the Map Act restrictions ultimately ended after nearly twenty years due to legislative rescission.

C. The Correct Measure of Damages

Having established that the Map Act recording effectuated an indefinite taking on 6 August 1996, we turn to the proper measure of damages. To the extent that the Court of Appeals held that the proper measure of damages for the Mata Property was based on valuation for temporary takings, that decision is reversed.

The General Assembly has specified the exclusive measure of damages for partial takings in inverse condemnation proceedings:

> Where only a part of a tract is taken, the measure of damages for said taking shall be the difference between the fair market value of the entire tract immediately prior to said taking and the fair market value of the remainder immediately after said taking, with consideration being given to any special or general benefits resulting from the utilization of the part taken for highway purposes.

N.C.G.S. § 136-112(1) (2023). In *Chappell*, we reaffirmed that this "fair market value" assessment is the measure of damages that applies to Map Act takings: namely, the amount of the immediate diminution in

value on the date of the taking, plus interest at the statutory rate from the date of taking until the date of final judgment. 374 N.C. at 283–84, 289; *accord Kirby*, 368 N.C. at 855–56 ("Through inverse condemnation the owner may recover to the extent of the diminution in his property's value as measured by the difference in the fair market value of the property *immediately before and immediately after* the taking." (cleaned up) (emphasis added) (citing N.C.G.S. § 136-112(1) (2015))). The "immediately" before and after standard calls for a snapshot comparison: the fair market value of the property immediately before the taking versus the fair market value immediately after the taking. Both valuations are anchored to the date of the taking—not calculated across a span of years as with a taking of temporary duration.

This measure of damages applies to Map Act takings, as said in *Kirby*:

> On remand, the trier of fact must determine the value of the loss of these fundamental rights by calculating the value of the land before the corridor map was recorded and the value of the land afterward, taking into account all pertinent factors, including the restriction on each plaintiff's fundamental rights, as well as any effect of the reduced *ad valorem* taxes.

368 N.C. at 856.

Chappell reinforced this framework, emphasizing that "the relevant determination when calculating just compensation for a taking that involves less than the entire parcel of property starts with the fair market value of the entire property before the taking and the fair market value of what remains after the taking." 374 N.C. at 284. We made it clear that this approach applies uniformly: "This is true whether the taking is an indefinite negative easement, as in the case of Map Act takings, or involves some other taking for public use." *Id.*

In addition, *Kirby* specifically directed that the trier of fact must consider "any effect of the reduced *ad valorem* taxes" when calculating the value of the land after the corridor map was recorded. 368 N.C. at 856. Moreover, as *Chappell* clarified, the way to account for reduced taxes depends on the particular facts of each case. In *Chappell*, "where the evidence was that the property essentially had no fair market value once the 1992 corridor map was recorded," the Court opined that "it was appropriate, following *Kirby*, for the trial court to take into account the effect of the reduced *ad valorem* taxes in the way that it did, and compensate the Chappells for the actual taxes they paid at a time when their property had virtually no fair market value." 374 N.C. at 289.

On remand, then, the trial court should adhere to the measure of damages outlined in *Kirby*, *Chappell*, and N.C.G.S. § 136-112(1) to assess the diminution in fair market value from immediately before to immediately after the taking. The parties may present evidence of that diminution in fair market value consistent with established appraisal methods, such as comparable sales, capitalization of income, and cost, but excluding any evidence of lost business profits, pursuant to established precedent. *E.g.*, *Chappell*, 374 N.C. at 284–85 ("While it speaks to the exclusive measure of damages, the statute does not restrict expert real estate appraisers with regard to the method they use to determine fair market value. . . . NCDOT was entitled to present evidence of the before and after fair market value of the Chappells' property using acceptable methods of appraisal, but only methods using factors that legally can be considered." (internal citations omitted)); *Dep't of Transp. v. M.M. Fowler, Inc.*, 361 N.C. 1, 13 n.5 (2006) ("Methods of appraisal acceptable in determining fair market value include: (1) comparable sales, (2) capitalization of income, and (3) cost. While the comparable sales method is the preferred approach, the next best method is capitalization of income when no comparable sales data are available." (citations omitted)).

Applying this framework to the proceedings below, the appropriate measure of damages should be the fair market value of the Mata Property immediately before and after the taking plus the requisite award of interest. Specifically, on 6 August 1996, the Mata Property had a fair market value unencumbered by Map Act restrictions (the "before" value). On that same date, immediately after DOT recorded the 1996 Corridor Map, the property had a diminished fair market value reflecting the indefinite restrictions on 9.93 acres (the "after" value). Following precedent from *Kirby* and *Chappell*, the Mata Property's fair market value was established immediately before and after the taking on 6 August 1996.

Furthermore, the reduced tax burden on plaintiffs for the subject property from 1996 to 2016 is a pertinent factor affecting the fair market value of the property immediately after the 1996 recording. A prospective buyer in 1996, evaluating the encumbered property, would consider not only the restrictions but also the tax benefits that accompanied them. Here the record does not yet reflect whether the Mata Property had essentially no fair market value after the 1996 recording or whether it retained some degree of value despite the restrictions. On remand, the trier of fact must determine the appropriate treatment of tax benefits based on the specific valuation evidence presented.

III. Conclusion

Kirby and *Chappell* establish clear, binding precedent that Map Act recordings effectuate indefinite takings of fundamental property rights at the moment corridor maps are recorded. The proper measure of just compensation is the difference between the fair market value of the property immediately before and immediately after that recording. This framework applies regardless of whether the Map Act is later rescinded, or the project is eventually built, or the property is subsequently acquired in fee simple.

The Court of Appeals' analysis erred by characterizing the taking as "temporary" based on subsequent legislative rescission. We reverse the Court of Appeals' decision and remand this case to that court for further remand to the trial court for further proceedings consistent with this opinion, including calculating just compensation based on the fair market value of the Mata Property immediately before and immediately after the taking on 6 August 1996, considering all pertinent factors including any effect of reduced *ad valorem* taxes.

REVERSED AND REMANDED.

Justice DIETZ concurring.

I agree with the majority that the reasoning of the Court of Appeals cannot be squared with this Court's decisions in *Kirby* and *Chappell*. Our precedent requires trial courts to treat Map Act takings as indefinite, not temporary.

But in fairness to our Court of Appeals colleagues, I think they were grappling with something that we simply ignore. As the majority observes, the Map Act recording was an indefinite taking of Mata's "core property rights to improve, develop, or subdivide" the property. *See* majority *supra* Part I. We often describe property rights in terms of a "bundle of sticks," meaning "a collection of individual rights which, in certain combinations, constitute property." *United States v. Craft*, 535 U.S. 274, 278 (2002). In North Carolina, the "rights to improve, develop, or subdivide" described by the majority are all sticks within that bundle. *See Kirby v. N.C. Dep't of Transp.*, 368 N.C. 847, 853 (2016).

In other words, through the Map Act recording in this case, the State effectively reached in and took a handful of sticks out of Mata's bundle. Under our precedent in *Kirby* and *Chappell*, Mata is entitled

to just compensation for this indefinite taking based on "the difference between the fair market value of the property immediately before and immediately after that recording." *See* majority *supra* Part III.

But many years after that indefinite taking, the State did something unusual: it changed its mind and gave all those sticks back. After that, the entire bundle of sticks, in fee simple absolute, once again belonged to Mata.

I think the Court of Appeals and the trial court in this case (and the many companion cases) were trying to make sense of the implications of that. They were reckoning with how an "indefinite" Map Act taking interacts with a future direct condemnation proceeding. After all, under this Court's precedent, the State needs to pay just compensation for any taking based on the fair market value of the bundle of sticks the landowner possesses at the time of the taking. *See Town of Midland v. Wayne*, 368 N.C. 55, 63 (2015). After the Map Act rescission and repeal, that bundle of sticks includes all the ones the State gave back.

This Court has decided there is no need to ponder this issue today. I respect that. But I think we should acknowledge that the lower courts were not simply ignoring our precedent—they were trying to wrap their minds around the "double payment" that will result from a strict adherence to *Kirby* and *Chappell*. *See, e.g.*, Order on Hearing Pursuant to G.S. § 136-108, *Mata v. N.C. Dep't of Transp.*, No. 19CVS2633-910, 2023 WL 9785672, at *8 (N.C. Super. June 2, 2023). They were trying to assess whether that was truly what our precedent intended. *See id.* We now know that it was.

Justice BERGER joins in this concurring opinion.

NORTH CAROLINA DEPARTMENT OF REVENUE
v.
WIRELESS CENTER OF NC, INC.

No. 272A23

Filed 12 December 2025

1. Taxation—sales tax—digital property—Sales and Use Tax Act—"retailer"

In a contested tax case arising after the Department of Revenue conducted an audit and assessed a tax penalty against a wireless company that sold products on behalf of a mobile network brand, the wireless company qualified as a "retailer" pursuant to the plain language of the North Carolina Sales and Use Tax Act and long-standing precedent, where its business involved routinely transferring title of real-time replenishments (which constituted digital property) to consumers in exchange for receiving a commission for these sales; therefore, the wireless company could be held responsible for collecting and remitting sales tax at the point of sale, depending on the type of product sold.

2. Taxation—sales tax—time of collection—nature of digital property—prepaid wireless calling service versus stored-value card

In a contested tax case arising after the Department of Revenue conducted an audit and assessed a tax penalty against a wireless company that sold products on behalf of a mobile network brand, since the real-time replenishments sold by the wireless company (during Period I of the audit) could only be used to purchase wireless telecommunications services—and, upon purchase, resulted in the immediate upload of the prepaid airtime units to the customer's account—those replenishments constituted a "prepaid wireless calling service" under the North Carolina Sales and Use Tax Act; therefore, the wireless company was responsible for collecting and remitting sales tax at the point of sale. However, after the replenishments were modified (Period II of the audit) so that customers could use them to purchase any of a range of products offered by the mobile network brand, and not just wireless telecommunications services, those replenishments functioned as stored-value cards that were not subject to sales tax at point of purchase; for the Period II replenishments, the tax liability lay instead with the mobile network brand at the point of redemption by the customer.

3. Taxation—sales tax—agency tax assessment—presumption of correctness—remanded for recalculation

In a contested tax case arising after the Department of Revenue conducted an audit and assessed a tax penalty against a wireless company that sold products on behalf of a mobile network brand, where the wireless company was properly assessed for real-time replenishments that qualified as "prepaid wireless calling services" under the North Carolina Sales and Use Tax Act (products that were sold during Period I of the audit, which were taxable at the point of sale), the Business Court did not err by determining that the final tax assessment properly credited the wireless company for sales taxes already remitted during Period I and, further, that the wireless company had not rebutted the presumption of correctness of the agency's assessment for that period. However, where the wireless company was not responsible for collecting and remitting sales taxes for replenishments that functioned as stored-value cards (products that were sold during Period II of the audit, which were taxable at the point of redemption), the matter was remanded for recalculation of the agency's tax assessment on Period II replenishments.

Justice BARRINGER concurring.

Chief Justice NEWBY joins in this concurring opinion.

Appeal pursuant to N.C.G.S. § 7A-27(a)(2) from an opinion and final judgment entered on 2 June 2023 by Judge Michael L. Robinson, Special Superior Court Judge for Complex Business Cases, in Superior Court, Wake County, after the case was designated a mandatory complex business case by the Chief Justice pursuant to N.C.G.S. § 7A-45.4(b). Heard in the Supreme Court on 17 September 2024.

Jeff Jackson, Attorney General, by Tania X. Laporte-Reverón, Assistant Attorney General, Hunter E. Fritz, Assistant Attorney General, and Ronald D. Williams II, Special Deputy Attorney General, for State-appellee.

Culp Elliott & Carpenter, P.L.L.C., by Stanton P. Geller, for defendant-appellant.

Eversheds Sutherland (US) LLP, by Virginia "Jenny" Worthy, for Dish Wireless LLC, amicus curiae.

RIGGS, Justice.

The North Carolina Sales and Use Tax Act (the Tax Act) imposes a tax on the sale of digital property including prepaid wireless calling service sold by retailers within the state. *See* N.C.G.S. § 105-164.4 (2023). Because prepaid wireless calling service can be offered in different forms, the Tax Act defines the characteristics of products that constitute "prepaid wireless calling service" under the Tax Act.

Wireless Center of NC, Inc. (Wireless Center), a North Carolina retailer for Boost Mobile (Boost), sells a product referred to as real-time replenishments (Replenishments). The North Carolina Department of Revenue (Department) audited Wireless Center over a period from January 2016 to December 2018 and concluded Replenishments were "prepaid wireless calling service." Therefore, it concluded that Wireless Center was responsible for collecting and remitting sales tax on its sale of Replenishments at the point of sale. Wireless Center argues that because the Replenishments act as a stored-value card, any tax should not be collected until the customer redeems the Replenishments for prepaid wireless calling service or products from Boost. Thus, this tax dispute centers on whether Wireless Center was responsible for collecting and remitting sales tax on Replenishments at the point of sale or whether tax should have been collected when the customer redeemed the Replenishments for Boost's prepaid wireless service or products.

Importantly, Wireless Center and Boost changed how the Replenishments could be redeemed during the audit period and that change affects our analysis of how the Replenishments should be taxed under the Tax Act. During the first half of the audit period (Period I), Replenishments could only be redeemed for prepaid wireless service on the Sprint network.[1] However, during the second half of the audit period (Period II), Replenishments could be redeemed for prepaid wireless service on the Sprint network or for the purchase of products from Boost.

1. For clarification, Boost is a brand line owned by Sprint Solutions, Inc. Boost provides low-cost service on the Sprint network. In 2018 during the audit period, Sprint merged with T-Mobile US Inc. joining the wireless networks. In 2020, T-Mobile/Sprint sold its Boost line of business to DISH Network Corporation, effective 1 June 2020. For consistency, we refer to the wireless service provider as Boost through this opinion but clarify that any wireless services purchased with Replenishments were on the Sprint network during the audit period.

This case was heard by the Office of Administrative Hearings (OAH) on Wireless Center's petition for a contested tax hearing and was subsequently heard by the North Carolina Business Court before being appealed to this Court. The administrative law judge presiding over the OAH hearing concluded that Wireless Center was liable for collecting and remitting sales tax on Period I Replenishments but was not liable for collecting and remitting sales tax on Period II Replenishments. In doing so, OAH found that the Period II Replenishments did not constitute prepaid wireless calling service at the point of sale from Wireless Center. The Business Court agreed with OAH on the Period I Replenishments but concluded that Wireless Center was liable for collecting and remitting sales tax on Period II Replenishments.

For the reasons below, we hold that during Period I of the tax audit, Wireless Center was responsible for collecting and remitting sales tax on its sale of Replenishments. During Period II of the tax audit, we hold that Wireless Center was not responsible for collecting and remitting sales tax on Replenishments at the point of sale; rather, in Period II, Boost was responsible for collecting and remitting sales tax on Replenishments when they were redeemed for prepaid wireless service on the Sprint network or products provided by Boost. Thus, we affirm the decision of the Business Court for the first portion of the audit period and reverse the decision of the Business Court as to the second portion of the audit period. For clarity, the holdings from OAH, the Business Court, and this Court are summarized as follows:

	Period I	Period II
OAH	Character of Replenishment: prepaid wireless calling service	Character of Replenishment: stored-value card taxable at point of redemption
	Timing of taxation: point of sale	Timing of taxation: point of redemption
	Responsible for tax: Wireless Center	Responsible for tax: Boost
Business Court	Character of Replenishment: prepaid wireless calling service	Character of Replenishment: right to purchase prepaid wireless calling service
	Timing of taxation: point of sale	Timing of taxation: point of sale
	Responsible for tax: Wireless Center	Responsible for tax: Wireless Center
Supreme Court of North Carolina	Character of Replenishment: prepaid wireless calling service	Character of Replenishment: stored-value card taxable at point of redemption
	Timing of taxation: point of sale	Timing of taxation: point of redemption
	Responsible for tax: Wireless Center	Responsible for tax: Boost

I. Factual Background

Wireless Center is an independent contractor and agent engaged in the retail sale of cellular phone equipment, prepaid wireless service, gift cards, and Replenishments for Boost. Wireless Center operated six retail stores in Monroe, Greensboro, and Winston-Salem, North Carolina during the audit period. In 2016, Wireless Center entered into a "Branded Retailer Program Agreement" with Boost (the Boost Agreement) to exclusively sell Boost products, including Replenishments. The Boost Agreement defined Replenishments as "real time replenishment of

[prepaid airtime] units for use on Sprint's network[;] . . . Airtime is *immediately* added directly to a Customer Account when the Airtime is purchased." (Emphasis added.) Initially, the Boost Agreement identified Wireless Center as a retailer for Boost and assigned responsibility for collecting and remitting sales tax on Replenishments to Wireless Center.

In 2017, Boost and Wireless Center modified the Boost Agreement. The modification changed the Replenishments into a stored-value card and made Boost responsible for collecting and remitting sales tax on Replenishments at the point of redemption. Boost sent a notice (the Boost Notice) to its retailers, including Wireless Center, that Replenishments would transition from functioning as prepaid wireless calling cards to stored-value cards, which could be used to purchase Boost's products and services, including wireless telecommunications service, internet access service, ringtones and digital games among other products and services. The Boost Notice stated that Boost assumed responsibility for "collecting all taxes that apply to the sale and use of Stored-Value Cards at the time Stored-Value Cards are redeemed for Boost's products and services."

The Department performed a tax audit on Wireless Center's retail sales for the period of 1 January 2016 to 31 December 2018. The Department determined that Wireless Center failed to collect sales tax on Replenishment sales throughout the entire audit period. Using Wireless Center's gross receipts for the audit period, the Department assessed Wireless Center a tax liability of $516,700.37, including penalties and interest. The Department issued a Notice of Final Determination to Wireless Center on 7 July 2021, notifying Wireless Center of this tax liability.

II. Procedural Background

Wireless Center filed a petition for a contested tax hearing with OAH. Relevant to this appeal, Wireless Center made two objections to the tax assessment. First, Wireless Center argued that it was not responsible for remitting sales tax on Replenishments because Wireless Center was not a "retailer" of Replenishments. Second, Wireless Center argued that the Department's "decision to resort to using gross receipts was arbitrary and capricious and artificially inflated [Wireless Center's] sales tax liability for the [y]ears at issue" because it included sales of equipment which Wireless Center had already paid taxes on.

Because Boost and Wireless Center had changed the contractual agreement for responsibility for remitting sales tax for Replenishments in 2017, OAH considered Wireless Center's tax liability for two separate

time periods. Period I covered the first half of the audit period from 1 January 2016 when, per the Boost Agreement, Replenishments were "real time replenishment of [prepaid airtime] units" that were added immediately to a customer's account when purchased, until 7 September 2017 when the Replenishments transitioned into stored-value cards and Boost assumed responsibility for tax on Replenishments redeemed for prepaid wireless service. Period II covered the balance of the audit from 8 September 2017 until 31 December 2018. Although Wireless Center collected and remitted sales tax on all other products it sold during the audit period, Wireless Center conceded that for the entire audit period, it did not collect or remit sales tax on its sale of Replenishments.

During the OAH hearing, Wireless Center argued that Replenishments operated like traditional prepaid calling cards, sold to consumers for specific dollar amounts or minutes to be used solely for phone calls or data access. The Replenishments were limited to purchasing wireless service and could not be used for any other purpose. During Period II, after the Boost Agreement was modified, Boost restructured Replenishments into stored-value cards and Boost assumed responsibility for collecting and remitting tax when Replenishments were redeemed for services and products provided by Boost. Under this new model, consumers could use Replenishments to purchase telecommunications services, products, and other services, including internet access, all from Boost. Boost was then responsible for collecting and remitting tax on Replenishments redeemed for wireless service on the Sprint Network or for other Boost services or products which may or may not have been subject to sales tax.

As a threshold matter, Wireless Center contended during the hearing that, while Wireless Center acted as a retailer for items and services sold within its stores, it was not a retailer of Replenishments as that term is defined under the Tax Act. Wireless Center argued that it merely facilitated transactions that occurred directly between Boost and its customers and that Boost was the actual retailer. As such, Wireless Center claimed it was not subject to the obligation to collect sales tax because, according to Wireless Center, it did not meet the definition of "retailer" with regard to prepaid wireless calling services because it did not actually make the sale of such services. *See* N.C.G.S. § 105-164.3(35) (2017) (defining retailer as "[a] person engaged in business of making sales at retail, offering to make sales at retail, or soliciting sales at retail of . . . services sourced to this State"). For reasons below, we hold that Wireless Center was a retailer of Replenishments as defined under the Tax Act.

In support of its argument that Boost—rather than Wireless Center—should have paid the taxes for Replenishments redeemed for prepaid calling services during Period II specifically, Wireless Center presented evidence at the hearing from Sprint, the owner of the Boost brand and the legal entity responsible for remitting taxes associated with Boost. The evidence included an unsigned May 2021 letter from Sprint addressed to retailers which explained the roles and responsibilities between Boost and its partners for collecting and remitting North Carolina taxes (the Sprint Letter). The Sprint Letter stated that, after 8 September 2017, Replenishments were to be treated as store credits under a tax-inclusive model, which required Boost, rather than its retailers, to collect and remit sales tax when Replenishments were redeemed for wireless services on the Sprint network. The Sprint Letter further stated that Replenishments should be treated at the point of sale as stored-value cards from a tax perspective, with sales tax applied upon redemption for Boost services and products, rather than at the point of initial sale from retailers. However, Boost does not track how much tax it paid to North Carolina for Replenishments purchased at Wireless Center stores, as the Sprint Letter clarified that "Boost was agnostic with respect to the origination point of credit customers brought to the Boost ecosystem"— i.e., Boost does not track which of its retailers originally sold the Replenishment now being redeemed for use by a customer for services or products provided by Boost.

During the hearing, Wireless Center also presented an October 2019 affidavit from Anthony Whalen, Sprint's Senior Tax Counsel, who was responsible for the Boost line of business (the Whalen Affidavit). The Whalen Affidavit similarly stated that Replenishments functioned like stored-value cards or gift cards, where no tax was due or collected at the time of sale. Instead, Boost was responsible for collecting and remitting sales tax when the customer redeemed the Replenishments to purchase Boost's services or products. The Whalen Affidavit emphasized that tax was not due at the time of the initial sale by Boost dealers but rather was due when the customer redeemed the Replenishments for prepaid wireless calling service or for other products provided by Boost.

The administrative law judge (ALJ) presiding over the hearing allowed the Department to present evidence that the tax determination was correct. The ALJ specifically asked whether the Department had confirmed if Boost paid the sales tax since September 2017, the start of Period II. When the ALJ asked Andrew Furuseth, the Director of the Department's Sales and Use Tax Division, whether Boost had paid the tax on Replenishments that were redeemed during Period II, Mr.

Furuseth indicated that the Department could not disclose information about a taxpayer that was not a party to the tax dispute.

In a Final Decision order, the ALJ reversed the Department's sales tax assessment for Period II. The ALJ further ordered the Department to "re-calculate and re-assess the tax owed" by Wireless Center for Period I after deducting the "gross receipts for equipment sales for which [Wireless Center] has already paid taxes," as the ALJ found that "it is uncontested that [Wireless Center] paid all taxes due for equipment sold by it" and found that "[the Department] had an obligation to deduct the gross sales receipts for equipment sold *prior* to assessing tax against [Wireless Center] for services sold."

Specifically, the ALJ found that Wireless Center was responsible for collecting and remitting sales tax only for Period I, because those Replenishments were treated solely as prepaid wireless calling services, with the ALJ noting in the Final Decision that "Mr. Furuseth testified there is no difference between [Period I Replenishments] and prepaid wireless service—a position that appears to hold true regarding the services sold by [Wireless Center] prior to [Period II]". (Emphasis omitted.) As to Period II taxes, the ALJ concluded that Wireless Center's evidence—documents from Sprint, including the Whalen Affidavit—overcame the presumption that the Department's assessment was correct. The ALJ further concluded that the Department failed to demonstrate that the taxes had not been paid, acknowledging that the Department "*failed to prove by a preponderance of the evidence that the tax is still owing*," as the Department "refus[ed] to answer the Tribunal's questions as to whether Boost had paid the owed taxes from September 8, 2017 forward and, if so, how much had been paid." The ALJ remanded the case for recalculation of Wireless Center's liability, excluding Period II Replenishments. The decision also required the Department to "[d]educt from Petitioner's gross receipts the gross receipts for equipment sales for which [Wireless Center] has already paid taxes."

Both parties sought review at the Business Court. The Business Court reversed OAH's Final Decision, affirming the Department's tax assessment in full. The Business Court concluded that Replenishments in Periods I and II met the definition of "prepaid wireless calling services" under N.C.G.S. § 105-164.3(27a). Thus, Wireless Center was responsible for remitting sales tax on the sales of Replenishments during both periods. Further, the Business Court concluded that in the absence of documentation showing that Boost paid taxes for Replenishments sold by Wireless Center during Period II, Wireless Center had not rebutted

the presumption of correctness afforded to the Department. Wireless Center now appeals.

III. Analysis

In this appeal, we are asked to perform a fact-intensive inquiry by interpreting the Tax Act and its application to the sale of Replenishments by Wireless Center. Specifically, the parties dispute whether Wireless Center is a retailer of Replenishments as defined by the Tax Act and, if so, whether the Replenishments are taxable prepaid wireless service under the North Carolina tax scheme. Finally, we are also asked to review the presumption of correctness afforded to the Department's tax assessment.

For the reasons set forth below, on the first question of whether Wireless Center was a "retailer," we hold that under the Tax Act, Wireless Center was a retailer of Replenishments sold by Wireless Center. Examining the audit period during Period I, the Replenishments were prepaid wireless calling services taxable at the point of sale. Therefore, Wireless Center was responsible for collecting and remitting taxes on its sales of Replenishments. However, during Period II, the Replenishments did not meet the statutory definition of "prepaid wireless calling service." In Period II, Replenishments were taxable when redeemed based on how the Boost Agreement changed Replenishments into a stored-value card that a customer could use to purchase various Boost services and products.[2] Thus, in Period II, Wireless Center was not responsible for sales tax on Replenishments at the point of sale; rather, Boost was responsible for collecting and remitting any sales tax on Replenishments when customers redeemed them for services and products provided by Boost; that tax would vary based on what the customer ultimately redeemed the Period II Replenishment for. For these reasons, we affirm the decision of the Business Court for the first portion of the audit period and reverse the decision of the Business Court as to the second portion of the audit period regarding Wireless Center's tax liability for Replenishment sales.

Regarding issues related to the tax assessment, we hold that the Business Court did not err in concluding that the Department's assessment

2. The Whalen Affidavit indicates that Boost's services and products include "contractless, low cost, telecommunications and related products and services. These services include wireless voice services, internet access service, text messaging, games, applications, ringtones, equipment insurance plans, and a variety of other electronically delivered services."

properly credited Wireless Center for sales tax that Wireless Center had previously remitted. However, the Department must adjust the tax assessment to reflect that Wireless Center was not liable for collecting and remitting sales tax on Replenishments it sold in Period II. Therefore, we remand this case for recalculation of Wireless Center's tax liability to reflect that Wireless was not responsible for collecting and remitting sales tax on Period II Replenishments it sold.

A. Standard of Review

"An appellate court reviewing a superior court order regarding an agency decision examines the trial court's order for error of law." *Holly Ridge Assocs. LLC v. N.C. Dep't of Env't and Nat. Res.*, 361 N.C. 531, 535 (2007) (cleaned up). In its review for errors of law, the appellate court must both (1) "determine whether the trial court exercised the appropriate scope of review" and, (2) "if appropriate, decide whether the court did so properly." *Midrex Techs., Inc. v. N.C. Dep't of Revenue*, 369 N.C. 250, 256 (2016) (cleaned up).

When the Superior Court reviews an agency's decision, the proper standard of review "depends upon the particular issues presented on appeal." *Mann Media, Inc. v. Randolph Cnty. Plan. Bd.*, 356 N.C. 1, 13 (2002) (quoting *ACT-UP Triangle v. Comm'n for Health Servs.*, 345 N.C. 699, 706 (1997)). If the petitioner contends that the agency's decision was based upon an error of law, the trial court reviews de novo. *Id.* When a petitioner challenges "whether the agency's decision was supported by evidence or . . . whether the decision was arbitrary or capricious, then the reviewing court must apply the 'whole record' test." *Id.* (quoting *ACT-UP Triangle*, 345 N.C. at 706); *accord Thompson v. Wake Cnty. Bd. of Educ.*, 292 N.C. 406 (1977). Under the whole record test, "the reviewing court merely determines 'whether an administrative decision has a rational basis in the evidence.' " *In re Greens of Pine Glen Ltd. P'ship*, 356 N.C. 642, 647 (2003) (quoting *In re Appeal of McElwee*, 304 N.C. 68, 87 (1981)).

This Court begins by analyzing whether the Business Court exercised the appropriate standards of review when considering OAH's Final Decision, and, if so, whether the Business Court utilized those standards properly.

Here, the Business Court considered whether Wireless Center was a "retailer" and whether the Replenishments were "prepaid wireless calling service" during the audit period under the definitions established by the Tax Act. As such, the Business Court was to apply de novo review to the appealed questions of law decided on by OAH, and this Court is

satisfied that the record reflects that the Business Court utilized the de novo review standard in considering those issues. Further, the Business Court reviewed OAH's findings regarding the Department's tax assessment. The Business Court was required to apply the whole record test to the argument that OAH's findings regarding the assessment were not supported by the evidence, and this Court is satisfied that the record reflects that the Business Court used the whole record test to review those particular findings. Accordingly, as the Business Court utilized the appropriate standards of review, this Court now assesses whether the Business Court exercised those standards properly as a matter of law.

B. Wireless Center is a Retailer

[1] The first issue is whether Wireless Center is a retailer of Replenishments based upon the statutory definition of a "retailer" in the Tax Act. Wireless Center contends that it is not a "retailer" of the Replenishments because it does not own the Replenishments and merely acts as an intermediary in the transaction between Boost and customers. However, Wireless Center's assertion that it is not a retailer runs contrary to the plain language of the Tax Act and conflicts with this Court's precedent. Additionally, the contention directly contradicts the original agreement between Wireless Center and Boost.

At the time of the tax audit in 2018, the Tax Act defined a "retailer" as "[a] person engaged in business of making sales at retail, offering to make sales at retail, or soliciting sales at retail of tangible personal property, digital property for storage, use or consumption in this State, or services sourced to this State." N.C.G.S. § 105-164.3(35)(a) (2017).[3] This statute further defined a "sale" as "[t]he transfer for consideration of title, license to use or consume, or possession of tangible personal property or digital property or the performance for consideration of a service." *Id.* § 105-164.3(36). According to the Tax Act, retailers are required to pay privilege tax on the net taxable or gross receipts of sales including the sale of certain digital property. *Id.* § 105-164.4(a)(1). This privilege tax applied "to the sales price of each item or article of tangible property that is sold at retail and is not subject to tax under another subdivision in this section." *Id.*[4]

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3. N.C.G.S. § 105-164.3 was modified several times during the time frame of the audit. In January 2017, the definition of retailer in subsection 35 was modified however the quoted language remained unchanged. An Act to Make Various Changes to the Revenue Laws, S.L. 2017-204, § 2.1, 2017 N.C. Sess. Laws 1433, 1444–47.

4. Effective 16 July 2019, the General Assembly added subsection (b) to this statute to specifically require tax on the sale of certain digital property "regardless of

Further, this Court has long held that a retailer does not need to hold title to property that it sells. As early as 1944, this Court recognized that a business selling products on behalf of a third party, while receiving a commission, is a retailer for tax purposes. For example, in *Johnston v. Gill*, the Court held that a plaintiff who received a commission for taking the order and necessary measurements for custom clothing before forwarding the order to a tailoring company is a retailer. 224 N.C. 638, 641–42 (1944). Similarly, in *Handley Motor Co. v. Wood*, the Court determined that a party exchanging property on behalf of the titleholder for consideration still conducts a valid sale. 238 N.C. 468, 476–77 (1953).

Based upon statutory language and this precedent, Wireless Center was a retailer of Replenishments as defined in the Tax Act. The parties do not dispute—at least during Period I—that the Replenishments constitute digital property.[5] Wireless Center conceded that Period I Replenishments operated as traditional prepaid calling cards, sold to consumers for specific dollar amounts or minutes to be used solely for phone calls or data access. Wireless Center routinely transferred title of Replenishments, which are digital property, to consumers in exchange for consideration and received a commission from Boost for these sales. For these reasons, Wireless Center is a retailer of Replenishments as Wireless Center's conduct aligned with the statutory definition of "retailer" and this Court's interpretation of a "retailer" under the Tax Act.

C. Replenishments Were Prepaid Wireless Calling Services During Period I and Gift Cards During Period II.

[2] Having concluded that Wireless Center was a Replenishments retailer, we now turn to whether Replenishments were a form of a prepaid calling service that was taxable at the point of sale. Because Boost expanded the options of what could be purchased by a customer using Replenishments during Period II of the audit period, we must consider whether the Replenishments represent prepaid calling service both before and after Boost transitioned Replenishments to function as stored-value cards on 8 September 2017.

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whether the purchaser of the property has a right to use it permanently or to use it without making continued payments." An Act to Make Various Clarifying and Administrative Changes to the Revenue Laws, S.L. 2019-169, § 3.2, 2019 N.C. Sess. Laws 682, 688. While this version of the statute was not in place during the audit period, the fact that it was a clarifying change lends credence to our interpretation of the statute.

5. The Tax Act did not define "digital property" during the audit period. N.C.G.S. § 105-164.3 (2017).

Prepaid wireless calling service is defined as a right that: (1) "[a]uthorizes the purchase of mobile telecommunications service, either exclusively or in conjunction with other services"; (2) "[m]ust be paid for in advance"; and (3) "[i]s sold in predetermined units or dollars whose number or dollar value declines with use and is known on a continuous basis." N.C.G.S. § 105-164.3(27a) (2017). During Period I, the Replenishments met the statutory definition of prepaid calling service because they could only be used to purchase wireless telecommunications services. Customers purchased the Replenishments and then immediately loaded the airtime into their wireless accounts in preset units of time that diminished with each use. Replenishments therefore met the definition of prepaid wireless calling service as defined in N.C.G.S. § 105-164.3(27a) (2017). Accordingly, the Period I Replenishments were taxable at the point of sale according to N.C.G.S § 105-164.4(a)(4d) (2017) ("Prepaid telephone calling service is taxable at the point of sale instead of at the point of use."), and, under section 105-164.4, Wireless Center had an obligation to remit tax for the sale of Replenishments during Period I.

However, the modifications to the Boost Agreement in 2017 took Replenishments out of the realm of prepaid wireless calling service. North Carolina General Statute subsection 105-164.3(27a) defined prepaid wireless calling services as "[a] right that . . . [a]uthorizes the purchase of mobile telecommunications service *either exclusively* or *in conjunction with* other services." N.C.G.S. § 105-164.3(27a) (2017) (emphasis added). The statutory language defining prepaid wireless service is clear and unambiguous. *See Wiggs v. Edgecombe County*, 361 N.C. 318, 322 (2007) ("If the statute is clear and unambiguous, [the Court] appl[ies] the plain meaning of the words, with no need to resort to judicial construction."). The plain language of N.C.G.S. § 105-164.3(27a) required prepaid wireless calling services to *either* authorize the purchase of telecommunications services alone or *in conjunction with* other products. Because a customer could use Replenishments in Period II to purchase Boost products, *without purchasing telecommunication services*, the Period II Replenishments no longer met the statutory definition of prepaid wireless service at the point of sale from Wireless Center.

Looking specifically at the parties' arguments and the record as to whether the Period II Replenishments were prepaid wireless service and thus taxable at the point of sale, Wireless Center provided evidence in the proceedings that during Period II, customers could use Replenishments without purchasing wireless telecommunication service. According to

the Boost Notice, Replenishments were treated as "stored-value cards." Additionally, Wireless Center introduced the Whalen Affidavit that stated that "Boost [Period II Replenishments], whether cards or electronic, represent an intangible right, can be used to purchase other products and services, and are not limited to purchasing telecommunication services." The Whalen Affidavit is undisputed evidence that Period II Replenishments were essentially gift cards and that Boost was responsible for collecting and remitting appropriate sales tax when the customer redeemed the Replenishments.

The Department contended to the Business Court that the Whalen Affidavit's and the Boost Notice's respective characterizations of the Period II Replenishments as gift cards were uncorroborated hearsay not subject to any exception, arguing that OAH erred as a matter of law in relying upon that evidence. We do not find merit in this argument.

In its review of OAH's Final Decision, the Business Court did not reach a conclusion as to whether the Whalen Affidavit and the Boost Notice were hearsay. Rather, the Business Court concluded that Boost's characterization of the Replenishment as a gift card during Period II was not credible or persuasive, stating that "neither the Whalen Affidavit nor the Sprint Letter provide how, if at all, the nature of [Replenishments] changed under the law during Period II." But when the Business Court sits as an appellate court reviewing an agency decision, the Business Court does not assess the credibility of the evidence. *See Thompson*, 292 N.C. at 410 (explaining that the whole record test does not allow the reviewing court to replace the lower tribunal's judgment between two conflicting views even if the court "could justifiably have reached a different result"). Instead, the reviewing court must simply determine "whether an administrative decision has a rational basis in the evidence," *In re Greens of Pine Glen Ltd.*, 356 N.C. at 647 (cleaned up), after "taking into account contradictory evidence or evidence from which conflicting inferences could be drawn." *Thompson*, 292 N.C. at 410 (citing *Universal Camera Corp. v. N.L.R.B.*, 340 U.S. 474 (1951)).

This Court finds that the Boost Notice and the Whalen Affidavit, were, in fact, relevant evidence to the question of whether the Replenishments met the statutory definition of prepaid wireless calling service. Thus, the Business Court erred in concluding that the Boost Notice's and Whalen Affidavit's respective characterizations of the Period II Replenishment as a gift card were not credible or persuasive evidence, and it was appropriate for the ALJ to consider that evidence. As such, this Court holds that the Business Court erred in how it considered the Boost Notice and the

Whalen Affidavit when reviewing the issue of whether Replenishments constituted prepaid wireless calling service during Period II.

In administrative proceedings, an ALJ may consider traditionally inadmissible evidence when more reliable information is not available. *See* N.C.G.S. § 150B-29 (2023) (applying the rules of evidence to administrative hearings unless evidence is not reasonably available to show relevant facts). Additionally, this Court has affirmed the use of potentially inadmissible evidence in administrative hearings when it is the most reliable information reasonably available. *See, e.g.*, *In re McLean Trucking Co.*, 281 N.C. 375, 387 (1972) (noting that the use of the Blue Book published by National Market Reports, Inc. in a State Board of Assessment proceeding was allowed even though it was hearsay); *In re N.C. Fire Ins. Rating Bureau*, 275 N.C. 15, 35 (1969) (allowing the use of hearsay projections of future replacement cost to determine allowable insurance premiums); *see also*, *e.g.*, *N.C. Dep't of Pub. Safety v. Ledford*, 247 N.C. App. 266, 290 (2016) (noting that even if the statements at issue were hearsay, "our General Assembly, through the Administrative Code, has entrusted ALJs with broad discretion to admit probative evidence during administrative hearings"). Based upon the Whalen Affidavit and the Sprint Letter, in addition to the Boost Notice and testimony provided by Mr. Furuseth, there is evidence in the record from which an ALJ could rationally conclude that Period II Replenishments did not meet the statutory definition of prepaid wireless calling service at the point of sale from Wireless Center.

Indeed, the conclusion that Phase II Replenishments are not prepaid calling service finds support in the statutory definition, and the Business Court did not perform a statutory analysis. Interpreting Phase II Replenishments as the Department suggests—that Replenishments are prepaid wireless calling service because Replenishments can be used to purchase wireless calling service—would render superfluous or meaningless the statute's specific language requiring prepaid wireless calling services to authorize the purchase of mobile telecommunications services "either exclusively or in conjunction with other services." N.C.G.S. § 105-164.4(27a) (2017). In essence, the General Assembly shifted the burden of which party was responsible for collecting sales tax depending on what was purchased. For example, a $50 American Express gift card can be used to purchase prepaid wireless calling service, but the purchaser of that $50 American Express gift card is not taxed for the purchase of prepaid wireless calling service until the customer uses the gift card to purchase it. Using this hypothetical, the plain language of the statute indicates that the legislature did not (and could

not) expect American Express to know if the purchasers of its $50 gift cards intended to use that purchased gift card to buy cell phone minutes or data, in part or in whole. And American Express certainly could not charge the customers sales tax on whatever speculative portion of that $50 gift card might ultimately be spent on cell phone minutes or data. If Replenishments qualify as prepaid wireless calling service even when not used to purchase telecommunications services, the clause "either exclusively or in conjunction with other services" would lose all meaning. *Porsh Builders, Inc. v. City of Winston-Salem*, 302 N.C. 550, 556 (1981) (recognizing that the legislature does not intend any provision to be mere surplusage).

Because the ALJ determined in his review of the record that Period II Replenishments permit the option for customers to solely purchase standalone products without any telecommunications services, the ALJ concluded that Period II Replenishments are not prepaid wireless service at the point of sale. We agree with the ALJ's conclusion and conclude that Period II Replenishments were only taxable upon redemption for prepaid wireless service or products from Boost.

This Court is further convinced that Period II Replenishments were not taxable at the point of sale when considering the tax treatment of gift cards in the North Carolina Administrative Code. While the Tax Act does not define a gift card or gift certificate, the North Carolina Administrative Code clarifies that "[c]harges for gift certificates or gift cards are not subject to sales and use tax, pursuant to [N.C.]G.S. § 105-164.4, at the time of initial sale for the gift certificate or gift card." 17 N.C. Admin. Code 7B.3804 (2024). Instead, the transaction is subject to "sales and use taxes applicable to the item as if it were purchased without a gift certificate or gift card." *Id.* Applying this to the understanding that Period II Replenishments are gift cards, Wireless Center was not responsible for collecting and remitting sales tax on the Period II Replenishments at the point of sale; rather, consistent with the tax treatment of gift cards as stated above, any tax should be determined at the point of redemption, meaning that tax liability in this case turned on the service or product that the customer ultimately purchased using the Replenishments.

In sum, Period I Replenishments—which could *only* be redeemed for prepaid wireless service—fall within the statutory definition of prepaid wireless calling services at the point of sale; thus, Wireless Center was responsible for collecting and remitting sales tax during that period. However, Period II Replenishments—which could be purchased from Wireless Center and redeemed *either* for Boost prepaid wireless service

and/or the purchase of products provided by Boost—do not meet the statutory definition of prepaid wireless calling services at the point of sale; and therefore, Wireless Center was not responsible for collecting and remitting sales tax when it sold Period II Replenishments. Thus, we affirm the decision of the Business Court for the first portion of the audit period and reverse the decision of the Business Court as to the second portion of the audit period.

D. Wireless Center Did Not Rebut the Presumption of Correctness Afforded to the Department's Tax Assessment for Period I.

[3] Next, we address Wireless Center's argument that it successfully rebutted the presumption of correctness afforded to the Department's assessment and that the Business Court erred in concluding otherwise. The Department assessed sales tax for all Replenishments sold by Wireless Center throughout the entire audit period. Because we conclude that Period II Replenishments were not taxable at the point of sale, that portion of the Department's tax assessment is rendered extraneous and the presumption of correctness as to that portion—i.e., taxes associated with Period II Replenishments—need not be addressed in depth here. Thus, this Court's inquiry will focus only on the first half of the audit period—1 January 2016 through 7 September 2017. For the reasons set forth below, we hold that the Business Court did not err in determining that the Department had properly credited Wireless Center for taxes remitted. However, the Department must adjust the tax assessment to reflect the nontaxable nature of the Period II Replenishments when initially purchased from Wireless Center.

Generally, tax assessments are presumed to be correct. N.C.G.S. § 105-241.9(a) (2023) ("A proposed assessment of the Secretary is presumed to be correct."); *see also In re Appeal of McElwee*, 304 N.C. at 75 ("[T]he correctness of tax assessments, the good faith of tax assessors and the validity of their actions are presumed."). However, the Secretary may only "propose an assessment against a taxpayer for *tax due from the taxpayer*." N.C.G.S. § 105-241.9(a). It follows then that when a taxpayer demonstrates that tax is not due from that taxpayer because the product is not subject to sales tax, the taxpayer has rebutted the presumption of correctness afforded to the Department. *See Olin Mathieson Chemical Corp. v. Johnson*, 257 N.C. 666, 667 (1962) ("A taxpayer who challenges a sales tax coverage by virtue of an exemption or exclusion has the burden of showing that he comes within the exemption upon which he relies.").

Wireless Center argues that the tax assessment for the first half of the audit period overstates the taxes that Wireless Center still owes because the assessment did not credit Wireless Center for the taxes that it already remitted for its equipment sales. The ALJ agreed with Wireless Center on this point, but the Business Court reversed, concluding the Department had credited Wireless Center for the tax it already remitted. For reasons below, we agree with the Business Court that the Department did properly credit Wireless Center for taxes remitted.

Wireless Center argues, and the ALJ concluded, that the Department's tax assessment was based upon Wireless Center's total sales and did not credit Wireless Center for the taxes it paid on sales of products from 2016 through 2018. On appeal, the Business Court—using the whole record test—concluded that the Record showed the Department reduced Wireless Center's tax assessment based upon its reported taxable sales. The final tax assessment, Notice of Final Determination dated 7 July 2021, relied upon a tax form which was updated in 2020 to reflect Wireless Center's taxable sales in 2016 through 2018. The Department made changes to the proposed adjustments "based on the additional documentation [Wireless Center] previously provided."

Because the Department updated the assessment's reported taxable sales based upon Wireless Center's information, the Business Court did not err in concluding that the assessment was based upon the "best information available"—including taxes that Wireless Center itself previously reported. *See* N.C.G.S. § 105-241.9(a) (2023) (requiring that the Department base the assessment on the "best information available").

Finally, to the extent that the Department was required to rebut the ALJ's finding that Wireless Center overcame the presumption of correctness of the assessment, the Department has done so through Wireless Center's own documentation that Boost only paid taxes on Replenishments starting in Period II. The ALJ acknowledged that "in [Wireless Center's] own exhibits, Sprint/T-Mobile/Boost are clear that until [Period II], the onus of collecting and remitting taxes—even on [Replenishments] and prepaid calling services—was on their dealer partners, which included [Wireless Center]." Thus, any argument concerning whether the Department had already collected taxes from Boost (i.e., a double taxation issue) is limited to the Department's tax assessment of Period II. Our holding that Wireless Center was not liable for taxes associated with Period II Replenishments means we do not need to further address the Business Court's discussion of the presumption of correctness; rather, we simply conclude that the Department's tax assessment of Period II will need to be recalculated to reflect that Wireless

Center was not liable for the collection and remittance of sales tax on Period II Replenishments.[6]

In conclusion, the Business Court did not err in concluding that the final tax assessment properly credited Wireless Center for sales tax that it had previously remitted and therefore Wireless Center did not rebut the presumption of correctness afforded to the Department's tax assessment on that argument.

E. The Question of Whether the Internet Tax Freedom Act Prohibits Taxing of Replenishments is Not Properly Before this Court.

Lastly, for the first time in this appeal, Wireless Center argues that taxing Replenishments at the point of sale violates the federal Internet Tax Freedom Act. In its brief, the Department argues that Wireless Center is bringing this issue up for the first time in this appeal, i.e., that the Department may not tax Replenishments because the Replenishments may be used to purchase internet service. In reply, Wireless Center argues this is simply a legal argument against taxing Replenishments and not a separate issue. Regardless of how it is framed, Wireless Center did not raise the question of whether taxing Replenishments at the point of sale violates federal law either with the ALJ or the Business Court.

An issue that is not presented to the trial court cannot be raised for the first time on appeal. *See* N.C. R. App. P. 10(a)(1) ("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."); *see also M.E. v. T.J.*, 380 N.C. 539, 564 (2022) (acknowledging a "well-established prohibition of raising new issues on appeal"). Therefore, this question is not properly before the Court, and we will not address it.

IV. Conclusion

In sum, in our fact-intensive review of this matter, Wireless Center is a retailer of Replenishments as defined in the Tax Act, and

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6. Notwithstanding our conclusion, we note that, in an ideal world, the administrative law judge would have had better tax record keeping from all the parties. Instead, with the somewhat limited record before it, the ALJ presiding over the administrative hearing had to rely primarily on evidence such as the Whalen Affidavit and the Boost Notice, with which the Business Court took issue. While Wireless Center did present evidence that Boost was responsible for collecting and remitting sales tax on Period II Replenishments, better recordkeeping by Wireless Center would have streamlined this litigation.

Replenishments sold during Period I met the statutory definition of prepaid wireless service. Thus, Wireless Center was responsible for remittance of sales tax on Replenishments sold by Wireless Center during Period I of the audit period. For that reason, we affirm the decision of the Business Court that Wireless Center owed taxes for Replenishments it sold in Period I.

In Period II, the Replenishments did not meet the statutory definition of prepaid wireless service at the point of sale from Wireless Center. Therefore, Wireless Center was not liable for taxes on Replenishments sold during Period II, and we reverse the decision of the Business Court for Period II.

Finally, we hold that the Business Court did not err in concluding that the Department's tax assessment properly credited Wireless Center for sales tax that it had previously remitted, thus Wireless Center did not meet its burden in overcoming the presumption of correctness of the Department's tax assessment on that point. The Department's assessment did properly credit Wireless Center for sales tax that it previously remitted. However, given that the assessment included that Wireless Center was liable for collecting and remitting sales tax on Period II Replenishments which this Court holds was an error, this matter is remanded to Superior Court, Wake County for further remand to the Office of Administrative Hearings for recalculation of Wireless Center's tax liability consistent with this opinion.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.

Justice BARRINGER concurring.

I concur with the majority opinion. However, I write separately to emphasize my concern that Wireless Center reached this favorable result despite what appears to be a disregard for good recordkeeping and accounting practices. Separately, I am further concerned by the Department's decision to pursue both Wireless Center and Boost for the same tax liability.

Wireless Center argued that even if it bore responsibility for collecting taxes on Replenishments during Period II, it should not be forced to pay. This argument was premised on a bald, unsupported assertion that the taxes had already been remitted by Boost. If appropriate accounting records had been kept, Wireless Center would have had

documentation affirmatively *proving* that Boost had, in fact, remitted the taxes. However, it is troublesome that Wireless Center did not provide any such records.[1] I am concerned that this strategy is indicative of insufficient accounting and recordkeeping.

A business's tax records should be verifiable—that is, sufficient to enable "different knowledgeable and independent observers [to] reach consensus" that the taxes were duly reported and remitted.[2] As this case's winding appeal shows, Wireless Center's records were not sufficient to enable independent observers to reach the same conclusion. In other words, Wireless Center's inadequate recordkeeping rendered its tax reporting and remittance unverifiable.

Audits verify compliance—the accuracy of tax reporting and remittance. Wireless Center's apparent lack of records undermined this process. This is unacceptable. It was incumbent upon Wireless Center to rebut the presumption that the Department's assessment was correct. N.C.G.S. § 105-241.9(a) (2023). Nowhere in the record has Wireless Center done so. Rather, to the contrary, OAH found that Wireless Center did not even inquire of Boost to confirm if it had paid the taxes. It is troublesome that Wireless Center appears to have completely abdicated its tax collection and recordkeeping responsibilities.

Nevertheless, today Wireless Center has emerged partially victorious—but no thanks to its documentation, or lack thereof. Today's decision, grounded in strict statutory interpretation, should not be read as a vindication of Wireless Center's practices. Had this Court instead ruled that the burden of collecting Period II taxes was indeed borne by Wireless Center, perhaps these apparently deficient

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1. Rather, Wireless Center merely relied on the averments of Mr. Whalen, Sprint's Senior Tax Counsel, and statements made in a notice sent by Boost to its retailers.

2. Fin. Acct. Stands. Bd., Conceptual Framework for Financial Reporting 44 (Sep. 2024), https://storage.fasb.org/Conceptual%20Framework%20for%20Financial%20Reporting%20%28September%202024%29.pdf.

"[T]he Financial Accounting Standards Board (FASB) . . . establishes financial accounting and reporting standards for . . . Generally Accepted Accounting Principles (GAAP)," which are "intended to promote financial reporting that provides useful information to . . . [those] who use financial reports." Fin. Acct. Stands. Bd., *About the FASB* [hereinafter Fin. Acct. Stands. Bd., *About the FASB*], https://www.fasb.org/about-us/about-the-fasb (last visited Dec. 4, 2025). "FASB is recognized by the U.S. Securities and Exchange Commission as the designated accounting standard setter for public companies. FASB standards are recognized as authoritative by many other organizations, including state Boards of Accountancy and the American Institute of CPAs (AICPA)." *Id.*

documentation and accounting practices could have led to serious legal and tax consequences.

Wireless Center's seemingly substandard documentation practices "should not serve as a model for future litigants involved in [similar] disputes." *Town of Apex v. Rubin*, 388 N.C. 236, 256 (2025) (Newby, C.J., concurring in part and concurring in result only in part). Rather, *all* taxpayers facing audits should, with appropriate documentation, be prepared to rebut the presumption that the Department's assessment is correct.

This is true too of Boost: Should the Department pursue it for tax liability, Boost should be ready with appropriate records, as required by FASB.

I do not take lightly an accusation that the Department may be attempting to collect the tax twice, potentially assessing and then levying the full amount owed against both Wireless Center and Boost. Such double-dipping would of course be impermissible. Although I recognize that "[s]tate regulators are not angels," *Cedarbrook Residential Ctr., Inc. v. N.C. Dep't of Health & Hum. Servs.*, 281 N.C. App. 9, 20 (2021) (Dietz, J., concurring), *rev'd*, 383 N.C. 31 (2022), it is my hope that the Department, in an attempt to collect the tax just *once*, is employing a process akin to alternative liability to overcome the dearth of documentation. I emphasize that the Department would not have had to resort to such measures had Wireless Center maintained and presented proper documentation.

Chief Justice NEWBY joins in this concurring opinion.

SANDERS v. N.C. DEP'T OF TRANSP.

[388 N.C. 653 (2025)]

WILLIAM T. SANDERS
v.
NORTH CAROLINA DEPARTMENT OF TRANSPORTATION

No. 87PA24

Filed 12 December 2025

Eminent Domain—restrictions recorded under the Roadway Corridor Official Map Act—damages not raised in condemnation action—right to damages abandoned

Although restrictions were imposed on private property by a highway corridor map recorded in 1992 pursuant the now-repealed Roadway Corridor Official Map Act—a taking by the North Carolina Department of Transportation (defendant) which entitled the landowner (plaintiff) to damages—plaintiff abandoned his right to seek such damages via his 2018 inverse condemnation action where he had failed to raise the issue in a prior condemnation action affecting the property: a complaint and declaration of taking concerning plaintiff's property (including portions of the land restricted by the 1992 map), filed by defendant in 2010 and settled by entry of a consent judgment in 2011. The Map Act provides for the waiver of further proceedings for compensation where pertinent affirmative defenses were not pleaded in earlier matters affecting the restricted property (N.C.G.S. § 136-106). Accordingly, the decision of the Court of Appeals, affirming trial court's application of N.C.G.S. § 136-111 (providing remedies where no complaint and declaration of taking was filed) to permit plaintiff to pursue damages, was reversed.

On discretionary review pursuant to N.C.G.S. § 7A-31 of a unanimous, unpublished decision of the Court of Appeals, No. COA22-440 (N.C. Ct. App. Feb. 6, 2024), affirming an order entered on 28 December 2021 by Judge Stephan R. Futrell in Superior Court, Cumberland County. On 21 March 2025, the Supreme Court allowed plaintiff's conditional petition for discretionary review as to an additional issue. Heard in the Supreme Court on 16 September 2025.

Cranfill Sumner LLP, by George B. Autry Jr., Stephanie H. Autry, and Jeremy H. Hopkins, for plaintiff-appellee.

Howard B. Rhodes, Matthew W. Skidmore, and Jeff Jackson, Attorney General, by J. Aldean Webster III, Special Deputy Attorney General, for defendant-appellant.

Matthew H. Bryant for Beroth Oil Company and James & Carol Deans, amici curiae.

ALLEN, Justice.

"Both the [United States] Constitution and the North Carolina Constitution require due process and just compensation when a public entity uses its eminent domain power to take property." *Dep't of Transp. v. Bloomsbury Ests., LLC*, 386 N.C. 384, 392 (2024) (first citing U.S. Const. amend. XIV, § 1; and then citing N.C. Const. art I, § 19). In *Kirby v. North Carolina Department of Transportation*, we held that restrictions imposed on private property by corridor maps recorded under the Roadway Corridor Official Map Act (Map Act) constituted a taking by defendant North Carolina Department of Transportation (NCDOT). 368 N.C. 847, 856 (2016). Here, NCDOT recorded corridor maps that covered parts of a tract owned by plaintiff William T. Sanders. We must decide whether plaintiff abandoned his right to seek damages for the Map Act restrictions on his land by not raising the issue in a condemnation action instituted by NCDOT after those restrictions went into effect. Because we hold that state law required plaintiff to raise the Map Act restrictions in NCDOT's condemnation action affecting the same property, we reverse the judgment of the Court of Appeals allowing plaintiff to pursue damages for inverse condemnation.

I.

The North Carolina General Assembly enacted the now-repealed Map Act in 1987. Act of Aug. 7, 1987, ch. 747, sec. 19, 1987 N.C. Sess. Laws 1520, 1538–42 (repealed 21 June 2019). While the Map Act remained in effect, "once NCDOT file[d] a highway corridor map with the county register of deeds, the Act impose[d] certain restrictions upon property located within the corridor for an indefinite period of time." *Kirby*, 368 N.C. at 849 (citing N.C.G.S. § 136-44.51 (2015)). In general, property located within a corridor map could not be developed or subdivided unless the owners first obtained approval through an administrative process that could drag on for years.[1]

1. More specifically, as we explained in *Kirby*:

> Owners whose properties [were] located within the highway corridor [could] seek administrative relief from the[ ] restrictions by applying for a building permit or subdivision plat approval, [N.C.G.S.] § 136-44.51(a)–(c), a

The corridor maps effectively functioned as cost-cutting mechanisms for NCDOT by limiting the ability of property owners to improve their parcels and alerting potential buyers to the possibility that the land could be taken for roadway projects. "By recording a corridor map, [NC] DOT [was] able to foreshadow which properties [would] eventually be taken for roadway projects and in turn, decrease the future price the State [would have to] pay to obtain those affected parcels." *Beroth Oil Co. v. N.C. Dep't of Transp.*, 367 N.C. 333, 349 (2014) (Newby, J., dissenting in part and concurring in part). *But see Kirby*, 368 N.C. at 852 (acknowledging NCDOT's assertion "that 'cost-cutting' is not the only underlying purpose of the Map Act").

On 29 October 1992, NCDOT recorded a corridor map (1992 map) for the Fayetteville Outer Loop project. At the time, plaintiff owned a tract of land in Cumberland County totaling nearly 650 acres. This 1992 map covered 92.969 acres of plaintiff's property.

Ten years later, on 23 December 2002, NCDOT filed a complaint and declaration of taking (2002 direct action) to acquire 9.280 acres of plaintiff's property in fee simple and easements on a further 6.169 acres. Although unrelated to the Fayetteville Outer Loop project, this taking included some of plaintiff's property covered by the 1992 map. The complaint and declaration made no reference to the Map Act restrictions on plaintiff's property, but plaintiff was clearly aware of them. Plaintiff's

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> variance, *id.* § 136-44.52, or an "advanced acquisition" of the property "due to an imposed hardship," *id.* § 136-44.53. In the first instance, if after three years a property owner's application for a building permit or subdivision plat ha[d] not been approved, the "entity that adopted the transportation corridor official map" [had to] either approve the application or initiate acquisition proceedings, or else the applicant "[could] treat the real property as unencumbered." *Id.* § 136-44.51(b). In the second instance, "a variance [could] be granted upon a showing that: (1) Even with the tax benefits authorized by this Article, no reasonable return [could] be earned from the land; and (2) The requirements of [N.C.]G.S. 136-44.51 result[ed] in practical difficulties or unnecessary hardships." *Id.* § 136-44.52(d). In the third instance, an "advanced acquisition" [could] be made upon establishing "an undue hardship on the affected property owner." *Id.* § 136-44.53(a). Property approved under the hardship category [had to] be acquired within three years or "the restrictions of the map [had to] be removed from the property." *Id.*

Kirby, 368 N.C. at 849–50 (cleaned up).

attorney sent a letter to NCDOT in March 2004 describing plaintiff's inability to develop his property due to Map Act encumbrances as "an extraordinary hardship."

The parties settled the 2002 direct action for $192,630. In an order filed on 29 November 2004, the trial court incorporated the settlement into a consent judgment (2004 consent judgment).

On 6 June 2006, NCDOT filed a second corridor map (2006 map) for the Fayetteville Outer Loop project. The 2006 map covered another 20.135 acres of plaintiff's land.

In December 2008, plaintiff's attorney sent NCDOT another letter, this one making a public records request for the appraisal of a portion of plaintiff's land related to the Fayetteville Outer Loop project. The letter explained that plaintiff needed the appraisal to obtain a loan so that he could "survive until [NCDOT] is able to proceed with the acquisition."

On 5 August 2010, NCDOT filed a second complaint and declaration of taking (2010 direct action), this time to acquire 101.763 acres of plaintiff's property in fee simple and easements on another 3.613 acres. About sixty acres of the fee simple taking had been included in the 1992 map. NCDOT also obtained in fee simple the additional 20.135 acres subject to Map Act restrictions under the 2006 map. As in the 2002 direct action, the complaint and declaration of taking said nothing about the Map Act restrictions on plaintiff's property.

The parties settled the 2010 direct action for $15,800,000 on 1 November 2011 (2011 consent judgment). After the 2011 consent judgment, 28.041 acres of plaintiff's property remained subject to Map Act restrictions under the 1992 map. The restrictions ceased when the General Assembly repealed both the 1992 map and the 2006 map in 2016.

The repeal of the 1992 and 2006 maps occurred a few months after this Court issued its decision in *Kirby*. We held that the restrictions imposed by the corridor maps at issue in that case "constitute[d] a taking of [the *Kirby*] plaintiffs' elemental property rights by eminent domain," thus triggering the constitutional right of those plaintiffs to just compensation. *Kirby*, 368 N.C. at 848; *see also Town of Morganton v. Hutton & Bourbonnais Co.*, 251 N.C. 531, 533 (1960) ("The power of eminent domain, that is, the right to take private property for public use, is inherent in sovereignty. Our Constitution . . . requires payment of fair compensation for the property so taken.").

On 13 December 2018, plaintiff instituted the current action by filing his complaint for inverse condemnation under N.C.G.S. § 136-111

in the Superior Court, Cumberland County. An inverse condemnation action can be used to obtain just compensation when NCDOT has taken property without filing a complaint and declaration of taking. N.C.G.S. § 136-111 (2023). *See generally City of Charlotte v. Spratt*, 263 N.C. 656, 662–63 (1965) (explaining that the term "inverse condemnation" generally refers to "a cause of action against a governmental defendant to recover the value of property which has been taken in fact by the governmental defendant, even though no formal exercise of the power of eminent domain has been attempted by the taking agency" (cleaned up)).

In his complaint, plaintiff alleged that the 2004 and 2011 consent judgments did not compensate him for the Map Act restrictions on his land. Consequently, according to the complaint, NCDOT still owed plaintiff just compensation for the restrictions placed on his property by the 1992 and 2006 maps.[2]

NCDOT filed a motion to dismiss pursuant to Rule 12(b)(6) (failure to state a claim upon which relief can be granted) of the North Carolina Rules of Civil Procedure.[3] *See* N.C.G.S. § 1A-1, Rule 12(b)(6) (2023). The motion asserted that plaintiff's inverse condemnation claims were barred by the statute of limitations, the doctrine of res judicata, and North Carolina's eminent domain statutes.[4] Plaintiff moved for a hearing under N.C.G.S. § 136-108 on "all issues raised by the pleadings other than the issue of damages."

On 28 December 2021, after a hearing on both parties' motions, the trial court entered an order dismissing some but not all of plaintiff's claims. In the first place, the court determined that plaintiff could have—"but was not required to"—assert his Map Act takings claims in either the 2002 direct action or the 2010 direct action.

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2. In addition to seeking damages under N.C.G.S. § 136-111, the complaint alleged claims directly under the Fifth Amendment to the United States Constitution and Article 1, Section 19 of the North Carolina Constitution. The trial court dismissed the constitutional claims, reasoning that N.C.G.S. § 136-111 constituted an adequate remedy. The dismissal of plaintiff's constitutional claims has not been appealed to this Court. Accordingly, the only claims before us are statutory.

3. NCDOT's motion to dismiss also cited Rules 12(b)(1) (lack of subject matter jurisdiction) and 12(b)(2) (lack of personal jurisdiction). Additionally, the motion requested judgment on the pleadings pursuant to Rule 12(c). The trial court denied the Rule 12(b)(1) and 12(c) motions. It appears that it did not rule on the Rule 12(b)(2) motion.

4. "The doctrine of res judicata . . . provides that 'a final judgment on the merits in a prior action will prevent a second suit based on the same cause of action between the same parties.' " *Doe 1K v. Roman Cath. Diocese*, 387 N.C. 12, 15 (2025) (quoting *Thomas M. McInnis & Assocs., Inc. v. Hall*, 318 N.C. 421, 427–28 (1986)).

Turning to NCDOT's res judicata defense, the court agreed with NCDOT that res judicata barred plaintiff's inverse condemnation claims for those portions of his land taken in fee simple by NCDOT in the 2002 and 2010 direct actions; however, the court also concluded that plaintiff could proceed with his inverse condemnation action for other portions of his land that were covered by the 1992 map or the 2006 map. In essence, this meant that plaintiff could pursue his inverse condemnation action with respect to the 28.041 acres that remained subject to Map Act restrictions after the 2010 direct action.

Finally, in rejecting NCDOT's statute-of-limitations defense, the trial court relied on the text of N.C.G.S. § 136-111, which declares that an inverse condemnation action may be filed "within 24 months of the date of the taking of the affected property or interest therein or the completion of the project involving the taking, whichever shall occur later." N.C.G.S. § 136-111. Observing that plaintiff filed his complaint before the completion of the Fayetteville Outer Loop project, the court ruled that NCDOT's "motion to dismiss for failure to comply with the statute of limitations should be denied."

Both parties appealed the trial court's order to the Court of Appeals. In part, NCDOT argued that the twenty-four-month statute of limitations in N.C.G.S. § 136-111 does not control plaintiff's inverse condemnation action. In support of its position, NCDOT noted that N.C.G.S. § 136-111 expressly does not apply when NCDOT has filed a complaint and declaration of taking, as it did twice here. NCDOT directed the court's attention to N.C.G.S. § 136-107, which provides that "[a]ny person named in and served with a complaint and declaration of taking shall have 12 months from the date of service thereof to file answer." N.C.G.S. § 136-107 (2023). If the person so named and served fails to file a timely answer, her failure constitutes "a waiver of any further proceeding to determine just compensation." *Id.* "According to NCDOT, because the entire tract of [plaintiff's] land was identified in the declarations of taking . . . , all claims for inverse condemnation with respect to those tracts must have been raised under N.C.G.S. § 136-107 in [plaintiff's] answer to the original declarations of taking." *Sanders v. N.C. Dep't of Transp.*, No. COA22-440, slip op. at 14 (N.C. Ct. App. Feb. 6, 2024) (unpublished).

On 6 February 2024, a unanimous panel of the Court of Appeals affirmed the trial court's order in an unpublished opinion. *Id.* at 2. In so doing, the appellate court disagreed with NCDOT's application of N.C.G.S. § 136-107. "While it may be true that the complaints and declarations of taking culminating in the [2004 and 2011] consent judgments . . . dealt with the same tracts of land," the court explained, NCDOT did not

deny "that the interests in the land contemplated by the [2004 and 2011] consent judgments are [not] the same interests at issue in this case." *Id.* at 16-17. Those complaints and declarations of taking concerned fee simple takings and easements separate from the restrictions imposed on plaintiff's property by the 1992 and 2006 maps. Because plaintiff's complaint sought compensation for interests in land "independent from those identified in [NCDOT's] complaints and declarations of taking," the Court of Appeals held that "the [twelve-month] timeframe allotted in N.C.G.S. § 136-107 does not operate to bar the current claim."[5] *Id.* at 17.

NCDOT petitioned this Court for discretionary review of the decision of the Court of Appeals. Plaintiff responded by asking us to deny NCDOT's petition or, in the alternative, to allow his conditional petition for discretionary review of additional issues. We allowed both petitions.

II.

A trial court's order disposing of a Rule 12(b)(6) motion to dismiss receives de novo review on appeal. *Taylor v. Bank of Am., N.A.*, 382 N.C. 677, 679 (2022). Like the trial court, the appellate court must treat the complaint's factual allegations as true when assessing whether the complaint fails to state a valid legal claim. *Lannan v. Bd. of Governors*, 387 N.C. 239, 246–47 (2025).

Similarly, "[w]e review a lower court's interpretation of statutes *de novo*." *Morris v. Rodeberg*, 385 N.C. 405, 409 (2023). "When reviewing a matter *de novo*, this Court considers the matter anew and freely substitutes its own judgment for that of the lower courts." *Town of Midland v. Harrell*, 385 N.C. 365, 370 (2023) (cleaned up).

III.

In its primary brief to this Court, NCDOT argues that Chapter 136 of the General Statutes bars this lawsuit because plaintiff failed to raise his inverse condemnation claims in the 2010 direct action. Our reading of the relevant statutory provisions leads us to agree.

"The primary aim of statutory construction 'is to accomplish the legislative intent.' " *N.C. Dep't of Env't Quality v. N.C. Farm Bureau Fed'n, Inc.*, No. 338PA23, slip op. at 12 (N.C. Oct. 17, 2025) (quoting *Lenox, Inc. v. Tolson*, 353 N.C. 659, 664 (2001)). In pursuit of that intent,

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5. The Court of Appeals also rejected NCDOT's other challenges to the trial court's order. We need not describe those challenges, however, because we ultimately rule for NCDOT on other grounds.

a court "must begin with an examination of the relevant statutory language." *Wilkie v. City of Boiling Spring Lakes*, 370 N.C. 540, 547 (2018).

As explained above, both the trial court and the Court of Appeals concluded that the statute of limitations in N.C.G.S. § 136-111 applies to at least some of plaintiff's inverse condemnation claims. According to its title, N.C.G.S. § 136-111 provides a remedy where no declaration of taking has been filed. N.C.G.S. § 136-111 ("Remedy where no declaration of taking filed; recording memorandum of action."). *See generally Smith Chapel Baptist Church v. City of Durham*, 350 N.C. 805, 812 (1999) ("[T]his Court has stated that the title of an act should be considered in ascertaining the intent of the legislature.").

The text of the statute aligns with its title:

> Any person whose land or compensable interest therein has been taken by an intentional or unintentional act or omission of the Department of Transportation *and no complaint and declaration of taking has been filed by said Department of Transportation* may, within 24 months of the date of the taking of the affected property or interest therein or the completion of the project involving the taking, whichever shall occur later, file a complaint in the superior court . . . .

N.C.G.S. § 136-111 (emphasis added).

By the plain terms of its title and text, N.C.G.S. § 136-111 does not apply when the "affected property" is the subject of a complaint and declaration of taking filed by NCDOT. Thus, if the "affected property" in this case encompasses plaintiff's entire tract, and not just the portion of the property taken in the 2010 direct action, then the complaint and declaration of taking filed by NCDOT in 2010 put plaintiff's inverse condemnation claims outside the ambit of N.C.G.S. § 136-111.

In NCDOT's view, "[t]he 'affected property' identified in the statute is the landowner's entire tract, not merely the specific portion [NC]DOT identified for right-of-way purposes in its complaint." Plaintiff insists that "[t]he obvious import of the language in N.C.G.S. § 136-111 is that an owner cannot file an inverse condemnation claim seeking compensation for *the same interest* [NC]DOT has already taken by filing a direct condemnation."

In the context of this case, NCDOT's reading of N.C.G.S. § 136-111 seems correct to us when it is considered alongside other provisions in

Chapter 136. *See generally Carver v. Carver*, 310 N.C. 669, 674 (1984) ("It is . . . a fundamental canon of statutory construction that statutes . . . which relate or are applicable to the same matter or subject . . . must be construed together in order to ascertain legislative intent.").

Chapter 136 authorizes NCDOT to exercise the power of eminent domain through condemnation actions. *See* N.C.G.S. §§ 136-103 to -121.1 (2023). NCDOT initiates a condemnation action by filing a complaint and declaration of taking, "accompanied by the deposit of the sum of money estimated by [NCDOT] to be just compensation for [the] taking." N.C.G.S. § 136-103(d). Both the complaint and the declaration must describe "the entire tract or tracts affected by" the taking. N.C.G.S. § 136-103(b)(2), (c)(2).

If the property owner disagrees with NCDOT's estimate of just compensation, he may file an answer to the complaint pursuant to N.C.G.S. § 136-106. The owner has twelve months after being served with the complaint and declaration to file such an answer. N.C.G.S. § 136-107. The owner's failure to file an answer within twelve months of service "shall constitute an admission that the amount deposited is just compensation and shall be a waiver of any further proceeding to determine just compensation." *Id.* If the owner files an answer, it must contain, among other things, "[s]uch affirmative defenses or matters as are pertinent to the action." N.C.G.S. § 136-106(a).

At this point, the question becomes whether for purposes of N.C.G.S. § 136-106 the Map Act restrictions on plaintiff's property were "pertinent to" the 2010 direct action. If they were, then N.C.G.S. § 136-106 required plaintiff to raise them in an answer timely filed, something plaintiff did not do.

We think that the plain language of N.C.G.S. § 136-112 compels us to answer this question in the affirmative. Section 136-112 directs that damages in condemnation actions be calculated as follows:

> (1) Where only a part of a tract is taken, the measure of damages for said taking shall be the difference between the fair market value of the entire tract immediately prior to said taking and the fair market value of the remainder immediately after said taking, with consideration being given to any special or general benefits resulting from the utilization of the part taken for highway purposes.

> (2) Where the entire tract is taken the measure of damages for said taking shall be the fair market value of the property at the time of taking.

N.C.G.S. § 136-112.

Subsection (1) of section 136-112 addresses partial takings. Basically, subsection (1) provides that the damages for a partial taking equal the difference between the fair market value of the entire tract immediately before the taking and the fair market value of the remainder immediately after the taking.

Here, of course, the 2010 direct action resulted in a partial taking of plaintiff's property, so subsection (1) would have governed the calculation of plaintiff's damages. Map Act restrictions encumbered part of plaintiff's property immediately before the 2010 direct action and continued to encumber 28.041 acres of plaintiff's remaining property immediately after the 2010 condemnation. In his complaint, plaintiff alleged that the restrictions damaged his property by "severely impact[ing] [its] use, marketability, and value." When accepted as true, as the allegations in a complaint must be when a court reviews a Rule 12(b)(6) dismissal motion, this allegation establishes that Map Act restrictions negatively affected the fair market value of plaintiff's property both immediately before and after the 2010 taking. It follows that a court could not have properly determined plaintiff's damages in the 2010 direct action without taking those restrictions into account. The restrictions were thus "pertinent to" the 2010 direct action, and N.C.G.S. § 136-106 required plaintiff to include them in a timely answer if he wanted them to be part of the damages calculation.

Indeed, it may well be that N.C.G.S. § 136-106 obliged plaintiff to raise the Map Act restrictions on the 28.041 acres in the 2002 direct action. As remarked above, the 1992 map imposed those restrictions, so they were in effect when NCDOT served the 2002 complaint and declaration on plaintiff. We need not decide this issue, though, because NCDOT has confined its argument to whether the 2010 direct action marked plaintiff's last opportunity to request damages for the Map Act restrictions on his property.

Inasmuch as he had to include the Map Act restrictions in an answer filed pursuant to N.C.G.S. § 136-106, plaintiff may not now pursue damages for those restrictions through an inverse condemnation action under N.C.G.S. § 136-111. In this case, the "affected property" is plaintiff's entire tract, not merely the areas covered by the 1992 or 2006 map.

The Court of Appeals therefore erred in holding that plaintiff has a viable claim for inverse condemnation.

Plaintiff cites numerous precedents that he contends bolster his position. Having reviewed those authorities, we think that each of them differs materially from this case.

For instance, plaintiff interprets *Lea Company v. North Carolina Board of Transportation*, 308 N.C. 603 (1983), to show that "an owner may bring a separate inverse condemnation when [NCDOT] takes additional property interests, even if a direct condemnation is proceeding." In *Lea Company*, NCDOT filed a complaint and declaration of taking for a part of the plaintiff company's property to be used for a highway improvement project. 308 N.C. at 607–08. After the parties signed a settlement agreement but a few days before the trial judge incorporated the agreement into a consent judgment, the company's remaining property flooded. *See id.* at 608. Several months later, the company filed an inverse condemnation action alleging that the highway improvement project had caused the flooding and had resulted in a separate taking of the company's property. *Id.* at 609. NCDOT argued in response that the company should have sought compensation for the flooding in the condemnation action pursuant to N.C.G.S. § 136-112(1). *Id.* at 631. In rejecting NCDOT's argument, this Court remarked that "[n]othing in . . . the statutes or our previous opinions . . . mandates that property owners must seek to recover compensation in the ongoing condemnation proceedings for a *subsequent further taking* by the State." *Id.* at 632–33 (emphasis added).

We do not see how *Lea Company* helps plaintiff. There, we expressly based our holding on the fact that the flooding occurred *after* NCDOT condemned a part of the company's land for a highway improvement project. In this case, the Map Act restrictions over which plaintiff filed his inverse condemnation claims were imposed and well known to plaintiff years *before* NCDOT initiated the 2010 direct action. He was thus well positioned to raise them in that proceeding.

Similarly, this Court's decision in *City of Charlotte v. Spratt*, 263 N.C. 656 (1965), does little, if anything, to strengthen plaintiff's position. That case preceded the enactment of N.C.G.S. § 136-111 and was decided on common law principles.[6] *See* 263 N.C. at 661–62.

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6. Likewise, although the Court of Appeals relied on *Department of Transportation v. Bragg*, 308 N.C. 367 (1983), we do not find that case instructive here. In *Bragg*, NCDOT initiated a condemnation action to acquire part of the landowner's property for a highway

IV.

Section 136-106 mandated that plaintiff raise the issue of Map Act restrictions in NCDOT's 2010 direct action condemning part of his property. His failure to do so prevents him from pursuing damages for those restrictions through an inverse condemnation action under N.C.G.S. § 136-111. The judgment of the Court of Appeals is therefore reversed. We further conclude that discretionary review was improvidently allowed as to the remaining issues on appeal.

REVERSED; DISCRETIONARY REVIEW IMPROVIDENTLY ALLOWED IN PART.

STATE OF NORTH CAROLINA
v.
GEORGE LEE ALLISON

No. 103PA24

Filed 12 December 2025

Homicide—defenses—statutory castle doctrine—inaccurate jury instructions—plain error analysis

After a jury convicted him of second-degree murder for fatally shooting someone who was standing in the doorway outside of his home, defendant was entitled to a new trial on the murder charge because the trial court improperly instructed the jury on the castle doctrine under N.C.G.S. § 14-51.2 by: (1) indicating that defendant had to prove he reasonably believed the victim would kill or inflict serious bodily harm and that deadly force was necessary, where the castle doctrine automatically presumes a reasonable fear of imminent death or serious bodily harm if the statutory criteria are met; (2) telling the jury that the presumption of reasonable fear could be rebutted by "any evidence to the contrary" when, in fact, it could only be rebutted by five specific circumstances listed in section 14-51.2(c); and (3) failing to instruct the jury that the curtilage of the

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construction project. 308 N.C. at 369. The construction led to flooding on the landowner's remaining property. *Id*. This Court held that the landowner should have been allowed to introduce evidence of water damage in the condemnation action. *Id*. Like *Lea Company*, *Bragg* is not on point inasmuch as it does not involve a claim for damages for a taking that occurred before NCDOT filed its complaint and declaration of taking.

home was protected under the castle doctrine. The court's inaccurate instructions amounted to plain error where: (1) defendant was deprived of a complete self-defense instruction—a fundamental error at trial, and (2) the error had a probable impact on the trial's outcome, since the jury could have found that defendant's actions were lawful under the correctly stated castle doctrine and therefore acquitted him.

Justice RIGGS dissenting.

Justice EARLS joins in this dissenting opinion.

On discretionary review pursuant to N.C.G.S. § 7A-31 of a unanimous, unpublished decision of the Court of Appeals, No. COA23-635 (N.C. Ct. App. Mar. 19, 2024), finding no error after appeal from a judgment entered on 28 October 2022 by Judge Jacqueline D. Grant in Superior Court, Burke County. Heard in the Supreme Court on 22 April 2025.

Jeff Jackson, Attorney General, by Michael T. Henry, Special Deputy Attorney General, for the State-appellee.

Craig M. Cooley for defendant-appellant.

BERGER, Justice.

It is undisputed that defendant shot and killed Brandon Adams on 13 December 2020 while Adams was standing in the doorway outside of defendant's residence. The question presented here is whether the jury was properly instructed on the castle doctrine as established by the legislature in N.C.G.S. § 14-51.2.

I. Factual and Procedural Background

A Burke County jury convicted defendant of second-degree murder, and he was sentenced to 144 to 185 months in prison. The evidence at trial tended to show the following.[1]

1. As this case requires us to determine whether defendant was entitled to certain jury instructions, we recite the evidence in the light most favorable to defendant. *See State v. Mash*, 323 N.C. 339, 348 (1988) ("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.").

On the day he was killed, Adams and his girlfriend, Pamela Rodgers, got into an argument. Adams told Rodgers he was going to defendant's home, but when he returned, Rodgers accused Adams of cheating on her. Adams told Rodgers to go to defendant's home to verify that he had in fact been there.

Rodgers drove to defendant's home, and defendant confirmed that Adams had been at his home. Thereafter, Rodgers and defendant began drinking bourbon, and Rodgers told defendant that Adams was mean to her and physically abusive. Defendant told Rodgers that she needed to leave and "go somewhere away from [Adams] if that's the case."

Later, Adams arrived at defendant's home, and defendant invited him inside. When Adams entered the home, he "started pointing at" Rodgers, and "[e]very time he would point, she would flinch" and "physically would draw back." After a few minutes, defendant asked Adams to leave. When Adams walked to the door, he rammed his shoulder into defendant's shoulder. Defendant testified that when he looked at Adams, he "did not see the person that [he] knew in those eyes."

Rodgers stayed in defendant's home and continued drinking after Adams left. Over the course of approximately two hours, Adams texted Rodgers multiple times, and Rodgers read the texts to defendant. In two texts sent at 8:41 p.m., Adams stated, "If I come down there I'm telling you it's going to get bad," and "I will drag him outside and beat the fuck out of him."

Eventually, Rodgers told defendant she was going to return to Adams' home but needed defendant to drive her because she was intoxicated. Defendant asked Rodgers to wait in his home while he went to the grocery store to pick up items for his mother, who suffered from Alzheimer's and lived with defendant. Defendant drove to the grocery store, but he returned home upon realizing that he had left his wallet. Defendant then went to withdraw cash from an ATM, but then he decided not to go to the grocery store.

Defendant's route home traveled past Adams' home, and when Adams saw defendant drive past, he pulled his vehicle in behind defendant, got "right on [defendant's] tail" and "slid in" behind defendant when he parked. Adams and defendant both exited their vehicles, and Adams told defendant, "You are going to have to kill me to keep me from dragging that fucking bitch out of your house." Defendant ran to his home, quickly opened the door, and Adams "stuck his hand and his foot" inside the door, preventing defendant from closing it.

Defendant pushed to close the door, Adams pushed back, and defendant realized he "wasn't winning this one" because Adams "had more strength than [defendant] did." Defendant let go of the door, retrieved a shotgun, and returned to the front door. He "presented the weapon" to Adams, who remained on the home's front porch directly outside the front door, and defendant "begged" Adams to "please just go home, don't come back, just go home" because Rodgers was "going to be leaving [t]here in a minute." Defendant asked Adams to let him lock the door and help his mother go to bed so that he could then allow Adams to come in and talk to Rodgers.

Adams "wasn't having it" and was "staying right there," and defendant told him, "I am going to countdown, and then you leave." Adams did not leave, so defendant counted down from seven to zero, then five to zero, and finally three to zero. At that point, defendant turned to look at his mother, who was sitting inside the home, and when he turned back, he saw Adams make a forward movement. Defendant testified that when he saw Adams make this movement, he "could have swore there was a bolt of light[ning] that ran through [his] body," and he "just reacted" by pulling the trigger and shooting Adams.

Rodgers called 911, and though Adams was alive when law enforcement arrived at the scene, he later died from the gunshot wound. Defendant was arrested, and he was subsequently indicted for first-degree murder.

Defendant's matter came on for trial on 24 October 2022, and he presented a castle doctrine defense under N.C.G.S. § 14-51.2. Rodgers testified for the State that when defendant and Adams arrived at the home, defendant entered and told Adams not to cross the threshold. Adams, who was neither aggressive nor violent, replied that he would not enter the home and, according to Rodgers, never attempted to do so. Defendant immediately retrieved his shotgun. According to Rodgers, defendant returned, pointed the gun at Adams, and counted down three times before pulling the trigger. The State argued that defendant was not entitled to the castle doctrine defense because Adams did not physically enter defendant's home. The trial court denied defendant's motion to dismiss but granted his request to provide the pattern jury instruction for defense of habitation under the statute.

The relevant portion of the trial court's instruction to the jury on this issue was as follows:

> If the defendant killed the victim to prevent a forcible entry into the defendant's home, or to terminate

the intruder's unlawful entry, the defendant's actions are excused and the defendant is not guilty. The State has the burden of proving from the evidence beyond a reasonable doubt that the defendant did not act in the lawful defense of the defendant's home.

The defendant was justified in using deadly force if such force was being used to prevent a forcible entry or terminate the intruder's unlawful entry into the defendant's home, the defendant reasonably believed that the [intruder] would kill or inflict serious bodily harm to the defendant or others in the home, and the defendant reasonably believed that the degree of force the defendant used was necessary to prevent a forcible entry or terminate the intruder's unlawful entry into the defendant's home.

A lawful occupant within a home does not have a duty to retreat from an intruder in these circumstances. Furthermore, a person who unlawfully and by force enters or attempts to enter a person's home is presumed to be doing so with the intent to commit an unlawful act involving force or violence. In addition, absent evidence to the contrary, the lawful occupant of a home is presumed to have held a reasonable fear of imminent death or serious bodily harm to himself or another when using defensive force that is intended or likely to cause death or serious bodily harm to another if both of the following apply:

The person against whom the defensive force was used was in the process of unlawfully and forcefully entering, or had unlawfully and forcibly entered a home, or if that person had removed or was attempting to remove another against that person's will from the home; and second, that the person who uses defensive force knew or had reason to believe that an unlawful and forcible entry or unlawful and forcible act was occurring or had occurred. It is for you, the jury, to determine the reasonableness of the defendant's belief from the circumstances as they appeared to the defendant at the time.

. . . .

> If you find beyond a reasonable doubt that the defendant killed the victim, you may return a verdict of guilty only if the State has satisfied you beyond a reasonable doubt that the defendant did not act in the lawful defense of the defendant's home; that is, that the defendant did not use such force to prevent a forcible entry or terminate the intruder[']s unlawful entry into the defendant's home, that the defendant did not reasonably believe the intruder would kill or inflict serious bodily harm to the defendant or others in his home, and that the defendant did not reasonably believe that the degree of force the defendant used was necessary to prevent a forcible entry or terminate the intruder's unlawful entry into the defendant's home.

The trial court did not instruct the jury that the curtilage of a home constitutes part of the home for defense of habitation purposes. *See* N.C.G.S. § 14-51.2(a)(1) (2023). Based on these instructions, the jury convicted defendant of second-degree murder, and the trial court sentenced defendant to 144 to 185 months incarceration. Defendant appealed.

At the Court of Appeals, defendant argued the trial court erred in denying his motion to dismiss and plainly erred in providing the jury with a deficient instruction on the castle doctrine. *State v. Allison*, No. COA23-635, 2024 WL 1173544, at *1–2 (N.C. Ct. App. Mar. 19, 2024). The Court of Appeals held the trial court did not err in denying defendant's motion to dismiss because the State "presented substantial evidence to rebut the presumption created by the castle doctrine." *Id.* In addition, relying on its own precedent in *State v. Austin*, 279 N.C. App. 377 (2021), the Court of Appeals rejected defendant's jury instruction argument because "the State presented substantial evidence that [d]efendant did not have a reasonable fear of imminent death or bodily harm, thus overcoming the reasonableness presumption and creating a question of fact for the jury to decide." *Allison*, 2024 WL 1173544, at *2.

Defendant filed a notice of appeal based upon a constitutional question and a petition for discretionary review with this Court. On 13 December 2024, this Court dismissed defendant's notice of appeal ex mero motu and allowed his petition for discretionary review to address a single issue:

> When the General Assembly enacted the castle doctrine statute, particularly N.C.G.S. § 14-51.2(c)—which

identifies five circumstances where the presumption of reasonableness can be rebutted, whether § 14-51.2(c) contains an unwritten sixth exception that states the reasonableness presumption can also be rebutted if:

> The State presents substantial evidence from which a reasonable juror could conclude that a defendant did not have a reasonable fear of imminent death or serious bodily harm, the State can overcome the presumption and create a fact question for the jury.

II. Standard of Review

"We examine de novo whether a jury instruction correctly explains the law." *State v. Copley*, 386 N.C. 111, 119 (2024) (cleaned up). As defendant failed to object to the trial court's instructions, we review for plain error and examine whether defendant has demonstrated that: (1) a fundamental error occurred at trial, (2) such error had a probable impact on the outcome, and (3) the error is an exceptional case warranting plain error review. *See State v. Reber*, 386 N.C. 153, 158 (2024).

III. Discussion

A. The Castle Doctrine

In 2011, the General Assembly enacted a detailed statutory scheme "that expanded and clarified use of force protections" and prioritized the rights of lawful occupants of homes, automobiles, and businesses. *State v. Phillips*, 386 N.C. 513, 520 (2024) (citing An Act to Provide When a Person May Use Defensive Force and to Amend Various Laws Regarding the Right to Own, Possess, or Carry a Firearm in North Carolina, S.L. 2011-268, § 2, 2011 N.C. Sess. Laws 1002, 1004). The castle doctrine in North Carolina recognizes that unlawful intruders create an inherently dangerous situation in certain specified circumstances, and lawful occupants are thus given the benefit of the doubt in qualifying use of force scenarios.

Under these statutes, "a person is justified in the use of deadly force and does not have a duty to retreat in any place he or she has the lawful right to be if," applicable here, N.C.G.S. § 14-51.2 is satisfied. N.C.G.S. § 14-51.3(a) (2023). Under that provision, lawful occupants of homes, vehicles, and workplaces may use force, including deadly force, against unlawful intruders. *Id.* The statute specifically defines a "home" as a "building or conveyance of any kind, to include its curtilage, whether the

building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it, including a tent, and is designed as a temporary or permanent residence." N.C.G.S. § 14-51.2(a)(1). The doctrine functions as follows:

> First, any person who unlawfully and by force enters or attempts to enter a home is presumed to be doing so with the intent to commit an unlawful act involving force or violence, and this presumption is nonrebuttable. Second, a lawful occupant of a home who knows or has reason to believe such unlawful entry or attempted entry occurred or is occurring, and who uses force against the intruder that is intended or likely to cause death or serious bodily injury, is presumed to have held a reasonable fear of imminent death or serious bodily harm and has no duty to retreat from the intruder. Finally, if a lawful occupant of a home uses deadly force as permitted by this statute, he or she is immune from civil or criminal liability for the use of such force, subject only to a narrow exception not relevant here.

Phillips, 386 N.C. at 524 (cleaned up).

Thus, although the common law and the stand your ground statute in subsection 14-51.3(a)(1) generally require individuals who use deadly force against another to demonstrate his or her reasonable belief that such force was necessary to prevent imminent death or great bodily harm, the castle doctrine does not require a lawful occupant of a home to make such a showing. N.C.G.S. § 14-51.2; *see also* N.C.G.S. § 14-51.3(a)(2). Instead, when the specific statutory criteria of section 14-51.2 are met, the General Assembly has plainly stated that such individual is "presumed to have held a reasonable fear of imminent death or serious bodily harm to himself or herself or another." N.C.G.S. § 14-51.2(b) (2023).

This presumption, however, is rebuttable and does not apply if at least one of the following scenarios is applicable:

> (1) The person against whom the defensive force is used has the right to be in or is a lawful resident of the home, motor vehicle, or workplace, such as an owner or lessee, and there is not an injunction for protection from domestic violence or a

written pretrial supervision order of no contact against that person.

(2) The person sought to be removed from the home, motor vehicle, or workplace is a child or grandchild or is otherwise in the lawful custody or under the lawful guardianship of the person against whom the defensive force is used.

(3) The person who uses defensive force is engaged in, attempting to escape from, or using the home, motor vehicle, or workplace to further any criminal offense that involves the use or threat of physical force or violence against any individual.

(4) The person against whom the defensive force is used is a law enforcement officer or bail bondsman who enters or attempts to enter a home, motor vehicle, or workplace in the lawful performance of his or her official duties, and the officer or bail bondsman identified himself or herself in accordance with any applicable law or the person using force knew or reasonably should have known that the person entering or attempting to enter was a law enforcement officer or bail bondsman in the lawful performance of his or her official duties.

(5) The person against whom the defensive force is used (i) has discontinued all efforts to unlawfully and forcefully enter the home, motor vehicle, or workplace and (ii) has exited the home, motor vehicle, or workplace.

N.C.G.S. § 14-51.2(c).

This Court recently took "the opportunity to clarify the castle doctrine as established by the legislature." *Phillips*, 386 N.C. at 514. We expressly held that "the castle doctrine's statutory presumption of reasonable fear may only be rebutted by the circumstances contained in section 14-51.2(c)." *Id.* at 525. We also held that excessive force is a legal impossibility unless that presumption had been rebutted and provided an outline of the proper decision tree to be applied when presented with a castle doctrine defense.

> [W]hen a defendant asserts the castle doctrine defense at trial, the jury must first determine whether the defendant is entitled to the presumption [of reasonable fear] as set forth in section 14-51.2(b). If the jury finds that the defendant is not entitled to the presumption, the castle doctrine statute does not apply and the jury must determine the defendant's culpability under section 14-51.3, the general self-defense statute.
>
> Alternatively, if the jury finds that the defendant is entitled to the presumption, it must then determine whether the State has rebutted the presumption by proving any of the circumstances set forth in section 14-51.2(c). If the jury finds that the State has rebutted the presumption, the jury must determine whether the defendant's use of force was proportional. However, if the jury finds that the State failed to rebut the presumption, the defendant *must* be acquitted in accordance with section 14-51.2(e).

Id.

Here, defendant's trial and the Court of Appeals' opinion predated our decision in *Phillips*. The Court of Appeals therefore relied on its erroneous precedent to reject defendant's argument that the trial court plainly erred by instructing the jury that it could consider evidence concerning the presumption of reasonable fear and the reasonableness of force used. *See Allison*, 2024 WL 1173544, at *1–2.

The State now argues that the Court of Appeals' reasoning survives *Phillips* because this Court did not explicitly overrule the Court of Appeals' precedent when we held "that the castle doctrine's statutory presumption of reasonable fear may *only* be rebutted by the circumstances contained in section 14-51.2(c)." *Phillips*, 386 N.C. at 525 (emphasis added). According to the State, this Court's "discussion of section 14-51.2(c) in *Phillips* is non-binding dicta" because it was unnecessary to the resolution of the issue presented in that case.

But the question in *Phillip*s was whether "the castle doctrine statute preserves the common law's prohibition on excessive force." *Id.* at 517. This Court clearly stated, "[t]o resolve this case, we must therefore examine what is permitted under the castle doctrine." *Id.* at 521. We ultimately concluded that excessive force was not a proper consideration where "a lawful occupant of a home is cloaked with the protections

afforded by the castle doctrine and the State fails to rebut the statutory presumption that the lawful occupant had reasonable fear." *Id.* at 527. In other words, whether the jury could consider the proportionality of a defendant's use of force turns on whether "the jury finds that the State has rebutted the presumption." *Id.* at 525. Determining the scope of the State's ability to rebut the statutory presumption of reasonable fear, that is, interpreting subsection 14-51.2(c), was therefore at the heart of resolving whether "the castle doctrine statute preserves the common law's prohibition on excessive force." *Id.* at 517.

In addition to misapprehending subsection 14-51.2(c)'s necessity to our decision in *Phillips*, the State's contention that the Court of Appeals' precedent to the contrary survived that decision belies fundamental principles of jurisprudence. When this Court, which has the final say on matters of state law, announces a rule of law or an interpretation of a statute, it is controlling, and any contrary holding of a lower court is superseded. *See State v. Tirado*, 387 N.C. 104, 112 (2025) (only the Supreme Court of North Carolina may answer "questions [of state law] with finality[.]"); *Hart v. State*, 368 N.C. 122, 130 (2015) ("As the court of last resort in this state, we answer with finality issues concerning the proper construction and application of North Carolina laws and the Constitution of North Carolina." (cleaned up)).

Under the backdrop of our decision in *Phillips*, the question presented here, whether the presumption of reasonable fear can be rebutted by evidence of circumstances beyond the five circumstances listed in subsection 14-51.2(c), was resolved unanimously by this Court: the presumption "may only be rebutted by the circumstances contained in section 14-51.2(c)." *See Phillips*, 386 N.C. at 525; *id.* at 531 (Earls, J., with Riggs, J., concurring in part and dissenting in part) (concurring as to the Court's interpretation of section 14-51.2 and only "part[ing] ways with the majority on" this Court's decision to remand the question of prejudice to the Court of Appeals).

B. Jury Instructions

"It is fundamental that a jury must be properly instructed on the law." *Phillips*, 386 N.C. at 525 (majority opinion). "A defendant entitled to *any* self-defense instruction is entitled to a *complete* self-defense instruction . . . ." *State v. Coley*, 375 N.C. 156, 159–60 (2020) (cleaned up). "Instructions that provide jurors with a clear decision tree are critical for a jury to be able to accurately determine whether the presumptions provided by § 14-51.2 have been rebutted. A jury must intentionally and methodically determine whether that presumption has been rebutted." *Copley*, 386 N.C. at 126–27 (Barringer, J., concurring).

Here, the jury instructions on the castle doctrine, which were crafted prior to *Phillips*, failed to properly inform the jury of the applicable law in several ways.[2] Specifically, the jury was instructed that defendant would be justified in using deadly force only if: (1) he reasonably believed Adams would kill or inflict serious bodily harm to defendant or others in the home, and (2) he reasonably believed such force was necessary to prevent or terminate Adams' unlawful entry into the home. Though the jury was instructed defendant was presumed to have held a reasonable fear of imminent death or serious bodily harm, it was also instructed that such presumption could be rebutted by any evidence to the contrary and that it was ultimately the jury's responsibility to determine the reasonableness of defendant's belief. In addition, the jury was not instructed that a home's curtilage is a protected location under the express language of section 14-51.2. These portions of the jury instructions, as we stated in *Phillips*, are fundamentally incompatible with the statute and therefore fail to accurately instruct on the law.[3]

First, when an intruder "unlawfully and by force enters or attempts to enter" a person's home or its curtilage, the General Assembly has expressly removed from the province of the jury questions regarding the reasonableness of a lawful occupant's belief that such intruder intends "to commit an unlawful act involving force or violence." N.C.G.S. § 14-51.2(d). No jury instruction on the castle doctrine should invite the jury to address this question. Rather, the instruction should simply ask the jury whether the intruder had unlawfully and by force entered or attempted to enter the protected location and whether the defendant was a lawful occupant of such location at the time of the unlawful entry. If the jury answers these questions in the affirmative, then

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2. Defendant was tried and convicted in October 2022, almost two years before this Court's opinion in *Phillips* was issued on 23 August 2024. Thus, there is no way the trial court's instructions below could have complied with the decision tree we laid out in *Phillips*. This will be true for a number of cases in the appellate pipeline. But to be clear, we understand that the very capable members of the Pattern Jury Instruction Committee read our opinions and take seriously their obligation to ensure the instructions align with the law. These things take time, and it is more important that the committee gets it right rather than simply getting it done.

3. The State argues defendant cannot now complain of these instructions as he requested the pattern jury instructions on defense of habitation. However, because the State did not raise this argument at the Court of Appeals, it is not preserved for our consideration. *See Falls Sales Co. v. Bd. of Transp.*, 292 N.C. 437, 443 (1977) ("The potential scope of our review is limited by the questions properly presented for first review in the Court of Appeals. The attempt to smuggle in new questions is not approved." (cleaned up)). Defendant's argument regarding a pretrial determination of immunity suffers from the same defect, and we decline to consider both arguments.

the non-rebuttable presumption that the victim intended to commit an unlawful act involving force or violence applies and the jury may not be instructed to the contrary.

Second, if an unlawful and forceful entry or attempted entry occurred, and if the lawful occupant knew or had reason to believe that such entry or attempted entry occurred, the lawful occupant "is presumed to have held a reasonable fear of imminent death or serious bodily harm to himself or herself or another when using defensive force that is intended or likely to cause death or serious bodily harm to another." N.C.G.S. § 14-51.2(b). The jury may consider whether that presumption has been rebutted if, and only if, the State presents evidence tending to establish one of the five circumstances listed in subsections 14-51.2(c)(1)–(5). In that case, the jury must be specifically instructed that it may only consider the reasonableness of the defendant's belief if it affirmatively finds that the State has proven the circumstance or circumstances beyond a reasonable doubt. If instead, as in this case, the State fails to present any evidence tending to establish one of those five circumstances, then the General Assembly has expressly removed from the province of the jury any question regarding the reasonableness of, or even the existence of, the defendant's fear of imminent death or serious bodily harm.

Third, a natural consequence of the presumption of fear of imminent death or serious bodily harm is that unless such presumption is rebutted, "excessive force is impossible" under the castle doctrine. *Phillips*, 386 N.C. at 527 (cleaned up). In other words, if, as in this case, the State fails to present any evidence establishing one of the five circumstances in subsection (c), the jury may not consider whether the defendant reasonably believed the degree of force used was necessary to prevent a forcible entry or to terminate such unlawful entry.

Finally, the castle doctrine statute specifically affords protection to a lawful occupant of a home, motor vehicle, or workplace. The statute defines a "home" as a "building or conveyance of any kind, to include its curtilage, whether the building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it, including a tent, and is designed as a temporary or permanent residence." N.C.G.S. § 14-51.2(a)(1). The State argued at trial that the defense does not apply to the curtilage, but the plain language of the statute extends the castle doctrine's protections beyond a home's four walls.

However, because defendant failed to object to these instructions at trial, to receive relief he must demonstrate plain error. In reviewing for

plain error, we examine whether defendant has shown that: (1) a fundamental error occurred at trial, (2) such error had a probable impact on the outcome, and (3) the error is an exceptional case warranting plain error review. *Reber*, 386 N.C. at 158.

Here, the instructional errors discussed above deprived defendant of his entitlement to "a *complete* self-defense instruction." *See Coley*, 375 N.C. at 159-60 (cleaned up). The "jury instructions [were] infected with legal error," *Copley*, 386 N.C. at 125, and rise to the level of fundamental error, i.e., a "grave error which amounts to a denial of a fundamental right of the accused," *Reber*, 386 N.C. at 158 (cleaned up).

The castle doctrine provides immunity from criminal and civil liability for qualifying occupants, and the erroneous instructions here foreclosed defendant's ability to argue, or that the jury could consider, that his actions were legally protected under the statute. Unlike many instructional errors, the failure to properly instruct the jury on the castle doctrine wholly eliminated consideration of lawful conduct. This amounts to the denial of a fundamental right.

The second prong of plain error, the prejudice prong, requires us to determine whether defendant has shown this fundamental error had a probable impact on the trial's outcome. "[T]his standard—showing that a jury *probably would have* reached a different result—requires a showing that the outcome is significantly more likely than not." *Id.* at 159. "[A]n event will 'probably' occur if it is 'almost certainly' the expected outcome; it is treated as synonymous with words such as 'presumably' and 'doubtless.' " *Id.* (first quoting *Probably*, New Oxford American Dictionary (3d ed. 2010); and then quoting *Probably*, Merriam-Webster's Collegiate Dictionary (11th ed. 2007)).

Here, the jury was improperly instructed that it could only find defendant acted lawfully under the castle doctrine if defendant reasonably believed that: (1) Adams would kill or inflict serious bodily harm to defendant or others, and (2) the degree of force he used was reasonably necessary to prevent or terminate an unlawful entry. Under the facts of this case and our precedent in *Phillips*, neither of these questions were proper.

The State argues that because "the jury's verdict [of second-degree murder] strongly suggests it credited [Rodger's] account, wherein no forcible entry occurred," the failure to properly instruct on the castle doctrine's presumptions and scope could not "probably" have affected the outcome at trial. Although Rodgers testified that Adams never entered defendant's home and she never heard defendant ask Adams to

leave the porch, she also testified that defendant warned Adams not to cross the threshold and counted down to zero multiple times before shooting him. Thus, even if the jury entirely credited Rodger's testimony over defendant's, her testimony alone provides some evidence that Adams unlawfully entered the curtilage of defendant's home and that he had not ceased such entry prior to defendant's use of force.

Though the enactment of the castle doctrine statute abrogated the common law, it did not alter the principle that the "burden is upon the State to prove beyond a reasonable doubt that the defendant did not act in self-defense when there is some evidence in the case that he did." *State v. Herbin*, 298 N.C. 441, 445 (1979); *see also* N.C.G.S. § 14-51.2(g) (providing that the castle doctrine statute "is not intended to repeal or limit any other defense that may exist under the common law"). The record demonstrates that there was some evidence of an unlawful and forceful entry, or an unlawful and forceful attempted entry, upon the premises by Adams. But there is no information in the record that the jury determined beyond a reasonable doubt that no such entry or attempted entry occurred. Considering the instructional error in this case, including the failure to inform the jury of the curtilage's protected status, we reject the State's invitation to impute this finding to an otherwise silent verdict sheet.

If a properly instructed jury found that Adams unlawfully and forcibly entered or attempted to enter the home's curtilage and that defendant knew or had reason to believe such entry or attempted entry occurred, then the castle doctrine's mandatory presumptions would apply. The jury would therefore not consider whether defendant reasonably believed Adams entered the curtilage with the "intent to commit an unlawful act involving force or violence." *See* N.C.G.S. § 14-51.2(d). Nor would it consider whether defendant "held a reasonable fear of imminent death or serious bodily harm to himself . . . or another when using defensive force that is intended or likely to cause death or serious bodily harm to another," *see* N.C.G.S. § 14-51.2(b), because the State failed to prove any of the circumstances rebutting this presumption beyond a reasonable doubt. Such a properly instructed jury would not only *probably* return a different verdict, it would almost *certainly* return a different verdict because an individual who uses deadly force under these circumstances "is justified in using such force and is immune from civil or criminal liability for the use of such force," subject to but one exception not relevant here. *See* N.C.G.S. § 14-51.2(e).

Having concluded that defendant has established both that a fundamental error occurred at trial and that the error had a probable impact

on the trial's outcome, we must now determine whether defendant has shown that this is the "exceptional case that . . . seriously affects the fairness, integrity or public reputation of judicial proceedings." *See Reber*, 386 N.C. at 158 (cleaned up). We agree with defendant that the erroneous instructions here probably led the jury to base its second-degree murder verdict "on conduct the General Assembly deemed justifiable and legal." Because such criminal convictions based on lawful conduct are abhorrent to the principles of fairness inherent in our judicial system, we are satisfied that defendant's matter is the exceptional case irreparably tainted by plain error. Accordingly, we reverse the Court of Appeals' judgment and remand this matter for a new trial.

IV. Conclusion

Where there is evidence supporting a jury instruction on the castle doctrine, a defendant is entitled to receive the full benefit of that instruction. When a jury is improperly instructed on this defense, the defendant faces the intolerable prospect of conviction based on conduct our General Assembly has deemed lawful and justified. Because the erroneous instructions in this case probably resulted in defendant's conviction rather than acquittal, we reverse the Court of Appeals' judgment.

REVERSED AND REMANDED.

Justice RIGGS dissenting.

At the core of the question presented in this case—whether the jury was properly instructed on the castle doctrine as established in N.C.G.S. § 14-51.2—is whether the castle doctrine's presumption of reasonable fear may be rebutted only by the five statutory exceptions to the presumption outlined in subsection (c) of the castle doctrine statute. *See* N.C.G.S. § 14-51.2(c) (2023) ("The presumption set forth in subsection (b) of this section shall be rebuttable and does not apply in any of the following [five] circumstances . . . ."). The majority, relying on nonbinding statements, or dicta, in *State v. Phillips*, 386 N.C. 513 (2024), formally limits the refutability of the presumption to only those five circumstances. Because I would hold that the majority's reliance on nonbinding dicta in *Phillips* is misguided and that the plain language of the castle doctrine statute does not limit rebutting the presumption of reasonable fear to the five circumstances in the castle doctrine statute, I respectfully dissent.

The concurrence in *Phillips*, which I joined, explained the path that jurors should take as they apply the castle doctrine, but it did not adopt nor suggest that the five exceptions are the *only* possibilities for rebutting the presumption of reasonable fear. *Phillips*, 386 N.C. at 529 (Earls, J., concurring in part and dissenting in part). The concurrence acknowledged, as the *Phillips* majority did, that the castle doctrine statute creates a reasonable presumption of fear provided that the prerequisites outlined in subsection 14-51.2(b) are met, entitling a criminal defendant to complete jury instructions that inform jurors of the use of lawful force and gives them a clear decision tree for examining it. *Id.* at 530; *see also* N.C.G.S. § 14-51.2(b) (2023). But the majority also affirmed that the castle doctrine is not a "license to kill," meaning that there are limits to the castle doctrine's protections. *See Phillips*, 386 N.C. at 525 ("The expansive protections afforded to lawful occupants of a home does not mean that the castle doctrine is 'a license to kill' or that the statute allows for 'open season on Girl Scouts and trick-or-treaters.' " (quoting *State v. Copley*, 386 N.C. 111, 123 (2024))). The castle doctrine statute uses a burden-shifting provision, creating a presumption in favor of the defendant that, per subsection 14-51.2(c), the State is entitled to rebut. *See* N.C.G.S. § 14-51.2(c) (providing that the presumption of a lawful occupant's reasonable fear of death or serious bodily harm is "rebuttable and does not apply in any of the . . . circumstances" listed in subsection (c)); *Copley*, 386 N.C. at 122. For example, in discussing the implicit limits of the castle doctrine, the concurrence explained that jurors must first consider any evidence of entry being lawful or unforceful, such as when a person is conducting door-to-door sales, delivering packages or mail, or accepting the homeowner's invitation to enter the property. *See Phillips*, 386 N.C. at 530 (Earls, J., concurring in part and dissenting in part). If jurors conclude an entry was "unlawful[ ] and forceful[ ]" as required by subsection 14-51.2(b), that is what triggers the presumption of reasonableness. *Id.*; *see also* N.C.G.S. § 14-51.2(b).

The next step for jurors would then be to consider whether the State rebutted the presumption in accordance with N.C.G.S. § 14-51.2(c). In *Phillips*, the issue was whether the jury instructions failed to accurately explain the law, preventing the jurors from assessing the legality of the defendant's use of force. *Phillips*, 386 N.C. at 528 (majority opinion); *see also id.* at 531 (Earls, J., concurring in part and dissenting in part). That the *Phillips* majority provided a full background on the development and evolution of the castle doctrine in North Carolina to ultimately reach the conclusion that the jury instructions in *Phillips* were erroneous does not necessarily make the entirety of its statements binding, especially where the statements, though informative, were not determinative. That

the concurrence agreed with the need for proper jury instructions in *Phillips* does not foreclose holding today that the castle doctrine's presumption of reasonableness is rebuttable beyond the five circumstances in the statute. Doing so is not a departure from the concurrence's position in *Phillips*; rather, it is an extension of the *Phillips* concurrence's interpretation that the castle doctrine, while broad when appropriately applied, still has necessary limits.

Language unnecessary to a court's decision is obiter dictum and not binding to subsequent decisions. *See*, *e.g.*, *Washburn v. Washburn*, 234 N.C. 370, 373 (1951) (holding that statements in the text of an opinion unnecessary to the determination of a case is obiter dicta). This Court's decision in *McKinney v. Goins*, 387 N.C. 35 (2025), is illustrative of this principle. There, this Court addressed a constitutional challenge to legislation reviving expired tort claims. *Id.* at 41. The defendant argued that a "revival provision" violated vested rights and relied on prior decisions—particularly *Wilkes County v. Forester*, 204 N.C. 163 (1933), and *Jewell v. Price*, 264 N.C. 459 (1965)—to support the proposition that retroactive revival of time-barred claims is unconstitutional. *McKinney*, 387 N.C. at 46–47. The Court rejected this reading and held that the relevant language in both *Wilkes County* and *Jewell* was nonbinding dicta. *Id.* at 54–58.

In *Wilkes County*, although the Court included broad language asserting that reviving a time-barred claim would be unconstitutional because it impaired vested rights, the holding turned on the statutory text of a statute enacted in 1931. 204 N.C. at 168–69. The Court interpreted the plain language of the statute as not applying retroactively and decided the case on those grounds. *Id.* at 166–69. The subsequent constitutional commentary, including the statement that reviving a barred claim would be unconstitutional, was unnecessary to the resolution of the dispute. *See id.* at 170. Similarly, in *Jewell*, the Court ruled on statutory grounds, concluding that the statute extending the limitations period did not apply retroactively. *Jewell*, 264 N.C. at 461–63 (citing N.C.G.S. § 1-50). While the *Jewell* Court reiterated the language from *Wilkes County*, it did so hypothetically and noted that the plaintiffs had conceded the new statute did not govern. *See id.* at 461.

Much like in *Wilkes County* and *Jewell*, the language in *Phillips* regarding the castle doctrine was not necessary to the case's outcome or disposition. The dispositive issue in *Phillips* was whether the trial court erred by instructing the jury to consider the proportionality of the defendant's use of force—even after finding that she was entitled to the castle doctrine's presumption of reasonableness. 386 N.C. at 517.

This Court ultimately held that this instruction was erroneous because proportionality becomes relevant *only* if the State first rebuts the statutory presumption by proving one of the five exceptions listed in N.C.G.S. § 14-51.2(c). *Id.* at 525–26.

However, the Court's broader explanation of how the castle doctrine statute "operates"—including its step-by-step summary of subsections (b), (d), and (e)—was not essential to that holding. *Id.* at 524–25. For instance, the Court's description of subsection (d) as creating a "non-rebuttable" presumption regarding the intruder's intent, *id.* at 524, or its statement that immunity under subsection (e) attaches once subsection (b) applies, *id.* at 525, were neither contested nor required to resolve the jury instruction issue. Instead, those comments functioned as background exposition and statutory overview—language helpful for context but not critical to the outcome.

Furthermore, the *Phillips* Court's overview of the castle doctrine in North Carolina provides that the General Assembly intended to broaden the castle doctrine through its 2011 amendments. *Phillips*, 386 N.C. at 520. According to the majority in *Phillips* and here, the legislature did so by repealing N.C.G.S. § 14-51.1 and codifying N.C.G.S. §§ 14-51.2 and -51.3, and this change clarified when the use of deadly force is justified in self-defense or in defense of habitation (the castle doctrine). *Phillips*, 386 N.C. at 520; *see also State v. Austin*, 279 N.C. App. 377, 378 (2021). Another expansion of the doctrine since 2011 is "the defendant no longer has the burden to prove key elements of the traditional self-defense doctrine." *Austin*, 279 N.C. App. at 380; *see also* N.C.G.S. § 14-51.2(f). These expansions do not compel, however, a conclusion that subsection (c) limits the rebuttable presumption to only the circumstances set forth in subsection (c) as the *Phillips* court extraneously declared. *Phillips*, 386 N.C. at 524.

Because the quoted statutory interpretation in *Phillips* was not necessary to resolve the precise legal question before the Court, it qualifies as nonbinding dicta. That the concurrence in *Phillips* did not quibble with irrelevant and nonbinding aspects of the majority there is of no import here: what matters is that dicta from *Phillips* now fully embraced in this case is incorrect.

Interpreting the castle doctrine's presumption of reasonableness as rebuttable only under the circumstances listed in subsection (c) of the castle doctrine statute also conflicts with longstanding principles of statutory construction. Statutory construction requires courts to "look first to the language of the statute itself." *Hieb v. Lowery*, 344 N.C.

403, 409 (1996). When the language of a statute is unambiguous, "there is no room for judicial construction and the courts must give [a statute] its plain and [ordinary] meaning." *State v. Camp*, 286 N.C. 148, 152 (1974) (quoting 7 Strong's, N.C. Index 2d, Statutes § 5 (1968)). But when a statute *is* ambiguous, then judicial construction must be used to determine the statute's legislative purpose. *Burgess v. Your House of Raleigh, Inc.*, 326 N.C. 205, 209 (1990). Determining that purpose is found from the "language of the act [and] its legislative history." *State ex rel. N.C. Milk Comm'n v. Nat'l Food Stores, Inc.*, 270 N.C. 323, 332 (1967).

With these principles in mind, the castle doctrine statute clearly and unambiguously provides that the presumption of reasonableness afforded to a home's lawful occupant may be rebutted *beyond* the five circumstances in subsection (c). The relevant portions of the castle doctrine statute are as follows:

> (b) The lawful occupant of a home . . . is presumed to have held a reasonable fear of imminent death or serious bodily harm . . . when using defensive force that is intended or likely to cause death or serious bodily harm to another if both of the following apply:
>
> > (1) The person against whom the defensive force was used was in the process of unlawfully and forcefully entering . . . .
> >
> > (2) The person who uses defensive force knew or had reason to believe that an unlawful and forcible entry or unlawful and forcible act was occurring or had occurred.
> >
> > (c) The presumption set forth in subsection (b) of this section *shall be rebuttable and does not apply in any* of the following circumstances . . . .

N.C.G.S. § 14-51.2(b)–(c) (emphasis added).

While subsection (c) lists five specific situations in which the presumption "does not apply," nothing in the statute's text expressly limits its rebuttal of the presumption to only those five circumstances. *See* N.C.G.S. § 14-51.2(c). Subsection (c) states that the presumption "shall be rebuttable and does not apply in any of the following circumstances," but it does not say the presumption is rebuttable *only* in those circumstances. *See id.* The legislature's use of the word "and"—a conjunction that functions to connect related but distinct ideas—supports this interpretation. *See And*, Merriam-Webster's Collegiate Dictionary (11th ed.

2007). By stating that the presumption "shall be rebuttable and does not apply" in certain instances, the statute draws a distinction between (1) the general rebuttable nature of the presumption, and (2) specific situations where the presumption fails to arise in the first place.

Had the legislature intended to make the five exceptions in subsection (c) the only means by which the presumption may be overcome, it could have structured the provision differently—such as by stating, "The presumption shall only be rebuttable in the following circumstances." Instead, it employed "shall be rebuttable" as a general directive and followed it with a nonexhaustive list of conditions under which the presumption does not apply *ab initio*. *See* N.C.G.S. § 14-51.2(c).

When the legislature *has* intended to limit the rebuttal of a presumption to specific, enumerated grounds, *it has done so expressly*. For example, in N.C.G.S. § 113-421, which governs presumptive liability for water contamination in oil and gas development, the statute provides that the presumption of contamination is rebuttable only through a limited number of defenses. It explicitly states that the presumption of contamination "is rebutted by a defense established as set forth in subsection (a1)" and then proceeds to list four specific, exclusive grounds for rebuttal. N.C.G.S. § 113-421(a)–(a1) (2023). This structure and phrasing make clear that no other basis for rebuttal is permitted *beyond* those identified in subsection (a1). Had the legislature intended for the castle doctrine presumption to function in a similar way, it could have used the same or similar language to limit rebuttal to the five circumstances in subsection (c).

Similarly, in N.C.G.S. § 20-305.1, the legislature provides a rebuttable presumption that a dealer's declared retail rate for warranty repairs is reasonable. Subsection (a1) expressly outlines how that presumption may be rebutted:

> The average of the parts markup rate and the average labor rate shall both be presumed to be reasonable, however, a manufacturer or distributor may, not later than 30 days after submission, *rebut that presumption* by reasonably substantiating that the rate is unfair and unreasonable in light of the retail rates charged for parts and labor by all other franchised motor vehicle dealers located in the dealer's relevant market area offering the same line-make vehicles.

N.C.G.S. § 20-305.1(a1) (2023) (emphasis added). This language creates a formal rebuttal mechanism that includes comparative data, timing, and

procedural rights, clearly signaling legislative intent to narrowly tailor how the presumption may be overcome. The absence of similar language or structure in N.C.G.S. § 14-51.2(c) indicates that the legislature did not intend to similarly restrict rebuttal of the castle doctrine's presumption.

These examples demonstrate that when the legislature intends to limit a rebuttable presumption to specific, enumerated grounds or to impose structured rebuttal mechanisms, it knows how to do so. The absence of any such language in the castle doctrine statute indicates that subsection (c) was not intended to serve as the exclusive grounds for rebuttal. Rather, subsection (c) unambiguously provides common circumstances in which the presumption will not apply, without foreclosing the possibility that other facts—such as the intruder's lack of aggression, unarmed status, or physical limitations—may also suffice to rebut the presumption of reasonable fear.

Other jurisdictions interpreting similar statutory castle doctrines reinforce the conclusion that statutory presumptions of reasonableness remain rebuttable through evidence beyond express statutory exceptions. These courts have found that rigidly confining the rebuttable presumption to narrow statutory carveouts contravenes legislative intent, introduces impracticalities, and leads to unjust outcomes. For instance, in *State v. Glenn*, 838 S.E.2d 491 (S.C. 2019), the Supreme Court of South Carolina emphasized that the statutory presumption of reasonable fear—similar to the one in North Carolina's castle doctrine—does not foreclose a court's duty to consider whether a defendant has otherwise established self-defense. *Id.* at 496–98. The statute at issue codified and extended the castle doctrine but still required the trial court to assess whether the defendant actually and reasonably feared harm and acted without other means of avoidance. *See* S.C. Code. Ann. § 16-11-440 ("The presumption [of reasonableness] *does not apply* if the person . . . ." (emphasis added)). The *Glenn* court faulted the trial court for denying immunity based solely on the defendant's technical lack of a "right to be" on the premises, holding that courts must also consider whether any unlawful activity was proximately related to the use of force. 838 S.E.2d at 497–98. That is, the defendant's alleged trespass did not automatically preclude immunity if it was not the proximate cause of the confrontation. *Id.*

This reasoning reflects an understanding that presumptions of reasonableness cannot be treated as conclusive when contextual facts undermine their foundation. The *Glenn* court explicitly warned against "hyper-technical" readings of such statutes that would lead to absurd results, such as denying immunity to a person attacked while unlawfully

present in a location, even if their presence was wholly unrelated to the incident. *Id.* at 497. The court thus rejected a categorical approach and instead adopted a flexible, proximate-cause analysis that allows rebuttal even when not squarely within the statute's enumerated exceptions. *Id.* at 497–98.

Similarly, in *People v. Owen*, 226 Cal. App. 3d 996 (1991), the California Court of Appeal construed section 198.5 of the Penal Code of California—which, like North Carolina's castle doctrine, presumes that a person in their home has a reasonable fear of death or bodily harm when confronting an unlawful intruder. *Id.* at 996. The *Owen* court held that this presumption is rebuttable and clarified that it imposes on the prosecution the burden of disproving reasonable fear beyond a reasonable doubt. *Id.* at 1005–06. But importantly, the court recognized that if evidence in the record undermines the factual basis for the presumption—such as if the defendant used excessive force or the "intruder" was not clearly threatening—then the presumption may be overcome. *Id.* at 1006–07.

Both *Glenn* and *Owen* demonstrate a consistent judicial recognition that statutory presumptions of reasonableness do not create absolute, irrebuttable shields. Courts must retain discretion to assess reasonableness in light of the entire record. The legislative silence on limiting rebuttal to enumerated exceptions, when paired with these interpretations, supports construing the North Carolina castle doctrine's presumption as rebuttable through general evidence of unreasonableness.

Even if the castle doctrine statute's language *was* ambiguous, canons of statutory interpretation still support the interpretation that the castle doctrine's presumption of reasonableness may be rebutted independently from subsection (c). Contrary to Mr. Allison's arguments, the *in pari materia* canon supports this view. The *in pari materia* canon requires courts to interpret statutes dealing with the same subject matter together and harmoniously, especially when they are enacted as part of the same legislative scheme. *In re R.L.C.*, 361 N.C. 287, 294 (2007). This canon is particularly relevant here because the castle doctrine statute and sections 14-51.3 and 14-51.4 were all enacted simultaneously in Session Law 2011-268. *See* An Act to Provide When a Person May Use Defensive Force and to Amend Various Laws Regarding the Right to Own, Possess, or Carry a Firearm in North Carolina, S.L. 2011-268, § 1, 2011 N.C. Sess. Laws 1002, 1002–04.

Section 14-51.4 further undermines the view that subsection (c) provides the only rebuttal ground for the presumption of reasonableness,

because it disqualifies an individual from relying on the justifications in sections 14-51.2 and 14-51.3 if the individual is committing a felony or is the initial aggressor. N.C.G.S. § 14-51.4 (2023). This exclusion applies even though such disqualifying conduct is not listed in subsection 14-51.2(c). The language—"[t]he justification described in G.S. 14-51.2 and G.S. 14-51.3 is not available"—confirms that the justifications under both statutes can be overcome by factual circumstances beyond the scope of subsection (c). *See* N.C.G.S. § 14-51.4.

If, as Mr. Allison contends, the presumption under the castle doctrine could be rebutted only by the five circumstances listed in subsection (c), then section 14-51.4 would be redundant to the extent it bars the presumption based on conduct not found in subsection (c). The legislature's decision to codify these exclusions outside of subsection (c) supports the interpretation that the presumption can be rebutted by circumstances beyond the scope of subsection (c). Elevating the presumption in subsection (c) as irrebuttable would ignore this broader statutory context and violate the *in pari materia* canon.

Accordingly, interpreting the statutes harmoniously supports the conclusion that the five exceptions in subsection (c) are not the exclusive means of rebutting the presumption of reasonable fear. Rather, they are illustrative examples within a broader framework that permits the introduction of evidence to challenge the presumption, consistent with sections 14-51.3 and 14-51.4.

In sum, the castle doctrine's presumption of reasonable fear may be rebutted by evidence beyond the five exceptions enumerated in the statute and *Phillips* is not controlling because its discussion of subsection (c) of the castle doctrine statute as the exclusive means of rebutting the presumption constitutes nonbinding dicta.

Looking to the evidence below, the trial court did not plainly err in failing to instruct the jury that it was mandatory to presume Mr. Allison satisfied the reasonableness presumption. As stated in the concurrence in *Phillips*, the castle doctrine statute creates a rebuttable presumption of reasonable fear "when the defendant satisfies the specific . . . requirements" of N.C.G.S. § 14-51.2(b). *Phillips*, 386 N.C. at 529. It permits defensive force against one who "unlawfully and forcefully enter[s]" a protected space. *Id.* The jury's answer on the issue of whether there was unlawful and forceful entry dictate whether the presumption of reasonable fear attached and whether the castle doctrine applied at all. *Id.* at 531. The State presented sufficient evidence to support the conclusion that Mr. Adams' entry, even if unlawful, was not forceful. The

State presented evidence that Mr. Adams was unarmed and no weapons besides Mr. Allison's shotgun were found on the scene. There are conflicting accounts over whether Mr. Adams was being aggressive in the first place. According to Mr. Allison's testimony, Mr. Adams used his hand and foot to stop Mr. Allison from shutting his door, but Mr. Adams did not enter the home or force entry otherwise. There had been a pushing match between the two in which Mr. Allison claims Mr. Adams had more strength. However, Mr. Allison also testified that Mr. Adams just had neck surgery. Mr. Allison also did not have defensive wounds or injuries. Mr. Allison, determining that Mr. Adams would not leave, immediately grabbed his shotgun and pointed it at Mr. Adams, though the record does not indicate reciprocal aggression on Mr. Adams' part. Mr. Allison counted down several times while pointing the gun at Mr. Adams, which could undermine the imminence of perceived danger. After law enforcement arrived and arrested Mr. Allison, Mr. Allison made comments about not intending to shoot Mr. Adams, which could suggest that it was not Mr. Allison's intent to use the gun for self-defense out of reasonable fear as much as it was to intimidate Mr. Adams. If a person does not "unlawfully and forcefully" enter another's property, the statutory presumption of reasonable fear does not attach. Thus, given the conflicting nature of testimony in this case, it was not mandatory for the jury to presume Mr. Allison satisfied the reasonableness presumption.

Had the jury concluded that entry was "unlawful[ ] and forceful[ ]" as required by subsection 14-51.2(b), then the jurors would be tasked with finding whether the State rebutted the reasonableness presumption. *Phillips*, 386 N.C. at 531. This case presents the rare instances that make the majority's interpretation of the castle doctrine and subsection (c) untenable—even the flimsiest bit of conflicting evidence of a unlawful and forceful entry would permit the use of defensive force and automatically give the defendant the mandatory presumption of reasonableness that the State cannot rebut unless the five exceptions in subsection (c) apply. Here, the State's evidence undercuts the defendant's assertion that he was under reasonable fear of death or serious bodily harm. On these bases, I would not find plain error on the facts of this case. Accordingly, I would affirm the decision of the Court of Appeals.

Justice EARLS joins in this dissenting opinion.

STATE v. BRACEY

[388 N.C. 689 (2025)]

STATE OF NORTH CAROLINA
v.
MACK VERNON BRACEY

No. 32A25

Filed 12 December 2025

Firearms and Other Weapons—possession of stolen gun—knowledge or reasonable grounds to believe gun was stolen—sufficiency of evidence

In a prosecution for multiple offenses, the trial court properly denied defendant's motion to dismiss the charge of possession of a stolen firearm where the State presented substantial evidence from which a rational juror could infer that defendant knew or had reasonable grounds to know that the gun discovered by law enforcement in his car was stolen, including that: defendant fled from officers in an extended high-speed car chase and then, after crashing his car, continued to flee on foot; defendant lied to police about having a gun when asked; the gun was found hidden in an empty space behind a plastic panel under the steering wheel of defendant's car; and the gun was hidden in his car even though defendant left a gun holster in plain view. Even if the evidence could also support other inferences, the State was not required to eliminate alternative hypotheses in order to overcome defendant's motion.

Justice EARLS dissenting.

Justice RIGGS joins in this dissenting opinion.

Appeal pursuant to N.C.G.S. § 7A-30(2) (repealed 2023) from the decision of a divided panel of the Court of Appeals, 297 N.C. App. 136 (2024), affirming judgments entered on 31 January 2023 by Judge Jason C. Disbrow in Superior Court, Brunswick County. Heard in the Supreme Court on 10 September 2025.

Jeff Jackson, Attorney General, by James W. Doggett, Deputy Solicitor General, and Laura Howard, Chief Deputy Attorney General, for the State-appellee.

Warren D. Hynson for defendant-appellant.

BARRINGER, Justice.

This case presents a single question: Was there substantial evidence that a criminal defendant knew or had reasonable grounds to believe the gun in his possession was stolen? We answer in the affirmative. Accordingly, we affirm the decision of the Court of Appeals affirming the trial court's denial of defendant's motion to dismiss his charge of possession of a stolen firearm.

I. Facts

The State's evidence tended to show the following: In the parking lot of a hotel known by law enforcement as a "hub for illegal activity," Officer Hannah Jackson ran the license plate of a station wagon and determined that the car belonged to defendant Mack Bracey, a convicted felon who had outstanding arrest warrants. Officer Jackson monitored the area for several hours until she saw defendant walk out of the hotel and get into the car's driver's seat. Once Officer Jackson's partner arrived, Officer Jackson approached the passenger-side door and asked defendant to get out of the car. Defendant said, "I'm not getting out of the car" and began "reaching around" in an apparent attempt to "try[ ] to hide things." When Officer Jackson's partner went to open the driver-side door, defendant "shut [the door], put the car in drive, and took off." The officers gave chase.

Defendant sped through red lights and stop signs, drove headlong into opposing lanes of travel, evaded police roadblocks, and plowed over curbs, medians, and grass. He drove dozens of miles per hour (mph) over posted speed limits, reaching 90 mph in a 35 mph zone and over 100 mph on a highway. He raced past pedestrians, going around 50 mph in a shopping center's busy parking lot and zipping at 70 mph past a man walking his dog in a residential neighborhood. After being forced onto a dirt road, defendant crashed his car into two trees—and then fled on foot through a swampy area until he encountered brush "so dense that he couldn't run anymore." Officers arrested defendant, read him his *Miranda* rights, and placed him in a patrol car.

When asked why he fled, defendant responded that he had been "trying to get [in] a hit" of cocaine and "wouldn't have run from" the officers if they "had just let him get . . . his hit in." However, Officer Jackson suspected otherwise, because she had seen an empty Sticky-brand gun holster[1] in defendant's car near the driver's seat. Although

1. A Sticky holster is a slender, clipless foam pocket holster coated in a nonslip material. *What Is a Sticky Holster?*, Sticky Holsters, https://stickyholsters.com/what-is-a-sticky-holster/ (last visited Nov. 18, 2025).

she had not yet found a gun, Officer Jackson decided to ask defendant "a trick question":

Officer Jackson:	"We found the gun."
Defendant:	"Where?"
Officer Jackson:	"In the woods . . . where you tossed it."
Defendant:	"Oh. There ain't no gun."

This exchange convinced Officer Jackson that a gun must have been "somewhere." Officer Jackson also asked defendant if there was anything in his hotel room that they should know about, to which defendant responded "No." Officers took defendant to the jail and impounded his wrecked car.

After obtaining a warrant, officers searched defendant's hotel room and found .38 Special ammunition, pills, and a digital scale. Officers also searched defendant's car at the impound lot. During this search, Officer Jackson "noticed that on the left side of the steering wheel where you would normally turn your headlights on and off, it was a little loose looking." The panel "popped open very easily," revealing a loaded .38 Special revolver inside. A run of the gun's serial number showed that it was stolen.

Defendant was tried for fleeing to elude arrest, possession of a firearm by a felon, and possession of a stolen firearm. Defendant moved to dismiss the firearm charges for insufficient evidence. The trial court denied the motion, and defendant was convicted on all three charges.

On appeal, defendant argued that the State's evidence was insufficient to establish that he knew or had reasonable grounds to believe the firearm was stolen. *State v. Bracey*, 297 N.C. App. 136, 137 (2024). The Court of Appeals disagreed. Applying the substantial evidence standard, the majority concluded that a rational juror could have found that defendant knew or had reasonable grounds to believe the gun was stolen. *Id.* at 141–42. Three main pieces of evidence supported this conclusion: (1) defendant fled, (2) the gun was hidden, and (3) defendant lied about having the gun and ammunition. *Id.* at 140–41.

The Court of Appeals was divided on this point. The dissenting judge would have held that the State failed to present sufficient evidence that defendant knew or had reasonable grounds to believe the firearm was stolen. *Id.* at 144 (Murphy, J., dissenting). Defendant's flight was, in the dissent's view, no indication that he knew or had reasonable

grounds to believe the gun was stolen; rather, defendant had numerous reasons to flee—including to evade a felon-in-possession-of-a-firearm charge—and his flight should not be considered substantial evidence of the "know[ledge] element of *every* crime which he could plausibly be charged with committing that day." *Id.* (emphasis added). As for the fact that the gun was hidden, the dissent believed this circumstance alone did not show defendant's guilty knowledge, citing a previous Court of Appeals decision that had held that storing a gun in a closet was, on its own, insufficient to show a defendant knew or had reasonable grounds to believe that the gun was stolen. *Id.* at 142–43 (citing *State v. Wilson*, 203 N.C. App. 547, 555 (2010)).

Defendant appealed based on the dissent at the Court of Appeals. N.C.G.S. § 7A-30(2) (repealed 2023).

II. Standard of Review

On a motion to dismiss for insufficient evidence, the trial court must determine whether there is substantial evidence of "each essential element of the crime." *State v. Winkler*, 368 N.C. 572, 574 (2015) (quoting *State v. Mann*, 355 N.C. 294, 301, *cert. denied*, 537 U.S. 1005 (2002)). On appeal, this determination is reviewed de novo. *State v. Crockett*, 368 N.C. 717, 720 (2016).

As a "general rule," a motion to dismiss should be denied if there is "*any* evidence" that "tend[s] to prove" each element or "reasonably conduces to [each element's] conclusion as a fairly logical and legitimate deduction" beyond mere "suspicion or conjecture." *State v. Blagg*, 377 N.C. 482, 488 (2021) (emphasis omitted) (quoting *State v. Earnhardt*, 307 N.C. 62, 66 (1982)). Relevant evidence is sufficiently substantial if it is enough to "persuade a rational juror" of the defendant's guilt. *Winkler*, 368 N.C. at 574 (quoting *Mann*, 355 N.C. at 301). Accordingly, the "substantial evidence" standard requires only that there be "more than a scintilla of evidence."[2] *State v. Powell*, 299 N.C. 95, 99 (1980); *see State v. Fritsch*, 351 N.C. 373, 379 (2000) ("[T]he trial court should be concerned only about whether the evidence is sufficient for jury consideration, not about the weight of the evidence."), *cert. denied*, 531 U.S. 890 (2000).

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2. To be clear, "[t]he terms 'more than a scintilla of evidence' and 'substantial evidence' are . . . the same." *State v. Gillard*, 386 N.C. 797, 832 (2024) (quoting *Earnhardt*, 307 N.C. at 66); *accord State v. Tucker*, 380 N.C. 234, 237 (2022) ("Substantial evidence is the same as more than a scintilla of evidence."). Regardless of which term a court employs, all that is required is evidence that is "existing and real, not just seeming or imaginary." *Gillard*, 386 N.C. at 832 (quoting *Earnhardt*, 307 N.C. at 66).

Evidence must be viewed "in the light most favorable to the State, giving the State the benefit of all reasonable inferences." *State v. Barnes*, 334 N.C. 67, 75 (1993). Moreover, "it is appropriate . . . to make 'inferences on inferences,' " *State v. Dover*, 381 N.C. 535, 547 (2022) (quoting *State v. Childress*, 321 N.C. 226, 232 (1987)), as "[t]his is the way people often reason in everyday life," *Childress*, 321 N.C. at 232. Thus, even circumstantial evidence that "does not rule out every hypothesis of innocence" may suffice to persuade a rational juror of a defendant's guilt. *Id.* It is not proper for the court to consider "an [alternative] explanation for [the defendant's] conduct." *Winkler*, 368 N.C. at 582. This is true whether the explanation portrays the defendant as entirely innocent, *id.*, or merely guilty of a different crime, *see State v. Ambriz*, 286 N.C. App. 273, 280 (2022) (recognizing that when the "same substantial evidence" supports convictions for two different offenses, it is improper to dismiss either offense), *disc. review denied*, 890 S.E.2d 918 (N.C. 2023) (order).[3] Such "[c]ontradictions and discrepancies . . . are for the jury to resolve"—not the trial court. *Barnes*, 334 N.C. at 75; *see Tucker*, 380 N.C. at 240 (holding that "[t]he evidence need only be sufficient to support a reasonable inference" of guilt—regardless of whether the evidence "could [also] support different inferences").

The court cannot "weigh[ ] the evidence, consider[ ] . . . evidence that is not favorable to the State, or contemplat[e] what evidence the State should have presented." *Tucker*, 380 N.C. at 240 (extraneities omitted). If evidence of each element is substantial (that is, more than a scintilla), the case should be sent to the jury, as it "is for *the jury* to decide" whether the defendant "is *actually* guilty" beyond a reasonable doubt. *Blagg*, 377 N.C. at 489 (emphases added) (quoting *Fritsch*, 351 N.C. at 379).

III. Analysis

To secure a conviction for felony possession of a stolen firearm, the State must prove that a (1) stolen (2) firearm (3) was possessed (4) with a dishonest purpose (5) by a defendant who knew or had reasonable grounds to believe that it was stolen. N.C.G.S. §§ 14-71.1, 14-72(b)(4), (c) (2023); *State v. Davis*, 302 N.C. 370, 373 (1981). In the Court of Appeals, the dissent argued that only the fifth element, knowledge or reasonable grounds to believe that the gun was stolen, was not supported by sufficient evidence. *Bracey*, 297 N.C. App. at 144 (Murphy, J., dissenting). Our review is therefore limited to this issue. N.C. R. App. P. 16(b).

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3. Although not controlling, this Court finds the Court of Appeals' reasoning persuasive.

The State presented evidence that defendant fled from police, lied about having a gun, and hid the gun—but not its holster. We hold that this evidence was sufficient to allow a rational juror to infer that defendant knew or had reasonable grounds to believe the gun was stolen.

We have long recognized that "an accused's flight is evidence of consciousness of guilt and therefore of guilt itself." *State v. Parker*, 316 N.C. 295, 304 (1986). Defendant's flight is a factor from which a rational juror could infer that defendant knew or had reasonable grounds to believe the gun was stolen. That defendant fled with such intensity—leading police on a reckless high-speed chase and, after crashing his car, running into a swamp until he encountered brush "so dense that he couldn't run anymore"—adds even greater import to this factor. *See State v. Jones*, 292 N.C. 513, 527 (1977) ("[T]he degree or nature of the flight is of great importance to the jury in weighing its probative force.").

While it is true that defendant had several additional reasons to flee, such as avoiding culpability for possessing a firearm as a felon, it is nevertheless consistent with our standard of review to consider his flight as evidence that he knew or had reasonable grounds to believe the gun was stolen. To survive dismissal, "[t]he evidence need only be sufficient to support a reasonable inference" that defendant knew or had reasonable grounds to believe the gun was stolen. *Tucker*, 380 N.C. at 240. This is true regardless of whether the evidence could also support "different inferences." *Id.* Accordingly, the State "need not eliminate 'every hypothesis of' " why defendant fled. *Winkler*, 368 N.C. at 583 (quoting *State v. Thomas*, 350 N.C. 315, 343, *cert. denied*, 528 U.S. 1006 (1999)).

Rather, when a defendant moving for dismissal offers "an [alternative] explanation for his conduct," *id.* at 582, it is not proper for the court to consider the alternative explanation. When, as here, such an alternative explanation is "evidence . . . not favorable to the State," *Tucker*, 380 N.C. at 240, that evidence is precluded from consideration by our standard of review. Because a rational juror *could* view flight as an indication that defendant knew or had reasonable grounds to believe the gun was stolen, this evidence counsels against dismissal.[4]

4. In the court below, the dissent argued that when multiple crimes may have been committed, "substantial evidence that [a] [d]efendant is guilty of *some* crime is *not* substantial evidence that he committed [a] particular crime." *Bracey*, 297 N.C. App. at 144 (Murphy, J., dissenting). This is an incorrect statement of law. If, for example, a defendant with two stolen laptops in his backpack fled, a rational juror could view his flight as evidence that he knew or had reasonable grounds to believe that *both* of the laptops were

Beyond defendant's flight, other evidence provides additional support for a finding that defendant knew or had reasonable grounds to believe the gun was stolen. For instance, evidence clearly indicates that defendant attempted to conceal the presence of the gun. When asked by law enforcement if he had a gun, defendant lied, saying "there ain't no gun" even though there was. Furthermore, the gun itself was hidden in an empty space behind a plastic panel under his car's steering wheel.[5] A rational juror *could* view defendant's attempts at concealment as indications that defendant knew or had reasonable grounds to believe the gun was stolen. That defendant had additional reasons to conceal the gun does not lower the import of this evidence when viewed in the light most favorable to the State.

Lastly, defendant did *not* hide the holster. Defendant's decision to hide the gun but not the holster indicates he was aware that *the gun itself* was incriminating. Had defendant simply been trying to avoid a felon-in-possession-of-a-firearm charge, it is likely he would have also hidden the holster—an item clearly signifying firearm possession. Yet he did not do so. Why? A rational juror *could* infer defendant was instead trying to hide a *gun* that he knew or had reasonable grounds to believe was stolen.[6]

The State presented evidence that defendant made a spirited attempt to flee from police, leading them on a high-speed chase, crashing his

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stolen. *See State v. Friend*, 164 N.C. App. 430, 439–41 (2004) (holding that when a variety of stolen items were hidden together in one location, this provided evidence that the defendant knew or had reason to believe that *each* of the items was stolen).

5. The dissent in the court below characterized this act as "mere storage" and likened caching a gun behind a car's steering-wheel panel to placing a shotgun in a closet. *Bracey*, 297 N.C. App. at 143 (Murphy, J., dissenting) (drawing analogies to *Wilson*, 203 N.C. App. at 548–50, 555). We disagree with this characterization. Cars contain myriad places designed for "mere storage" of items, such as glove compartments, center consoles, cupholders, door pockets, seat-back pockets, and trunks. Instead of using any of these storage spaces, defendant dislodged, and then replaced, a permanently affixed plastic panel under the steering wheel. Such an action is not akin to storing an item in a bedroom closet; it is more akin to stashing an item in one of the room's air vents and replacing the grille.

6. We note also that, given defendant's felon status, there was no legal way for him to obtain the gun. *See* 18 U.S.C. § 922(d)(1). A rational juror could therefore infer that defendant was aware that one who willingly *provided* him the gun illegally would have a greater likelihood of having *obtained* the gun illegally—such as by theft. *Cf. Parker*, 316 N.C. at 304 (noting that, when combined with the defendant's flight, "unusual" circumstances surrounding the sale of a stolen car, including the use of a middleman and an exceedingly low sale price, constituted substantial evidence that the defendant knew the car was stolen).

car, and running deep into a swamp until he was ensnared by brush "so dense that he couldn't run anymore." The State also presented evidence that defendant hid the gun behind a plastic panel under his steering wheel and, despite leaving the holster in plain sight, told police "[t]here ain't no gun." When viewed in the light most favorable to the State, drawing all reasonable inferences in the State's favor, this is substantial evidence that *could* lead a rational juror to believe defendant knew or had reasonable grounds to believe the gun was stolen. That a rational juror could also view this behavior as derivative of a compulsion to avoid a felon-in-possession-of-a-firearm charge is immaterial because, as we have observed, the State "need not eliminate 'every hypothesis' " for why defendant took these actions. *Winkler*, 368 N.C. at 583 (quoting *Thomas*, 350 N.C. at 343).

Because the State presented substantial evidence supporting the possession-of-a-stolen-firearm charge, it was proper for the trial court to deny defendant's motion to dismiss.

IV. Conclusion

After careful review, considering the evidence in the light most favorable to the State, we conclude that the State presented evidence sufficient for a rational juror to find that defendant knew or had reasonable grounds to believe the gun was stolen. Accordingly, we affirm the decision of the Court of Appeals.

AFFIRMED.

Justice EARLS dissenting.

I dissent from the majority's holding that the State introduced sufficient evidence to show that Mr. Bracey knew or had reasonable grounds to believe that the .38 Special revolver in his possession was stolen.

On 31 January 2022, after crashing his vehicle and fleeing on foot, Mr. Bracey was apprehended by Shallotte Police Officer Hannah Jackson and her partner. During an initial search of Mr. Bracey's vehicle, Officer Jackson found an empty firearms holster. When questioned and falsely told that police had found a gun, Mr. Bracey asked, "Where?" and then denied having any firearm. After acquiring a search warrant for the vehicle the next day, Officer Jackson discovered a loaded .38 Special revolver hidden in a void behind a loose panel to the left of the steering wheel, with its serial number intact. A database search revealed that the

firearm had been reported stolen from Columbus County. Police also found .38 caliber ammunition in Mr. Bracey's hotel room but conducted no fingerprint analysis on the weapon or the bullets.

To successfully convict a person for felony possession of a stolen firearm, the State must prove, by substantial evidence, that a (1) stolen (2) firearm (3) was possessed (4) with a dishonest purpose (5) by a defendant who knew or had reasonable grounds to believe that it was stolen. N.C.G.S. §§ 14-71.1–72(b)(4), (c) (2023); *State v. Davis*, 302 N.C. 370, 373 (1981). Plus, "substantial evidence [must be] introduced tending to prove each essential element of the offense charged and that the defendant was the perpetrator." *State v. Parker*, 316 N.C. 295, 302 (1986). Specifically, this substantial evidence standard "mean[s] that the evidence must be existing and real, not just seeming or imaginary." *State v. Powell*, 299 N.C. 95, 99 (1980).

The knowledge element of being in possession of a stolen good is typically proved when there is a transactional imbalance or some other inconsistency that permits an inference that the person in possession knew or should have known that the item was stolen. For example, in *State v. Parker*, the defendant was selling a car, a two-year old sports car in good condition, for just $800, without a title, at a motel. In these circumstances, the defendant reasonably should have known the car was stolen. *See Parker*, 316 N.C. at 304. In that case, the defendant's behavior fleeing from police was also evidence of consciousness of guilt, where the only crime he could have been guilty of was possession of a stolen vehicle. *See id.*

While not binding on this Court, it is illustrative that the Court of Appeals has concluded that knowledge of stolen goods can be inferred from incriminating behavior associated with the goods. In *State v. Taylor*, the defendant was charged *inter alia* with felony possession of a stolen firearm. 64 N.C. App. 165, 165 (1983), *rev'd in part* and *aff'd in part*, 311 N.C. 380 (1984). The State relied on evidence of the defendant's suspicious actions after being confronted by a pedestrian to show knowledge that the firearm was stolen. *Id.* at 166. The defendant there removed the firearm from his coat, stooped near a car, and attempted to surreptitiously hide or dispose of the firearm by throwing it into nearby bushes. *Id.* at 169.

Similarly, in *State v. Wilson*, the fact that the defendant told his codefendant to throw the gun from the car as they were fleeing from police was considered sufficient evidence of knowledge that the gun was stolen. *See Wilson*, 106 N.C. App. 342, 347–48 (1992). In *State v. Walker*,

the defendant removed the item's serial number to make it untraceable. 86 N.C. App. 336, 341 (1987). Though the defendant's accomplice claimed that the gun belonged to him, the true owner identified the item as the one that recently had been stolen from his home. From this evidence, the court determined that the scratching off the serial number constituted evidence that the item was contraband, thereby meeting the "something more" test necessary to establish the defendant's custody and control over stolen property and, by reasonable inference, his knowledge that the property was stolen. *Id.* at 341.

In this case, no evidence shows how Mr. Bracey acquired the gun. Unlike the defendants in the Court of Appeals' precedents cited above, there is no associated incriminating behavior involving the gun by Mr. Bracey to suggest that he knew the gun was stolen. No serial number was obliterated, as in *Walker*. Mr. Bracey did not dispose of the gun during flight as the defendants did in *Wilson* or *Taylor*. Even with regard to storage, there is no evidence "whether . . . storage [of the gun] took place during the flight," *State v. Bracey*, 297 N.C. App. 136, 144 (2024) (Murphy, J., dissenting), or even after Mr. Bracey crashed his vehicle. Lastly, no DNA evidence was collected from the gun or the ammunition found by police.

It is also significant that the only evidence supporting the contention that Mr. Bracey knew the gun was stolen, namely, that he fled from the scene and the gun was hidden, could just as easily be explained by the fact that he knew he had a felony conviction and thus illegally possessed a gun. In short, if Mr. Bracey were not a felon, and possession of a stolen firearm was the only charge before the jury, the evidence of his flight and concealment of the gun possibly could be substantial evidence that he knew the gun was stolen because that would be the most reasonable explanation for his behavior. But where he is charged with multiple offenses, hiding the gun and fleeing arrest are some evidence of knowledge that he is criminally liable for *something*, but these facts are not substantial evidence that he knew the firearm in his possession was stolen.

The Court of Appeals suggested that because the gun was hidden in a void behind the steering wheel and not found with or in the holster, Mr. Bracey "surreptitiously" hid the gun. *State v. Bracey*, 297 N.C. App. 136, 141 (2024). The majority, however, takes this a step further, and contends that the fact that the holster was not hidden is proof that Mr. Bracey *knew* the gun was stolen. *See* majority *supra* Part III. This is a misplaced exercise of stacking inference upon inference, which we have previously ruled is not appropriate in these circumstances. *See State*

v. Voncannon, 302 N.C. 619, 623 (1981) (quoting *State v. Maines*, 301 N.C. 669, 676 (1981) ("Inference may not be based on inference. Every inference must stand upon some clear or direct evidence, and not upon some other inference or presumption.").

The role of this Court when evaluating the evidence for a motion to dismiss is to assess holistically all the evidence in the light most favorable to the State, and to determine that there is a logical link between the evidence and the conclusion that is being drawn. *State v. Everett*, 328 N.C. 72, 77 (1991). It is a long-standing principle of law that a motion to dismiss for insufficiency of the evidence should be allowed when there is some evidence but the evidence only creates "a suspicion or conjecture as to . . . the commission of the offense." *Powell*, 299 N.C. at 98 (first citing *State v. Cutler*, 271 N.C. 379 (1967); and then citing *State v. Guffey*, 252 N.C. 60 (1960)). "This is true even though the suspicion so aroused by the evidence is strong." *Id.* (first citing *State v. Evans*, 279 N.C. 447 (1971); and then citing *State v. Chavis*, 270 N.C. 306 (1967)). In *Powell*, this Court also explained that:

> In passing on the motion, evidence favorable to the State is to be considered as a whole in order to determine its sufficiency. This is especially true when the evidence is circumstantial since one bit of such evidence will rarely point to a defendant's guilt.

Id. at 99. Here, the State has offered essentially only one bit of evidence, namely that the gun was hidden, to prove Mr. Bracey's knowledge that the gun was stolen.

On these facts, the State has failed to meet its burden of coming forward with sufficient evidence that Mr. Bracey knew or had reasonable grounds to believe that the gun in his possession was stolen. His motion to dismiss should have been allowed by the trial court, and the Court of Appeals erred in affirming the trial court. Therefore, I respectfully dissent.

Justice RIGGS joins in this dissenting opinion.

STATE OF NORTH CAROLINA
v.
PEDRO ISAIAS CALDERON

No. 238A23

Filed 12 December 2025

1. Indecent Liberties—qualifying acts—statutory interpretation—no distinction between touching and sexual acts

In a prosecution for multiple counts of taking indecent liberties with a child, based on multiple instances of defendant having kissed the victim, the Court of Appeals erred by imposing a threshold inquiry of distinguishing between touching and sexual acts before addressing the central issue of whether the trial court properly denied defendant's motion to dismiss the charges. Where the plain language of N.C.G.S. § 14-202.1(a) does not distinguish between touching and sexual acts, the statute does not support a threshold requirement or different analytical paths depending on the conduct at issue.

2. Indecent Liberties—multiple counts—proper standard—distinct interruption test

In a prosecution for multiple counts of taking indecent liberties with a child, based on multiple instances of defendant having kissed the victim, the Court of Appeals erred by adopting a four-factor test from another state to evaluate whether multiple "non-sexual acts" could support separate charges, because N.C.G.S. § 14-202.1(a) does not distinguish between touching (or non-sexual acts) and sexual acts. The intermediate appellate court should have utilized the distinct interruption test to determine whether defendant was properly charged with multiple offenses or whether his conduct constituted a single ongoing, continuous attack.

3. Indecent Liberties—multiple counts—based on separate kisses—distinct offenses

The trial court properly denied defendant's motion to dismiss multiple counts of taking indecent liberties with a child—based on three instances of defendant having kissed the victim—where, under the distinct interruption test, there was sufficient evidence to infer that an intervening event took place between each of the kisses, when defendant (1) kissed the victim's neck outside of defendant's van, (2) kissed the victim on the mouth inside the van, and (3) kissed the victim on the mouth inside the van six to seven minutes

after the first kiss inside the van. Defendant's double jeopardy rights were not violated because the three instances were sufficiently distinct to support three convictions.

Appeal pursuant to N.C.G.S. § 7A-30(2) (2023) from the decision of a divided panel of the Court of Appeals, 290 N.C. App. 344 (2023), reversing in part a judgment entered on 8 September 2021 by Judge Keith O. Gregory in Superior Court, Wake County, and remanding the case to arrest judgment and for resentencing. On 28 June 2024, the Supreme Court allowed both parties' petitions for discretionary review as to additional issues. Heard in the Supreme Court on 11 February 2025.

Jeff Jackson, *Attorney General*, *by Nicholas S. Brod*, *Solicitor General*, *for the State-appellant.*

Glenn Gerding, *Appellate Defender*, *by John F. Carella*, *Assistant Appellate Defender*, *for defendant-appellee.*

RIGGS, Justice.

On 8 September 2021, a jury convicted Pedro Isaias Calderon of three counts of taking indecent liberties with a child for kissing a thirteen-year-old girl, Jocelyn,[1] on the neck outside his van, on the mouth inside his van, and on the mouth for a second time inside his van. Mr. Calderon was forty years old at the time of the alleged improper conduct. On appeal, the Court of Appeals held that the trial court erred by denying Mr. Calderon's motion to dismiss because the State presented sufficient evidence for two, but not three, counts of taking indecent liberties with a child. *State v. Calderon*, 290 N.C. App. 344, 356 (2023). The Court of Appeals remanded to the trial court to arrest judgment on one of Mr. Calderon's indecent liberties convictions and for resentencing. *Id.* at 357. The dissent would have held that there was sufficient evidence to convict Mr. Calderon of three separate counts of taking indecent liberties, so the trial court did not err by denying Mr. Calderon's motion to dismiss. *Id.* at 359 (Stading, J., concurring in part and dissenting in part).

The State entered a notice of appeal based on the dissent and both parties filed petitions for discretionary review as to additional issues.

1. Pseudonyms are used for the minor victim and other involved parties to protect their identities. *See* N.C. R. App. P. 42(b).

The State sought review of whether the Court of Appeals' threshold distinction between "touching" and "sexual acts" was correct or necessary. Mr. Calderon sought review alleging the trial court made three errors: denying Mr. Calderon's motion to dismiss two counts of indecent liberties, given that he allegedly committed a single continuing offense; instructing the jury on three counts of indecent liberties; and violating Mr. Calderon's double jeopardy rights by failing to arrest judgment on two of the three counts of indecent liberties. This Court granted both petitions.

We hold that (1) the Court of Appeals erred in applying a threshold distinction between touching and sexual acts, (2) the Court of Appeals erred by applying a four-factor test for multiple indecent liberties offenses instead of the "distinct interruption" test established in *State v. Dew*, 379 N.C. 64 (2021), and (3) Mr. Calderon was properly convicted of three counts of indecent liberties, so the trial court did not err in denying his motion to dismiss.

I. Factual and Procedural Background

Mr. Calderon met Jocelyn in June 2019 after a church service at the home where he was renting a room. Marvin, Mr. Calderon's friend who also lived in the home, testified that Mr. Calderon noticed Jocelyn and told him she "had a big ass." Marvin told Mr. Calderon "not to joke around that way because she was young." Mr. Calderon asked Marvin if Jocelyn was married, and if the children she was taking care of during the church service were her children. Marvin told him that the children were her siblings, told him that she was not married, and warned him not to get involved with Jocelyn. Mr. Calderon spoke with Jocelyn briefly that day.

Just a few days later, Mr. Calderon spoke with Jocelyn again at a pool party for the children who attended the church, where he asked for her social media information. Jocelyn gave him her Facebook information, and the two became Facebook friends. Mr. Calderon and Jocelyn messaged on Facebook "[p]robably every day" for one to two weeks. Mr. Calderon asked Jocelyn to go to the movies with him, sent her pictures, told her about his day, and told her that he wanted to touch her.

Then, on 5 July 2019, Mr. Calderon and Jocelyn met again in front of Jocelyn's home. Jocelyn's grandmother and younger sister took a taxi to a dentist appointment that morning, leaving Jocelyn at home with her uncle and younger siblings. After that point, testimony from Jocelyn, two neighbors who witnessed the encounter, and Mr. Calderon diverged.

Jocelyn testified that, after cooking breakfast for her siblings, she took the trash outside and saw Mr. Calderon's van in the parking spot in front of her house. When she saw Mr. Calderon, she started to go back into her house, but Mr. Calderon grabbed her. Jocelyn alleged that, while standing outside the van, Mr. Calderon kissed her two or three times on the neck, leaving hickeys. He lifted her into the driver's seat of the van, lifted her shirt and bra, and kissed her breasts. Next, Mr. Calderon entered the van, climbing over Jocelyn to get into the passenger's seat. Jocelyn testified that he moved into the footwell under the driver's seat, pulled down her pants, and licked her vagina. Jocelyn testified that Mr. Calderon then digitally penetrated her for a minute or two, pulled her pants up, and moved back into the passenger's seat. Jocelyn also testified that he asked her to perform oral sex on him, which she refused, and that he kissed her on the neck inside the van.

At that point, a taxi with Jocelyn's grandmother and younger sister arrived back home, and Jocelyn left the van. She walked to her neighbors, who were standing outside, and briefly spoke with them but did not tell them what happened in the van. Jocelyn "hoped [her] grandmother didn't notice" because she was worried she would get in trouble.

Two of Jocelyn's neighbors also testified at trial. Natalie and Danielle, two sisters, testified that they lived in a townhouse two doors down from Jocelyn's home. They had never spoken to Jocelyn before, but had seen her in their neighborhood and knew she was a child because she took the middle school bus with their younger brother. On 5 July 2019, Natalie and Danielle were sitting on their porch and playing with Danielle's son when they saw Jocelyn and Mr. Calderon in the van. Natalie and Danielle were approximately ten to twelve feet away from the van, which was facing the townhomes in the parking lot in front of Jocelyn's house.

Natalie and Danielle testified that Mr. Calderon and Jocelyn appeared to be "hugging on each other" as if they were "in a relationship" and "laying in the car, kind of cuddled up." The neighbors testified that they saw Mr. Calderon and Jocelyn kiss twice in the van. The kisses were "not back to back," with about six to seven minutes between the kisses. They observed the kisses, but saw "nothing sexual," saying Jocelyn and Mr. Calderon appeared to be laughing and holding a conversation.

The neighbors' stories varied on how long they observed the van, with Danielle testifying it was ten to fifteen minutes and Natalie testifying it was about forty-five minutes. When a taxi carrying her family arrived back at the house, Jocelyn left the van, approached the neighbors, and

told Danielle that her son was cute. Danielle described Jocelyn as "playing it off" because they had never had a conversation before, but "she made it seem like to her parents that we were outside the whole time, like she was there . . . talking with us, but she wasn't." Mr. Calderon left the passenger's seat, got into the driver's seat, and left the parking lot.

Mr. Calderon also testified. He claimed that on 5 July 2019, Jocelyn gave him her address and sent him a Facebook message that said, "Come save your girlfriend." He drove to her house and texted her that he was outside. According to him, Jocelyn then said, "I'll be right out," and Mr. Calderon got out of his van to greet her. When Jocelyn came out of the house, Mr. Calderon testified that she came up to him, "threw her arms around" him, and started kissing him. They kissed "a couple times" and Jocelyn asked him to kiss her on the neck. Mr. Calderon admitted to kissing Jocelyn on the neck and leaving hickeys. Mr. Calderon claimed he asked to meet Jocelyn's uncle, who was watching them through a window, but Jocelyn declined because she did not want him to meet her family.

After kissing Jocelyn on the neck, Mr. Calderon testified that he got into the van first, and Jocelyn followed him. He testified that they spent ten to fifteen minutes "joking around, talking, laughing." Mr. Calderon denied engaging in any sexual acts with Jocelyn and claimed that they only "kissed and talked." When the taxi arrived with Jocelyn's grandmother, Mr. Calderon claims Jocelyn opened the door and left. When she was speaking with the neighbors, Mr. Calderon claimed Jocelyn motioned for him to leave, which he did.

On 29 August 2019, a grand jury indicted Mr. Calderon on three counts of taking indecent liberties with a child under N.C.G.S. § 14-202.1(a)(2) and one count of second-degree kidnapping under N.C.G.S. § 14-39. On 17 September 2019, two arrest warrants were issued against Mr. Calderon for two counts of statutory sex offense with a child and two counts of indecent liberties with a child. On 21 October 2019, a grand jury indicted Mr. Calderon on two additional charges of taking indecent liberties with a child under N.C.G.S. § 14-202.1(a)(2). Mr. Calderon was ultimately charged with five counts of taking indecent liberties with a child, two counts of statutory sex offenses with a child under fifteen, and one count of second-degree kidnapping. Mr. Calderon pleaded not guilty to all counts. His trial began on 30 August 2021 in Wake County Superior Court.

On 7 September 2021, Mr. Calderon filed a motion to dismiss all charges on the grounds that the evidence was insufficient to support

submission of the charges to the jury and because "there is a variance between the crime alleged in the indictment and any crime for which the State's evidence may have been sufficient to warrant submission to the jury." The trial court denied his motion.

The same day, at the charge conference, the State identified the facts supporting each of the five indecent liberties charges. Three of the charges related to Mr. Calderon kissing Jocelyn: (1) kissing her on the neck outside the van, (2) kissing her on the mouth inside the van, and (3) kissing her on the mouth inside the van for a second time. Mr. Calderon objected to these charges, arguing that, based on *State v. Laney*, 178 N.C. App. 337 (2006), the kisses were not sufficiently distinct acts to support two charges or convictions. The trial court overruled both objections and instructed the jury on all three counts based on the three kisses.

The jury found Mr. Calderon guilty of three counts of taking indecent liberties with a child based on Mr. Calderon: (1) kissing Jocelyn on the neck outside the van, (2) kissing Jocelyn on the mouth inside the van, and (3) kissing Jocelyn on the mouth for a second time inside the van. The jury found Mr. Calderon not guilty of two counts of taking indecent liberties with a child based on Mr. Calderon allegedly (1) pulling up Jocelyn's bra and licking and kissing her breasts and (2) asking Jocelyn to perform oral sex on him. The jury also found Mr. Calderon not guilty of second-degree kidnapping and two counts of statutory sex offense. The trial court sentenced Mr. Calderon to sixteen to twenty-nine months of active imprisonment for each of the three indecent liberties convictions, to be served consecutively. Mr. Calderon gave notice of appeal in open court.

In a split decision, the Court of Appeals reversed the judgment in part and remanded with instructions to arrest judgment on one of Mr. Calderon's indecent liberties convictions and to conduct a new sentencing hearing. *Calderon*, 290 N.C. App. at 356–57. The majority first analyzed, as a threshold issue, whether the kisses were a "touching" or a "sexual act." *Id.* at 351–52. It concluded that the kisses were non-sexual acts. *Id.* at 352. Then, in deciding whether the kisses were separate and distinct acts or a single continuous occurrence, the Court of Appeals applied a test established in *State v. Sellers*, 253 P.3d 20 (Kan. 2011), a Kansas case. *Calderon*, 290 N.C. App. at 354–55. The majority held that the kisses outside the van were sufficiently distinct from the kisses inside the van and could be charged separately, *id.* at 356, but that the two kisses inside the van were not sufficiently distinct under the *Sellers*

test, so the trial court erred by denying Mr. Calderon's motion to dismiss as to one of the indecent liberties charges. *Id.*

The dissent agreed that, bound by prior decisions by the Court of Appeals, "there is a different analytical path" for sexual acts and touching. *Id.* at 357 (Stading, J., dissenting) (asking for clarification from this Court whether the distinction, "not found in the statute, is appropriate"). However, the dissent argued that Mr. Calderon had committed three separate and distinct acts under the *Sellers* test, so he was properly convicted of three separate counts of indecent liberties. *Id.* The dissent reasoned that, in the light most favorable to the State, the defendant kissed Jocelyn outside the van, then twice inside the van "not back to back." *Id.* at 359. The six-to-seven-minute break between the kisses in the van was sufficient to make the two kisses "distinct in time, permitting defendant to employ his thought process and make a conscious decision to engage in the same act a second time." *Id.* As such, the dissent would have found that the trial court did not err by denying Mr. Calderon's motion to dismiss, instructing the jury on three counts of indecent liberties, and declining to arrest judgment on one of the three indecent liberties convictions. *Id.*

The State moved for a temporary stay and petitioned this Court for a writ of supersedeas on 19 September 2023. We allowed the temporary stay on 20 September 2023 and the writ of supersedeas on 28 September 2023. The State filed its notice of appeal based on Judge Stading's dissent on 27 September 2023. The State also filed a petition for discretionary review as to additional issues on 10 October 2023, which we allowed on 28 June 2024. Mr. Calderon filed a petition for discretionary review under N.C.G.S. § 7A-31 on 10 October 2023, which we allowed on 28 June 2024.

II. Analysis

A. Standard of Review

This Court reviews *de novo* the denial of a motion to dismiss for insufficient evidence. *State v. Tucker*, 380 N.C. 234, 236 (2022) (citing *State v. Crockett*, 368 N.C. 717, 720 (2016)). In reviewing the denial, this Court "must view the evidence in the light most favorable to the State, giving the State the benefit of all reasonable inferences." *State v. Barnes*, 334 N.C. 67, 75 (1993) (citing *State v. Benson*, 331 N.C. 537, 544 (1992)).

This Court also reviews *de novo* a trial court's decisions about jury instructions, *State v. Osorio*, 196 N.C. App. 458, 466 (2009); *see State v. Copley*, 386 N.C. 111, 119 (2024) (examining *de novo* "whether a jury

instruction correctly explains the law" (quoting *State v. Greenfield*, 275 N.C. 434, 449 (2020))), and likewise reviews *de novo* alleged double jeopardy violations, *State v. Courtney*, 372 N.C. 458, 462 (2019).

B. The Court of Appeals erred in distinguishing between touching and sexual acts as a threshold analysis under N.C.G.S. § 14-202.1(a).

[1] The indecent liberties statute does not distinguish between touching and sexual acts, so the Court of Appeals erred by applying a threshold requirement distinguishing between touching and sexual acts. The Court of Appeals said that "[a]s a threshold issue, we must consider whether the kissing in this case was a 'touching' or a 'sexual act.' . . . In indecent-liberties cases in North Carolina, our Appellate Courts have utilized a different analytical approach when considering acts of touching as opposed to sexual acts." *Calderon*, 290 N.C. App. at 351–52 (citations omitted). The Court of Appeals erroneously treated this distinction as a threshold question it must resolve before determining whether multiple inappropriate contacts were separate and distinct. *Id.* at 351–53. Instead, the same test applies to both touchings and sexual acts, and a threshold determination is not necessary.

The Court of Appeals relied on prior indecent liberties cases that applied a "different analytical approach" for sexual acts and touching. *Id.* at 352 (citing *State v. Williams*, 201 N.C. App. 161, 185 (2009)). In *Laney*, the Court of Appeals reasoned that, when the defendant touched the victim's breasts, then put his hand under her waistband, the two contacts "were part of one transaction . . . . The sole act involved was touching—not two distinct sexual acts. Furthermore, there was no gap in time between two incidents of touching, and the two acts combined were for the purpose of arousing or gratifying defendant's sexual desire." *State v. Laney*, 178 N.C. App. 337, 341 (2006) (distinguishing *Laney* from *State v. Lawrence*, 360 N.C. 368 (2006), where the defendant committed indecent liberties "during three separate and distinct encounters"). The Court of Appeals in *Calderon* improperly focused on *Laney*'s distinction between touching and sexual acts, instead of its reliance on the continuous nature of the contact.

In *State v. James*, 182 N.C. App. 698 (2007), the Court of Appeals distinguished *Laney* because the defendant had committed both an improper touching and sexual acts. *James*, 182 N.C. App. at 704–05. The Court of Appeals "note[d], however, that the *Laney* Court emphasized the sole act alleged was touching, and 'not two distinct sexual acts.' This language indicates that multiple sexual acts, even in a single encounter,

may form the basis for multiple indictments for indecent liberties." *James*, 182 N.C. App. at 705. *James* reiterated *Laney*'s disparate treatment of touching and sexual acts for multiple indecent liberties charges.

In *James* and *Laney*, the Court of Appeals established that "different analytical path[s] should be applied when dealing with 'sexual acts' as opposed to touching in the context of charges of indecent liberties." *Williams*, 201 N.C. App. at 185 (citing *James*, 182 N.C. App. at 705). If the indecent liberties involved touching, multiple contacts would support only a single indictment, while if the indecent liberties involved sexual acts, multiple contacts could support multiple indictments. Therefore, the Court of Appeals analyzed as a threshold requirement whether a contact was a touching or a sexual act.

However, the indecent liberties statute does not support such a threshold requirement or different analytical paths. When interpreting statutes, "legislative intent is the guiding star." *Fearrington v. City of Greenville*, 386 N.C. 38, 52 (2024) (quoting *Piedmont Canteen Serv., Inc. v. Johnson*, 256 N.C. 155, 161 (1962)). This intent is first determined by the plain language, "as the 'actual words of the legislature are the clearest manifestation of its intent.' " *Id.* (quoting *N.C. Dep't of Corr. v. N.C. Med. Bd.*, 363 N.C. 189, 201 (2009)). North Carolina's indecent liberties statute provides:

> A person is guilty of taking indecent liberties with children if, being 16 years of age or more and at least five years older than the child in question, he either:
>
> (1) Willfully takes or attempts to take any immoral, improper, or indecent liberties with any child of either sex under the age of 16 years for the purpose of arousing or gratifying sexual desire; or
>
> (2) Willfully commits or attempts to commit any lewd or lascivious act upon or with the body or any part or member of the body of any child of either sex under the age of 16 years.

N.C.G.S. § 14-202.1(a) (2023). The text of the statute does not distinguish between touching and sexual acts; in fact, neither are mentioned. As such, courts should not impose an atextual threshold requirement distinguishing between touching and sexual acts before analyzing whether multiple indecent liberties charges are proper.

The lack of a threshold requirement is further supported by this Court's prior holdings that a defendant need not touch the victim to be

convicted under the indecent liberties statute. *State v. Etheridge*, 319 N.C. 34, 49 (1987) ("We note first that it is not necessary that defendant touch his victim to commit an immoral, improper, or indecent liberty within the meaning of the statute."); *State v. Hartness*, 326 N.C. 561, 567 (1990) ("Nor is there any requirement that the State prove that a touching occurred."). Instead, "a variety of acts may be considered indecent" even if the perpetrator does not actually touch or commit a sexual act with the victim, as long as the liberty was taken "for the purpose of arousing or gratifying sexual desire." *Etheridge*, 319 N.C. at 49–50; *see also Hartness*, 326 N.C. at 567. This is consistent with the purpose of the indecent liberties statute, where "[t]he evil the legislature sought to prevent . . . was the defendant's performance of any immoral, improper, or indecent act in the presence of a child 'for the purpose of arousing or gratifying sexual desire.' " *Hartness*, 326 N.C. at 567. As such, "Defendant's purpose for committing such an act is the gravamen of this offense; the particular act performed is immaterial." *Id.* Neither a touching nor "a showing of intent to commit an unnatural sexual act" is required to convict a defendant under N.C.G.S. § 14-202.1(a). *Id.*

Neither a touching nor a sexual act is listed in the text of the indecent liberties statute; neither is required to convict a defendant. As such, we reject the Court of Appeals' analysis requiring a threshold inquiry of whether an alleged indecent liberty is a "touching" or a "sexual act."

C. The Court of Appeals erred by utilizing a multiplicity test under *Sellers* instead of applying *Dew*'s "distinct interruption" test.

[2] The Court of Appeals below drew on a Kansas case, *State v. Sellers*, 253 P.3d 20 (Kan. 2011), to determine whether Mr. Calderon's three convictions for indecent liberties were proper. Believing *Sellers* to be consistent with this Court's ruling in *State v. Rambert*, 341 N.C. 173 (1995), the Court of Appeals established a four-factor test "for indecent liberties offenses involving multiple, non-sexual acts":

> (1) whether the acts occur at or near the same time; (2) whether the acts occur at the same location; (3) whether there is a causal relationship between the acts, in particular whether there was an intervening event; and (4) whether there is a fresh impulse motivating some of the conduct.

Calderon, 290 N.C. App. at 354–55 (quoting *Sellers*, 253 P.3d at 28). However, the Court of Appeals did not need to apply a test specifically for "non-sexual acts," given that no distinction between touching and

sexual acts is necessary. Moreover, when a defendant is charged with multiple counts of indecent liberties, our lower courts should instead apply this Court's "distinct interruptions" test articulated in *State v. Dew*, 379 N.C. 64 (2021).

In *Dew*, the defendant alleged the trial court erred in denying his motion to dismiss several assault charges because the State presented insufficient evidence of multiple assaults. *Id.* at 68. The defendant subjected his girlfriend to "a continuous, nonstop beating" for two hours in her family's trailer. *Id.* at 65. When it ended, the defendant's girlfriend removed the sheets from their bed, cleaned the mattress cover, and put their bags into the car. *Id.* at 66, 73–74. The defendant put his daughter into the car, made his girlfriend get into the car, and began to drive home. *Id.* at 74. At that point, he began beating his girlfriend again. *Id.* The defendant was charged with five counts of assault. *Id.* at 67. The jury found the defendant guilty of three counts of assault: two from his conduct inside the trailer and one from the beating in the car. *Id.* at 68, 74. The defendant appealed, alleging "there was insufficient evidence of multiple assaults such that the trial court erred by denying [his] motion to dismiss all but one assault charge . . . ." *Id.* at 68.

The Court held that, taking the evidence in the light most favorable to the State, "there could be sufficient evidence of a distinct interruption between assault(s) in the trailer and the assault(s) in the car to submit the issue to the jury." *Id.* at 73. However, the Court also held that there was insufficient evidence to support two separate assault charges related to the beating in the trailer because "it was an ongoing, continuous attack." *Id.* at 74.

In analyzing whether the trial court properly denied the defendant's motion to dismiss, this Court articulated our "distinct interruption" test: "the State may charge a defendant with multiple counts of assault only when there is substantial evidence that a distinct interruption occurred between assaults." *Id.* at 72. The Court articulated a non-exhaustive list of examples that qualify as distinct interruptions, including "an intervening event, a lapse of time in which a reasonable person could calm down, an interruption in the momentum of the attack, a change in location, or some other clear break delineating the end of one assault and the beginning of another." *Id.* The Court also articulated factors which, without more, do not constitute distinct interruptions, including the victim suffering multiple injuries or the defendant using different methods of attack. *Id.* at 74.

Our lower state courts should use the *Dew* "distinct interruptions" test to determine whether a defendant has properly been charged with

multiple counts of indecent liberties. However, as we did in *Dew*, we decline to extend *Rambert* to indecent liberties cases. In *Rambert*, the defendant was convicted of three counts of discharging a firearm into occupied property when he fired a gun three separate times. *State v. Rambert*, 341 N.C. at 176–77. The Court held that his convictions did not violate double jeopardy because "[e]ach shot . . . required that defendant employ his thought processes each time he fired the weapon. Each act was distinct in time, and each bullet hit the vehicle in a different place." *Id.* From *Rambert*, it does not violate double jeopardy to charge a defendant with multiple counts of discharging a firearm into occupied property when the defendant fired a gun multiple times in a single incident. *Id.*

In *Dew*, the Court declined to extend *Rambert* to assault cases because the act of discharging a firearm differed from physical assaults. *Dew*, 379 N.C. at 72. We likewise decline to extend *Rambert* here because the commission of indecent liberties is more akin to assault than the discharging of a firearm. When discharging a firearm, "each distinctly fired shot is a separate discharge of a firearm" and can support separate charges. *Id.* However, for both assault and indecent liberties, each individual contact does not necessarily constitute a separate charge. In a fight, multiple punches could constitute a single assault charge or, if the State presents evidence of a distinct interruption, multiple punches could constitute multiple assault charges. *Id.* Similarly, in the context of indecent liberties, multiple inappropriate acts could constitute a single charge or multiple charges, depending on the facts of the case. Just as every punch in an assault is not necessarily a separate assault charge, so, too, do we recognize that each inappropriate act is not necessarily a separate indecent liberties charge. Therefore, the proper test to determine whether a defendant has been properly charged with multiple counts of indecent liberties is the one we explained in *Dew*: whether a distinct interruption occurred, giving the perpetrator the opportunity to reconsider his or her conduct.

D. Mr. Calderon was properly convicted of three counts of indecent liberties.

[3] Applying *Dew*'s "distinct interruption" test, the trial court did not err in denying Mr. Calderon's motion to dismiss, and the Court of Appeals erred in remanding to the trial court with instructions to arrest judgment on one of his indecent liberties convictions. Viewing the evidence in the light most favorable to the State, and drawing all inferences in its favor, a distinct interruption occurred between each of the three kisses at issue.

In *Dew*, our Court was presented with facts where, at one point in the charged assault, the State did not present evidence of a distinct interruption during a "continuous, non-stop beating" in the same location for two hours. *Dew*, 379 N.C. at 65. However, we did find sufficient evidence for another, separate charge of assault because the process of cleaning and packing after the initial beating in the trailer was "an intervening event interrupting the momentum of the attack," and the beating in the trailer was "distinct in time and location" from the second beating in the car. *Id.* at 74. This distinct interruption was "a lapse of time in which a reasonable person could calm down," giving the defendant sufficient time to consider his actions and recognize the consequences. *Id.* at 72.

In *Laney*, the defendant touched the victim's breast, then touched under her waistband. *Laney*, 178 N.C. App. at 338. The Court of Appeals held that the two touches "were part of one transaction" and that "there was no gap in time between [the] two incidents." *Id.* at 341. Accordingly, the Court of Appeals held that the trial court erred in denying the defendant's motion to dismiss because "a single act can support only one conviction." *Id.* (quoting *State v. Jones*, 172 N.C. App. 308, 315 (2005)).

Mr. Calderon was convicted of three counts of taking indecent liberties with a child for three kisses: (1) on Jocelyn's neck outside the van, (2) on the mouth inside the van, and (3) on the mouth inside the van six to seven minutes after the first kiss in the van. The Court of Appeals incorrectly concluded that the two kisses inside the van were a continuous act and thus should not have been charged separately. *Calderon*, 290 N.C. at 356. However, the six-to-seven-minute break between the kisses, in which Mr. Calderon was "joking around, talking, laughing" and cuddling with Jocelyn was a sufficiently distinct interruption to support separate charges. The two kisses in the van were more similar to *Dew*'s two separate assaults, first in the trailer and then in the car, than the "continuous, non-stop" initial assault in the trailer in *Dew* or the "one transaction" in *Laney*. The kisses were "not back to back." Instead, about six to seven minutes elapsed between each kiss, during which Mr. Calderon had the opportunity to reconsider and choose not to reoffend. Because this is a fact-specific inquiry, we decline to draw a brightline rule in deciding when an interruption creates enough time for a perpetrator to reconsider, thus creating a distinct interruption. On these facts, six to seven minutes sufficed to create an adequate disruption to support two separate charges. The three kisses were sufficiently distinct to support three convictions.

As such, the trial court did not err in denying Mr. Calderon's motion to dismiss the charges. Because the three separate kisses could support three separate charges, Mr. Calderon's double jeopardy rights were not violated because he committed, and was properly convicted of, three distinct acts of taking indecent liberties with a child. The trial court did not violate Mr. Calderon's double jeopardy rights or err in instructing the jury on three counts of taking indecent liberties with a child.

III. Conclusion

The trial court properly found that Mr. Calderon committed three separate indecent liberties when he kissed Jocelyn three times, and there was no error in Mr. Calderon's conviction. Thus, we reverse the Court of Appeals' decision.

REVERSED.

STATE OF NORTH CAROLINA
v.
SCOTT EVERETT FORD

No. 31A24

Filed 12 December 2025

1. Obstruction of Justice—motion to dismiss—existence of a business practice not a bar to obstruction—success of obstruction not an element

In a prosecution for felony obstruction of justice and felony cruelty to animals arising from defendant driving a work truck into a baby stroller containing a pedestrian's cat, the Court of Appeals properly affirmed the trial court's denial of defendant's motion to dismiss the obstruction charge (arising from the destruction of a physical copy of the schedule identifying who was driving each work truck at defendant's business on the date of the offense). The evidence was substantial, including that: (1) the existence of a business practice—such as routinely discarding old daily schedules—did not foreclose the possibility of obstruction of justice; (2) defendant initially told investigators that no such schedule existed and that he did not know who drove the truck involved; (3) defendant had access to the daily schedules; and (4) when served with a search warrant, defendant showed investigators a bin containing

a week's worth of discarded schedules, missing only the date sought. Further, the fact that defendant's destruction of the physical schedule did not impair the investigation—because investigators discovered a digital copy on defendant's cellphone—was irrelevant since success of obstruction is not an element of the offense.

2. Animals—cruelty to animals—felony offense—knowledge element—circumstantial evidence sufficient

In an appeal from defendant's conviction of felony cruelty to animals arising from defendant driving his truck into a baby stroller containing a pedestrian's cat, the Court of Appeals misstated the knowledge element of the offense—applying a "knew or should have known" standard, while the relevant statute required actual knowledge. Notwithstanding that error, the lower appellate court reached the correct result because the evidence presented, taken in the light most favorable to the State, was sufficient for the jury to reasonably infer that defendant actually knew the cat was in the stroller when he struck it with his truck: the pedestrian was known in the community as "Cat Man" and was often seen with his cat in the stroller; defendant had repeated interactions with the pedestrian; defendant's front-seat passenger saw the cat before the collision; and defendant was observed driving straight toward the stroller looking angry. Accordingly, the Supreme Court clarified, modified, and affirmed the Court of Appeals' opinion on the animal cruelty charge.

Justice BERGER concurring.

Appeal pursuant to N.C.G.S. § 7A-30(2) (2023) from the unpublished decision of a divided panel of the Court of Appeals, 292 N.C. App. 111, 2024 WL 16286, affirming judgments entered on 1 July 2022 by Judge Alan Z. Thornburg in Superior Court, Buncombe County. On 16 October 2024, the Supreme Court allowed defendant's petition for discretionary review of an additional issue. Heard in the Supreme Court on 11 February 2025.

Devereux & Banzhoff, PLLC, by Andrew B. Banzhoff, for defendant-appellant.

Jeff Jackson, Attorney General, by Brenda Menard, Special Deputy Attorney General, for the State-appellee.

RIGGS, Justice.

In this matter, we examine whether the Court of Appeals properly affirmed the trial court's denial of defendant Scott Everett Ford's motions to dismiss two charges brought against him: felony obstruction of justice and felony cruelty to animals. The dissent below argued that the trial court erred in failing to dismiss the felony obstruction of justice charge. *State v. Ford*, 2024 WL 16286, at *10 (Carpenter, J., dissenting in part). In addition, Mr. Ford argues that the Court of Appeals erred by applying a "should have known" standard rather than an actual knowledge standard in analyzing the trial court's denial of his motions to dismiss the felony cruelty to animals charge.

For the reasons stated below, we modify the Court of Appeals' decision to clarify that N.C.G.S. § 14-360, the statute that establishes the felony cruelty to animals offense, requires actual knowledge of the presence of an animal and not merely that the defendant "should have known" of the animal's presence. Thus, to survive a motion to dismiss, the State must present evidence that supports a reasonable inference of the defendant's actual knowledge of the animal. We otherwise affirm the Court of Appeals' holdings that the trial court did not err in denying Mr. Ford's motions to dismiss the above charges.

I. Factual and Procedural Background

Defendant Scott Everett Ford owns Classic Event Rental, which "set[s] up tents, tables, [and] chairs" ahead of events like weddings and festivals. The company has operated in the Asheville region for roughly twenty-one years. Mr. Ford employs about seventy people and has a fleet of sixteen to twenty trucks.

On Monday, 17 May 2021, Mr. Ford was driving one of Classic Event Rental's white Ford F-150s back from a job in Waynesville. Kelby Manos, one of his employees, was riding in the front passenger seat. Between 4:00 and 5:00 p.m., Mr. Ford stopped at the intersection near Exit 44 off I-40.

Claude "Alex" McPherson, an unhoused individual, regularly panhandled at that spot. Mr. McPherson had a cat named Thomas. Thomas was always either on Mr. McPherson's shoulder or inside a stroller that had been given to Mr. McPherson in January 2021. The evidence at the trial court tended to show that Thomas was "a very popular character" around Asheville, with Mr. McPherson being widely known as the "Cat Man" because of Thomas.

Mr. Ford testified at trial that Mr. McPherson "mess[ed] with [him] every time [he went] through" the intersection near Exit 44. Because of this history, when he stopped at that intersection on 17 May 2021, Mr. Ford "decided to harass" Mr. McPherson and "flicked a golf ball" at him. Mr. McPherson then picked up the golf ball, and Mr. Ford—allegedly afraid that Mr. McPherson was going to break his windshield with the golf ball—drove onto the grassy lot where Mr. McPherson was and hit the stroller with Thomas inside. Mr. Manos—Mr. Ford's frontseat passenger—testified that, during the incident, he was not initially paying attention but that "the next thing I know I seen I was in a field," that he then saw "the kitty kitty," and that Mr. Ford "hit a cat stroller." Mr. Ford then drove the rest of the way back to Classic Event Rental.

Madison Stewart and Joseph Schlenk—both of whom were familiar with Mr. McPherson and Thomas—witnessed these events. Ms. Stewart filmed part of the incident. At trial, Mr. Schlenk recalled that Mr. Ford "looked really upset, mad, grimacing" as he "went straight for" Thomas's stroller.

Right after the collision, Mr. Schlenk called 911. Before Mr. Schlenk even mentioned Thomas, the dispatcher asked, "[H]ow's the cat?" Thomas was physically unharmed but was "screaming bloody murder" and shaking. Afterward, Thomas would not willingly get in the stroller and was less friendly to strangers.

Sometime after 5:00 p.m. that same day, Officer Rebecca Williams of the Asheville Police Department called Mr. Ford and described to him both the incident and the perpetrator. Mr. Ford replied, "That doesn't sound right." When Officer Williams asked Mr. Ford "if he was going to be able to find out who was driving" the truck, he said that he "was trying his best."

The next day, Asheville police officers went to Classic Event Rental and asked for documentation to identify which employee was driving the truck involved in the collision. Mr. Ford denied that Classic Event Rental recorded that information. He also said that he "had no clue" who was driving the particular F-150, explaining that his company has so many employees that they "throw keys and tell them to go."

On 21 May 2021, Detective Adam Roach and other Asheville police officers returned to Classic Event Rental with a search warrant. Detective Roach gave Mr. Ford "one last chance" to provide "some kind of documentation" on the driver of the vehicle. Mr. Ford then led Asheville police to the "podium" at the back of Classic Event Rental's

warehouse. There, the company posted spreadsheets of each day's work assignments, which included columns assigning employees and trucks.

Mr. Ford testified that the spreadsheets eventually "go in the [warehouse] recycling bin," although they sometimes "end up in the trash can." At some unspecified time, a third-party company shreds all documents. Asheville police watched Mr. Ford go through the contents of the warehouse recycling bin, where he found "every day except for the day in question." That is, the warehouse recycling bin contained spreadsheets for the 15th, 16th, and from "the 18th on," but the spreadsheet for May 17, which Detective Roach originally requested on May 18, was missing.

As part of the search, Asheville police also seized Mr. Ford's cellphone and examined its contents. They found a digital copy of the May 17 schedule, which had the name "Mo" and "F-150" in the relevant columns.[1] The spreadsheet also had Mr. Ford's handwriting on it, which he identified at trial. The spreadsheet did not, however, contain a VIN or tag number for the assigned "F-150."

Caleb Anglin—Classic Event Rental's head of human resources—testified that he often "worked the podium" (i.e., made assignments) but that Mr. Ford "occasionally" performed that task. Mr. Anglin also testified that whoever worked the podium usually "t[ook] a picture of the spreadsheet" and uploaded it to a messaging app called Voxer.

Mr. Ford was charged with felony obstruction of justice and felony cruelty to animals, as well as related offenses not relevant to this appeal. On 7 January 2022, Mr. Ford filed a motion asking, in relevant part, for the State "to prepare and file a Bill of Particulars" to "identify the specific acts which [the State] alleges constitute 'disposal' of these documents and/or information [by Mr. Ford to obstruct justice]." The trial court granted the motion, and the State prepared and filed a bill of particulars on 7 April 2022 clarifying "[t]hat the 'documentation and information' recited in the Indictment . . . is the document attached as Exhibit A, seized from a search of Defendant's phone pursuant to a search warrant" and that the document "was 'disposed' of by way of making it not available to officers who were executing a search warrant seeking said documentation and information."

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1. From the trial transcript, it appears that "Mo" was the nickname for an employee named Maurice Honeycutt. Law enforcement ultimately determined that Mo was not the driver. Rather, Mr. Ford was found to be the driver of the F-150 involved in the collision on the day in question.

At trial, Mr. Ford denied intentionally disposing of the physical copy of the May 17 schedule. He also testified that he forgot that he had taken a picture of it. Lastly, Mr. Ford stated that he did not know that Mr. McPherson was the "Cat Man" or that Thomas was in the stroller when he hit it.

Mr. Ford moved twice for the trial court to dismiss the charges against him. The trial court denied the motions both times. On 1 July 2022, a jury found Mr. Ford guilty of both felony obstruction of justice and felony cruelty to animals, as well as other offenses not at issue here. He received consecutive split sentences of four months of imprisonment and twenty-four months of supervised probation. Mr. Ford orally appealed in open court.

On 2 January 2024, the Court of Appeals issued its opinion in a divided decision, finding no error as to the trial court's rulings on Mr. Ford's motions to dismiss. *Ford*, 2024 WL 16286, at *9–10. Regarding the obstruction of justice charge, the Court of Appeals agreed with the trial court that the evidence was sufficient for the charge to be submitted to the jury because the evidence "*could* support a reasonable inference by the jury that the defendant deliberately destroyed a document to subvert an adverse party's investigation." *Id.* at *9 (cleaned up). As to the felony cruelty to animals charge, the majority concluded that the evidence "was sufficient such that 'a reasonable mind might accept [it] as adequate to support [the] conclusion' that defendant knew or should have known that McPherson had the cat with him in the carriage." *Id.* at *6 (quoting *State v. Miller*, 363 N.C. 96, 99 (2009)).[2]

The dissent argued that the trial court erred in not dismissing the charge of felony obstruction of justice. *Id.* at *10 (Carpenter, J., dissenting in part). Specifically, the dissent would have held that dismissal of the charge would be proper based on the lack of any legal obligation for Mr. Ford to retain the spreadsheet in question. The dissent emphasized the disposal of the spreadsheet "was consistent with his regular business practice" and "law enforcement [actually] obtained a copy of the spreadsheet while executing the first and only search warrant appearing in the record." *Id.*

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2. The Court of Appeals also addressed an additional issue regarding special jury instructions. Mr. Ford argued that the trial court erred by denying his request for a jury instruction incorporating the common law definition of torture into the pattern jury instructions for the offense of animal cruelty. *Ford,* 2024 WL 16286, at *7. The Court of Appeals rejected Mr. Ford's argument and held that the specific definition of torture provided by the animal cruelty statute controls. *Id.* That issue is not before us on appeal here.

Mr. Ford appealed pursuant to N.C.G.S. § 7A-30(2) based on the dissent's arguments that the obstruction of justice charge should have been dismissed.[3] This Court further allowed discretionary review pursuant to N.C.G.S. § 7A-31 on the felony cruelty to animals charge on the issue of whether the requirement in N.C.G.S. § 14-360(b) that a defendant act "intentionally" and "knowingly" required the State to prove actual information or knowledge of the presence of an animal.

More specifically, Mr. Ford argues to this Court that the Court of Appeals erred by concluding that Mr. Ford obstructed justice by "disposing" of a document when that document was electronically retained pursuant to the company's standard procedures and was retrieved electronically by law enforcement. He further argues that the Court of Appeals erred by failing to apply the proper standard in evaluating the sufficiency of the evidence for the felony cruelty to animals charge because that court's use of the "should have known" standard is inconsistent with the requirement that the State prove the defendant acted "intentionally" and "knowingly."

For the reasons set forth below, we affirm the Court of Appeals' decision in that the Court of Appeals did not err in concluding that the State presented substantial evidence of both charges. Nonetheless, while we agree with the Court of Appeals' result, we disagree with the Court of Appeals' analysis regarding the felony cruelty to animals charge and modify it as addressed below. While the Court of Appeals erred in its invocation of the "should have known" language in its analysis, the State's evidence was sufficient to support a reasonable inference that Mr. Ford had actual knowledge that Thomas the cat was in the stroller at the time of the incident.

II. Analysis

A. Standard of Review

Both issues in this matter stem from the trial court's denial of Mr. Ford's motions to dismiss the obstruction of justice and cruelty to animals charges. "Whether the State presented substantial evidence of each essential element of the offense[s] is a question of law; therefore, we review the denial of a motion to dismiss de novo." *State v. Chekanow*, 370 N.C. 488, 492 (2018) (quoting *State v. Crockett*, 368 N.C. 717, 720 (2016)).

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3. N.C.G.S. § 7A-30(2) (2023) provided a right of appeal when there is a dissent at the Court of Appeals and was repealed by the Current Operations Appropriations Act of 2023, S.L. 2023-134, § 16.21(d), 2023 N.C. Sess. Laws 760, 1171. The right of appeal based on a dissent was still in effect at the time Mr. Ford's notice of appeal was filed.

In ruling on a motion to dismiss, the trial court's task is to decide "whether there is substantial evidence (1) of each essential element of the offense charged . . . and (2) of [the] defendant[ ] being the perpetrator of such offense." *State v. Powell*, 299 N.C. 95, 98 (1980). The evidence is "substantial" if it is "relevant and adequate to convince a reasonable mind to accept a conclusion." *State v. Parker*, 354 N.C. 268, 278 (2001). But if the evidence merely raises "a suspicion or conjecture," the trial court must grant the motion to dismiss. *State v. Malloy*, 309 N.C. 176, 179 (1983). What matters is the sufficiency, not the weight, of the evidence presented. *State v. Fritsch*, 351 N.C. 373, 379 (2000).

In deciding whether the evidence presented is substantial, the trial court must view the evidence "in the light most favorable to the State, giving the State the benefit of all reasonable inferences in the State's favor." *Id.* at 378–79 (citing *State v. Benson*, 331 N.C. 537, 544 (1992)). Any contradictions or conflicts in the evidence must be resolved in the State's favor. *Miller*, 363 N.C. at 98.

As long as the evidence presented ultimately supports a reasonable inference of the defendant's guilt, the trial court should deny the motion to dismiss, regardless of whether the evidence also permits a reasonable inference of the defendant's innocence. *State v. Butler*, 356 N.C. 141, 145 (2002). This standard applies even when the evidence presented is mostly or totally circumstantial. *Fritsch*, 351 N.C. at 379.

B. The Motions to Dismiss the Obstruction of Justice Charge

[1] The Court of Appeals held that the trial court did not err in finding that the State had presented sufficient evidence of the destruction of the May 17 schedule to send the charge of felony obstruction of justice to the jury. *Ford*, 2024 WL 16286, at *7, 9. Mr. Ford, in agreement with the dissent, contends on appeal that the Court of Appeals erred by concluding that the State had presented sufficient evidence for the trial court to submit this charge to the jury. Mr. Ford contends that the Court of Appeals erred on that grounds that (1) schedules were routinely discarded in the normal course of business and (2) the schedule was successfully retrieved by law enforcement—arguing essentially that the May 17 schedule was not "disposed of" within the meaning of the statute. We disagree with Mr. Ford and affirm the Court of Appeals' decision.

Common-law obstruction of justice "take[s] a variety of forms." *In re Kivett*, 309 N.C. 635, 670 (1983) (quoting 67 C.J.S. *Obstructing Justice* §§ 1–2 (1978)). Most often, however, this Court has defined the offense as "any act which prevents, obstructs, impedes or hinders public or legal justice." *State v. Bradsher*, 382 N.C. 656, 659 (2022) (quoting *Kivett*, 309

N.C. at 670). When "done with deceit and intent to defraud," obstruction of justice is a felony. *Id.* (quoting N.C.G.S. § 14-3(b) (2021) (governing "Punishment of misdemeanors, infamous offenses, offenses committed in secrecy and malice, or with deceit and intent to defraud, or with ethnic animosity")); *see also State v. Ditenhafer*, 373 N.C. 116, 128 (2019).

An obstruction charge addresses "direct or indirect opposition or resistance to [an officer's] lawful discharge of his official duty." *State v. Estes*, 185 N.C. 752, 755 (1923); *see also Obstruction*, *Black's Law Dictionary* (12th ed. 2024) (defining "obstruction" as "the act of impeding or hindering something"). Disposal—that is, destruction—of a document sought by law enforcement can certainly constitute obstruction of justice. *See Henry v. Deen*, 310 N.C. 75, 87 (1984) (acknowledging that the plaintiff's allegations that the defendants acted to destroy or conceal certain records "if found to have occurred, would be acts which . . . would amount to the common law offense of obstructing public justice"). However, "success" is not an element of the offense. *See*, *e.g.*, *Kivett*, 309 N.C. at 670 ("[T]he *attempt* to prevent the convening of the grand jury would support a charge of common law obstruction of justice." (emphasis added)); *Henry*, 310 N.C. at 88 (finding obstruction "[w]here . . . a party deliberately destroys, alters or creates a false document to subvert an adverse party's investigation" without a requirement that the party succeed in doing so).

i. Existence of a business practice does not foreclose the possibility of obstruction of justice.

Mr. Ford argues that he was charged with "disposing" of a document that was routinely discarded in the normal course of business. In doing so, Mr. Ford asserts that the obstruction of justice charge requires evidence of *intentional* obstruction. He argues that here, the State presented evidence that only supports an inference of Mr. Ford's adherence to a regular business practice that was not limited by any law or regulation requiring retention.

This argument lacks merit because the existence of a regular business practice of disposing of the spreadsheets does not foreclose the possibility that Mr. Ford intentionally obstructed justice by destroying the document or hindering its discovery. *See Butler*, 356 N.C. at 145 (noting that when the evidence supports an inference of guilt, the motion to dismiss should be denied even if the evidence also permits a reasonable inference of innocence). The evidence offered by the State tends to show that, even if the physical copy of the May 17 schedule was discarded via a regular business practice, the copy would still be accessible as long as

it remained in the warehouse recycling bin. Asheville police managed to recover schedules for "every single day [of the target week] consecutively except for May 17th." Thus, the fact that Classic Event Rental had a regular business practice of disposing of the physical schedules does not, in and of itself, explain why only the physical copy of the May 17 schedule was missing when law enforcement initially requested the documentation and then physically searched for it. That the recycling bin contained spreadsheets for "the 18th on" supports an inference that someone disposed of the physical copy of the May 17 schedule *irregularly*—that is, that someone took additional, atypical steps to prevent Asheville police officers from obtaining a document they otherwise would have found in searching the warehouse recycling bin.

Furthermore, the State offered compelling circumstantial evidence that could support an inference that Mr. Ford disposed of the May 17 schedule in an effort to obstruct police efforts. Notably, Mr. Ford worked the podium on that date and thus had access to the physical copy of that schedule. Asheville police asked Mr. Ford about documentation of employee use of company trucks and he misled them by denying that such records existed, insisting that he "had no clue" who was driving the truck and had so many employees that he just "thr[e]w keys and t[old] them to go." When presented with a search warrant, Mr. Ford led law enforcement to the warehouse recycling bin, and police found that the bin contained spreadsheets for "every single day consecutively except for May 17th." Finally, Mr. Ford knew, and eyewitness testimony supports, that Mr. Ford was the driver who hit the stroller.

Therefore, when taken together and viewed in the light most favorable to the State, these facts support several reasonable inferences. From the evidence, a jury could reasonably infer that someone intentionally removed the physical copy of the May 17 schedule from the recycling bin, given that the bin contained spreadsheets for every other day of that week. A jury could further reasonably infer from the State's evidence that Mr. Ford, the driver of the vehicle in the collision, was the party that actually removed the May 17 schedule shortly before or during law enforcement's investigation. Thus, the State presented substantial evidence to support a conclusion that Mr. Ford disposed of the physical copy of the May 17 schedule irregularly to obstruct law enforcement's investigation of the collision in which he hit the stroller.

ii. The success of a defendant's obstruction of justice efforts is not an element of the offense.

Mr. Ford also contends that the Court of Appeals erred in affirming the trial court's denial of his motion to dismiss the obstruction of justice

charge because the May 17 schedule was found by law enforcement. He contends that the Court of Appeals' decision conflicts with the rule that common-law obstruction of justice requires that the act be done to "impair the verity or availability" of evidence at judicial proceedings for which he relies primarily on *State v. Eastman*, 113 N.C. App. 347, 353 (1994) for this argument.[4] Mr. Ford argues he cannot be guilty of obstruction because there was no impairment of the verity or availability of the May 17 schedule, given that a digital copy of the May 17 schedule was in fact found by law enforcement and admitted into evidence at trial. We disagree with Mr. Ford's interpretation that total effective obstruction of the availability of a document is necessary to support an obstruction of justice charge.

Mr. Ford's narrow reading of *Eastman*'s language is not consistent with this Court's recitation of the elements of obstruction of justice in other cases. This Court has defined the offense as "any act which prevents, obstructs, impedes or hinders public or legal justice." *Bradsher*, 382 N.C. at 659 (quoting *Kivett*, 309 N.C. at 670). A plain reading of that definition is that obstruction of justice merely requires a showing that a defendant acts to stymie law enforcement's progress or otherwise stall an investigation of a matter. The success of a defendant's obstruction efforts is not an element of the offense. *See*, *e.g.*, *Kivett*, 309 N.C. at 670. For example, in *Kivett*, the Judicial Standards Commission investigated a superior court judge, Charles Kivett, for his unethical relationship with a local bail bondsman. *Id.* at 639–40. Worried that the district attorney "was going to present a bill of indictment" against him, Kivett implored a colleague, Judge Albright, "to enter a restraining order to prevent the grand jury from convening." *Id.* at 642. Judge Albright refused and promptly informed the Administrative Office of the Courts of the conversation. *Id.* On appeal, this Court concluded that the evidence of Kivett's solicitation of interference "clearly and convincingly prove[d] an attempt . . . to obstruct justice" and therefore "would support a charge of common-law obstruction of justice." *Id.* at 670.

In sum, viewed in the light most favorable to the State, the evidence here supports a reasonable inference that Mr. Ford disposed of

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4. Mr. Ford only appears to cite to *Eastman* because of the quotation included above and the fact that the documents in *Eastman* were completely destroyed. *See Eastman*, 113 N.C. App. at 353. The common-law obstruction of justice issue in *Eastman*, however, was different from the one presented here. In *Eastman*, the court acknowledged the destruction of the documents in question but was only concerned with the issue of whether the defendant had the specific intent to impede a criminal investigation. *Id.* at 353.

the physical copy of the May 17 schedule irregularly to obstruct law enforcement's investigation. While officers eventually recovered a digital copy of the May 17 schedule, the act of making the physical copy unavailable is sufficient to support the charge. The defendant in *Kivett* did not succeed in his obstruction, but the evidence of his efforts was enough to support the obstruction of justice charge. The same result must follow here.

C. The Motions to Dismiss the Cruelty to Animals Charge

[2] The Court of Appeals held that the State presented sufficient evidence for the trial court to submit the felony cruelty to animals charge to the jury. *Ford*, 2024 WL 16286, at *3, *6. In doing so, the Court of Appeals misstated that the evidence "was sufficient such that 'a reasonable mind might accept [it] as adequate to support [the] conclusion' that defendant *knew or should have known* that McPherson had the cat with him in the carriage." *Id.* at *6 (emphasis added) (quoting *Miller*, 363 N.C. at 99). Mr. Ford contends on appeal that the Court of Appeals erred by applying the wrong standard to the "intent" element of the cruelty to animals charge.

For reasons set forth below, we agree with Mr. Ford that the Court of Appeals erred in using "should have known" language because the statute requires actual knowledge. *See* N.C.G.S. § 14-360(b)–(c) (2023) (requiring that a defendant acted "maliciously," thus "intentionally" and "knowingly"). Notwithstanding that misstatement, the Court of Appeals' ultimate conclusion is still correct because the State presented sufficient evidence for the jury to reasonably infer that Mr. Ford actually knew Thomas was in the stroller at the time of the incident. Thus, while we affirm the Court of Appeals' conclusion that the State presented sufficient evidence of this charge, we modify the Court of Appeals' decision to clarify that actual knowledge is required to meet the "intent" element of N.C.G.S. § 14-360(b).

Under N.C.G.S. § 14-360(b), a person is guilty of felony cruelty to animals if he "shall maliciously torture, mutilate, maim, cruelly beat, disfigure, poison, or kill . . . any animal." "[M]aliciously" means "an act committed intentionally and with malice or bad motive." N.C.G.S. § 14-360(c). In turn, "intentionally" means "committed knowingly and without justifiable excuse." *Id.* Because malice and intent are seldom proved with direct evidence, both are "ordinarily proven by circumstantial evidence from which [they] may be inferred." *State v. Sexton*, 357 N.C. 235, 238 (2003). As commonly defined, "knowingly" entails actual knowledge. *See State v. Hightower*, 187 N.C. 300, 308–09 (1924)

("[W]hen it is said a person has knowledge of a given condition, it is meant that his relation to it, his association with it, his control over it, and his direction of it are such as to give him *actual information* concerning it." (emphasis added)). As such, the Court of Appeals erred in using the phrase "should have known" because, under N.C.G.S. § 14-360(b), the State needed to present substantial evidence that Mr. Ford had *actual knowledge* that Thomas was in the stroller at the time of the incident.

But while the Court of Appeals erred in its language, the Court of Appeals did not err in holding that the trial court properly denied Mr. Ford's motions to dismiss. The State presented substantial evidence in the form of circumstantial evidence that Mr. Ford knew that Thomas was in the stroller when he hit it with Classic Event Rental's truck. Thus, for purposes of the motion to dismiss stage, the State presented sufficient evidence of the "intent" element of the charge of felony cruelty to animals.

The State's circumstantial evidence, from Mr. Ford's own testimony to the testimony of other witnesses, supports an inference that Mr. Ford had actual knowledge of Thomas's whereabouts at the time of the incident. The State's evidence indicates that Mr. Ford owned and operated Classic Event Rental in Asheville for over twenty years. The State's evidence further suggests that Mr. McPherson had a community-wide reputation as the "Cat Man," with Thomas usually either on his shoulder or in the stroller. Finally, the State established that Mr. Ford and Mr. McPherson had repeated interactions, with Mr. Ford testifying that "[y]ou mess with me every time I go through [the intersection] asking for money, whatever it might be." Turning to the day of the incident, Mr. Ford testified at trial that he could not say exactly when he learned about the cat and that he did not know that there was a cat in the stroller. But, Mr. Manos, Mr. Ford's front-seat passenger, testified that he was not initially paying attention but when he looked up he saw "the kitty kitty." Moreover, Mr. Schlenk, an eyewitness to the incident, testified that Mr. Ford "looked really upset, mad, grimacing" and "went straight for the baby carriage."

Considered together, and viewing the evidence in the light most favorable to the State, the evidence supports a reasonable inference that Mr. Ford knew and bore animus toward Mr. McPherson and, based on this relationship, knew of Thomas, given that Thomas was frequently with Mr. McPherson. The evidence also supports the inference that Thomas was plainly visible to Mr. Ford during the incident given Thomas's plain visibility to Mr. Manos as a passenger in the same vehicle. The State's evidence supports the reasonable inferences that Mr. Ford had a lengthy

and adversarial relationship with Mr. McPherson, and that, on the day in question, Mr. Ford intended to hit Mr. McPherson's stroller, and he did so knowing that Thomas was in it. Therefore, the State presented sufficient evidence of the elements of the felony cruelty to animals offense, and we affirm the Court of Appeals' conclusion that the trial court did not err in denying Mr. Ford's motions to dismiss this charge.

Mr. Ford argues that the State is misusing "information known to other witnesses" to "imply that Mr. Ford should have seen [Thomas]." That assertion is misguided because, while Mr. McPherson's and Thomas's widespread community recognition made it more likely that Mr. Ford knew that Thomas was in the stroller, as discussed above, the State's evidence was more encompassing than just the common knowledge of Thomas in the community. In particular, when viewed in the light most favorable to the State, the evidence that the cat was always with Mr. McPherson, that Mr. Manos saw the cat on the day in question, and that Mr. Ford testified that he had repeated irritating and direct interactions with Mr. McPherson at that particular intersection can reasonably support an inference that Mr. Ford knew the cat was in the stroller when he struck it.

In sum, we clarify that the State was required to present evidence of Mr. Ford's actual knowledge of Thomas's presence in accord with N.C.G.S. § 14-360(b), and, despite the Court of Appeals' use of language indicating a different standard, the State did provide sufficient evidence that Mr. Ford actually knew of Thomas's presence at the time of the incident. Thus, we affirm the Court of Appeals' holding as modified herein.

III. Conclusion

We affirm the Court of Appeals' ultimate conclusions that the State presented sufficient evidence of both charges to withstand motions to dismiss; however, while we agree with those conclusions, we clarify and modify the Court of Appeals' sufficiency of the evidence analysis relating to the felony cruelty to animals charge.

MODIFIED AND AFFIRMED.

Justice BERGER concurring.

I concur with the majority but write separately to clarify the burden required of the State to survive a motion to dismiss for insufficient evidence. This has apparently been the source of some confusion recently

given exchanges on the subject in recent oral arguments and as highlighted by this opinion.

When ruling on a motion to dismiss, the trial court must determine whether the State presented sufficient evidence for jury consideration. "If there is more than a scintilla of competent evidence to support the allegations in the warrant or indictment, it is the court's duty to submit the case to the jury." *State v. Horner*, 248 N.C. 342, 344–45 (1958). At this stage, the evidence is viewed in the light most favorable to the State, and it is entitled to every reasonable inference which can be drawn from that evidence. *State v. Barnes*, 334 N.C. 67, 75 (1993). "Contradictions or conflicts in the evidence are resolved in favor of the State, and evidence unfavorable to the State is not considered." *State v. Miller*, 363 N.C. 96, 98 (2009) (citations omitted). In other words, the "more than a scintilla of evidence" standard is not a high bar.

But word choice can control outcomes, and shifting the vocabulary may alter interpretation. Our case law has also stated that the burden on the State to survive a motion to dismiss is the production of "substantial evidence." *See State v. Scott*, 356 N.C. 591, 597–98 (2002). A casual reader of the law might reasonably think that this is a higher bar.

But "[s]ubstantial evidence means 'more than a scintilla of evidence.' " *State v. Beck*, 385 N.C. 435, 438 (2023) (quoting *State v. Powell*, 299 N.C. 95, 99 (1980)); *see also State v. Gillard*, 386 N.C. 797, 832 (2024) ("The terms 'more than a scintilla of evidence' and 'substantial evidence' are in reality the same . . . ." (quoting *State v. Earnhardt*, 307 N.C. 62, 66 (1982))); *State v. Dover*, 381 N.C. 535, 547 (2022) ("Substantial evidence only requires 'more than a scintilla of evidence . . . .' " (quoting *Earnhardt*, 307 N.C. at 66)).

Even though these two phrases are synonymous, the "more than a scintilla of evidence" standard is probably the more accurate framing given the low bar. Practitioners and judges alike should be mindful that, regardless of which phrase is used, the burden on the State remains the same.

Although this is a recurring issue which I will certainly address again, I will not belabor the point every time it comes up. Yes, we should insist on a consistent articulation of the standard, but there is no need to use more toner and ink on something that should already be clear.

STATE OF NORTH CAROLINA
v.
JAMES RYAN KELLIHER

No. 442PA20-2

Filed 12 December 2025

Sentencing—resentencing of murder convictions—scope of mandate on remand—discretion regarding ancillary convictions not limited

In a first-degree murder case in which the Supreme Court vacated defendant's sentence of two consecutive terms of life with parole (for two first-degree murders he committed as a juvenile) as unconstitutional, the trial court did not exceed its authority on remand when, after complying with the Supreme Court's mandate to resentence defendant to two concurrent sentences of life with parole for the murders, the trial court decided to have defendant's ancillary convictions (for robbery with a dangerous weapon, which were not addressed in the higher court's mandate) run consecutive to the murder convictions. Pursuant to N.C.G.S. § 15A-1354(a), a sentencing court has discretion to run multiple sentences either concurrently or consecutively and the mandate on remand did not divest the trial court of its de novo sentencing authority. Further, defendant's sentence did not offend the higher court's determination that a sentence requiring a juvenile defendant to serve more than forty years constituted a de facto sentence of life without parole.

On discretionary review pursuant to N.C.G.S. § 7A-31 of a unanimous, unpublished decision of the Court of Appeals, No. COA23-691 (N.C. Ct. App. May 7, 2024), vacating judgments entered on 31 March 2023 by Judge James F. Ammons Jr. in Superior Court, Cumberland County, and remanding the case. Heard in the Supreme Court on 15 April 2025.

Jeff Jackson, *Attorney General*, *by Heidi M. Williams*, *Special Deputy Attorney General*, *for the State-appellant.*

Glenn Gerding, *Appellate Defender*, *by Kathryn L. VandenBerg*, *Assistant Appellate Defender*, *for defendant-appellee.*

BERGER, Justice.

In *Kelliher I*, a majority of this Court held that sentencing a juvenile murderer to two consecutive terms of life with parole violates the Eighth Amendment to the United States Constitution and Article I, Section 27 of the North Carolina Constitution. *See State v. Kelliher* (*Kelliher I*), 381 N.C. 558, 577–78, 597 (2022). This Court remanded for resentencing with "instructions to enter two concurrent sentences of life with parole." *Id.* Now, defendant challenges the resentencing court's exercise of its discretion to run his ancillary convictions for robbery with a dangerous weapon consecutive to the two sentences of life with parole for the murders. The Court of Appeals agreed with defendant. We reverse.

I. Factual and Procedural Background

This is defendant's second appeal before this Court stemming from the August 2001 murders of Eric Carpenter and his pregnant girlfriend, Kelsea Helton.[1] The seventeen-year-old defendant was charged with two counts of first-degree murder, two counts of robbery with a dangerous weapon, and one count of conspiracy to commit robbery with a dangerous weapon. On 1 March 2004, defendant pled guilty to all charges and was sentenced to two consecutive sentences of life without parole for the first-degree murder convictions and concurrent sentences of sixty-four to eighty-six months for the robbery convictions and twenty-five to thirty-nine months for the conspiracy conviction.

On 27 June 2013, defendant filed a motion for appropriate relief seeking resentencing after the Supreme Court of the United States held that mandatory sentences of life imprisonment without parole for defendants who were juveniles at the time of their crime violate the Eighth Amendment to the federal Constitution. *See Miller v. Alabama*, 567 U.S. 460, 465 (2012). Defendant's MAR was initially denied due to the trial court's uncertainty about *Miller*'s retroactive effect. But following this Court's confirmation of *Miller*'s retroactive applicability, *see, e.g.*, *State v. Young*, 369 N.C. 118, 123 (2016), the Court of Appeals reversed the trial court's order and remanded for resentencing pursuant to the General Assembly's *Miller*-fix statute, codified at N.C.G.S. §§ 15A-1340.19A to 1340.19D. On remand, defendant received two consecutive sentences of life with the possibility of parole. Pursuant to those sentences, defendant faced a minimum of fifty years in prison. *See* N.C.G.S. § 15A-1340.19A (2023) (providing that life imprisonment with parole requires a defendant to serve a minimum of twenty-five years imprisonment before becoming eligible for parole).

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1. For a more complete recitation of the facts of this case, *see State v. Kelliher* (*Kelliher I*), 381 N.C. 558 (2022).

In December 2018, defendant appealed again, arguing that the consecutive nature of his sentence constituted a "de facto" sentence of life without parole. *Kelliher I*, 381 N.C. at 560. A majority of this Court discerned from our state's constitution that

> any sentence or combination of sentences which, considered together, requires a juvenile offender to serve more than forty years in prison before becoming eligible for parole is a de facto sentence of life without parole within the meaning of article I, section 27 of the North Carolina Constitution because it deprives the juvenile of a genuine opportunity to demonstrate he or she has been rehabilitated and to establish a meaningful life outside of prison.

Id. The Court remanded to the trial court noting,

> Although we would ordinarily leave resentencing to the trial court's discretion, we agree with the Court of Appeals that of the two binary options available—consecutive or concurrent sentences of life with parole—one is unconstitutional. Accordingly, we remand to the trial court with instructions to enter two concurrent sentences of life with parole.

Id. at 597 (cleaned up).

On remand, the resentencing court held a hearing to determine the scope of the mandate from *Kelliher I*. Specifically, the resentencing court was unsure of its authority to enter an order that included defendant's convictions for robbery with a dangerous weapon and conspiracy to commit robbery.

The resentencing court made the following comments on the record:

> [W]ell, if 40 years is the limit, then this Court should determine what sentence within that time period is appropriate under all the circumstances. Can the Court arrest judgment in one of these murder cases and reduce it to second degree murder and sentence the defendant for first degree murder and then second degree murder but make sure that he—I keep the sentence below 40? Can the Court resentence on these other convictions that he pled to, these other matters, which were two counts of armed robbery and one count of conspiracy? And even though you

> say those sentences have been served, if the Court vacates all of those sentences and then starts over, . . . he will not lose a day of credit because the combined records department of department of corrections will figure that out.
>
> So right now I see my choices as do nothing and just do what he's arguing the Supreme Court said just—and just do the paperwork. Make them concurrent. Or consider whether sentencing on these other offenses is appropriate and whether to make them consecutive or concurrent or whether to arrest judgment in one of these cases and change the character of the conviction to such that the punishment is not unconstitutional or start completely over where [the previous sentencing judge] was.

The resentencing court then engaged in the following exchange with defense counsel:

> [DEFENSE COUNSEL]: . . . Your Honor, again, I'm . . . just submitting back to the Court . . . that this opinion that we're before Your Honor for specifically just talks about murders and again that's the life with—
>
> THE COURT: Well, to me, that's the whole key. I mean I can read. It says we order it remanded for the imposition of two concurrent life sentences. I got that. After we've already handled all these other issues, that's what I intend to do. I'm going to do that.
>
> [DEFENSE COUNSEL]: I know, Judge.
>
> THE COURT: But there's still questions about these other offenses.
>
> [DEFENSE COUNSEL]: I don't think that's why we are here though. I think the scope to which this—
>
> THE COURT: Tell me why we're not here for that.
>
> [DEFENSE COUNSEL]: It's not in the opinion, Judge. I mean those offenses, as the court indicated, are not—and even in the *Miller* hearing, none of this was considered. The only thing we were talking about was those particular life without parole sentences.

> That's in the Court of Appeals' opinion and the Supreme Court opinion.
>
> THE COURT: Well, [the previous sentencing judge's] order didn't vacate those. They didn't go away. He didn't address them because his full sentence was life with parole plus life with parole. He left those other ones there. He was doing a resentencing. Okay. I see what you're saying. This is just—you just want me to kind of check the box.

Ultimately, on 31 March 2023, the resentencing court vacated the judgments entered on 1 March 2004 and sentenced defendant to two consecutive terms of sixty-four to eighty-six months imprisonment for the robberies, to be followed by two concurrent terms of life with parole for the first-degree murder convictions.[2] Under this new sentence, and after receiving credit for time already served, defendant would be eligible for parole after approximately thirty-six to thirty-nine years imprisonment, satisfying the *Kelliher I* forty-year edict from this Court.

Defendant appealed again, this time arguing, inter alia, that the resentencing court exceeded the authority given to it under the *Kelliher I* mandate. The Court of Appeals agreed, asserting that the opinion in *Kelliher I* was

> clear that, while the ordinary remedy on remand from a successfully appealed sentence is a new sentencing hearing within the discretion of the trial court, no such discretion existed here because . . . the mandate was to remand to the trial court with instructions to enter two concurrent sentences of life with parole.

State v. Kelliher, No. COA23-691, 2024 WL 2014207, at *5 (N.C. Ct. App. May 7, 2024). The panel thus remanded "for the entry of new judgments exactly identical with those previously appealed from except in that the life without parole sentences are to run concurrently rather than consecutively." *Id.*

We allowed the State's petition for discretionary review to address the issue concerning the court's discretion on resentencing. On appeal, the State argues that the Court of Appeals erred by holding that the

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2. For the conspiracy conviction, the resentencing court imposed a sentence of twenty-five to thirty-nine months imprisonment to run concurrently with the robbery sentences.

resentencing court could not consider the consecutive or concurrent nature of defendant's sentences for the robbery and conspiracy convictions. Further, the State asserts that N.C.G.S. § 15A-1354(a) warrants a presumption in favor of a trial court's de novo resentencing authority. For the reasons set forth herein, we reverse the judgment of the Court of Appeals and reinstate the 31 March 2023 judgments.[3]

II. Discussion

When a defendant receives an unconstitutional sentence, the proper remedy is to vacate that sentence and order a new sentencing hearing. *See Young*, 369 N.C. at 126. "[E]ach sentencing hearing in a particular case is a *de novo* proceeding." *State v. Abbott*, 90 N.C. App. 749, 751 (1988). Ultimately, the purpose of any such hearing is

> to impose a punishment commensurate with the injury the offense has caused, taking into account factors that may diminish or increase the offender's culpability; to protect the public by restraining offenders; to assist the offender toward rehabilitation and restoration to the community as a lawful citizen; and to provide a general deterrent to criminal behavior.

N.C.G.S. § 15A-1340.12 (2023).

Trial courts are necessarily afforded discretion to effectuate these goals. For example, "the decision to depart from the presumptive

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3. We note that defendant raised four arguments at the Court of Appeals, only the first of which was addressed below. Specifically, defendant argued that the resentencing court (1) exceeded the authority given to it under the mandate of *Kelliher I*, (2) violated the law of the case by imposing a sentence unauthorized by the mandate, (3) imposed a sentence violative of N.C.G.S. § 15A-1354, and (4) violated the Eighth Amendment to the Constitution. *See Kelliher*, 2024 WL 2014207, at *4. While we would typically remand to the Court of Appeals for determination of the remaining issues in the first instance, *see Blue v. Bhiro*, 381 N.C. 1, 7 (2022), we find it unnecessary to do so in this case, *see*, *e.g.*, *Morris Commc'ns Corp. v. City of Bessemer City Zoning Bd. of Adjustment*, 365 N.C. 152, 158 (2011) ("Remand is not automatic when an appellate court's obligation to review for errors of law can be accomplished by addressing the dispositive issue(s)." (cleaned up)).

Issues one through three, all challenging the scope of the resentencing court's authority under the *Kelliher I* mandate and section 15A-1354, are sufficiently interrelated so as to be resolved by our decision here. Regarding issue four, defendant failed to raise a constitutional objection at the resentencing court and thus failed to preserve this argument on appeal. *See*, *e.g.*, *State v. Valentine*, 357 N.C. 512, 525 (2003) ("The failure to raise a constitutional issue before the trial court bars appellate review."). Accordingly, we reverse the Court of Appeals' judgment and reinstate the 31 March 2023 judgments, resolving defendant's appeal in full.

range [of length of sentence] is in the discretion of the court," N.C.G.S. § 15A-1340.16(a) (2023), and a court "may suspend the sentence of imprisonment if the class of offense and prior record level authorize, but do not require, active punishment as a sentence disposition[,]" N.C.G.S. § 15A-1340.13(f) (2023).

Further, and central to this appeal, the trial court is afforded discretion to run multiple sentences for felony convictions either consecutively or concurrently. *See* N.C.G.S. § 15A-1354(a) (2023); *State v. Ysaguire*, 309 N.C. 780, 785 (1983) ("[Subsection 15A-1354(a)] vests the sentencing judge with discretion to impose either consecutive or concurrent sentences."). *But see* N.C.G.S. § 15A-1340.22(a) (2023) (limiting the maximum cumulative length of consecutive sentences for certain misdemeanors and prohibiting consecutive sentences when all convictions are for Class 3 misdemeanors).

Specifically, the General Assembly has provided that

> [w]hen multiple sentences of imprisonment are imposed on a person at the same time or when a term of imprisonment is imposed on a person who is already subject to an undischarged term of imprisonment, including a term of imprisonment in another jurisdiction, the sentences may run either concurrently or consecutively, as determined by the court. If not specified or not required by statute to run consecutively, sentences shall run concurrently.

N.C.G.S. § 15A-1354(a). This subsection applies to the original sentencing court and any resentencing court alike. *See State v. Oglesby*, 382 N.C. 235, 237 (2022) ("[U]nder N.C.G.S. § 15A-1354(a), the resentencing court possessed the authority to run any and all of [the defendant's] sentences imposed at the same time either concurrently or consecutively.").

When a reviewing court "remand[s] a case to the trial court for resentencing, that hearing shall generally be conducted *de novo*." *State v. Paul*, 231 N.C. App. 448, 449 (2013). But a trial court's de novo resentencing authority may be limited by a reviewing court's mandate on remand. Such mandates are "binding on the lower court, and must be strictly followed, without variation and departure from the mandate of the appellate court." *State v. Watkins*, 246 N.C. App. 725, 730 (2016) (cleaned up) (quoting *Bodie v. Bodie*, 239 N.C. App. 281, 284 (2015)).

The Court of Appeals concluded that our mandate in *Kelliher I* entirely divested the resentencing court of its de novo sentencing

authority. *Kelliher*, 2024 WL 2014207, at *5. Under the Court of Appeals' interpretation, our remand "with instructions to enter two concurrent sentences of life with parole," *see Kelliher I*, 381 N.C. at 597, both required the resentencing court to enter said sentence *and* stripped the resentencing court of its de novo authority to make any other sentencing determinations. This analysis is doubly flawed.

First, the Court of Appeals failed to acknowledge that the resentencing court properly executed the *Kelliher I* mandate to "enter two concurrent sentences of life with parole." *See id.* Defendant's appeal in *Kelliher I* only addressed sentencing for his two murder convictions, and this Court did not dictate how any other issues should be resolved on remand. The resentencing court did not violate our mandate because the mandate in no way limited the de novo resentencing hearing beyond the murder convictions. In other words, the resentencing court complied with our instruction regarding the murder convictions and was otherwise free to grapple with the additional convictions which were left wholly unaddressed by the mandate.

But mandates do not exist in a vacuum, and in the absence of language limiting the scope of the remand, the resentencing court must comply with subsection 15A-1354(a). This was the second flaw in the Court of Appeals' analysis. Pursuant to the statute, "the resentencing court possesses the authority and the discretion to run any sentences 'imposed . . . at the same time or . . . imposed on a person who is already subject to an undischarged term of imprisonment . . . either concurrently or consecutively, as determined by the court.' " *Oglesby*, 382 N.C. at 248 (quoting N.C.G.S. § 15A-1354(a) (2021)). Defendant's sentences for two counts of first-degree murder, two counts of robbery with a dangerous weapon, and one count of conspiracy to commit robbery were all imposed on 1 March 2004. Under the plain text of the statute, and as we reaffirmed in *Oglesby*, the resentencing court had the authority to run these sentences concurrently or consecutively, so long as the sentence imposed complied with the forty-year limitation of *Kelliher I* and the mandate therein. Because the *Kelliher I* mandate did not address the ancillary convictions or otherwise limit the resentencing court's discretion, the statute provided explicit authority to run the robbery convictions consecutive to the first-degree murder convictions.

Defendant argues that the resentencing court lacked jurisdiction over the ancillary robbery and conspiracy convictions. Specifically, because this appeal stems from defendant's original MAR in which he challenged only the two life sentences without parole, defendant contends that the ancillary convictions are not at play. As set forth above,

defendant's argument cannot be squared with the *Kelliher I* mandate or the text of subsection 15A-1354(a) because we would be forced to interpret "[sentences imposed] at the same time," *see* N.C.G.S. § 15A-1354(a) (2023), as "sentences challenged on appeal." We decline to adopt a reading at odds with the plain text of the statute and our decision in *Oglesby*.

Further, we decline to adopt a rule that would incentivize gamesmanship and encourage criminal defendants to selectively pick and choose among their convictions to strategically fashion a resentencing court's scope of authority. Rather, a defendant seeking to be resentenced cannot complain when, as here, a full resentencing in fact takes place.

III. Conclusion

A sentencing court is presumptively afforded de novo sentencing authority. This authority may be limited by statute or in circumstances where a reviewing court's mandate cabins that discretion as to particular issues. But reviewing courts do not craft mandates through their silence, and lower courts are tasked with executing the instructions actually issued. Accordingly, a resentencing court retains its de novo authority as to the issues a mandate leaves unaddressed.

Here, the resentencing court's actions were squarely within its statutory authority under subsection 15A-1354(a). Defendant's new sentence both satisfied *Kelliher I* and complied with the letter of our mandate therein. Because the Court of Appeals erroneously construed our *Kelliher I* mandate as divesting the resentencing court of all discretion on matters left wholly unaddressed, we reverse the judgment of the Court of Appeals and reinstate the 31 March 2023 judgments.

REVERSED.

STATE v. REEL

[388 N.C. 737 (2025)]

STATE OF NORTH CAROLINA
v.
QUASHAUN MELSUN REEL

No. 34A25

Filed 12 December 2025

Appeal pursuant to N.C.G.S. § 7A-30(2) (2023) from the decision of a divided panel of the Court of Appeals, 297 N.C. App. 205 (2024), affirming an order entered on 12 December 2022 by Judge William A. Wood in Superior Court, Guilford County. Heard in the Supreme Court on 4 November 2025.

Jeff Jackson, Attorney General, by John A. Payne, Special Deputy Attorney General, for the State-appellee.

Glenn Gerding, Appellate Defender, by Jillian C. Franke, Assistant Appellate Defender, for defendant-appellant.

PER CURIAM.

AFFIRMED.

STATE OF NORTH CAROLINA	From N.C. Court of Appeals 23-1158
v.	
WILLIAM DAVID LINGERFELT	From McDowell 03CRS302, 03CRS303

No. 38A25

ORDER OF THE COURT

The State's motion for extension of time to file supplemental brief is decided as follows: The Court extends the deadline for both parties to file their supplemental briefs. The parties are directed to file their supplemental briefs no later than thirty days from the date of this order.

By order of the Court this the 21st day of October 2025.

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 21st day of October 2025.

s/Grant E. Buckner

Grant E. Buckner
Clerk of the Supreme Court

STATE v. LATTA

[388 N.C. 739 (2025)]

STATE OF NORTH CAROLINA	From N.C. Court of Appeals 24-407
v.	
DANA ALDEN LATTA, JR.	From Durham 01CRS57717-22

No. 139P25

ORDER OF THE COURT

The State's petition for discretionary review and petition for writ of supersedeas are allowed. In addition, the parties are specifically ordered to also brief the following:

I. Whether defendant's sentence qualifies under N.C.G.S. § 15A-1024 as one "other than provided for" when the term of years set forth in defendant's Transcript of Plea dated 4 June 2002 was only available to him if he cooperated and testified against his co-defendant?

II. Under the terms of the Transcript of Plea and entry of the prayer for judgment, could defendant have been given a prison sentence other than the term of years specified if he failed to cooperate and provide truthful testimony?

By order of the Court this the 10th day of December 2025.

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 12th day of December 2025.

s/Grant E. Buckner

Grant E. Buckner
Clerk of the Supreme Court

DISPOSITION OF PETITIONS FOR DISCRETIONARY REVIEW UNDER G.S. 7A-31

12 DECEMBER 2025

11A19-2	State v. Tyler Deion Greenfield	Def's PDR Under N.C.G.S. § 7A-31 (COA23-597)	Denied
14A25	Mary A. Hill v. Renee P. Ewing, Curtis E. Ewing, Herman T. Ewing, Nathaniel V. Ewing, and Monica Y. Ewing, the heirs of Annie Marie Ewing, and Cora Lee Branham, Herman Branham, Roslyn Branham Pauling, Larue Branham, and Leroy Branham, the heirs of Annie Branham, Bright & Neat Investment LLC, Thomas Ray, Clarissa Judit Verdugo Gaxiola (aka Clarissa J. Verdugo) and Geoffrey Hemenway	1. Plt's Notice of Appeal Based Upon a Dissent (COA23-982-2) 2. Plt's PDR Under N.C.G.S. § 7A-31 3. Def's (Geoffrey Hemenway) Motion to Dismiss Appeal	1. --- 2. Dismiss as moot 3. Denied
23P25	Sessoms v. Toyota Motor Sales, U.S.A., Inc., et al.	1. Defs' (Toyota Motor Sales, U.S.A., Inc. and Subaru Corporation) Motion for Temporary Stay (COA24-265) 2. Defs' (Toyota Motor Sales, U.S.A., Inc. and Subaru Corporation) Petition for Writ of Supersedeas 3. Defs' (Toyota Motor Sales, U.S.A., Inc. and Subaru Corporation) PDR Under N.C.G.S. § 7A-31 4. Plt's Conditional PDR Under N.C.G.S. § 7A-31	1. Allowed **01/22/2025** 2. Allowed 3. Allowed 4. Denied
24P25-3	Jeremy Keith Fincannon v. Warden Ben Anderson	Petitioner's Pro Se Petition for Writ of Habeas Corpus	Denied **11/24/2025**
30P25	R. Anthony Orsbon, as Guardian ad Litem for Patricia Bosworth-Jones v. Matthew Taylor Milazzo and City of Charlotte	1. Plt's PDR Under N.C.G.S. § 7A-31 (COA23-1170) 2. Defs' Conditional PDR Under N.C.G.S. § 7A-31	1. Denied 2. Dismissed as moot
32PA23-2`	In the Matter of B.M.T.	Petitioners' PDR Under N.C.G.S. § 7A-31 (COA22-377-2)	Allowed
38A25	State v. William David Lingerfelt	State's Motion for Extension of Time to File Supplemental Brief	Special Order **10/21/2025**

DISPOSITION OF PETITIONS FOR DISCRETIONARY REVIEW UNDER G.S. 7A-31

12 DECEMBER 2025

47P02-19	State v. George W. Baldwin	1. Def's Pro Se Petition for Writ of Certiorari to Review Order of the COA (COAP25-324) 2. Def's Pro Se Motion to Appoint Counsel 3. Def's Pro Se Motion to Proceed *In Forma Pauperis*	1. Denied 2. Dismissed as moot 3. Allowed
56PA24-2	State v. Eric Ramond Chambers	1. Def's Notice of Appeal Based Upon a Constitutional Question (COA22-1063-2) 2. Def's PDR Under N.C.G.S. § 7A-31 3. State's Motion to Dismiss Appeal	1. --- 2. Denied 3. Allowed
80P23-3	State v. Jim Robinson, III	1. Def's Pro Se PDR Under N.C.G.S. § 7A-31 (COA24-735) 2. Def's Pro Se Motion to Proceed *In Forma Pauperis*	1. Denied 2. Allowed
85P24-4	Paul Yongo Odindo v. Mary Terry Kanyi	1. Plt's Pro Se Motion for Temporary Stay 2. Plt's Pro Se Petition for Writ of Supersedeas	1. Denied **11/20/2025** 2. Dismissed **11/20/2025** **Riggs, J., recused**
102P19-20	State v. Christopher Lee Neal	Def's Pro Se Petition for Writ of Habeas Corpus *Coram Nobis* or Audita Querela	Denied **12/03/2025**
112P25	State v. Shajuan Dwatray Ervin	Def's PDR Under N.C.G.S. § 7A-31 (COA24-650)	Denied
121A23	Alvin Mitchell v. The University of North Carolina Board of Governors	1. Petitioner's Motion to Stay Mandate 2. Petitioner's Motion for Clarification and Reconsideration	1. Denied **11/06/2025** 2. Denied **11/06/2025**
121P25-3	Tigress Sydney Acute McDaniel, JD and on behalf of minor child, AM v. Goodwill Industries, Inc., Goodwill Industries of the Southern Piedmont, Inc., City of Concord, and Does Defendants	Plt's Pro Se Notice of Appeal Based Upon a Constitutional Question (COA25-402)	Dismissed *ex mero motu*

DISPOSITION OF PETITIONS FOR DISCRETIONARY REVIEW UNDER G.S. 7A-31

12 DECEMBER 2025

122P25-3	CUSA Holdings, LP d/b/a Camden Noda Apartments v. Tigress McDaniel a/k/a Tigress Sydney Acute McDaniel	1. Def's Pro Se Notice of Appeal Based Upon a Constitutional Question (COA25-382) 2. Def's Pro Se Motion for Temporary Stay 3. Def's Pro Se Petition for Writ of Supersedeas	1. Dismissed *ex mero motu* 2. Denied **11/07/2025** 3. Dismissed
127P13-3	State v. Jarrod W. Willis	Def's Pro Se Petition for Writ of Certiorari to Review Order of Superior Court, Mecklenburg County	Dismissed
130A25	Tim Oates v. Philip E. Berger, in his official capacity as President Pro Tempore of the North Carolina Senate; Timothy K. Moore, in his official capacity as Speaker of the House of Representatives; Cameron Ingram, in his official capacity as Executive Director of the North Carolina Wildlife Resources Commission; the North Carolina Wildlife Resources Commission; and the State of North Carolina	1. Plt's Notice of Appeal Based Upon a Constitutional Question (COA24-559) 2. Defs' Motion to Dismiss Appeal	1. --- 2. Allowed
133P25	State v. Antonio Dupree Jefferson	1. Def's Pro Se Motion for Notice of Appeal (COA22-450) 2. Def's Pro Se Motion for PDR	1. Dismissed *ex mero motu* 2. Denied
139P25	State v. Dana Alden Latta, Jr.	1. State's Motion for Temporary Stay (COA24-407) 2. State's Petition for Writ of Supersedeas 3. State's PDR Under N.C.G.S. § 7A-31	1. Allowed **06/12/2025** 2. Special Order 3. Special Order
144P21-5	State v. Derrick Jervon Lindsay	Def's Pro Se Petition for Writ of Certiorari to Review Order of the COA (COAP25-21)	Dismissed
148P25	In the Matter of K.E.P.	Respondent-Mother's PDR Under N.C.G.S. § 7A-31 (COA24-792)	Denied
152P25	In the Matter of B.E.R. and P.M.E.R.	Respondent-Father's PDR Under N.C.G.S. § 7A-31 (COA24-974)	Denied

DISPOSITION OF PETITIONS FOR DISCRETIONARY REVIEW UNDER G.S. 7A-31

12 DECEMBER 2025

154P25	Legal Impact for Chickens v. Case Farms, L.L.C., Case Foods, Inc., and Case Farms Processing, Inc.	Plt's PDR Under N.C.G.S. § 7A-31 (COA24-673)	Denied
165A24	State v. Philip Anthony Montanino	1. State's Motion to Dismiss Def's Appeal 2. Def's Motion for Extension of Time to File Response to Motion to Dismiss 3. Def's Motion for Extension of Time to File Briefs	1. Denied **10/24/2025** 2. Dismissed as moot **10/24/2025** 3. Allowed **10/24/2025**
165P16-6	State v. Simaron Demetrius Hill	1. Def's Pro Se Motion for Complaint - Civil Action 2. Def's Pro Se Motion for Default Judgment 3. Def's Pro Se Motion for Peremptory Setting	1. Dismissed 2. Dismissed 3. Dismissed **Berger, J., recused**
165P25	Mohamed El Henawy v. Ameera Hammad	1. Def's Motion for Temporary Stay (COA25-260) 2. Def's Petition for Writ of Supersedeas	1. Denied **07/11/2025** 2. Denied **10/23/2025**
166P25	State v. Jonathan Jermane Hannah	Def's PDR Under N.C.G.S. § 7A-31 (COA23-902)	Denied
173A25	Alexander Farms MU, LLC, Alexander Farms MU Holdings, LLC, and Mazel Tov Brothers Cornelius, LLC v. Win CS, LLC, Jesse McInerney, Owen Ewing, River Rock Capital Partners, LLC, R2 Development, LLC, RRCAP MF Alexander Farms, LLC, RRCAPSFR Alexander Farms, LLC, RRCAP Alexander Farms SFR Owner, LLC, Dalton Building Group, LLC d/b/a River Rock Construction, and Jasper AF, LLC	1. Plts' Motion for Temporary Stay 2. Plts' Petition for Writ of Supersedeas 3. Parties' Joint Motion to Dismiss Appeal	1. Allowed **07/17/2025** 2. Allowed **10/15/2025** 3. Allowed **12/05/2025**

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176P25	Jacqueline Amato v. Karl W. Miller and Equity Trust Company	1. Def's (Karl W. Miller) Motion for Temporary Stay (COA24-417-2) 2. Def's (Karl W. Miller) Petition for Writ of Supersedeas 3. Def's (Karl W. Miller) PDR Under N.C.G.S. § 7A-31	1. Allowed **07/17/2025** Dissolved 2. Denied 3. Denied
187P25	MH Mission Hospital LLLP v. NC Department of Health and Human Services, Division of Health Service Regulation, Health Care Planning & Certificate of Need	1. Petitioner's Motion for Temporary Stay (COA24-726) 2. Petitioner's Petition for Writ of Supersedeas 3. Petitioner's PDR Under N.C.G.S. § 7A-31	1. Allowed **07/25/2025** Dissolved 2. Denied 3. Denied
196P25	State v. Joel Noah Emmanuel Jenkins	Def's PDR Under N.C.G.S. § 7A-31 (COA24-693)	Denied
198P25	State v. Farren Shunta Yarborough	Def's PDR Under N.C.G.S. § 7A-31 (COA24-490)	Denied
203P25	Holly Ridge Alp v. Dasharai Williams	1. Def's Pro Se Motion for Notice of Appeal (COAP25-496) 2. Def's Pro Se Motion for Notice of Appeal 3. Def's Pro Se Motion for Temporary Stay 4. Def's Pro Se Petition for Writ of Supersedeas 5. Def's Pro Se Motion for Notice of Appeal	1. Dismissed **11/24/2025** 2. Dismissed **11/24/2025** 3. Denied **11/24/2025** 4. Denied **11/24/2025** 5. Dismissed **11/24/2025**
205P24-2	H.D. Rodgers, Executor of the Estate of Ruth Rodgers, Deceased v. Nash Hospitals, Inc., SC Surgicalists of North Carolina, P.C., Providence Anesthesiology Associates PA, Marcus Lynn Wever, M.D., and Andrea Kay Fuller, M.D.	1. Defs' Petition for Writ of Certiorari to Review Order of the COA (COA24-125) 2. Defs' Motion for Temporary Stay of Trial Court Order Issued 12 June 2023 3. Defs' Motion for Temporary Stay of All Matters in the Trial Court 4. Defs' Petition for Writ of Supersedeas	1. Denied **11/12/2025** 2. Denied **11/12/2025** 3. Denied **11/12/2025** 4. Denied **11/12/2025**
205P25	State v. Dana Denzil Moss	Def's PDR Under N.C.G.S. § 7A-31 (COA24-1024)	Denied
206P25	Erie Insurance Exchange v. James Strickland	Def's PDR Under N.C.G.S. § 7A-31 (COA24-111)	Denied

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210P25	Nigel Max Edge v. Novant Health Brunswick Medical Center, Dr. Tighe, and Theressa Long	1. Plt's Pro Se Petition for Writ of Certiorari to Review Order of the COA (COA25-555) 2. Plt's Pro Se Petition for Writ of Certiorari to Review Order of Superior Court, Brunswick County	1. Denied 2. Dismissed
215P25	State v. Hubert Lee Monk, Jr.	Def's PDR Under N.C.G.S. § 7A-31 (COA24-446)	Denied
223P25	Ronnie C. Hedgepeth and Shira L. Hedgepeth v. Smoky Mountain Country Club Property Owners' Association, Inc., a North Carolina Corporation	1. Plts' Pro Se Notice of Appeal Based Upon a Constitutional Question (COA24-1020) 2. Plts' Pro Se PDR Under N.C.G.S. § 7A-31 3. Def's Motion to Dismiss Appeal 4. Plts' Pro Se Motion for Leave to File Sur-Reply in Response to Motion to Dismiss Appeal and Petition for Discretionary Review 5. Plts' Pro Se Motion to Stay Proceedings 6. Plts' Pro Se Motion to Stay Transfer of Property	1. 2. 3. 4. 5. Denied **11/20/2025** 6. Denied **11/20/2025**
225A24	State v. Blaine Dale Hague	Def's Motion for Opportunity for Rebuttal at Oral Argument (COA23-734)	Denied **10/20/2025**
229P25	Yang Real Estate Investments, LLC v. Affordable Mini Storage of Newton, LLC	Def's PDR Under N.C.G.S. § 7A-31 (COA24-1120)	Denied
230PA18-2	State v. Everette Porshau Hewitt	Def's PDR Under N.C.G.S. § 7A-31 (COA17-1157-3)	Denied
230P25-2	State v. Nashone L. Wiggins	Def's Pro Se Motion to Vacate Sentence	Dismissed
241P25	Owl House Cafe, LLC, OHCGrill, LLC, Hamza Tebib, individually and his official capacity v. District Attorney 11th Prosecutorial District; Robert Fountain, Granville County Sheriff; James Champion, Chief Butner Public Safety; Troy Wheless, Chief Creedmoor Police Department	Plt's (Hamza Tebib) Pro Se Motion for PDR (COAP25-526)	Denied

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247A25	United Therapeutics Corporation and Lung Biotechnology PBC v. Robert Roscigno and Liquidia Technologies, Inc.	1. Plts' Motion to Dismiss Appeal	1. Allowed
		2. Def's (Liquidia Technologies, Inc.) Petition in the Alternative for Writ of Certiorari to Review Order of the Business Court	2. Denied
		3. Plts' Motion to Admit Douglas H. Carsten Pro Hac Vice	3. Dismissed as moot
		4. Plts' Motion to Admit William C. Jackson Pro Hac Vice	4. Dismissed as moot
		5. Plts' Motion to Admit Arthur P. Dykhuis Pro Hac Vice	5. Dismissed as moot
		6. Plts' Motion to Admit Adam W. Burrowbridge Pro Hac Vice	6. Dismissed as moot
		7. Def's (Liquidia Technologies, Inc.) Motion to Admit Jonathan Davies Pro Hac Vice	7. Dismissed as moot
		8. Def's (Liquidia Technologies, Inc.) Motion to Admit Sanya Sukduang Pro Hac Vice	8. Dismissed as moot
250P25	Bobby L. Williams v. Jacob Crandall	1. Plt's Pro Se Notice of Appeal Based Upon a Constitutional Question (COA25-309)	1. Dismissed *ex mero motu*
		2. Plt's Pro Se Petition in the Alternative for Discretionary Review Under N.C.G.S. § 7A-31	2. Denied
252P25	State v. Dwight Lee McLeod	1. Def's Motion for Temporary Stay (COA24-784)	1. Allowed **10/06/2025** Dissolved
		2. Def's Petition for Writ of Supersedeas	2. Denied
		3. Def's PDR Under N.C.G.S. § 7A-31	3. Denied
259P24	State v. Jeremy Kyle Price	1. Def's Notice of Appeal Based Upon a Constitutional Question (COA23-361)	1. ---
		2. Def's PDR Under N.C.G.S. § 7A-31	2. Dismissed as moot
		3. Def's Petition for Writ of Certiorari to Review Decision of the COA	3. Denied
		4. State's Motion to Dismiss Appeal	4. Allowed
264P24	State v. Chauncey Jamal Slade	1. State's Motion for Temporary Stay (COA23-1157)	1. Allowed **10/09/2024**
		2. State's Petition for Writ of Supersedeas	2. Allowed
		3. State's PDR Under N.C.G.S. § 7A-31	3. Allowed
		4. Def's Motion to Deem Response Timely Filed	4. Denied

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273P25	Goran Davidovic, Employee v. Allbound Carrier, Inc., Alleged Employer, and Total Quality Logistics, Inc., LLC, (Freight Brokerage Firm), Alleged Statutory Employer, Old Republic Insurance Company, Carrier (Broadspire, Third-Party Administrator)	1. Defs' (Total Quality Logistics and Old Republic Insurance Co.) PDR Under N.C.G.S. § 7A-31 (COA24-1027) 2. Plt's Motion to Deem Response Timely Filed 3. Defs' (Total Quality Logistics and Old Republic Insurance Co.) Motion for Temporary Stay 4. Defs' (Total Quality Logistics and Old Republic Insurance Co.) Petition for Writ of Supersedeas	1. 2. 3. Allowed **11/05/2025** 4.
274P25	State v. Mark Emmanuel Martinez	Def's Pro Se Notice of Appeal	Dismissed
276P25	State v. Demetrius Locke	1. Def's Pro Se Motion for Appropriate Relief 2. Def's Pro Se Petition for Writ of Habeas Corpus	1. Dismissed **10/23/2025** 2. Denied **10/23/2025**
277P25	State v. Kenneth Lee Daniel	1. Def's Motion for Temporary Stay (COA24-971) 2. Def's Petition for Writ of Supersedeas 3. Def's Notice of Appeal Based Upon a Constitutional Question 4. Def's PDR Under N.C.G.S. § 7A-31	1. Allowed **10/17/2025** 2. 3. 4.
278P25	Dianne Michele Carter v. April Maryam Kaiser, Fidelis Uwensuyi-Edosomwan, Americare Health, Inc., and Buddy Connect, Inc.	Plt's Pro Se PDR Under N.C.G.S. § 7A-31 (COA25-735)	Denied
279P25	State v. Scottie Thomas Eanes	1. Def's Pro Se Motion for Extension of Time to File Petition for Writ of Certiorari (COA24-1130) 2. Def's Pro Se Petition for Writ of Certiorari to Review Decision of the COA 3. Def's Pro Se Motion to Correct Honest Filing Error	1. Dismissed as moot 2. Denied 3. Allowed
280P25	State v. Joseph Stephen Jett	Def's Pro Se PDR Under N.C.G.S. § 7A-31 (COA23-624)	Denied

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284P25	In re Appeal of County Board Decision on Challenge of James McLean to Candidacy of Jimmy Steve Jordan	1. Petitioner's Motion for Temporary Stay (COAP25-721) 2. Petitioner's Petition for Writ of Supersedeas	1. Denied **10/24/2025** 2. Denied **10/24/2025**
286P25	State v. Jamie Richard Dupree	Def's Pro Se Motion for Extension of Time	Denied
287P20-2	Richard Topping v. Kurt Meyers and McGuireWoods, LLP	1. Defs' Motion for Temporary Stay (COA25-257) 2. Defs' Petition for Writ of Supersedeas 3. Defs' PDR Under N.C.G.S. § 7A-31 4. Defs' Petition in the Alternative for Writ of Certiorari to Review Order of Superior Court, Mecklenburg County	1. Allowed **10/24/2025** 2. 3. 4. **Berger, J., recused** **Barringer, J., recused**
287P25	State v. Dathan Shaka McIntyre	1. Def's Motion for Temporary Stay (COA24-1117) 2. Def's Petition for Writ of Supersedeas 3. Def's Notice of Appeal Based Upon a Constitutional Question 4. Def's PDR Under N.C.G.S. § 7A-31 5. State's Motion to Dismiss Appeal	1. Allowed **10/23/2025** 2. 3. 4. 5.
288P25	Michele Simons f/k/a Michele Connelly v. Camden Lee Connelly	1. Def's Pro Se Motion for Temporary Stay of District Court Order 2. Def's Pro Se Petition for Writ of Supersedeas 3. Def's Pro Se Petition for Writ of Certiorari to Review Order of District Court, New Hanover County	1. Denied **10/24/2025** 2. 3.
289P25-1	Gowri Mogilicherla & Upendra Vijay Kumar Mogilicherla v. Desmond Lafonde Tuck	1. Def's Pro Se Motion for Temporary Stay 2. Def's Pro Se Petition for Writ of Supersedeas	1. Dismissed **10/24/2025** 2. Dismissed **10/24/2025**

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289P25-2	Gowri Mogilicherla & Upendra Vijay Kumar Mogilicherla v. Desmond Lafonde Tuck	1. Def's Pro Se Renewed Motion for Temporary Stay 2. Def's Pro Se Motion for Reconsideration of Denial of Supersedeas 3. Def's Pro Se Motion for Reconsideration of Denied Stay and Temporary Supervisory Stay 4. Def's Pro Se Updated Motion for Temporary Stay 5. Def's Pro Se Motion for Temporary Stay 6. Def's Pro Se Renewed Petition for Writ of Supersedeas	1. Dismissed **10/29/2025** 2. Dismissed **10/29/2025** 3. Dismissed **10/29/2025** 4. Dismissed **10/29/2025** 5. Dismissed **10/29/2025** 6. Dismissed **10/29/2025**
294P25	Jokoy T. Bell v. Leslie Dismukes, Secretary NCDAC	Petitioner's Pro Se Petition for Writ of Habeas Corpus	Denied **10/24/2025**
295P25	Smartsky Networks, LLC, a Delaware Limited Liability Company v. DAG Wireless Ltd, an Israeli Company; DAG Wireless USA, LLC, a North Carolina Limited Liability Company; Laslo Gross, a North Carolina resident; Susan Gross, a North Carolina resident; David D. Gross, a resident of Israel	1. Defs' Pro Se Motion for Temporary Stay (COA25-25) 2. Defs' Pro Se Petition for Writ of Supersedeas 3. Defs' Pro Se Petition for Writ of Certiorari to Review Decision of the COA 4. Defs' Pro Se PDR Under N.C.G.S. § 7A-31	1. Denied 2. Denied 3. Denied 4. Denied
297P25	State v. Joseph Earl Simmons	1. Def's Pro Se Motion to Overturn Denial of Bond Reduction 2. Def's Pro Se Motion to Remove Judge and District Attorney	1. Dismissed 2. Dismissed
298P25	Dallas I. Brand, Jr. v. Leslie Dismukes, NCDAC Secretary	Petitioner's Pro Se Petition for Writ of Habeas Corpus	Denied **10/28/2025**
299P25	State v. Ricardo Edwin Lanier, Jr.	Def's Pro Se Petition for Writ of Certiorari to Review Order of Superior Court, Henderson County	Dismissed **10/29/2025**

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300P25	In re Estate of Lula M. Allen, Executor (Amos Malone)	1. Petitioner's Pro Se Petition for Supervisory Writ and Extraordinary Relief	1. Dismissed **11/18/2025**
		2. Petitioner's Pro Se Emergency Motion for Immediate Stay of Lower-Court Proceedings, Clarification of Jurisdiction, and Direction to Vance County Superior Court	2. Dismissed **11/18/2025**
		3. Petitioner's Pro Se Petition for Writ of Certiorari to Review Order of Superior Court, Vance County	3. Dismissed **11/18/2025**
		4. Petitioner's Pro Se Petition for Writ of Prohibition	4. Dismissed **11/18/2025**
		5. Petitioner's Pro Se Motion for Temporary Stay	5. Dismissed **11/18/2025**
		6. Petitioner's Pro Se Petition for Writ of Supersedeas	6. Dismissed **11/18/2025**
		7. Petitioner's Pro Se Emergency Motion for Lis Pendens Enforcement Order and Prohibition of Further Foreclosure Actions	7. Dismissed **11/18/2025**
301P25	State v. Christopher Allen Paul Clark	Def's Pro Se PDR Under N.C.G.S. § 7A-31 (COA25-13)	Dismissed
303P14-2	Michael David Morrow v. Leslie Dismukes, NCDAC Secretary	1. Petitioner's Pro Se Petition for Writ of Habeas Corpus	1. Denied **11/19/2025**
		2. Petitioner's Pro Se Motion to Appoint Counsel	2. Dismissed as moot **11/19/2025**
303P25	State v. Luis Antonio Rosado	1. Def's Pro Se Petition for Writ of Habeas Corpus	1. Denied **10/31/2025**
		2. Def's Pro Se Petition for Writ of Certiorari to Review Order of Superior Court, Wilkes County	2. Dismissed **10/31/2025**
		3. Def's Pro Se Motion to Proceed *In Forma Pauperis*	3. Allowed **10/31/2025**
		4. Def's Pro Se Motion to Appoint Counsel	4. Dismissed as moot **10/31/2025**
305P25	Anthony Wayne Sando v. Leslie Dismukes, NCDAC Secretary	Petitioner's Pro Se Petition for Writ of Habeas Corpus	Denied **11/03/2025**
306P25	Jason T. Millwood v. Leslie Dismukes, NCDAC Secretary	Petitioner's Pro Se Petition for Writ of Habeas Corpus	Denied **11/04/2025**

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308A24	Gvest Real Estate, LLC v. JS Real Estate Investments, LLC, et al.	Defs' Motion to Dismiss Appeal	Denied
308P25	Christopher L. Brown v. Leslie Dismukes, NCDAC Secretary	Petitioner's Pro Se Petition for Writ of Habeas Corpus	Denied **11/04/2025**
309P25	Kenneth R. Streeter v. Leslie Dismukes, NCDAC Secretary	Petitioner's Pro Se Petition for Writ of Habeas Corpus	Denied **11/03/2025**
310P25	State v. Cameron Duane Canipe	Def's Pro Se PDR Under N.C.G.S. § 7A-31 (COA25-121)	Denied
311P25	State v. Darius Lamar Williams	1. Def's Motion for Temporary Stay (COA25-38) 2. Def's Petition for Writ of Supersedeas 3. Def's Notice of Appeal Based Upon a Constitutional Question 4. Def's PDR Under N.C.G.S. § 7A-31 5. State's Motion to Dismiss Appeal	1. Allowed **11/04/2025** 2. 3. 4. 5.
312P25-1	Tremayne Carmichael v. Honorable Billy J. Strickland II, Senior Resident Superior Court Judge, Wayne County and Progressive Insurance Corporation, Drew Grice, Esq., and Progressive Adjuster	1. Petitioner's Pro Se Petition for Writ of Mandamus 2. Petitioner's Pro Se Motion to Shorten Response Time to Four (4) Hours 3. Petitioner's Pro Se Motion for Peremptory Writ 4. Petitioner's Pro Se Motion for Peremptory Writ of Mandamus 5. Petitioner's Pro Se Motion to Hold Four Contemnors in Civil Contempt and Start $10,000/Hour Coercive Fine 6. Petitioner's Pro Se Motion for Oral Writ Demand 7. Petitioner's Pro Se Motion to Hold Duty Judge in Civil Contempt 8. Petitioner's Pro Se Petition for Writ of Mandamus	1. Dismissed **11/07/2025** 2. Dismissed **11/07/2025** 3. Dismissed **11/07/2025** 4. Dismissed **11/07/2025** 5. Dismissed **11/07/2025** 6. Dismissed **11/07/2025** 7. Dismissed **11/07/2025** 8. Dismissed **11/07/2025**

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312P25-2	Tremayne Carmichael v. Honorable Billy J. Strickland II, Senior Resident Superior Court Judge, Wayne County and Progressive Insurance Corporation, Drew Grice, Esq., and Progressive Adjuster	1. Petitioner's Pro Se Motion to Compel Immediate Resolution 2. Petitioner's Pro Se Emergency Petition for Writ of Mandamus 3. Petitioner's Pro Se Motion for Temporary Stay and Immediate Relief	1. Dismissed **11/21/2025** 2. Dismissed **11/21/2025** 3. Dismissed **11/21/2025**
319P25	Ahmad Maurice Jones v. Leslie Dismukes, NCDAC Secretary	Petitioner's Pro Se Petition for Writ of Habeas Corpus	Denied **11/07/2025**
322P25	John Timothy Hull v. Leslie Dismukes, NCDAC Secretary	Petitioner's Pro Se Petition for Writ of Habeas Corpus	Denied **11/12/2025**
323P24	State v. Melvin Howard Clark	1. State's Motion for Temporary Stay (COA23-1133) 2. State's Petition for Writ of Supersedeas 3. State's Notice of Appeal Based Upon a Constitutional Question 4. State's PDR Under N.C.G.S. § 7A-31	1. Allowed **12/20/2024** 2. Allowed 3. Retained 4. Allowed
323P25	State v. Hamza Tebib	1. Def's Pro Se Petition for Writ of Habeas Corpus 2. Def's Pro Se Petition for Writ of Certiorari to Review Order of the COA 3. Def's Pro Se Motion to Take Judicial Notice	1. Denied **11/21/2025** 2. Dismissed **11/21/2025** 3. Dismissed as moot **11/21/2025**
324P25	Jin Huk Lim v. Leslie Dismukes, NCDAC Secretary	Petitioner's Pro Se Petition for Writ of Habeas Corpus	Denied **11/18/2025**
327P02-15	State v. Guy Tobias Legrande	Def's Pro Se Motion for Writ of Mandamus	Denied
328P25	State v. Johnnie Denise Hickman	1. State's Motion for Temporary Stay (COA24-893) 2. State's Petition for Writ of Supersedeas	1. Allowed **11/21/2025** 2.
334P24	Henry West and Geraldine West v. Theodore A. Greve; Ted A. Greve & Associates, P.A.; and Justin L. Lowenberger	1. Plts' PDR Under N.C.G.S. § 7A-31 (COA24-210) 2. Plts' Motion to Extend Time	1. Denied 2. Denied

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335P25	Rafael Escamilla Valdez v. Marjorie Ann Anderson	1. Def's Pro Se Motion for Temporary Stay (COA24-1131) 2. Def's Pro Se Petition for Writ of Supersedeas	1. Denied **11/21/2025** 2. Denied **11/21/2025**
338P25	Rey Cervantes Lopez v. Leslie Dismukes, NCDAC Secretary	Petitioner's Pro Se Petition for Writ of Habeas Corpus	Denied **11/21/2025**
340P25	Ronny Lee Whitworth v. Leslie Dismukes, NCDAC Secretary	Petitioner's Pro Se Petition for Writ of Habeas Corpus	Denied **11/24/2025**
342P25	Mary Dallam Martin, in her capacity as Co-Trustee of the Nancy Dallam Martin Revocable Trust and approximate 50% Beneficiary of The Estate of Nancy Dallam Martin v. Judge Gary M. Gavenus, in his official capacity as Senior Resident Superior Court Judge for Yancey County presiding over the Trust and Estate of Nancy Dallam Martin and Estate of Harry Corpening Martin in Buncombe County	1. Petitioner's Pro Se Emergency Petition for Writ of Certiorari to Review Order of the COA (COAP25-580) 2. Petitioner's Pro Se Emergency Motion to Supplement the Record 3. Petitioner's Pro Se Emergency Motion for Stay 4. Petitioner's Pro Se Emergency Motion for Supervisory Intervention	1. Dismissed **12/10/2025** 2. Dismissed as moot **12/10/2025** 3. Denied **12/10/2025** 4. Dismissed **12/10/2025**
346P25	In the Matter of D.D., a minor child	1. Petitioner's Pro Se Motion for Temporary Stay (COAP25-705) 2. Petitioner's Pro Se PDR Under N.C.G.S. § 7A-31 3. Petitioner's Pro Se Petition for Writ of Mandamus	1. Dismissed as moot **12/05/2025** 2. Denied **12/05/2025** 3. Dismissed **12/05/2025**

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351P23-2	In re Hedgepeth	1. Respondents' Pro Se Motion to Stay Proceedings (COA23-226) 2. Respondents' Pro Se Motion to Stay Transfer of Property 3. Respondents' Pro Se Notice of Appeal Based Upon a Constitutional Question 4. Respondents' Pro Se PDR Under N.C.G.S. § 7A-31 5. Respondents' Pro Se Motion to Strike Opposition for Improper Consolidation and Misstatement of Procedural Posture	1. Denied **11/20/2025** 2. Denied **11/20/2025** 3. 4. 5.
352P23-2	Ronnie C. Hedgepeth, Jr., and Shira Hedgepeth v. Smoky Mountain Country Club, SMCC Clubhouse, LLC, Conleys Creek Limited Partnership, and Smoky Mountain Country Club Property Owners Association, Inc., a North Carolina Corporation	1. Plts' Pro Se Motion to Stay Proceedings (COA23-222) 2. Plts' Pro Se Motion to Stay Transfer of Property 3. Plts' Notice of Appeal Based Upon a Constitutional Question 4. Plts' Pro Se PDR Under N.C.G.S. § 7A-31 5. Plts' Pro Se Motion to Strike Opposition for Improper Consolidation and Misstatement of Procedural Posture	1. Denied **11/20/2025** 2. Denied **11/20/2025** 3. 4. 5.
370P04-23	State v. Anthony Leon Hoover	Def's Pro Se Motion for Petition for Writ of Certiorari for Motion for Appropriate Relief	Dismissed
405P18-3	In the Matter of E.W.P.	Respondent's PDR Under N.C.G.S. § 7A-31 (COA24-643)	Denied **Dietz, J., recused**
396PA17-2	State v. Michael Lee White	1. State's Motion for Temporary Stay (COA24-1093) 2. State's Petition for Writ of Supersedeas 3. State's PDR Under N.C.G.S. § 7A-31 4. Def's Motion for Extension of Time to File Response to PDR	1. Allowed **11/06/2025** 2. 3. 4. Denied **11/24/2025**
412P13-11	Henry Clifford Byrd, Sr. v. State of North Carolina and Edward Basden, Warden of Pender Correctional Institution	Petitioner's Pro Se Motion for Petition for Rehearing	Dismissed

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436A21-2	State of North Carolina ex rel. Jeffrey Jackson, Attorney General v. E.I. du Pont de Nemours and Company; the Chemours Company; the Chemours Company FC, LLC; Corteva, Inc.; Dupont De Nemours, Inc.; and Business Entities 1-10	1. Defs' (E.I. du Pont de Nemours and Company, The Chemours Company, and The Chemours Company FC, LLC) Petition for Writ of Certiorari to Review Order of the Business Court 2. Defs' (E.I. du Pont de Nemours and Company, The Chemours Company, and The Chemours Company FC, LLC) Motion for Temporary Stay 3. Defs' (E.I. du Pont de Nemours and Company, The Chemours Company, and The Chemours Company FC, LLC) Petition for Writ of Supersedeas	1. 2. Allowed **10/29/2025** 3.
444P19-2	State v. Garry Joseph Gupton	1. Def's PDR Under N.C.G.S. § 7A-31 (COA23-661) 2. Def's Petition for Writ of Certiorari to Review Decision of the COA	1. Dismissed 2. Allowed
580P05-34	In re David Lee Smith	Def's Pro Se Emergency Petition for Writ of Mandamus	Denied **Riggs, J., recused**
629P01-11	State v. John Edward Butler	1. Def's Pro Se Motion to Order Superior Court to Answer Affidavit of Innocence Motion 2. Def's Pro Se Motion to Appeal and Hear Motions 3. Def's Pro Se Motion to Order the COA to Refund $10	1. Dismissed 2. Dismissed 3. Denied

IN RE CLIENT SECURITY FUND OF THE NORTH CAROLINA STATE	)))	ORDER

This matter came on to be considered before the Supreme Court of North Carolina in conference duly assembled on the 10th day of December 2025 upon request of the North Carolina State Bar, and it appearing from information provided by the State Bar that projected claim payouts for FY 2026 will exceed the historical ten-year average and those projected payouts could result in the Fund falling below the required minimum operating threshold, a Twenty-five Dollars ($25) assessment of the active members of the North Carolina State Bar will be needed in the year 2026 to properly support and maintain the Fund.

Now, therefore, it is hereby ordered that each active member of the North Carolina State Bar be assessed the sum of Twenty-five Dollars ($25) in support of the Client Security Fund, it being understood that for the purposes of 2027 and all succeeding years, the amount of the assessment shall again be Zero Dollars ($0), unless and until the Court enters another superseding order.

By order of the Court in Conference, this the 10th day of December 2025.

/s/ Riggs, J.
For the Court

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 10th day of December 2025.

s/Grant E. Buckner

Grant E. Buckner
Clerk of the Supreme Court

RULES GOVERNING ADMISSION TO THE PRACTICE OF LAW IN THE STATE OF NORTH CAROLINA:

The following Rules Governing Admission to the Practice of Law in the State of North Carolina, submitted by the North Carolina Board of Law Examiners, was duly adopted by the Council of the North Carolina State Bar at its quarterly meeting on October 31, 2025.

BE IT RESOLVED by the Council of the North Carolina State Bar that the Rules Governing Admission to the Practice of Law in the State of North Carolina are approved to be amended as shown in the following attachment:

Attachment 1: Rules Governing the Admission to the Practice of Law in the State of North Carolina

- Attachment 1A: 27 N.C.A.C. 03, Section .0100, Rule .0101, *Definitions*
- Attachment 1B: 27 N.C.A.C. 03, Section .0300, Rule .0301, *Effective Date*
- Attachment 1C: 27 N.C.A.C. 03, Section .0400, Rule .0404, *Fees for General Applicants*
- Attachment 1D: 27 N.C.A.C. 03, Section .0500, Rule .0501, *Requirements for General Applicants*
- Attachment 1E: 27 N.C.A.C. 03, Section .0500, Rule .0503, *Requirements for Relocated Servicemember and Spouse of Relocated Servicemember Applicants*
- Attachment 1F: 27 N.C.A.C. 03, Section .0500, Rule .0504, *Requirements for Transfer Applicants*
- Attachment 1G: 27 N.C.A.C. 03, Section .0900, Rule .0901, *Bar Examination*
- Attachment 1H: 27 N.C.A.C. 03, Section .0900, Rule .0902, *Dates*
- Attachment 1I: 27 N.C.A.C. 03, Section .0900, Rule .0903, *Subject Matter*
- Attachment 1J: 27 N.C.A.C. 03, Section .0900, Rule .0904, *Grading and Scoring*
- Attachment 1K: 27 N.C.A.C. 03, Section .1000, Rule .1001, *Review*
- Attachment 1L: 27 N.C.A.C. 03, Section .0100, Rule .1002, *Reserved for Future Use*
- Attachment 1M: 27 N.C.A.C. 03, Section .0100, Rule .1003, *Release of Scores*
- Attachment 1N: 27 N.C.A.C. 03, Section .0100, Rule .1005, *Re-Grading*

BOARD OF LAW EXAMINERS

NORTH CAROLINA
WAKE COUNTY

I, Peter Bolac, Secretary-Treasurer of the North Carolina State Bar, do hereby certify that the Rules Governing Admission to the Practice of Law in the State of North Carolina, submitted by the North Carolina Board of Law Examiners were duly adopted by the Council of the North Carolina State Bar at a regularly called meeting on October 31, 2025.

Given over my hand and the Seal of the North Carolina State Bar, this the 6th day of November, 2025.

s/Peter Bolac
Peter Bolac, Secretary

After examining the foregoing amendments to the Rules Governing Admission to the Practice of Law in the State of North Carolina as adopted by the Council of the North Carolina State Bar, it is my opinion that the same is not inconsistent with Article 4, Chapter 84 of the General Statutes.

This the 10th day of December, 2025.

s/Paul Newby
Paul Newby, Chief Justice

On this date, the foregoing Rules Governing Admission to the Practice of Law in the State of North Carolina were entered upon the minutes of the Supreme Court. The rules shall be published in the forthcoming volume of the Advance Sheets as provided by the Act incorporating the North Carolina State Bar, and as otherwise directed by the Appellate Division Reporter.

This the 10th day of December, 2025.

s/Riggs, J.
For the Court

27 NCAC 03 .0101 through and including .1005 is adopted without notice pursuant to G.S. 84-21 and G.S. 84-24 as follows:

TITLE 27 – THE NORTH CAROLINA STATE BAR

CHAPTER 3 – RULES GOVERNING ADMISSION TO THE PRACTICE OF LAW IN THE STATE OF NORTH CAROLINA

SECTION .0100 – ORGANIZATION

27 NCAC 03 .0101 DEFINITIONS

For purposes of this Chapter, the following shall apply:

(1) "Chapter" or "Rules" refers to the "Rules Governing Admission to the Practice of Law in the State of North Carolina."

(2) "Board" refers to the "Board of Law Examiners of the State of North Carolina." A majority of the members of the Board shall constitute a quorum, and the action of a majority of a quorum, present and voting, shall constitute the action of the Board.

(3) "Executive Director" refers to the "Executive Director of the Board of Law Examiners of the State of North Carolina."

(4) "File" or "filing" or "filed" shall mean received in the office of the Board of Law Examiners. Except that applications placed in the United States mail properly addressed to the Board of Law Examiners and bearing sufficient first-class postage and post-marked by the United States Postal Service or date-stamped by any recognized delivery service on or before a deadline date will be considered as having been timely filed if all required fees are included in the mailing. Mailings which are postmarked after a deadline or which, if postmarked on or before a deadline, do not include required fees or which include a check in payment of required fees which is dishonored because of insufficient funds will not be considered as filed. Applications which are not properly signed and notarized; or which do not include the properly executed Authorization and Release forms; or which are illegible; or with incomplete answers to questions will not be considered filed and will be returned.

(5) Any reference to a "state" shall mean one of the United States, and any reference to a "territory" shall mean a United States territory.

(6) "Panel" means one or more members of the Board specially designated to conduct hearings provided for in these Rules.

(7) "Uniform Bar Examination" (or "UBE") means the bar examination prepared and coordinated by the National Conference of Bar Examiners that is uniformly administered by user jurisdictions and results in a portable score. This includes the NextGen UBE. To the extent that these rules refer to "bar examination," "bar exam," "examination," and "exam," those terms also refer to the UBE.

SECTION .0300 – EFFECTIVE DATE

27 NCAC 03 .0301 EFFECTIVE DATE

~~These Revised Rules shall apply to all applications for admission to practice law in North Carolina submitted on or after June 30, 2018.~~ Rule .0501(8) shall apply to all applications filed on or after November 15, 2027. Rule .0504(9) shall apply to all applications filed on or after May 1, 2028. All other rules shall become effective as provided by law.

27 NCAC 03 .0404 FEES FOR GENERAL APPLICANTS

(a) The application specified in .0402(a) shall be accompanied by a fee of eight hundred and fifty dollars ($850.00), if the applicant is not, and has not been, a licensed attorney in any other jurisdiction, or by a fee of one thousand six hundred fifty dollars ($1,650), if the applicant is or has been a licensed attorney in any other jurisdiction; provided that if the applicant is filing after the deadline set out in Rule .0403(a), but before the deadline set forth in Rule .0403(b), the application shall also be accompanied by a late fee of two hundred and fifty dollars ($250.00).

(b) A Supplemental Application shall be accompanied by a fee of four hundred dollars ($400.00).

(c) Beginning with the July 2028 bar examination, the application specified in Rule .0402(a) shall be accompanied by a fee of one thousand and twenty-five dollars ($1,025) if the applicant is not, and has not been, a licensed attorney in any other jurisdiction, or by a fee of one thousand eight hundred and twenty-five dollars ($1,825) if the applicant is or has been a licensed attorney in any other jurisdiction; provided that if the applicant is filing after the deadline set out in Rule .0403(a), but before the deadline set forth in Rule .0403(b), the application shall also be accompanied by a late fee of two hundred and fifty dollars ($250.00).

(d) Beginning with the July 2028 bar examination, a Supplemental application shall be accompanied by a fee of five hundred and seventy-five dollars ($575.00).

SECTION .0500 - REQUIREMENTS FOR APPLICANTS

27 NCAC 03 .0501 REQUIREMENTS FOR GENERAL APPLICANTS

As a prerequisite to being licensed by the Board to practice law in the State of North Carolina, a general applicant shall:

(1) possess the qualifications of character and general fitness requisite for an attorney and counselor-at- law, and be of good moral character and entitled to the high regard and confidence of the public and have satisfied the requirements of Section .0600 of this Chapter at the time the license is issued;

(2) possess the legal educational qualifications as prescribed in Section .0700 of this Chapter;

(3) be at least 18 years of age;

(4) have filed formal application as a general applicant in accordance with Section .0400 of this Chapter;

(5) pass the written bar examination prescribed in Section .0900 of this Chapter, provided that an applicant who has failed to achieve licensure for any reason within three years after the date of the written bar examination in which the applicant received a passing score will be required to take and pass the examination again before being admitted as a general applicant;

(6) have taken and passed the Multistate Professional Responsibility Examination within the 24 month period next preceding the beginning day of the written bar examination which applicant passes as prescribed above, or shall take and pass the Multistate Professional Responsibility Examination within the 12 month period thereafter; the time limits are tolled for a period not exceeding four years for any applicant who is a ~~service member~~ servicemember as defined in the ~~Service Members~~ Servicemembers Civil Relief Act, 50 U.S.C. Appx. § 511, while engaged in active service as defined in 10 U.S.C.

§ 101, and who provides a letter or other communication from the ~~service member's~~ servicemember's commanding officer stating that the ~~service member's~~ servicemember's current military duty prevents attendance for the examination, stating that military leave is not authorized for the ~~service member~~ servicemember at the time of the letter, and stating when the ~~service member~~ servicemember would be authorized military leave to take the examination.

(7) if the applicant is or has been a licensed attorney, be in good standing in each state, territory of the United Sates, or the District of Columbia, in which the applicant is or has been licensed to practice law and not under any charges of misconduct while the application is pending before the Board.

(a) For purposes of this rule, an applicant is "in good standing" in a jurisdiction if:

(i) the applicant is an active member of the bar of the jurisdiction and the jurisdiction issues a certificate attesting to the applicant's good standing therein; or

(ii) the applicant was formerly a member of the jurisdiction, and the jurisdiction certifies the applicant was in good standing at the time that the applicant ceased to be a member; and

(b) if the jurisdiction in which the applicant is inactive or was formerly a member will not certify the applicant's good standing solely because of the non-payment of dues, the Board, in its discretion, may waive such certification from that jurisdiction.

(8) have successfully completed the North Carolina State-Specific Component covering Decedents' Estates and Trusts, outlined below, within 12 months after the beginning day of the bar examination which applicant passes as prescribed above. The time limits are tolled for a period not exceeding 24-months for any applicant who is a servicemember as defined in the Servicemembers Civil Relief Act, 50 U.S.C. Appx. § 511, while engaged in active service as defined in 10 U.S.C. § 101, and who provides a letter or other communication from the servicemember's commanding officer stating that the servicemember's current military duty prevents the servicemember from completing the State-Specific Component within the 12-month period after the beginning day of the written bar examination which applicant passes as prescribed above.

(a) Composition of the North Carolina State-Specific Component. The North Carolina State-Specific Component shall consist of a multiple-choice examination covering the subject area of Decedents' Estates and Trusts.

(b) Administration of the North Carolina State-Specific Component. The North Carolina State-Specific Component shall be offered four times per year: February, May, July, and November.

(c) Deadlines and Fees. The deadlines and fees shall be as prescribed below.

(i) February and July administrations. The North Carolina State-Specific Component shall be administered with the February and July bar examinations. Applicants must apply by the deadlines provided in Rule .0403. There shall be no additional fee for the North Carolina State-Specific Component when taken at the February or July administration of the bar examination.

(ii) May administration. Applications for the May administration of the North Carolina State-Specific Component shall be filed with the Executive Director at the offices of the Board on or before the third Tuesday in April. The fee for the May administration of the North Carolina State-Specific Component shall be one hundred dollars ($100.00).

(iii) November administration. Applications for the November administration of the North Carolina State-Specific Component shall be filed with the Executive Director at the offices of the Board on or before the third Tuesday in October. The fee for the November administration of the North Carolina State-Specific Component shall be one hundred dollars ($100.00).

27 NCAC 03 .0503 REQUIREMENTS FOR RELOCATED SERVICEMEMBER AND ~~MILITARY~~ SPOUSE OF RELOCATED SERVICEMEMBER ~~COMITY~~ APPLICANTS

A servicemember or spouse of a servicemember who has a license to practice law in a State, or territory of the United States or the District

of Columbia, and relocates residence because such servicemember receives military orders for military service in the State of North Carolina, ~~A Military Spouse Comity Applicant, upon written application may, in the discretion of the Board,~~ shall be granted a license to practice law in the State of North Carolina without written examination if the applicant satisfies the requirements listed below ~~provided that~~:

(1) Requirements. The applicant must file an application, upon such forms as may be supplied by the Board. Such application shall require: ~~The Applicant fulfills all of the requirements of Rule .0502, except that:~~

(a) That an applicant supplies full and complete information in regard to the applicant's background, including family, past residences, education, military service, employment, credit status, whether the applicant has been a party to any discipline or legal proceedings, whether currently mentally or emotionally impaired, references, and the nature of the applicant's practice of law. ~~in lieu of the requirements of paragraph (3) of Rule .0502, a Military Spouse Comity Applicant shall certify that said applicant has read the Rules of Professional Conduct promulgated by the North Carolina State Bar and shall prove to the satisfaction of the Board that the Military Spouse Comity Applicant is duly licensed to practice law in a state, or territory of the United States, or the District of Columbia, and that the Military Spouse Comity Applicant has been for at least four out of the last eight years immediately preceding the filing of this application with the Executive Director, actively and substantially engaged in the practice of law. Practice of law for the purposes of this rule shall be defined as it would be defined for any other comity applicant; and~~

(b) That the applicant provides the following documentation: ~~Paragraph (4) of Rule .0502 shall not apply to a Military Spouse Comity Applicant.~~

(i) Proof of military orders as defined in section (2)(b);

(ii) If the applicant is the spouse of a relocated servicemember, a copy of the marriage certificate;

(iii) A notarized affidavit affirming under penalty of law that: the applicant is the person described and identified in the application; all statements made in the application are true, correct, and complete; the

applicant has read and understands the requirements to receive a license to practice law and the scope of practice, of the State of North Carolina; the applicant certifies that the applicant meets and shall comply with the requirements to receive a license to practice law in the State of North Carolina; and the applicant is in good standing in all States in which the applicant holds or has held a license to practice law.

(iv) Certificates of Moral Character from four individuals who know the applicant;

(v) A recent photograph;

(vi) Two sets of clear fingerprints;

(vii) A certification of the Court of Last Resort from the jurisdiction from which the applicant is applying that: the applicant is currently licensed in the jurisdiction; the date of the applicant's licensure in the jurisdiction; and the applicant was of good moral character when licensed by the jurisdiction;

(viii) Transcripts from the applicant's undergraduate and graduate schools;

(ix) A copy of applications for admission to the practice of law that the applicant has filed with any state, territory, or the District of Columbia;

(x) A certificate from the proper court or body of every jurisdiction in which the applicant is licensed that the applicant is in good standing, and not under pending charges of misconduct. For purposes of this rule, an applicant is "in good standing" in a jurisdiction if: the applicant is an active member of the bar of the jurisdiction and the jurisdiction issues a certificate attesting to the applicant's good standing therein; or the applicant was formerly a member of the bar of the jurisdiction and the jurisdiction certifies the applicant was in good standing at the time that the applicant ceased to be a member; and if the jurisdiction in which the applicant is inactive or was formerly a member will not certify the applicant's good standing solely because of the non-payment of dues, the Board, in its discretion, may waive such certification from that jurisdiction; however, the applicant must not only be in good standing, but also

must be an active member of each jurisdiction upon which the applicant relies for admission by comity.

(c) The applicant shall possess the qualifications of character and general fitness requisite for an attorney and counselor-at-law and satisfy the requirements of Section .0600 of this Chapter;

(d) The applicant must satisfy the educational requirements of Section .0700 of this Chapter.

(e) The applicant may not have failed the written North Carolina Bar Examination within five years prior to the date of filing the application;

(f) The applicant must have passed the Multistate Professional Responsibility Examination; and

(g) The applicant must pay to the Board the application fee provided in section (3)(a) or (3)(b).

(2) Definitions. ~~Military Spouse Comity Applicant Defined. A Military Spouse Comity Applicant is any person who is~~

(a) Servicemember. A servicemember, as defined in 50 U.S.C. § 3911(1), or a member of the North Carolina National Guard. ~~An attorney at law duly admitted to practice in another state or territory of the United States, or the District of Columbia; and~~

(b) Military order. Official military orders, or any notification, certification, or verification from the servicemember's commanding officer, with respect to a servicemember's current or future military service. In the case of a member of the North Carolina National Guard, this term includes an order from the Governor of North Carolina pursuant to Chapter 127A of the General Statutes. ~~Identified by the Department of Defense (or, for the Coast Guard when it is not operating as a service in the Navy, by the Department of Homeland Security) as the spouse of a service member of the United States Uniformed Services; and~~

~~(c) Is residing or intends within the next six months to be residing, in North Carolina due to the service member's military orders for a permanent change of station to the State of North Carolina.~~

(3) Application Fee. ~~Procedure. In addition to the documentation required by paragraph (1) of Rule .0502, a Military Spouse Comity Applicant must file with the Board the following:~~

(a) For servicemembers, the application fee is one thousand five hundred dollars ($1,500). ~~A copy of the service member's military orders reflecting a permanent change of station to a military installation in North Carolina; and~~

(b) For spouses of servicemembers, there is no application fee. ~~A military identification card which lists the Military Spouse Applicant as the spouse of the service member.~~

~~(4) Fee. No application fee will be required for Military Spouse Comity Applicants.~~

27 NCAC 03 .0504 REQUIREMENTS FOR TRANSFER APPLICANTS

As a prerequisite to being licensed by the Board to practice law in the State of North Carolina, a transfer applicant shall:

(1) possess the qualifications of character and general fitness requisite for an attorney and counselor-at- law, and be of good moral character and entitled to the high regard and confidence of the public and have satisfied the requirements of Section .0600 of this Chapter;

(2) possess the legal educational qualifications as prescribed in Section .0700 of this Chapter;

(3) be at least 18 years of age;

(4) have filed with the Executive Director, upon such forms as may be supplied by the Board, a typed application in duplicate, containing the same information and documentation required of general applicants under Rule .0402(a);

(5) have paid with the application an application fee of one thousand five hundred dollars ($1,500), if the applicant is licensed in any other jurisdiction, or one thousand two hundred seventy-five dollars ($1,275) if the applicant is not licensed in any other jurisdiction, no part of which may be refunded to an applicant whose application is denied or to an applicant who withdraws, unless the withdrawing applicant filed with the Board a written request to withdraw, in which event, the Board in its discretion may refund no more than one-half of the fee to the withdrawing applicant. However, when an application for admission by transfer is received from an applicant who, in the opinion of the Executive Director, after consultation

with the Board Chair, is not eligible for consideration under the Rules, the applicant shall be so advised by written notice. Upon receipt of such notice, the applicant may elect in writing to withdraw the application, and provided the written election is received by the Board within 20 days from the date of the Board's written notice to the applicant, receive a refund of all fees paid.

(6) have, within the three-year period preceding the filing date of the application, taken the Uniform Bar Examination and achieved a scaled score on such exam that is equal to or greater than the passing score established by the Board for the UBE as of the administration of the exam immediately preceding the filing date~~;~~. For purposes of this rule: "passing score" means the minimum passing score established by the Board for the UBE as of the administration date of the exam immediately preceding the application filing date; and, the three-year period preceding the filing date begins to run on the date the applicant sat for the Uniform Bar Examination.

(7) have passed the Multistate Professional Responsibility Examination.

(8) if the applicant is or has been a licensed attorney, be in good standing in each state, territory of the United Sates, or the District of Columbia, in which the applicant is or has been licensed to practice law and not under any charges of misconduct while the application is pending before the Board.

(a) For purposes of this rule, an applicant is "in good standing" in a jurisdiction if:

(i) the applicant is an active member of the bar of the jurisdiction and the jurisdiction issues a certificate attesting to the applicant's good standing therein; or

(ii) the applicant was formerly a member of the jurisdiction, and the jurisdiction certifies the applicant was in good standing at the time that the applicant ceased to be a member; and

(b) if the jurisdiction in which the applicant is inactive or was formerly a member will not certify the applicant's good standing solely because of the non-payment of dues, the Board, in its discretion, may waive such certification from that jurisdiction.

(9) have successfully completed the North Carolina State-Specific Component covering Decedents' Estates and Trusts, outlined

below, within 12 months after the filing of the application for admission to practice law in North Carolina by UBE Transfer. The time limits are tolled for a period not exceeding 24 months for any applicant who is a servicemember as defined in the Servicemembers Civil Relief Act, 50 U.S.C. Appx § 511, while engaged in active service as defined in 10 U.S.C. § 101, and who provides a letter or other communication from the servicemember's commanding officer stating that the servicemember's current military duty prevents the servicemember from completing the State-Specific Component within the 12 month period after the filing of the application for admission to practice law in North Carolina by UBE Transfer.

(a) Composition of the North Carolina State-Specific Component. The North Carolina State-Specific Component shall consist of a multiple-choice examination covering the subject area of Decedents' Estates and Trusts.

(b) Administration of the North Carolina State-Specific Component. The North Carolina State-Specific Component shall be offered 4 times per year: February, May, July, and November.

(c) Deadlines and Fees. The deadlines and fees shall be prescribed below.

(i) Deadlines for February and July administrations. The North Carolina State-Specific Component shall be administered with the February and July bar examinations. Applicants must apply by the deadlines provided in Rule .0403. There shall be no additional fee for the North Carolina State-Specific Component when taken at the February or July administration of the bar examination.

(ii) Deadline for May administration. Applications for the May administration of the North Carolina State-Specific Component shall be filed with the Executive Director at the offices of the Board on or before the third Tuesday in April. The fee for the May administration of the North Carolina State-Specific Component shall be one hundred dollars ($100.00).

(iii) Deadline for November administration. Applications for the November administration of the North Carolina State-Specific Component shall be filed with the Executive Director at the offices of the

Board on or before the third Tuesday in October. The fee for the November administration of the North Carolina State-Specific Component shall be one hundred dollars ($100.00).

SECTION .0900 - EXAMINATIONS

27 NCAC 03 .0901 ~~WRITTEN~~ BAR EXAMINATION

Two ~~written~~ bar examinations shall be held each year for general applicants.

27 NCAC 03 .0902 DATES

The ~~written~~ bar examinations shall be held in North Carolina in the months of February and July on the dates prescribed by the National Conference of Bar Examiners.

27 NCAC 03 .0903 SUBJECT MATTER

The examination shall be the Uniform Bar Examination (UBE) prepared by the National Conference of Bar Examiners ~~and comprising six Multistate Essay Examination (MEE) questions, two Multistate Performance Test (MPT) items, and the Multistate Bar Examination (MBE).~~ Applicants may be tested on any subject matter listed by the National Conference of Bar Examiners as areas of law to be tested on the UBE. ~~Questions will be unlabeled and not necessarily limited to one subject matter.~~

27 NCAC 03 .0904 GRADING AND SCORING.

Grading of the bar examination ~~of the MEE and MPT answers~~ shall be ~~strictly~~ anonymous. ~~The MEE and MPT raw scores shall be combined and converted to the MBE scale to calculate written scaled scores according~~

~~to the method used by the National Conference of Bar Examiners for jurisdictions that administer the UBE.~~ The Board shall grade the UBE in accordance with grading procedures and standards set by the National Conference of Bar Examiners.

SECTION .1000 – REVIEW OF ~~WRITTEN~~ BAR EXAMINATION

27 NCAC 03 .1001 REVIEW

After release of the results of the ~~written~~ bar examination, a general applicant who has failed the ~~written~~ examination may, in the Board's offices, review ~~the MEE questions and MPT items on the written examination and the applicant's answers thereto, along with selected answers by other applicants which the Board determines may be useful to unsuccessful applicants~~ the applicant's examination in accordance with the policies and procedures set by the National Conference of Bar Examiners. ~~The Board will also furnish an unsuccessful applicant hard copies of any or all of these materials, upon payment of the reasonable cost of such copies, as determined by the Board. No copies of the MEE or MPT grading materials prepared by the National Conference of Bar Examiners will be shown or provided to the applicant unless authorized by the National Conference of Bar Examiners.~~

27 NCAC 03 .1002 ~~MULTISTATE BAR EXAMINATION~~ RESERVED FOR FUTURE USE

~~There is no provision for review of the Multistate Bar Examination. Applicants may, however, request the National Conference of Bar Examiners to hand score their MBE answers.~~

27 NCAC 03 .1003 RELEASE OF SCORES

(a) The Board will not release ~~UBE~~ bar examination scores to the public.

(b) The Board will inform each applicant in writing of the applicant's ~~scaled~~ score on the ~~UBE~~ bar examination. Scores will be shared with the applicant's law school only with the applicant's consent.

~~(c) Upon written request of an unsuccessful applicant, the Board will furnish the following information about the applicant's score to the applicant: the applicant's raw scores on the MEE questions and MPT items; the applicant's scaled combined MEE and MPT score; the applicant's scaled MBE score; and the applicant's scaled UBE score.~~

~~(d) Upon written request of an applicant, the Board will furnish the Multistate Bar Examination score of said applicant to another jurisdiction's board of bar examiners or like organization that administers the admission of attorneys for that jurisdiction.~~

27 NCAC 03 .1005 ~~RE-GRADING~~ REGRADING

Examination answers ~~cannot~~ will not be regraded. ~~once UBE scores have been released.~~

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