389 N.C.—No. 4 Pages 540-706

DISCIPLINE AND DISABILITY OF ATTORNEYS; BOARD OF LAW EXAMINERS; ADMINISTRATIVE COMMITTEE PROCEDURES

ADVANCE SHEETS

OF

CASES

ARGUED AND DETERMINED IN THE

SUPREME COURT

OF

NORTH CAROLINA

AUGUST 19, 2026

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

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OF
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APPEAL AND ERROR

Guilty plea—limited right of appeal—statutory exception inapplicable—appellate jurisdiction improper—After the defendant in a prosecution for embezzlement and obtaining property by false pretenses pleaded guilty to attaining habitual felon status, the Court of Appeals erred in concluding that defendant had a right of appeal from the entry of her guilty plea under one of the exceptions to the general limitation on such appeals: specifically, N.C.G.S. § 15A-1444(a2)(3), which allows an appeal as of right where the duration of a prison sentence is not statutorily authorized for the defendant's class of offense and prior record level. This exception did not apply to defendant's appeal, which challenged the factual basis for the guilty plea rather than the duration of defendant's sentence. Consequently, the Court of Appeals—having dismissed defendant's petition for a writ of certiorari as moot—lacked jurisdiction to review the merits of defendant's appeal, prompting the Supreme Court to reverse that court's decision and to remand the case for further proceedings. **State v. Mincey, 585.**

Preservation of issues—insufficiency of evidence—two separate assault charges—general motion to dismiss—In a prosecution for multiple crimes arising from a domestic violence incident between defendant and his wife, defendant failed to preserve for appellate review his argument that insufficient evidence supported two separate charges of assault by strangulation rather than a single charge arising from one, continuous offense. Under Appellate Rule 10(a)(3), which precludes defendants from raising sufficiency of the evidence issues on appeal unless a motion to dismiss is made at trial, a motion to dismiss for insufficiency of the evidence

is offense specific, meaning that a motion to dismiss one offense preserves all sufficiency issues with respect to that offense alone. Consequently, defendant's general motion to dismiss at trial did not preserve his argument regarding the two assault charges, especially where he announced to the trial court that he was excluding those specific charges from his motion. **State v. Tadlock, 642.**

CLASS ACTIONS

Class certification—conflict between class definition and court's analysis—ascertainability—In a class action lawsuit arising from an allegedly deceptive promotional flyer that a car dealership sent to plaintiffs—who were led to believe that they had won either a large cash prize or a free car when, in fact, they had won only two dollars—the trial court's class certification order (entered on remand from a prior appeal) was vacated where the court defined the class to include people who received the flyer, called the promotional hotline number shown on the flyer, and then visited the dealership to claim their prize. This definition conflicted with the court's analysis, wherein the court found that one of the named plaintiffs did not call the hotline—rather, her grandmother did—but nevertheless allowed her to remain a named plaintiff representing the class; in turn, this inconsistency prevented meaningful appellate review. Additionally, the proposed class was not ascertainable where there were no records identifying which of the 2,118 people who called the hotline number were among the 927 who also visited the dealership during the promotional period. **Surgeon v. TKO Shelby, LLC, 652.**

CONSTITUTIONAL LAW

Effective assistance of counsel—defense counsel's purported concessions of guilt—defendant's stipulations—Harbison inapplicable—In defendant's appeal from his convictions for possession of a firearm by a felon and two counts of assault with a deadly weapon, the Court of Appeals' determination that the record failed to show whether defendant knowingly consented in advance to his trial counsel's admission of guilt—and its resulting remand of the case to the trial court for an evidentiary hearing on that issue—was reversed. There was no deficiency in defense counsel's performance regarding concessions—let alone per se prejudicial error pursuant to *State v. Harbison*, 315 N.C. 175 (1985), and *State v. McAllister*, 375 N.C. 455 (2020), which together provide the appropriate framework when a client's autonomy, not counsel's competence, is in issue—where defendant stipulated on the record to his counsel's purported concessions in two separate colloquies with the trial court and, moreover, counsel did not actually concede defendant's guilt, either explicitly or implicitly. **State v. Nunnally, 594.**

CRIMINAL LAW

Capital case—executive clemency—death sentence commuted to life imprisonment without parole— effect on right of direct appeal to Supreme Court— In a capital case, where defendant applied for clemency while his appeal from a judgment sentencing him to death for first-degree murder was still pending in the Supreme Court, which resulted in the governor commuting defendant's death sentence to life imprisonment without parole, the Supreme Court granted defendant's motion to remand the appeal to the Court of Appeals on the ground that, because he no longer faced execution, he did not retain his statutory right of direct appeal to the Supreme Court under N.C.G.S. §§ 7A-27(a)(1) and 15A-2000(d), since the legislative

purpose under those statutes for allowing direct Supreme Court review—to prevent arbitrary or unjust executions—no longer applied to his case, which had become a non-capital felony case requiring appellate review in the Court of Appeals under N.C.G.S. § 7A-27(b)(1). **State v. Robinson, 618.**

EVIDENCE

Murder trial—victim's prior felony convictions—to show defendant's state of mind—exclusion under Rule 404(b)—prejudicial—In a prosecution for first-degree murder arising from an altercation in a cornfield about the victim hunting too close to defendant's horse rescue farm, where defendant claimed that he acted in self-defense when he fatally shot the victim as he appeared to reach into his vest after angrily pushing defendant to the ground, the trial court prejudicially erred in excluding evidence of the victim's prior felony convictions under Evidence Rule 404(b). This evidence was not offered to show that the victim acted in conformity with his past crimes, but rather to show defendant's state of mind during the altercation—and the reasonableness of his fear during the incident, which was essential to his self-defense claim—where defendant knew that the victim was a convicted felon who illegally carried a firearm. **State v. Hague, 552.**

Text messages—voluminous and un-redacted—admitted without limiting instruction—plain error analysis—Where defendant was convicted of second-degree murder—upon evidence that: the victim (a married co-worker with whom defendant had been engaged in a sexual affair and significant drug use) was found face-down in defendant's bedroom doorway, shot twice in the back and with a key to defendant's home lying nearby; defendant was the only person armed when the encounter that led to the victim's death began; and defendant's accounts of the encounter were materially inconsistent—defendant could not demonstrate that, but for the trial court's admission of voluminous and un-redacted text messages and photos, some sexually explicit, sent from defendant's phone to the victim and other persons, the jury probably would have returned a different verdict. **State v. Hicks, 567.**

SEARCH AND SEIZURE

Traffic stop—warrantless search—probable cause—totality of circumstances—marijuana odor only one factor—The trial court properly denied defendant's motion to suppress evidence found during a traffic stop where law enforcement officers had probable cause under the totality of the circumstances to conduct a warrantless search of defendant's person and vehicle. Relevant factors included: the excessive speed of the vehicle (a traffic violation which provided the officers with legal justification to initiate the stop); a marijuana odor; a cover scent (which, based on the officers' experience, was a common tactic used to mask the scent of marijuana); the criminal history of the vehicle's occupants; and a background check that revealed defendant had serious pending charges. Although the presence of a handgun on the car's dashboard was not a factor in the inquiry—because the driver provided her credentials as a probation and parole officer—the remainder of the circumstances collectively supported an inference that evidence of criminal activity would be discovered in the car; thus, the searches of defendant's person and vehicle were objectively reasonable under the Fourth Amendment. **State v. Dobson, 542.**

Traffic stop—warrantless search—reasonable suspicion—probable cause—totality of circumstances—marijuana odor—The trial court properly denied

defendant's motion to suppress evidence where law enforcement officers had, under the totality of the circumstances, reasonable suspicion to conduct a *Terry* search of defendant's person and probable cause to conduct a warrantless search of defendant's vehicle. Relevant factors included: defendant's failure to pull over in response to a police vehicle's blue lights and sirens; defendant's presence in a "high crime area"; a marijuana odor coming from defendant's vehicle; defendant's evasive behavior during questioning; and defendant's prior criminal history. These circumstances, including the subsequent discovery of a marijuana "blunt" in defendant's pants pocket, were sufficient to create an inference that evidence of criminal activity would be discovered in the car; thus, the searches of defendant's person and vehicle were objectively reasonable under the Fourth Amendment. **State v. Rowdy, 631.**

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

STATE v. BARDEN

[389 N.C. 540 (2026)]

STATE OF NORTH CAROLINA
v.
IZIAH BARDEN

No. 96A01-3

Filed 22 May 2026

Appeal as of right pursuant to N.C.G.S. § 7A-27(a)(1) from a judgment imposing a sentence of death entered on 12 November 1999 by Judge Steve A. Balog in Superior Court, Sampson County, upon a jury verdict finding defendant guilty of first-degree murder, following a hearing on remand ordered by this Court pursuant to *Batson v. Kentucky*, 476 U.S. 79, 106 S. Ct. 1712 (1986). Appellate proceedings were stayed on 7 September 2010. On 12 May 2025, defendant moved to dissolve the stay and transfer the case to the Court of Appeals. On 16 May 2025, this Court dissolved the stay and requested supplemental briefing regarding defendant's transfer request. This matter was calendared for argument in the Supreme Court on 30 October 2025 but determined on the record and briefs without oral argument pursuant to Rule 30(f) of the North Carolina Rules of Appellate Procedure.

Jeff Jackson, *Attorney General*, *by Nicholaos G. Vlahos*, *Special Deputy Attorney General*, *for the State-appellee.*

Glenn Gerding, *Appellate Defender*, *by Janine C. Fodor*, *Attorney at the Center for Death Penalty Litigation*, *for defendant-appellant.*

PER CURIAM.

In 1999, a jury convicted defendant of robbery with a dangerous weapon and first-degree murder under the felony murder rule. Upon the jury's recommendation, the Superior Court, Sampson County, sentenced defendant to death and arrested judgment on defendant's robbery with a dangerous weapon conviction. In defendant's initial appeal, this Court remanded for a hearing under *Batson v. Kentucky*, 476 U.S. 79, 106 S. Ct. 1712 (1986), but otherwise held that there was no error. *State v. Barden* (*Barden I*), 356 N.C. 316, 389, 572 S.E.2d 108, 153 (2002).

In defendant's second appeal after the *Batson* hearing, this Court remanded for a second *Batson* hearing in light of several cases decided by the Supreme Court of the United States in the interim. *State v. Barden* (*Barden II*), 362 N.C. 277, 279–80, 658 S.E.2d 654, 655–56 (2008) (first

citing *Snyder v. Louisiana*, 552 U.S. 472, 128 S. Ct. 1203 (2008); then citing *Rice v. Collins*, 546 U.S. 333, 126 S. Ct. 969 (2006); and then citing *Miller-El v. Dretke*, 545 U.S. 231, 125 S. Ct. 2317 (2005)). On 4 June 2008, the trial court conducted a second *Batson* hearing, and on 9 July 2008, it denied defendant's *Batson* challenge. Defendant filed a notice of appeal on 17 July 2008.

Defendant docketed the record on appeal on 18 May 2010 and filed his opening brief on 20 July 2010. On 10 August 2010, defendant filed motions for appropriate relief under the Racial Justice Act (RJA), N.C.G.S. §§ 15A-2010 to -2012 (2009) (repealed 2013), in both this Court and Superior Court, Sampson County. That same day, defendant filed two other motions: (1) a "Motion to Dismiss Appellant's Motion Filed in this Court Under the North Carolina Racial Justice Act Without Prejudice to File a Motion Under the Racial Justice Act in Post-Conviction Proceedings if Appellant is Not Be [sic] Granted Relief on Direct Appeal," and (2) an alternative "Motion to Remand to the Superior Court of Sampson County for an Evidentiary Hearing and Other Proceedings."[1] On 7 September 2010, this Court (1) dismissed defendant's motion for appropriate relief without prejudice, (2) dismissed his other motions, and (3) stayed further appellate proceedings "until after the trial court's hearing and determination of defendant's Motion for Appropriate Relief Pursuant to the Racial Justice Act filed in Superior Court, Sampson County."

On 31 December 2024, the Governor commuted defendant's death sentence to life imprisonment without the possibility of parole. On 1 May 2025, the trial court granted defendant's motion to withdraw his motion for appropriate relief under the RJA. On 12 May 2025, defendant moved to dissolve this Court's stay and transfer the case to the Court of Appeals.

On 16 May 2025, this Court lifted the stay and issued a special order requesting briefing on the following question: "When the Governor commutes a defendant's death sentence to life imprisonment but no court has vacated, altered, or amended the judgment that includes a sentence of death, does initial appellate jurisdiction now rest with the Court of Appeals under N.C.G.S. § 7A-27?"

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1. Defendant filed these motions because "[t]he RJA d[id] not address the issue of what court, if any, ha[d] jurisdiction for filing of a motion under the RJA when a defendant-appellant's case is on direct appeal to th[e Supreme] Court."

The question has been fully briefed. For the reasons explained in *State v. Robinson*, No. 142A12 (N.C. May 22, 2026), defendant's appeal is remanded to the Court of Appeals.

REMANDED.

Justice BERGER dissenting.

For the reasons stated in my separate opinion in *State v. Robinson*, No. 142A12 (N.C. May 22, 2026), I dissent from the majority's decision in this matter.

STATE OF NORTH CAROLINA
v.
TYRON LAMONT DOBSON

No. 190PA24

Filed 22 May 2026

Search and Seizure—traffic stop—warrantless search—probable cause—totality of circumstances—marijuana odor only one factor

The trial court properly denied defendant's motion to suppress evidence found during a traffic stop where law enforcement officers had probable cause under the totality of the circumstances to conduct a warrantless search of defendant's person and vehicle. Relevant factors included: the excessive speed of the vehicle (a traffic violation which provided the officers with legal justification to initiate the stop); a marijuana odor; a cover scent (which, based on the officers' experience, was a common tactic used to mask the scent of marijuana); the criminal history of the vehicle's occupants; and a background check that revealed defendant had serious pending charges. Although the presence of a handgun on the car's dashboard was not a factor in the inquiry—because the driver provided her credentials as a probation and parole officer—the remainder of the circumstances collectively supported an inference that evidence of criminal activity would be discovered in the car; thus, the searches of defendant's person and vehicle were objectively reasonable under the Fourth Amendment.

On discretionary review pursuant to N.C.G.S. § 7A-31 of a unanimous decision of the Court of Appeals, 293 N.C. App. 450 (2024), affirming a judgment entered on 12 December 2022 by Judge Craig Croom in Superior Court, Guilford County. Heard in the Supreme Court on 9 September 2025.

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

Benjamin J. Kull for defendant-appellant.

Robert C. Montgomery for North Carolina Conference of District Attorneys, amicus curiae; Edmond W. Caldwell Jr. for North Carolina Sheriffs' Association, amicus curiae; and Fred P. Baggett for North Carolina Association of Chiefs of Police, amicus curiae.

EARLS, Justice.

Earlier North Carolina statutes defined "marijuana" as all parts of the plant "of the genus Cannabis." *Compare* An Act Clarifying that all Species of Marijuana Are Included in the Schedule of Controlled Substances, ch. 491, § 1, 1985 N.C. Sess. Laws 546, 546, *with* North Carolina Controlled Substances Act, ch. 919, § 1, 1971 N.C. Sess. Laws 1477, 1479. Possession of marijuana has long been, and continues to be, illegal in North Carolina. N.C.G.S. § 90-95 (2025). In 2015, the General Assembly modified the law to provide for the cultivation, sale, possession, and use of what was originally called "industrial hemp," Act of October 31, 2025, S.L. 2015-299, § 2, 2015 N.C. Sess. Laws 1486–87, and then shortened to "hemp" in 2022, Act of June 30, 2022, S.L. 2022-32, § 1, 2022 N.C. Sess. Laws 176, 176–77 (current version at N.C.G.S. § 90-87(13a) (2025)). Because the odor of legal hemp and illegal marijuana are virtually identical, the question arises how that smell can factor into a law enforcement officer's determination of when probable cause exists to conduct a warrantless search consistent with the Fourth Amendment's protection against unreasonable searches and seizures.

In two other pending cases, this Court is also considering this same question. *See State v. Rowdy*, No. 300PA24 (N.C. May 22, 2026) and *State v. Schiene*, No. 305PA24 (N.C. 2026). Today we hold that under applicable federal Fourth Amendment doctrine, we continue to follow our precedents which require examination of the "totality of the circumstances" to determine whether probable cause exists to conduct

a warrantless search. *See*, *e.g.*, *Missouri v. McNeely*, 569 U.S. 141, 143 (2013); *State v. McKinney*, 361 N.C. 53, 62 (2006); *State v. Woolard*, 385 N.C. 560, 569 (2023). In that evaluation, the odor of cannabis is one factor that may be considered.

In this case, following a traffic stop, law enforcement officers conducted a warrantless search of Mr. Tyron Lamont Dobson's vehicle and person and discovered marijuana and a handgun. Mr. Dobson appealed his judgment after the trial court sentenced him to twenty-four months of supervised probation. Below, the trial court determined that the totality of the circumstances justified the police search of Mr. Dobson's vehicle and person. The Court of Appeals affirmed that order, holding that the officers' detection of a cover scent provided a basis to support probable cause for a search in addition to their detection of the odor of marijuana.

Mr. Dobson argues that the Court of Appeals erred in affirming the judgment, asserting that it failed to conduct the requisite "totality of the circumstances" analysis with respect to the search at issue and instead applied an unconstitutional "double odor" rule in determining the existence of probable cause. The State argues that the "odor alone" doctrine is good law; and in the alternative, that the Court of Appeals did not create a "double odor" rule and other facts gave rise to probable cause.

We hold here that the smell of marijuana and the smell of a cover scent were not the only factors on which the officers relied in making their probable cause determination. Considering the totality of the circumstances, we hold that the officers' search was objectively reasonable. We therefore affirm the judgment of the Court of Appeals.

I. Background

A. Facts

Around 10 p.m. on 23 January 2021, in downtown Greensboro, the Center City Resource Team observed a handgun in the driver door pocket of a parked black Dodge Charger. The Resource Team relayed this observation to the Greensboro Police Department's Street Crimes Unit. Soon after, the Street Crimes Unit arrived at the parking lot, where officers observed four individuals enter the Charger and leave the parking lot "quickly." Because officers were aware of past incidents involving the discharge of a firearm in the downtown area, the officers decided to continue surveilling the car.

The officers—five in total—began to follow the Charger in unmarked vehicles. Detective Allis and Sergeant Strum began to pace the vehicle at

the intersection of Freeman Mill Road and Randleman Road. Detective Allis paced the Charger at fifty-five miles per hour in the forty-five mile-per-hour zone. He relayed this information to the rest of his team, and Officer Guy and Officer Foster subsequently initiated a traffic stop. Detective Allis, Sergeant Strum, and Detective Bailey also participated in the stop.

Officer Foster approached the driver on the driver's side, while Detective Guy approached the passenger on the passenger's side. The officers noted a woman driving the car, a woman in the passenger seat, and two men in the rear seats. The driver, Janelle Albright, identified herself as a probation and parole officer and alerted the officers to her handgun on the dashboard. She provided her license and credentials. Officer Foster reviewed Ms. Albright's license and credentials, and when he went to return them to her, he smelled an "odor of burnt marijuana" coming from the vehicle. Officer Foster relayed this observation to Ms. Albright, who told the officer that the smell "may have come from the club they visited."

The officers then began to collect the identifications of all of the Charger's passengers. As Detective Allis was speaking to one of the backseat passengers, he smelled a "strong odor of perfume/cologne" that was "freshly sprayed." He recognized the heavy use of fragrances as a "cover scent," which from his ten years of experience in law enforcement, often is "used in order to attempt to mask the smell of illegal narcotics or alcohol." Sergeant Strum similarly smelled a "very sweet almost fruity smell that was overpowering" when he walked past the vehicle, also identifying it as a cover scent.

While the car was stopped, Detectives Allis and Bailey proceeded to conduct a criminal background check of the occupants. They discovered that one of the backseat passengers, Demario Hargrave, had been convicted of possession with intent to sell or distribute cocaine and possession with intent to sell or distribute marijuana. They also discovered that the other backseat passenger, Mr. Dobson, had been previously convicted of a felony and had recently been charged with assault with a deadly weapon with intent to kill inflicting serious injury and possession of a firearm by a felon.

At this point, "[g]iven the totality of the circumstance[s]," the officers concluded they had probable cause to search the vehicle and its occupants of likely criminal activity. The officers notified the occupants and asked them to exit the vehicle. Mr. Hargrave complied, and Detective Bailey took custody of him. Mr. Dobson similarly complied

but did so while holding several food trays close to his belt line in a way Detective Allis found "unnatural." Detective Allis observed a "retail package of marijuana" on the seat after Mr. Dobson got up. While Mr. Dobson was initially reluctant to put the trays down, he eventually complied and was subsequently detained.

Detective Allis proceeded to search Mr. Dobson's person. While doing so, a handgun became dislodged from Mr. Dobson's person and fell to the ground, where Detective Bailey safely retrieved it.

Finally, Sergeant Strum and Detective Allis conducted a search of the vehicle, which revealed a "retail package of marijuana" on the front seat, a cannabis cigarette on the driver's side floor, a cannabis cigarette in the backseat, a cannabis-filled cigar behind an armrest, and a nugget of cannabis in the backseat. Mr. Dobson was placed under arrest for carrying a concealed weapon, possession of a firearm by convicted felon, and simple possession of marijuana.

B. Procedural Posture

On 1 March 2021, a grand jury in Guilford County indicted Mr. Dobson for (1) possession of a firearm by a felon, (2) misdemeanor carrying a concealed firearm, and (3) misdemeanor possession of marijuana (up to one-half ounce). On 21 February 2022, Mr. Dobson filed a motion to suppress the evidence obtained from the vehicle stop. He filed an amended motion to suppress on 8 November 2022, further arguing that the searches of the vehicle and his person were unsupported by probable cause.

After a hearing, the trial court denied Mr. Dobson's motion to suppress. The trial court concluded that officers had reasonable suspicion to stop the Charger initially because the car was speeding. It also determined that "the odor of marijuana, the driver's statement that she and the occupants of the Charger were in a club where marijuana was smoked, and the cologne smell as a cover agent for the marijuana" constituted probable cause to search the vehicle. The trial court clarified with respect to his probable cause determination that, in this case, "[w]e have the smell of marijuana . . . plus something else." Because the search of the Charger was reasonable, there was a firearm found in the car, and Mr. Dobson had a felony conviction and a pending violent felony charge, the trial court also concluded that the removal of Mr. Dobson from the vehicle and frisk of his person was reasonable.

After the trial court denied his motion to suppress, Mr. Dobson consulted with his attorney and chose to plead guilty in exchange for the

State dismissing the misdemeanor possession charge. He also reserved his right to appeal the denial of the motion to suppress as a condition of his plea. Mr. Dobson was sentenced to fourteen to twenty-six months in custody, and the sentence was suspended for twenty-four months of supervised probation. He gave notice of appeal as to the order on the suppression motion in open court.

On appeal, the Court of Appeals affirmed the trial court's judgment, holding the trial court did not err in its denial of Mr. Dobson's motion to suppress. *State v. Dobson*, 293 N.C. App. 450, 456 (2024). The Court of Appeals recognized that, "[i]f the scent of marijuana no longer conclusively indicates the presence of an illegal drug[,] . . . then the scent of marijuana may be insufficient to show probable cause to perform a search." *Id.* at 453 (quoting *State v. Parker*, 277 N.C. App. 531, 541 (2021)). However, the legalization of hemp in North Carolina did not eliminate the significance of the "odor of marijuana" for purposes of a motion to suppress. *Id.* at 454. Further, in this case, the odor of marijuana was not the sole basis for the probable cause search; indeed, officers detected the scent of marijuana "*plus*" a cover scent. *Id.* at 455. In the Court of Appeals' view, the odor of marijuana and the detection—by multiple officers—of the cover scent provided a sufficient basis for a probable cause search. *Id.* at 456.

This Court allowed discretionary review as to the issue of whether the Court of Appeals failed to conduct the requisite "totality of the circumstances" analysis and instead evaluated the existence of probable cause by applying an unconstitutional new "double odor" rule.

II. Analysis

A. Standard of Review

An appellate court's review of a trial court's denial of a motion to suppress "is strictly limited to determining whether the trial judge's underlying findings of fact are supported by competent evidence, in which event they are conclusively binding on appeal, and whether those factual findings in turn support the judge's ultimate conclusions of law." *State v. Cooke*, 306 N.C. 132, 134 (1982). "[F]indings of fact . . . not challenged on appeal . . . are deemed to be supported by competent evidence and are binding on appeal." *State v. Biber*, 365 N.C. 162, 168 (2011). Conclusions of law are reviewed de novo. *Id.* This Court reviews a decision of the Court of Appeals for errors of law. N.C. R. App. P. 16(a).

A denial of a motion to suppress is reviewed under the standards required by the Fourth Amendment, which secures the people

against unreasonable searches and seizures. *State v. Colson*, 274 N.C. 295, 306 (1968).

In general, warrantless searches and seizures are presumed unreasonable under the Fourth Amendment. *Id.* The fruits of such an unreasonable search or seizure may be excluded as evidence in criminal proceedings. *See, e.g.*, *State v. Cooke*, 306 N.C. 132, 135 (1982). Under the automobile exception, however, the government may search a vehicle "on a public roadway or in a public vehicular area . . . if [the search] is based on probable cause, even though a warrant has not been obtained." *State v. Isleib*, 319 N.C. 634, 638 (1987); *accord Pennsylvania v. Labron*, 518 U.S. 938 (1996). Evidence obtained in such a search may be admitted in a criminal proceeding if facts known to the officers conducting the search gave the officer probable cause of a potential crime. *Isleib*, 319 N.C. at 638.

Probable cause exists when "facts and circumstances within . . . the officers' knowledge . . . are sufficient in themselves to warrant a man of reasonable caution in the belief that an offense has been or is being committed." *Brinegar v. United States*, 338 U.S. 160, 175–76 (1949) (cleaned up) (quoting *Carroll v. United States*, 267 U.S. 132, 162 (1925)). Probable cause calls for an officer to determine whether there is a "fair probability"—of contraband or criminal activity—upon which "reasonable and prudent people, not legal technicians, act." *Florida v. Harris*, 568 U.S. 237, 244 (2013) (cleaned up) (quoting *Illinois v. Gates*, 462 U.S. 213, 231 (1983)). This inquiry requires common-sense considerations of "the totality of the circumstances." *State v. Arrington*, 311 N.C. 633, 638 (1984). This analysis is "fluid[,] . . . turning on the assessment of probabilities in particular factual contexts—not readily, or even usefully, reduced to a neat set of legal rules." *Gates*, 462 U.S. at 232.

The totality of the circumstances approach is not a demand of a rigid specific test, but is a "practical, nontechnical conception." *Brinegar*, 338 U.S. at 176. Meaning, as a court, we must ascertain the "whole picture" rather than review each fact in isolation. *United States v. Cortez*, 449 U.S. 411, 417 (1981). In addition, the totality of the circumstances allows trained officers to use their professional experiences and specialized training to make inferences from their observations that "might well elude an untrained person." *Id.* at 418. By definition, then, no one consideration is dispositive of the totality of the circumstances inquiry. *E.g.*, *State v. Johnson*, 378 N.C. 236, 245–46 (2021) (noting that while a prior criminal record, presence in a high-crime area, and nervousness may not, standing alone, provide an officer with reasonable suspicion, each factor may weigh in the "totality of the circumstances" analysis).

Relevant factors can include, for example, the statements of informants, *State v. Jackson*, 309 N.C. 26, 37–38 (1983); the behavior of the suspect, *Sennett v. United States*, 667 F.3d 531, 536–37 (4th Cir. 2012); statements by the suspect or associates, *State v. Nicholson*, 371 N.C. 284, 290–91 (2018); and odors suggesting illegal use or possession of substances, *Woolard*, 385 N.C. at 571–72. Even innocuous conduct may provide suggestions to bolster the probable cause inquiry when the overall facts known to the officer appear to be suspicious and the innocent explanation is not readily discernable. *See District of Columbia v. Wesby*, 583 U.S. 48, 60–62 (2018). However, when information known to officers at the time of the stop affirmatively negates an inference of reasonable suspicion, that inference is dispelled and may no longer be weighed as a factor in the totality of the circumstances analysis supporting probable cause. *Kansas v. Glover*, 589 U.S. 376, 386 n.2 (2020).

B. Application to Mr. Dobson

Mr. Dobson argues that the Court of Appeals failed to conduct the requisite totality of the circumstances analysis and instead evaluated the existence of probable cause by applying an unconstitutional new "double odor" rule. We need not resolve whether the smell of a single odor or a double odor is sufficient to establish probable cause. Rightfully, based on the totality of the circumstances, we must consider whether there was probable cause to justify the search of the Dodge Charger.

Applying the totality of the circumstances test, viewing the entire record, probable cause did exist for officers to search the Dodge Charger. The officers' observation of the Charger's excessive speed was the first relevant factor in the totality of the circumstances. Detective Allis paced the vehicle at fifty-five miles per hour in a forty-five mile-per-hour zone. That traffic violation provided the officers with lawful justification to initiate the stop, and the circumstances that developed during the stop must be assessed against the backdrop of that initial, objective basis for police contact. *See Illinois v. Caballes*, 543 U.S. 405, 407 (2005) (a traffic stop is lawful where officers have probable cause to believe a traffic violation has occurred).

As the stop progressed, Officer Foster detected an odor of burnt marijuana emanating from the vehicle when he returned Ms. Albright's license and credentials to her. The smell of marijuana is a well-recognized factor supporting probable cause to search a vehicle. *See Woolard*, 385 N.C. at 571–72. Although North Carolina's legalization of industrial hemp has complicated marijuana-odor analysis in some respects, it has not eliminated odor as a factor in the totality of the circumstances

inquiry. *See Dobson*, 293 N.C. App. at 454. Ms. Albright's explanation that the smell "may have come from the club they visited" offered only a speculative innocent account that did not affirmatively dispel suspicion. Accordingly, the detection of the odor of burnt marijuana remained a meaningful consideration weighing in favor of probable cause.

The detection of a cover scent added independent weight to the probable cause calculus. Drawing on a combined ten years of law enforcement experience, Detective Allis identified a "strong odor of perfume/cologne" that had been "freshly sprayed" as a classic cover scent — a tactic commonly used to mask the smell of illegal narcotics or alcohol. Sergeant Strum likewise detected a "very sweet almost fruity smell that was overpowering," independently recognizing it as a cover scent. The near-simultaneous, independent identification of that odor by two experienced officers lent substantial reliability to that observation. *See Cortez*, 449 U.S. at 418 (trained officers may draw inferences from observations that might elude an untrained person).

The criminal history of the vehicle's occupants further bolstered probable cause. While conducting the stop, Detectives Allis and Bailey ran a background check and discovered that Demario Hargrave — one of the two backseat passengers — had prior convictions for possession with intent to sell or distribute cocaine and possession with intent to sell or distribute marijuana. Although a prior criminal record alone does not establish probable cause, a passenger's history of drug-distribution offenses, when considered alongside evidence of marijuana and a freshly applied cover scent, meaningfully contributes to the overall picture of likely criminal activity. *See Johnson*, 378 N.C. at 245–46. Mr. Hargrave's drug-trafficking background was thus a relevant consideration in the totality of the circumstances analysis.

The background check similarly revealed that Mr. Dobson himself had a prior felony conviction and was at that time facing a pending charge of assault with a deadly weapon with intent to kill inflicting serious injury, as well as a pending charge of possession of a firearm by a felon. These pending charges are appropriately considered as part of the totality of the circumstances because they are facts known to the officers at the time of the stop, even if they do not establish guilt. *See Brinegar*, 338 U.S. at 175–76 (probable cause turns on facts and circumstances within the officers' knowledge). That Mr. Dobson was actively facing a pending violent felony involving a firearm, combined with the drug-related indicators already present, contributed to a reasonable officer's belief that criminal activity was likely present.

Lastly, the presence of Ms. Albright's handgun on the dashboard is not a factor in our totality of the circumstances analysis. Under *Glover*, where information known to officers at the time of the stop affirmatively negates an inference of reasonable suspicion, that inference is dispelled and may not be counted in favor of probable cause. 589 U.S. at 386 n.2. Here, Ms. Albright identified herself as a probation and parole officer at the outset of the stop and provided her law enforcement credentials. Her firearm was lawfully possessed in the course of her duties as a licensed officer of the state. That disclosure affirmatively eliminated any inference of unlawful possession that might otherwise have been drawn from the presence of the gun. Accordingly, the firearm belonging to Ms. Albright does not enhance the probable cause calculus, as it was a neutral fact explained by her lawful status.

Even setting aside Ms. Albright's firearm entirely, the remaining circumstances — the traffic violation, the odor of burnt marijuana, the freshly applied cover scent independently detected by two experienced officers, the drug-distribution criminal history of Mr. Hargrave, and Mr. Dobson's felony record and pending violent felony and firearm charges — collectively provided the officers with a fair probability that contraband or criminal activity would be found in the Charger. *See Harris*, 568 U.S. at 244. The officers' search of the vehicle and the subsequent search of Mr. Dobson's person were therefore objectively reasonable under the Fourth Amendment.

As a result, after reviewing the record in its entirety and the totality of the circumstances, the judgment of the Court of Appeals is affirmed.

AFFIRMED.

STATE v. HAGUE

[389 N.C. 552 (2026)]

STATE OF NORTH CAROLINA
v.
BLAINE DALE HAGUE

No. 225A24

Filed 22 May 2026

Evidence—murder trial—victim's prior felony convictions—to show defendant's state of mind—exclusion under Rule 404(b)—prejudicial

In a prosecution for first-degree murder arising from an altercation in a cornfield about the victim hunting too close to defendant's horse rescue farm, where defendant claimed that he acted in self-defense when he fatally shot the victim as he appeared to reach into his vest after angrily pushing defendant to the ground, the trial court prejudicially erred in excluding evidence of the victim's prior felony convictions under Evidence Rule 404(b). This evidence was not offered to show that the victim acted in conformity with his past crimes, but rather to show defendant's state of mind during the altercation—and the reasonableness of his fear during the incident, which was essential to his self-defense claim—where defendant knew that the victim was a convicted felon who illegally carried a firearm.

Justice BARRINGER concurring.

Justice ALLEN joins in this concurring opinion.

Justice BERGER dissenting.

Appeal pursuant to N.C.G.S. § 7A-30(2) (2023) from the decision of a divided panel of the Court of Appeals, 295 N.C. App. 380 (2024), reversing and vacating a judgment entered on 9 December 2022 by Judge David L. Hall in Superior Court, Iredell County, and remanding the case for a new trial. On 23 May 2025, the Supreme Court allowed defendant's petition for discretionary review. Heard in the Supreme Court on 29 October 2025.

Jeff Jackson, Attorney General, by Jeremy D. Lindsley, Assistant Attorney General, for the State-appellant.

Sandra Payne Hagood, for defendant-appellee.

RIGGS, Justice.

On 9 December 2022, a jury convicted Blaine Dale Hague of first-degree murder for the killing of Thomas "Tommy" Cass. Mr. Hague alleged that he acted in self-defense after Mr. Cass pushed him to the ground, grew angry, and reached into his vest. At trial, Mr. Hague sought to enter evidence of Mr. Cass's prior felony convictions to demonstrate that Mr. Hague reasonably feared for his life when he acted in self-defense. The trial court granted the State's motion in limine preventing the admission of evidence of Mr. Cass's prior felony convictions under Rule 404(a)(2) and Rule 404(b) of the Rules of Evidence. The Court of Appeals held that the trial court erred by denying Mr. Hague's motion to dismiss the charge of first-degree murder because the State did not meet its burden to prove premeditation and deliberation, did not err by omitting a stand-your-ground jury instruction, and prejudicially erred by excluding evidence of Mr. Cass's prior felony convictions. *State v. Hague*, 295 N.C. App. 380, 400–01 (2024). The Court of Appeals remanded the case to the trial court so that Mr. Hague could receive a new trial.

We hold that the trial court prejudicially erred by excluding the Rule 404(b) evidence of Mr. Cass's prior felony convictions and remand to the trial court for a new trial. We dismiss review of the jury instruction issue as improvidently allowed and do not reach whether the trial court erred by denying Mr. Hague's motion to dismiss.

I. Factual and Procedural Background

On 7 September 2020, Blaine Dale Hague shot and killed Thomas "Tommy" Cass. That morning, Mr. Cass, his son, and several friends met at a cornfield to hunt doves. Mr. Hague lived near the cornfield, where he operated a horse rescue farm. While neither the men in the hunting party nor Mr. Hague owned the cornfield, Mr. Cass had permission to hunt there—on the day of the shooting, Mr. Cass had a note in his wallet with written permission from the owner of the field to hunt on the property.

Mr. Hague and Mr. Cass had several previous interactions. In 2017, Mr. Cass was among a group of hunters in the cornfield when someone in the hunting party shot one of Mr. Hague's horses twice. Mr. Hague asked the hunters to proceed with greater caution so as to not shoot his horses or spook them, which could cause fatal injuries. Mr. Hague testified that he and Mr. Cass would always acknowledge each other when Mr. Cass hunted. Additionally, about a year before the shooting,

the men encountered each other at a Subway restaurant. Mr. Hague testified he left the restaurant to de-escalate the situation because Mr. Cass was having a "bad-day attitude" and making aggressive comments. Then, Mr. Cass's wife testified that, at a 7-Eleven about a week before the 7 September incident, Mr. Hague told Mr. Cass that he was not allowed to hunt in the cornfield but that Mr. Cass "basically laughed it off" and was not angry at Mr. Hague.

On 7 September, Mr. Hague heard gunshots and his horses running. As was "automatic for [him] for the last 50 years," he put his gun in his back pocket before leaving the house to check on the situation. He then drove to the cornfield and spoke with Mr. Cass's son. Mr. Cass's son testified that Mr. Hague seemed angry and asked if he was there with Mr. Cass. Mr. Cass's son told Mr. Hague they had permission to hunt in the cornfield, to which Mr. Hague replied they "didn't have permission to shoot his horses."

Mr. Hague testified he tried to get the hunting party's attention without crossing onto the land, but they did not look over, so he walked to them. Mr. Hague approached one of Mr. Cass's friends and asked him to move because the horses were spooked; his friend explained that Mr. Cass had permission to hunt there. Mr. Hague said, "Oh, I know Tommy" and walked towards Mr. Cass. Another of Mr. Cass's friends testified that Mr. Cass, who had just shot at doves twice, put his gun down and walked quickly towards Mr. Hague with his hands empty, seeming angry. The two men stopped "face to face" with each other.

One of Mr. Cass's friends testified that Mr. Cass said, "[E]very time I come over here hunting you come over here f***ing with me." Mr. Cass raised his hands and pushed Mr. Hague with both open palms. Mr. Hague fell onto his back and slid backwards. Mr. Cass's friends testified that Mr. Hague was able to stand within a few seconds. However, Mr. Hague testified that he struggled to get up for about ten seconds and explained that he had several preexisting health conditions, including a torn Achilles tendon on his left leg, right torn rotor cuff, "bum right leg," bulging disc in his spine, vertigo, and diabetes. He was also using a cane and had a large walking cast from his ankle to his knee. Mr. Cass was forty-six years old, and Mr. Hague was seventy-one.

Mr. Hague testified that Mr. Cass initially walked away after pushing him, but spun around after Mr. Hague said "This is a classic felony, assault on a disabled veteran and a senior citizen." Mr. Hague testified that Mr. Cass was angry and came back to him, saying, "I'm done," then put his right hand into the pocket area of his vest. When he saw Mr. Cass

reach into his vest pocket, Mr. Hague believed he was taking out a handgun and felt fear that he had "never felt since Vietnam." Mr. Hague pulled his gun out of his pocket and shot Mr. Cass once.

On the contrary, Mr. Cass's friend testified that Mr. Hague immediately extended his arm with his gun when he got off the ground; Mr. Cass raised his hands and said, "[N]o . . . [w]hoa, wait a minute, wait a minute"; and Mr. Hague fired one shot. He testified that Mr. Hague walked off the cornfield immediately after firing the shot. Members of the hunting party called 911 and asked Mr. Hague his name. Mr. Hague identified himself, drove home, and made his own 911 call.

Mr. Hague was indicted for first-degree murder on 30 September 2020. His trial began on 5 December 2022. He moved to dismiss the first-degree murder charge on the basis that there was insufficient evidence of premeditation and deliberation. The trial court denied his motion to dismiss. Mr. Hague also requested a stand-your-ground jury instruction, which the trial court denied.

The State filed a motion in limine to exclude character evidence, namely evidence of Mr. Cass's prior felony convictions for simple possession of cocaine in 2005 and felony assault inflicting serious bodily injury in 2009. Mr. Hague knew of Mr. Cass's status as a felon, and that Mr. Cass would hunt with a shotgun and occasionally carry a pistol, but Mr. Hague did not know Mr. Cass's specific felony convictions. Defense counsel argued that Mr. Hague's knowledge that Mr. Cass carried a firearm despite his felony conviction "underpins whether or not some of this fear on September the 7th, 2020, was reasonable." While the State's motion in limine sought to exclude the evidence under Rule 403 and Rule 404, the trial court took the motion under advisement before trial, then considered the motion under Rule 404(a)(2) and Rule 404(b). The trial court allowed the State's motion in limine and found that the evidence of Mr. Cass's felony convictions was inadmissible to show the jury that Mr. Cass, in the trial court's words, "must have been the aggressor here because he's a bad fellow because he had been convicted of a felony or, because he is a felon, he shouldn't have been carrying a gun." Defense counsel entered a continuing objection to that ruling to preserve the issue for appellate review.

Pursuant to the trial court's ruling, the State also requested that a portion of Mr. Hague's 911 call be redacted. The trial court agreed to redact portions of the 911 call that discussed Mr. Cass's felony convictions. In the full call, the 911 operator asked, "And y'all have had this issue before in previous years?" to which Mr. Hague replied, "No. No.

I've known Tommy. He's a felon. When I was a detention officer at Iredell County, he was also my neighbor at one time. And I've always known he hunts illegally, and I could have called the law on him a million times, and I didn't." Once the call was redacted, the jury heard only, "And y'all have had this issue before in previous years? . . . [H]e was also my neighbor at one time. And I've always known he hunts illegally, and I could have called the law on him a million times, and I didn't."

Mr. Hague argued self-defense at trial, claiming that when he fired his gun, he reasonably believed that Mr. Cass was reaching for a handgun to shoot him. On 9 December 2022, the jury found Mr. Hague guilty of first-degree murder and sentenced him to life without parole. Mr. Hague gave oral notice of appeal.

The Court of Appeals upheld the trial court's decision as to the stand-your-ground jury instruction but held that the trial court erred by denying Mr. Hague's motion to dismiss and excluding Mr. Cass's prior felony convictions. *Hague*, 295 N.C. App. at 400–01. The Court of Appeals reversed and vacated Mr. Hague's judgment and remanded the case to the trial court for a new trial. *Id.* at 401. Judge Stading concurred with the majority's decision regarding the jury instructions but dissented as to the other two issues. *Id.* at 401 (Stading, J., concurring in part and dissenting in part). Judge Stading would have held that there was sufficient evidence of premeditation and deliberation to survive a motion to dismiss and that the trial court did not err by excluding Mr. Cass's prior felony convictions. *Id.*

On 20 September 2024, the State filed a notice of appeal based on Judge Stading's dissent pursuant to N.C.G.S. § 7A-30(2). Mr. Hague filed a petition for discretionary review under N.C.G.S. § 7A-31 as to the jury instruction issue. This Court allowed his petition on 23 May 2025.

II. Analysis

A. Standard of Review

When reviewing the trial court's decision, "[w]e review de novo the legal conclusion that the evidence is, or is not, within the coverage of Rule 404(b)." *State v. Beckelheimer*, 366 N.C. 127, 130 (2012). If the trial court erred in its 404(b) analysis, the Court must determine whether that error was prejudicial. *State v. Pabon*, 380 N.C. 241, 260 (2022). The defendant has the burden to prove that the error was prejudicial—that "there is a reasonable possibility that, had the error in question not been committed, a different result would have been reached at the trial."

N.C.G.S. § 15A-1443(a) (2025). This Court reviews determinations under Rule 403 for abuse of discretion. *Beckelheimer*, 366 N.C. at 130.

B. The Trial Court Prejudicially Erred by Excluding Evidence of Mr. Cass's Prior Felony Convictions Under Rule 404(b)

"Evidence of a person's character or a trait of his character is not admissible for the purpose of proving that he acted in conformity therewith on a particular occasion . . . ." N.C.G.S. § 8C-1, Rule 404(a) (2025). In limiting its uses, "[g]enerally, Rule 404 acts as a gatekeeper against 'character evidence.' " *Pabon*, 380 N.C. at 258. The trial court here considered whether testimony about Mr. Cass's prior felony convictions was admissible under Rule 404(a)(2) and Rule 404(b). Character evidence is admissible in self-defense cases if it is "[e]vidence of a pertinent trait of character of the victim of the crime offered by an accused, or by the prosecution to rebut the same, or evidence of a character trait of peacefulness of the victim offered by the prosecution in a homicide case to rebut evidence that the victim was the first aggressor[.]" N.C.G.S. § 8C-1, Rule 404(a)(2). And under Rule 404(b),

> Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake, entrapment or accident.

N.C.G.S. § 8C-1, Rule 404(b) (2025). The trial court erred by excluding evidence of Mr. Cass's prior felony convictions under Rule 404(b), and that error was prejudicial.

Rule 404(b) is a "clear general rule of inclusion of relevant evidence of other crimes, wrongs[,] or acts by a defendant." *State v. Coffey*, 326 N.C. 268, 278–79 (1990) (emphasis omitted). As a rule of inclusion, character evidence is admissible under Rule 404(b) unless its only probative value is to show conformity with or propensity to commit similar actions. *Id.*; *see also State v. Bagley*, 321 N.C. 201, 206 (1987) ("Thus, even though evidence may tend to show other crimes, wrongs or acts by the defendant and his propensity to commit them, it is admissible under Rule 404(b) so long as it also 'is relevant for some purpose other than to show that defendant has the propensity for the type of conduct for which he is being tried.' " (emphasis omitted) (quoting *State v. Morgan*, 315 N.C. 626, 637 (1986))). Although much of the language around Rule

404(b) describes whether prior conduct of a "defendant" is admissible, Rule 404(b) applies to other entities, including the victim.[1]

Under Rule 404(b), "[t]he evidence of the victim's prior bad acts would be impermissible character evidence if its only relevance was to the victim's behavior at the time of the shooting. However, because the evidence is relevant to the defendant's state of mind, *it is not prohibited by Rule 404(b)*." *State v. Jacobs*, 363 N.C. 815, 823 (2010) (emphasis added) (citing *State v. Gibson*, 333 N.C. 29, 42 (1992), *overruled on other grounds by*, *State v. Lynch*, 334 N.C. 402, 409–10 (1993)). "[W]hen character or a trait of character of the victim is an essential element of the defense, a defendant may also offer proof of specific instances of the victim's conduct." *Jacobs*, 363 N.C. at 822. Evidence that "relate[s] directly to defendant's state of mind . . . necessarily bear[s] upon and forcefully support[s] key elements of the primary offense charged." *Gibson*, 333 N.C. at 42. Rule 404(b) evidence can support a defendant's self-defense claim because "(1) defendant's knowledge of the victim's past at the time of the shooting is relevant to defendant's mental state; and (2) the light this knowledge cast on the victim's character could make it more likely that the victim acted in a way that warranted self-defense." *Jacobs*, 363 N.C. at 822. Even though this purpose is not in the language of Rule 404(b), the list in Rule 404(b) is not exclusive—"evidence of other offenses is admissible so long as it is relevant to any fact or issue other than the character of the accused." *State v. Weaver*, 318 N.C. 400, 403 (1986) (citing 1 *Brandis on North Carolina Evidence* § 91 (1982)); *Bagley*, 321 N.C. at 206. Prior conduct is admissible under Rule 404(b) if it is relevant to the defendant's state of mind. *Jacobs*, 363 N.C. at 823.

Here, defense counsel argued that Mr. Hague's knowledge of Mr. Cass's felony convictions "underpins whether or not some of this fear on September the 7th, 2020, was reasonable." Rather than solely demonstrating that Mr. Cass acted in conformity with his felony convictions, Mr. Hague sought to testify that he knew Mr. Cass regularly carried a pistol and hunted with a firearm, despite being prohibited to do so as

1. When a defendant's prior acts are subject to Rule 404(b), we apply a "safeguard" requiring similarity and temporal proximity between the prior act and the charged crime. *State v. Gillard*, 386 N.C. 797, 811 (2024). However, here, the similarity and temporal proximity requirement is not applicable because the inquiry is not about whether Mr. Cass's previous crimes were similar to his actions on the day of the shooting, but it is instead about whether Mr. Hague's state of mind was reasonable in light of his knowledge of Mr. Cass's prior convictions and the illegality of Mr. Cass's possession of a firearm.

a person with a felony conviction. In addition to the prior knowledge of his firearm possession and use, including when a member of Mr. Cass's hunting party shot Mr. Hague's horse, Mr. Hague knew Mr. Cass was hunting with a firearm that very day, since Mr. Cass shot at doves twice while Mr. Hague was talking to other members of the hunting party.

Because Mr. Hague claimed self-defense, defense counsel argued that the jury had to know about Mr. Cass's prior felony convictions to "be placed in the position that . . . defendant was" and understand Mr. Hague's state of mind at the time of the shooting. Defense counsel argued that the prior convictions went to whether Mr. Hague acted reasonably in self-defense, because he would have known "that Mr. Cass was a felon" and, because he was using a firearm to hunt, "was therefore committing a felony that day in the field." Further, defense counsel claimed that Mr. Hague knew Mr. Cass had "a pattern of just . . . ignoring certain parts of the law, as it relate[d] to firearms." Defense counsel argued Mr. Hague knew that Mr. Cass was hunting with firearms he could not legally possess, and therefore Mr. Hague had heightened fear because he knew that Mr. Cass was willing to flaunt firearm laws.

This position is distinct from an argument that Mr. Hague generally feared Mr. Cass because of Mr. Cass's prior felony convictions. Similarly, Mr. Hague is not arguing that he feared for his life after encountering Mr. Cass on the street or in the grocery store, locations where Mr. Cass may not have access to a firearm. Mr. Hague argues that he feared for his life in an encounter with Mr. Cass where Mr. Cass was undoubtedly in possession of and using a gun for hunting. For the jury to fully understand Mr. Hague's state of mind when he encountered Mr. Cass and the hunting party, it was necessary for the jury to know what Mr. Hague knew about Mr. Cass's prior convictions. Because Mr. Hague intended to introduce Mr. Cass's felony convictions to prove his state of mind, not to prove Mr. Cass acted in conformity with his prior drug possession and assault convictions, the trial court erred by excluding the evidence under Rule 404(b).

We further note that Mr. Hague's lack of knowledge of the specific felony convictions does not defeat his 404(b) argument. If a defendant is not aware of the victim's criminal past, the victim's past crimes "ha[ve] no tendency . . . to make the existence of [defendant's] belief as to the apparent necessity to defend himself from attack 'more or less probable than it would be without the evidence.' " *State v. Smith*, 337 N.C. 658, 666 (1994) (second and third alterations in original) (quoting *Morgan*, 315 N.C. at 639). However, where, as here, the defendant uses the prior violent acts to prove his state of mind, he must "show that he was aware

of the prior act and that his awareness somehow was related to the killing." *State v. Strickland*, 346 N.C. 443, 456 (1997) (citing *Smith*, 337 N.C. at 666). Mr. Hague knew that Mr. Cass had prior felony convictions and used firearms despite being prohibited from doing so. His awareness of the felony convictions informed his state of mind at the time he killed Mr. Cass and provided the evidence of Mr. Hague's understanding of a character trait of Mr. Cass—the willingness to break the law by illegally possessing a firearm. Therefore, even though he did not know the specific felony convictions, the fact that Mr. Hague knew about the convictions and weapons possession made the prior convictions still sufficiently relevant to his state of mind to be admissible under Rule 404(b).

Mr. Hague's state of mind at the time of the shooting and whether Mr. Cass's prior felony convictions made Mr. Hague's fear of Mr. Cass reasonable were questions for the jury. The trial court erred by excluding evidence of Mr. Cass's prior felony convictions.

If an appellate court determines that a trial court erred as to Rule 404(b) evidence, then it must analyze whether that error was prejudicial. *Pabon*, 380 N.C. at 260. An error is prejudicial "when there is a reasonable possibility that, had the error in question not been committed, a different result would have been reached at the trial." N.C.G.S. § 15A-1443(a). The defendant bears the burden to prove prejudice. *Id.*

When a defendant alleges self-defense, the "proper inquiry . . . focuses on the reasonableness of defendant's belief as to the apparent necessity for, and reasonableness of, the force used to repel an attack upon his person." *Morgan*, 315 N.C. at 639 (citing *State v. Gladden*, 279 N.C. 566 (1971)). The reasonableness of the defendant's actions is a "critical component of self-defense." *State v. Lee*, 370 N.C. 671, 675 (2018).

Here, the parties dispute the exact chain of events between when Mr. Cass pushed Mr. Hague and when Mr. Hague shot Mr. Cass, including how quickly Mr. Hague reacted. In a "credibility contest" with "little or no physical or corroborating evidence of the incident in question," "any evidence of prior acts that tends to bolster or undermine the credibility of one of the primary participants may be particularly influential in the ultimate outcome." *Pabon*, 380 N.C. at 260–61 (citing *State v. Scott*, 331 N.C. 39, 46 (1992)).

The trial court redacted Mr. Hague's 911 call in a way that fundamentally changed how the jury perceived what was happening. In addition to misrepresenting by omission the entirety of the evidence, the redactions to the 911 call misled the jury as to Mr. Hague's credibility and state of mind. In the unredacted call, the 911 dispatcher asked, "And y'all have

had this issue before in previous years?" and Mr. Hague replied, "No. No. I've known Tommy. He's a felon. When I was a detention officer at Iredell County, he was also my neighbor at one time. And I've always known he hunts illegally, and I could have called the law on him a million times, and I didn't." However, because the trial court excluded evidence of Mr. Cass's felony convictions, the jury heard only, "And y'all have had this issue before in previous years? . . . [H]e was also my neighbor at one time. And I've always known he hunts illegally, and I could have called the law on him a million times, and I didn't."

People who are convicted of felonies are not allowed to possess firearms in North Carolina. *See* N.C.G.S. § 14-415.1(a) (2025). In the full 911 call, Mr. Hague says that Mr. Cass hunted illegally because he was a felon, but that he never called the police to report him. However, when the 911 call was redacted, Mr. Hague's allegation that Mr. Cass hunted illegally stayed in without context for the jury to understand why Mr. Hague believed Mr. Cass hunted illegally. The jury could have inferred from the redacted call that Mr. Hague meant that Mr. Cass was hunting illegally because he was trespassing on land where he was not permitted to hunt. However, evidence presented at trial indicated that Mr. Cass had a permission note and hunting license in his wallet, so was neither trespassing nor hunting without proper documentation. Therefore, without full context from the 911 call about why Mr. Hague believed Mr. Cass was hunting illegally, the jury may have found Mr. Hague less credible because, from its perspective, he may have claimed without support that Mr. Cass hunted illegally. This reduced credibility created a reasonable possibility that the jury did not find Mr. Hague's self-defense claim convincing but would have if it had the full context of the 911 call.

Similarly, the redacted 911 call could have misled the jury about Mr. Hague's state of mind by encouraging the jury to believe that Mr. Hague bore animosity against Mr. Cass for hunting on the cornfield. The 911 dispatcher asked Mr. Hague if he and Mr. Cass "had this issue before in previous years." In the full 911 call, Mr. Hague responded "No. No. I've known Tommy." However, when the 911 call was redacted, the jury heard Mr. Hague respond, "[H]e was also my neighbor at one time. And I've always known he hunts illegally, and I could have called the law on him a million times, and I didn't." The redaction changed Mr. Hague's response so that the jury did not hear Mr. Hague's contemporaneous denial of this issue. Instead, despite Mr. Hague's actual conversation with the 911 dispatcher, the redactions misrepresented to the jury that Mr. Hague was talking about Mr. Cass shooting near his horses and that he had a general animosity toward Mr. Cass. The redaction could

have significantly changed the jury's perception of Mr. Hague's state of mind. Therefore, when presented with the 911 call in full, without redactions, the jury could have reasonably believed that Mr. Hague acted in self-defense. The redaction of the 911 call was a prejudicial error because it reduced Mr. Hague's credibility to the jury and changed its perception of his state of mind. Thus, the trial court prejudicially erred in excluding testimony about Mr. Cass's prior felony convictions.

"Once a trial court determines that the requirements of Rule 404(b) have been met, it must then 'balance the danger of undue prejudice against the probative value of the evidence, pursuant to Rule 403.' " *State v. Gillard*, 386 N.C. 797, 811 (2024) (quoting *State v. Carpenter*, 361 N.C. 382, 388–89 (2007)). "We review a trial court's Rule 403 determination for abuse of discretion and will only disturb it when it is 'manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision.' " *Id.* at 816 (quoting *State v. Richardson*, 385 N.C. 101, 133 (2023)). Under Rule 403, relevant evidence "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice." N.C.G.S. § 8C-1, Rule 403.

However, upon careful review of the trial transcript, it is not clear that the Court of Appeals was correct that the trial court "engaged in the Rule 403 balancing test and recognized the potential for prejudice." *See Hague*, 295 N.C. App. at 400. And notwithstanding the Court of Appeals' reasoning, the State did not argue that the trial court abused its discretion under Rule 403 at the Court of Appeals. Arguably, because the trial court excluded the evidence under Rule 404, it did not need to conduct a Rule 403 analysis, and it did not make an explicit determination as to whether the evidence should be excluded under Rule 403. Thus, it is improper for us to address Rule 403 arguments here. Because this case will be remanded for a new trial, we leave it to the trial court to determine whether this evidence should be excluded under Rule 403.

III. Conclusion

The trial court prejudicially erred by excluding evidence of Mr. Cass's prior felony convictions under Rule 404(b), so Mr. Hague is entitled to a new trial. The issue of whether the Court of Appeals erred by affirming the trial court's refusal to instruct the jury on the stand-your-ground doctrine is dismissed as improvidently allowed. Because Mr. Hague will receive a new trial on the evidentiary issue, we do not need to reach whether the State supplied evidence of premeditation and deliberation sufficient enough to survive Mr. Hague's motion to dismiss the charge of first-degree murder. We dismiss Mr. Hague's motion to

expedite consideration and issuance of an opinion, filed 10 February 2026, and motion to expedite consideration and issuance of an opinion due to new and compelling circumstances, filed 11 May 2026, as moot.

MODIFIED AND AFFIRMED; DISCRETIONARY REVIEW IMPROVIDENTLY ALLOWED.

Justice BARRINGER concurring.

I concur with the majority's holding that it was prejudicial error for the trial court to exclude evidence that defendant knew the victim was a felon. I write separately to partially address the State's argument that there was sufficient evidence of premeditation.

In attempting to prove premeditation, the State relies in large part on the fact that defendant had a pistol on him during the encounter. Such a fact would convincingly evince premeditation only if it had indicated that defendant had "anticipated" that, *in the immediate future*, there would be "a violent confrontation and the potential need for deadly force." *See State v. Bell*, 338 N.C. 363, 389 (1994) (holding there to be sufficient evidence of premeditation when, among several other factors, the defendant had "read[ied] [his] weapon for firing" while en route to a meeting with the victim by "remov[ing] the clip from his semiautomatic pistol, eject[ing] the round from the chamber, replac[ing] the round in the clip, reinsert[ing] the clip, and chamber[ing] a live round of ammunition"). Here, though, it did not.

Instead, defendant testified during cross-examination that "I . . . always put [my] pistol in my back pocket, no matter where I'm going." "It [has been] automatic for me for the last 50 years, since Vietnam . . . ." The habit is so strong that "[s]ometimes, by accident, when I go to the bank, I don't even think about it, and it's there in my back pocket."

Preparedness is not always evidence of premeditation. Premeditation can, of course, be shown by a defendant's preparation to commit a specific murder, but only if the preparation is sufficiently connected to the murder. A defendant's routine preparedness to defend himself on any given day is not, in and of itself, sufficient evidence of preparation to commit a murder. To extrapolate premeditation from such rote conduct is to engage in the kind of speculation that dismissal is meant to prevent.

Justice ALLEN joins in this concurring opinion.

Justice BERGER dissenting.

Law students are often reasonably confused by classes concerning character evidence. Those students will want to avoid the majority opinion and stick with their own flow charts.

The majority holds that the trial court erred in excluding evidence under Rule 404(b). But the majority's amorphous approach to the Rules of Evidence here is confusing and wrong, and Rule 404(b) does not allow this evidence to be admitted. Based upon the record here and a proper understanding of the interaction of Rules 404 and 405, I would reverse the Court of Appeals and affirm the trial court. I respectfully dissent.

The trial court properly excluded evidence of the victim's prior felony convictions under Rule 404(b) despite defendant's self-defense claim. The majority concludes that defendant's purported knowledge that the victim was a convicted felon and his belief that the victim carried firearms constituted permissible 404(b) evidence to demonstrate defendant had a reasonable belief the victim posed a threat of death or great bodily harm. This conclusion sanctions the use of propensity evidence and is contrary to the Rules of Evidence and our prior holdings.

Subject to enumerated exceptions, "[e]vidence of a person's character or a trait of his character is not admissible for the purpose of proving that he acted in conformity therewith on a particular occasion." N.C.G.S. § 8C-1, Rule 404(a) (2025). This rule applies equally to victims and defendants. One exception allows for the admission of pertinent character traits of victims. *See* N.C.G.S. § 8C-1, Rule 404(a)(2); *see also State v. Bass*, 371 N.C. 535, 543 (2018) ("A criminal defendant may . . . introduce evidence of a victim's pertinent character traits.").

This subsection "creates an exception to permit an accused to introduce pertinent evidence of character of the victim and to permit the prosecution to introduce similar evidence in rebuttal of the character evidence." Commentary, N.C.G.S. § 8C-1, Rule 404(a)(2). Thus, Rule 404(a)(2) would have been the appropriate rule through which defendant could have attempted to admit this evidence, not Rule 404(b). It is this subsection that permits evidence tending to show a defendant had a "reasonable apprehension of death or bodily harm [or that the victim was the first aggressor], rather than to prove that the victim acted in conformity with his character trait on a particular occasion." *Id.* Pertinent character traits of a victim in a self-defense case are traits of violence or aggressiveness. *See id.* ("Subdivision (a)(2) permits

proof of any pertinent trait of the victim. North Carolina practice has confined the evidence to character for violence.").

Mere status as a felon is not evidence of character for violence or aggressiveness under Rule 404(a)(2). While possessing and carrying a firearm may qualify as a habit admissible under Rule 406, that activity or practice is not in and of itself illegal, and it is certainly not a character trait under Rule 404(a)(2). *See id.* The majority appears to contend that being a felon and/or possessing a firearm can be evidence of general lawlessness which per se places a defendant in reasonable fear. But this is insufficient under the rule. There must be some evidence of violence or aggressiveness on the part of the victim. Otherwise, the evidence is simply being offered for propensity purposes: the victim was a bad guy, and he was acting like a bad guy on this occasion.

Further, even if the trait of general lawlessness was pertinent under Rule 404(a)(2), "[o]nce the admissibility of character evidence in some form is established under this rule, reference must then be made to Rule 405, which follows, in order to determine the appropriate method of proof." Commentary, N.C.G.S. § 8C-1, Rule 404(a); *see also Bass*, 371 N.C. at 543 ("Whether character evidence is admissible under Rule 404(a)(2) is merely a threshold inquiry, separate from the determination of the *method* by which character may be proved . . . [under] Rule 405.").

Pursuant to Rule 405, character evidence may be introduced through testimony concerning reputation or opinion, or by use of specific instances of conduct when "character or a trait of character of a person is an essential element of a charge, claim, or defense." N.C.G.S. § 8C-1, Rule 405(a)–(b) (2025). But here, no witness was called to testify about the victim's reputation for violence in the community, and no witness provided an opinion concerning the victim's violent character. The character evidence defendant attempted to offer related *only* to the victim's status as a felon and him carrying a firearm. But such evidence, which the trial court determined was not relevant, could not qualify for admission under Rule 405(b) because, according to defendant's attorney, defendant did not know exactly what offenses the victim had been convicted of. Thus, defendant attempted to offer specific instances of conduct, felony convictions, without any knowledge of the underlying offenses. Defendant's evidence simply did not satisfy either prong of Rule 405.

The trial court understood this and made it clear when the State moved to exclude references to the victim's convictions. "[K]nowing that one is a convicted felon in and of itself . . . is distinctly different

from knowing one has a reputation for violence, a reputation for dangerousness, [etc.]" As the trial court correctly determined, defendant failed to satisfy Rule 404(a)(2) and Rule 405.

The majority then rewrites the Rules of Evidence and hornbook law by concluding this evidence is admissible under Rule 404(b). Rule 404(b) first echoes the prohibition against use of propensity evidence in Rule 404(a), stating that "[e]vidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith." N.C.G.S. § 8C-1, Rule 404(b). But the rule contemplates that this type of evidence may be used "for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake, entrapment or accident." *Id.* By incorrectly cabining its analysis to Rule 404(b), the majority extends Rule 404(b) beyond its intended reach and suggests by silence that the method of proof under Rule 405 is not relevant to this inquiry.

One need only to review footnote 1 in the majority opinion to see why its Rule 404(b) analysis is wrong. The temporal proximity and substantial similarity determinations are basic to any 404(b) inquiry. But the majority, without citing any authority or support, proclaims that those are "not applicable because the inquiry is not about whether Mr. Cass's previous crimes were similar to his actions on the day of the shooting, but it is instead about whether Mr. Hague's state of mind was reasonable." The majority is correct that temporal proximity and substantial similarity are not applicable to the inquiry here, but not for the reasons they think. It's not because we suddenly abandon the temporal proximity and substantial similarity analyses when we are looking to defendant's state of mind, it is because Rule 404(b) is not applicable. The leading treatise on evidence in North Carolina confirms this: Rule 404(b) "does not govern admissibility of evidence of the victim's violent character to prove apprehension by the defendant. The purpose of such evidence is not to prove conduct by the victim, but to prove defendant's state of mind." *Brandis & Broun on North Carolina Evidence*, ch. 4, § 90, at 291 (8th ed. 2018).

Consistent therewith, we have held that "Rule 404(b) expressly prohibits admission of evidence" when a defendant attempts to show a victim "had a history of criminal convictions and disciplinary infractions" to show a propensity for violence. *State v. Smith*, 337 N.C. 658, 666 (1994). In that case, the defendant had no specific knowledge of the victim's prior offenses, and this Court reasoned that without such knowledge, the victim's convictions would have "no tendency to make the existence of defendant's belief as to the apparent necessity to defend

himself from an attack more or less probable than it would be without the evidence." *Id.*

The record here shows defendant knew only that the victim was a felon; he did not know the nature of the prior convictions. Defendant nevertheless argues that the victim's possession of a firearm and his presence on the property caused him to fear the victim was committing a felony at the time of the incident. As the trial court noted, however, mere unlawful activity, like felony littering in excess of 500 pounds, *see* N.C.G.S. § 14-399(e) (2025), or larceny of pine straw, also a felony, *see* N.C.G.S. § 14-79.1 (2025), is not enough to place a defendant in reasonable fear of death or great bodily harm. But it is now.

Rule 404(b) prohibits evidence of prior crimes, wrongs, or acts when offered solely to prove a person acted in conformity therewith, and the majority's reasoning improperly relies on the precise inference Rule 404(b) forbids: because the victim was a felon, he acted unlawfully on the day in question. Defendant here had only vague knowledge of the victim's status as a felon and was aware that the victim carried a gun. At most, defendant had knowledge of the victim's general lawlessness, not specific information concerning pertinent character traits for violence or aggressiveness. As such, the trial court did not err and the decision of the Court of Appeals should be reversed.

STATE OF NORTH CAROLINA
v.
WENDY DAWN LAMB HICKS

No. 136PA22-2

Filed 22 May 2026

Evidence—text messages—voluminous and un-redacted—admitted without limiting instruction—plain error analysis

Where defendant was convicted of second-degree murder—upon evidence that: the victim (a married co-worker with whom defendant had been engaged in a sexual affair and significant drug use) was found face-down in defendant's bedroom doorway, shot twice in the back and with a key to defendant's home lying nearby; defendant was the only person armed when the encounter that led to the victim's death began; and defendant's accounts of the encounter were materially inconsistent—defendant could not

demonstrate that, but for the trial court's admission of voluminous and un-redacted text messages and photos, some sexually explicit, sent from defendant's phone to the victim and other persons, the jury probably would have returned a different verdict.

Justice BARRINGER dissenting.

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. 457 (2024), reversing and remanding for a new trial a judgment entered on 12 December 2019 by Judge V. Bradford Long in Superior Court, Randolph County. Heard in the Supreme Court on 4 November 2025.

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

Marilyn G. Ozer for defendant-appellee.

EARLS, Justice.

This case requires the Court to apply the plain error doctrine to the admission of evidentiary materials at trial. On 12 December 2019 Ms. Wendy Dawn Lamb Hicks was found guilty by a jury of second-degree murder. During the trial, the State introduced Exhibits 174 and 175—phone-extraction reports of text messages from Ms. Hicks's cell phone—without objection from defense counsel. The State provided individual copies of the phone-extraction reports to each juror. Detective Warren Sibbett, the charging officer, read most or all the messages aloud to the jury. The Court of Appeals vacated the judgment and ordered a new trial, holding that the trial court plainly erred in allowing the admission of Exhibits 174 and 175. We now reverse the Court of Appeals. We hold that Ms. Hicks has failed to show that the admission of Exhibits 174 and 175 constituted plain error.

I. Facts[1]

On the night of 13 June 2017, Caleb Adams was shot and killed in Wendy Hicks's bedroom. Mr. Adams was shot twice in the back from

1. This is the second time this Court has heard this case; we adopt and incorporate the recitation of facts in our earlier opinion, *State v. Hicks*, 385 N.C. 52 (2023). An abbreviated summary of the disputed evidence is included here to facilitate understanding the Court's legal analysis of the evidentiary issue before us at this time.

a distance of more than six inches. When officers arrived at the scene, they found his body face down at the bedroom door, with personal items—including a key to Ms. Hicks's home and a vape—on the floor near him. Ms. Hicks was the only person armed during the encounter.

The State introduced Exhibits 174 and 175—phone-extraction reports from Ms. Hicks's cell phone—without objection from defense counsel. Exhibit 174 contained text messages from 5 March 2017 through 16 June 2017; the earliest message between Ms. Hicks and Mr. Adams was sent on 23 May 2017. Exhibit 175 contained multimedia messages—photographs and longer texts—spanning 24 March 2017 through 13 June 2017. Each juror received a paper copy of the exhibits to "follow along" with the State's questioning. The State explained that it chose individual copies rather than a courtroom display "[b]ecause of the sensitive nature" of their contents. Detective Warren Sibbett, the charging officer, read most or all of the messages aloud, including communications between Ms. Hicks and Mr. Adams, her son, friends, and her methamphetamine dealer. At closing argument, defense counsel told the jury the exhibits were used to paint a fuller picture of Ms. Hicks and Mr. Adams's relationship.

II. Procedural History

On 12 December 2019, a jury found Ms. Hicks guilty of second-degree murder. She was sentenced to a minimum of 180 months and a maximum of 228 months in custody. On appeal, Ms. Hicks argued that the jury instructions were improper and that the trial court erred by admitting Exhibits 174 and 175 without a limiting instruction. *State v. Hicks*, 283 N.C. App. 74, 74–75, 84 (2022). The Court of Appeals reversed and remanded based on the jury-instruction issue and did not reach the evidentiary issue. *Id.* at 84–85. This Court reversed, holding that the trial court gave proper jury instructions, and remanded for the Court of Appeals to consider the evidentiary issue. *State v. Hicks*, 385 N.C. 52, 65 (2023).

On remand, the Court of Appeals vacated the judgment and ordered a new trial, holding that the trial court plainly erred "in admitting into evidence voluminous, unredacted text messages and photos without a limiting instruction and in publishing identical copies and enlarged sexually explicit photos to each member of the jury." *State v. Hicks*, 297 N.C. App. 457, 484 (2024). Judge Murphy dissented; he agreed that the trial court erred but did not believe the jury would have reached a different result had the exhibits been excluded. *Id.* at 484–85 (Murphy, J., dissenting). The State filed a motion for temporary stay and petition

for writ of supersedeas on 14 January 2025, both of which were allowed, and noticed an appeal based on Judge Murphy's dissent.

III. Analysis

Relevant evidence is generally admissible, and evidence that is not relevant is not admissible. N.C.G.S. § 8C-1, Rule 402 (2025). Evidence is relevant if it has any tendency to prove or disprove a material fact. N.C.G.S. § 8C-1, Rule 401 (2025). Even relevant evidence, however, may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence. N.C.G.S. § 8C-1, Rule 403 (2025). Evidence that has the "potential only for inflaming the jurors" may constitute prejudicial error. *State v. Hennis*, 323 N.C. 279, 286 (1988).

To preserve an issue for appeal, a party must present to the trial court "a timely request, objection, or motion, stating the specific grounds for the ruling the party desired the court to make if the specific grounds were not apparent from the context." N.C. R. App. P. 10(a)(1). In criminal cases, an unpreserved issue "may be made the basis of an issue presented on appeal when the judicial action questioned is specifically and distinctly contended to amount to plain error." N.C. R. App. P. 10(a)(4).

In *State v. Lawrence*, 365 N.C. 506, 507 (2012), this Court acknowledged that earlier cases "applied the plain error standard using several different formulations." We explained that "[t]hese incomplete and inconsistent formulations lead us to conclude that clarification of the plain error standard is needed." *Id.* After reviewing our own precedent and developments in federal law, we held that to establish plain error a defendant must show that a fundamental error occurred at trial, that the error was prejudicial, and that it resulted in a miscarriage of justice. The defendant bears "the heavier burden of showing that the error rises to the level of plain error." *Id.* at 516. *Lawrence* also clarified that the doctrine applies to unpreserved instructional and evidentiary error. *Id.* at 518; *see also State v. Greene*, 351 N.C. 562, 566 (2000); *State v. Cummings*, 361 N.C. 438, 469 (2007); *State v. Garcell*, 363 N.C. 10, 35 (2009).

Most recently, in *State v. Reber*, 386 N.C. 153, 158 (2024), this Court reaffirmed that under the three-part test articulated in *Lawrence* a defendant must show (1) that "a fundamental error occurred at trial;" (2) that the error had a "probable impact" on the outcome, meaning that "absent the error, the jury probably would have returned a different verdict;"

and (3) that the error is an "exceptional case" that affects the fairness, integrity, or public reputation of judicial proceedings.

Although Exhibits 174 and 175 had the potential to inflame the jury, on the entire record Ms. Hicks has not met her burden of showing plain error. The Court of Appeals concluded that there was "substantial and persuasive evidence" of self-defense, and that, absent the exhibits, "it [was] significantly more likely the jury would have acquitted rather than convicted [Ms. Hicks]." *Hicks*, 297 N.C. App. at 484. Applying the correct *Lawrence* standard, we conclude the remaining evidence establishing a lack of justifiable self-defense was substantial such that it is not probable that the jury would have come to a different verdict absent the evidence allowed in Exhibits 174 and 175.

Mr. Adams was shot twice in the back at a distance of more than six inches away. Officers found a key to Ms. Hicks's home and a vape on the floor near his body, suggesting he was attempting to leave when he was shot.[2] *See Hicks*, 385 N.C. at 60 (citing *Cannon* for the proposition that shooting a victim in the back can support an inference that the victim was making an effort to leave). By her own account, Ms. Hicks was the only person armed when the confrontation became physical.

The record also reflects materially inconsistent accounts of the shooting. In each version, Ms. Hicks said Mr. Adams was the aggressor in seeking her phone and that he grabbed the holstered firearm from the nightstand when she refused to give it up. To the deputies at the scene, she said Mr. Adams dropped the gun while trying to grab her, that she picked it up, and that she shot him. To the detectives later that day, she described a wrestling match in which the gun and phone changed hands but could not remember how she came to have the gun or how it left the holster. At trial, she testified that Mr. Adams grabbed her left arm, slammed her back into a mirror, and that—after she began to black out—she pulled the gun from the holster and shot him. Yet, by her own admission, she stopped Mr. Adams from leaving the bedroom. Despite Ms. Hicks's description of a violent struggle, she had limited visible injuries or bruises, and the small bedroom showed no damage to its furniture or fixtures.

Taken together—Ms. Hicks being the only armed party, Mr. Adams being shot twice in the back, the absence of significant injuries to Ms.

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2. Ms. Hicks's front door was broken at one of its hinges. Ms. Hicks told detectives that this property damage occurred prior to Mr. Adam's visits to her home during the week of June 12.

Hicks or damage to the room, and her materially inconsistent accounts—it is difficult to conclude that the jury "*probably would have* returned a different result" had the exhibits been excluded. *State v. Towe*, 366 N.C. 56, 57 (2012). Defense counsel reminded the jurors at closing argument that the texts and photographs were used to provide "a fuller picture of [the] relationship" between Ms. Hicks and Mr. Adams. A relationship that has tragically ended in an intimate-partner homicide.

Accordingly, Ms. Hicks has failed to show that the admission of Exhibits 174 and 175 amounted to plain error. Ms. Hicks's credibility was undermined by substantial physical evidence as well as by her own multiple prior inconsistent statements. On the entire record, we cannot say that, but for the admission of the challenged exhibits, the jury "probably would have returned a different verdict." *Reber*, 386 N.C. at 158.

REVERSED.

Justice BARRINGER dissenting.

I do not agree with the majority's conclusion that, on plain error review, defendant failed to show that it is "significantly more likely than not" that she would have been acquitted but for the publication of Exhibits 174 and 175. *State v. Reber*, 386 N.C. 153, 159–60 (2024). I would have affirmed the Court of Appeals' well-reasoned opinion holding that the publication of these exhibits constituted plain error, and I respectfully dissent from the majority's holding to the contrary.

Beyond this, though, I write also to strongly emphasize that this need not be the end of the road for defendant's challenges against her unfair trial. The majority's opinion today is limited to holding only that there was no plain error. In no way does this prevent defendant from later asserting that she received ineffective assistance of counsel.

Notably, the prejudice standard for an ineffective assistance claim is more forgiving than the one for plain error review, requiring only a "reasonable probability" that absent the error the jury would have reached a different result. *Id.* at 166. "This means a defendant might prevail on an ineffective assistance claim even when unable to prevail on plain error review." *Id.*

There is much to be said about defendant's trial. I write this dissent to paint a full picture of the trial and emphasize my grave concerns regarding its fairness. *See State v. Malachi*, 371 N.C. 719, 733 (2018)

(noting that although defendants are not entitled to "perfect" trials, they are entitled to "fair" ones (quoting *State v. Ligon*, 332 N.C. 224, 243 (1992))).

Before addressing the evidentiary issue implicated in the present appeal, I must first note the many other ways in which the fairness of defendant's trial was diminished. The jury was erroneously instructed that the castle doctrine's presumption of reasonable fear could be rebutted if the State showed that defendant's use of force was excessive. Such an interpretation was flatly rejected by this Court in *State v. Phillips*, 386 N.C. 513, 527 (2024). The jury was also instructed that the castle doctrine would be unavailable to defendant if she was the initial aggressor—an interpretation that, although not fully addressed due to appeal preservation issues, was greeted with great skepticism by some members of this Court[1] and deemed by others to not be supported by sufficient evidence.[2] In fact, in *Hicks II*, four members of this Court indicated that *these errors alone* likely would have warranted reversal of defendant's conviction, had the issues been properly preserved.[3] Together, they show a serious risk that defendant did not receive a fair trial.

In sum, there was abundant evidence of defendant's innocence, and the trial court committed numerous errors in its delivery of jury instructions and denial of defendant's motion to dismiss. The result was an exceedingly close trial—one in which the scales of justice could easily be upset. Under these unique circumstances, improperly admitted evidence would be very likely to tip the balance and cause the jury to

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1. *State v. Hicks* (*Hicks II*), 385 N.C. 52, 65–66 (2023) (Dietz, J., with Berger, J., concurring) (holding that the trial court's jury instruction, which was "taken from the common law, cannot be squared with the statutory castle doctrine, which creates a presumption that deadly force is reasonable whenever the defendant knows or has reason to know that the victim has unlawfully or forcibly entered the defendant's home").

2 *Id.* at 69–72 (Barringer, J., with Morgan, J., dissenting); *see also State v. Hicks* (*Hicks I*), 283 N.C. App. 74, 84 (2022) (unanimously holding that "the trial court committed reversible error . . . by delivering unsupported jury instructions on the aggressor doctrine" and that "this error entitles [d]efendant to a new trial"), *rev'd*, 385 N.C. 52 (2023).

3. *See Hicks II*, 385 N.C. at 66–67 (Dietz, J., with Berger, J., concurring) ("[W]e are constrained to address only those arguments that were adequately raised and preserved in the case. These complicated legal issues [regarding the proper application of the aggressor doctrine to the castle doctrine] were not and therefore must wait for another day. As a result, not only does the law suffer, but so does Hicks."); *id.* at 69–72 (Barringer, J., with Morgan, J., dissenting) ("There was insufficient evidence to support that Ms. Hicks was the initial aggressor, and therefore, the trial court should not have given the aggressor doctrine instruction. . . . Thus, I would reverse Ms. Hicks's conviction.").

decide the case on moral outrage against defendant's character rather than the facts of the case.

Despite the incredibly high risk that improperly admitted evidence could corrupt this jury's verdict, jurors were allowed to keep personal copies of *223* pages of *unredacted* texts and enlarged *obscene* photos in their laps *for three days*—all *without any limiting instructions*. Many of these texts were *completely irrelevant* to the case, and several were *highly inflammatory* in nature, portraying defendant as lecherous, impudent, and callously indifferent to authority. The publication of these texts are yet another egregious error compelling the conclusion that defendant's trial was remarkably unfair.

The core dispute of the trial was whether defendant shot out of murderous anger or in self-defense. The determination of this issue hinged almost entirely on defendant's credibility, as she was the key surviving witness—both to the shooting and to the myriad interactions between her and the victim over the months preceding the shooting. Defendant testified that the victim "arrived angry, came into the house, and then came into [defendant's] bedroom to obtain her phone. When she refused to give him her phone, [the victim] grabbed her gun from the nightstand" until defendant eventually regained control of the gun and shot the victim. *Hicks II*, 385 N.C. at 56–57. If true, these statements showed that defendant was not guilty of second-degree murder.[4] However, these statements would be of no use to defendant if the jury thought them to be lies. Thus, maintaining defendant's credibility would have been an absolutely essential component of *any* defense strategy.

Under such circumstances, it seems almost impossible to claim that defendant's trial counsel acted pursuant to any viable trial strategy when he allowed for the publication of Exhibits 174 and 175. Perhaps more importantly, defendant may also be able to show at least a "reasonable probability" that she suffered prejudice. That the jury rendered a guilty verdict on the highest charge after less than two hours of deliberation compels a conclusion that the jury largely discredited the "substantial

4. The majority claims that defendant's accounts were "materially inconsistent." However, even the majority admits that "[i]n each version [of defendant's accounts], [she] said [the victim] was the aggressor in seeking her phone and that he grabbed the holstered firearm from the nightstand when she refused to give it up." Given the consistency of these material facts across all of defendant's prior statements, it is obvious that it was the disparaging nature of Exhibits 174 and 175—not any material inconsistency—that caused the jury to discredit defendant's testimony.

and persuasive" exculpatory testimony offered by defendant. *See State v. Hicks* (*Hicks III*), 297 N.C. App. 457, 484 (2024).

The majority spends *only two sentences* describing the contents of Exhibits 174 and 175. In providing such a cursory overview, it severely understates the inflammatory nature of these unredacted exhibits, which jurors were permitted to scour for three days without limiting instructions. Paying such short shrift to the incendiary material contained in these exhibits obfuscates the trial's extraordinary unfairness.

The majority purports to analyze the prejudicial effect of material it refuses to even describe. Such ostrichism is cause for real concern. Here on appeal, the majority seems to think the exhibits' incendiary contents are easy to ignore. But for the jury at trial, they were impossible to ignore.

It is difficult to convey the potency of Exhibits 174 and 175 with words alone. Perhaps it is best to start with numbers. Exhibits 174 and 175 are a combined 231 pages in length. When printed single-sided on standard copy paper, these packets weigh over two pounds and are well over an inch thick. As the prosecutor put it, "we killed a small forest" printing out the exhibits.

Exhibit 175 is composed of one hundred pages of Multimedia Messaging Service (MMS) messages. Almost all of the MMS messages are images—camera photos, screenshots, computer-generated imagery, etc.—some of which are accompanied by message text.

After a table of contents, the *first* four MMS messages in the packet are as follows:

- An uncensored 6" x 7" closeup photo of anal sex (the victim's penis inserted into defendant's anus, with the victim's hand grabbing a buttock).
- A 6" x 7" closeup photo of defendant and the victim bare-skinned and kissing.
- An uncensored 5" x 7" extreme-closeup photo of vaginal sex (the victim's penis inserted into defendant's vagina).
- An uncensored 5" x 7" closeup photo of oral sex (the victim's penis inserted in defendant's mouth, with defendant's full face visible), sent with the caption "Oh but you love it."

The second-to-last image in Exhibit 175 is an uncensored 4" x 8" extreme-closeup photo of defendant's vagina, including vulva piercing, sent from defendant to the victim with the caption "Yeah you making it feel good again baby."

Some of the other images contained in Exhibit 175 include the following:

- A 4.5" x 6" closeup freezeframe from a video of vaginal sex (the victim's penis inserted into defendant's vagina), sent with the caption "I'd rather be doing this lol."
- A 6.5" x 5" medium-shot freezeframe from a selfie video of sex with the victim behind defendant.
- Two 5" x 7" closeup photos of defendant and the victim bare-skinned lying in bed.
- A 6.5" x 8.5" medium-shot photo of defendant and the victim bare-skinned and embracing in bed.
- Six closeup photos of defendant and the victim bare-skinned and kissing, the largest of which were 7" x 9".
- Three 4.5" x 8" photos of a seemingly homemade kunai rope dart (a double-edged knife tied to a length of rope).

Exhibit 174 contains *all* of the non-deleted[5] Short Message Service (SMS) text messages found on defendant's phone that were sent or received from 5 March 2017 (one hundred days before the shooting) to 16 June 2017 (three days after the shooting). Although the State easily could have filtered these text messages,[6] it did not do so in any way—not even by recipient or sender.

Most of these texts were of absolutely no relevance to the trial. In fact, of the 2,431 texts admitted, *none of the first 968 were sent to or by the victim*. Rather, the very first texts sent to or received from the victim in Exhibit 174 were not until 29 May 2017, fifteen days before the

5. As described by one of the State's witnesses, investigators were also able to extract numerous deleted messages from defendant's phone, which were contained in other exhibits used at trial.

6. A witness for the State described how numerous text message datasets admitted at trial were made using Cellebrite, a "user-friendly" software that allows a user to "filter by name," "by date and time," etc. For example, Exhibit 211 contained only deleted text messages sent to or by defendant's drug dealer.

shooting. This fact alone should make it abundantly clear that, at the very minimum, the first *eighty-five days*' worth of text messages published to the jury were of almost no relevance to this trial.[7]

More importantly, many of the text messages were highly inflammatory.

The text messages portrayed defendant as a bad parent. They showed that she routinely bought alcohol for her sixteen-year-old son and helped him skip school when he complained about "doing nothing but sitting in [in-school suspension]." At least one of these exchanges was read out loud to the jury.

The messages also showed that defendant did not care when her son got in trouble at school. After being told by her son that he had gotten caught skipping class "with a girl," defendant responded with "ok lol" and asked, "Was your dick in you[r] pants or in her mouth[?]" Defendant also told her son that he should have lied to school administrators by saying the girl he skipped class with had "sta[in]ed her rag and you took her to the store to get pads lmao or [she] had the shits and need[ed] clean pants."

The texts showed her son's disrespect for law enforcement. In one exchange, defendant's son wrote: "I'm sitting here with another fucking cop behind me saying I got no goddamn insurance pulled over a fucking again . . . . I swear to fucking God I'm fucking done . . . . It's an old guy so he'll probably be a dick head." In other exchanges, her son made jokes about fake IDs and fraudulently modifying license plate tags.

The texts showed defendant's temper towards her son. On a night when her son got in trouble, defendant told him that his dread of talking with her "[i]s the price you pay for stupidity." The texts showed defendant's outbursts, such as when she texted her son: "Don't answer the phone wtf," then "Answer the phone," followed by "Fine fuck it" and "I guess you can just walk then." In one particularly lengthy outburst, defendant wrote:

[Defendant:]
Hey y'all come on

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7. I recognize that this lack of text messages indicates that defendant had likely deleted her text message conversations with the victim, an act that could conceivably be of some relevance to the trial. However, this fact could be conveyed to the jury in myriad ways not involving the presentation of almost 1,000 irrelevant messages, many of which were highly prejudicial to defendant.

We need to be otw back

Please come on

If y'all don't come on I'm going to ha[v]e to pay more money

Hurry up please

Hello

You usually check in sooner than this

Please son I don't have money to pay come on

Dam It this Is pissing me off

Really this is not good son come on

Okay I'm taking her home then I told you I wanted to leave before dark

Why aren't you answering me

That's it dammit to fucking hell Get your ass here now wtf son

You don't realize how pissed this is making me

Your staying gone on purpose now come on I don't have money for this dam it

I'll never again do this I can't believe you're doing this

The texts put on full display defendant's deteriorating relationship with her children. Her son complained about how he was tired of "be[ing] a messenger" between defendant and her ex-husband. Defendant admitted that her daughter "don't have to listen to me" and that she was "scared from how [her daughter] talks about not being alive anymore." In one exchange read aloud to the jury, defendant's son said:

[Son:]

I don't really give a fuck you're never going to see me anymore anyway so why does it matter [if I act up]

[The victim] [i]s more [im]port[e]n[t] th[a]n your family so go ahead and keep him don't give a fuck about us I don't matter I don't have to come around anym[ore]

It's all about that fucking [victim] goddamnit

You got what you want I won't come around anymore I won't ask if you . . . want anything I w[on't] ask if you wanted to spend time together I'm done [f]uck[i]t th[a]nk your boyfriend

The texts showed that defendant could not afford many things, such as a $1,700 used car, car insurance, a car inspection, or even a replacement front bumper.

The texts insinuated that defendant is paranoid and described bizarre occurrences of absolutely no relevance to the trial. One conversation recounted how someone got kicked out of church. Others described defendant's mother's long-term partner as a good-for-nothing alcoholic.

One particularly eyebrow-raising conversation described the plight of a man whom defendant and her mother both knew. One evening, defendant's mother texted:

[Mother:]

That crazy bitch stab him in the back of the neck

[Defendant:]

. . . What did she stab him with

[Mother:]

They senting him to ct scan . . .

. . . Eight inch streak knife

[**Defendant:]**

Oh wow so guess they trying to see how deep it went

. . . If it was in the back of the neck that means he was walking away

. . . [D]id he say what was going on

[Mother:]

They kicked me out

They didn't w[an]t me video[ing] them not helping him

. . . Called the law on me and took me out can't find out anything

[Defendant:]
Wow that's crazy

[Mother:]
Yeah hope I got it on video

[Defendant:]
Yeah I hope so to

[Mother:]
. . . Did you get the video

[Defendant:]
Yeah . . .

. . . is the knife still in his neck

In general, this exchange showed defendant as disturbingly callous to graphic violence—already greatly damaging to her character in a murder trial. Perhaps even more damaging, though, was her specific statement that "[i]f [the stab wound] was in the back of the neck that means [the victim of this encounter] was walking away." It is exceedingly obvious that such a statement would have been incredibly damaging in this trial, where the State contended that the presence of wounds in the victim's back was proof that defendant had not acted in self-defense.[8]

Perhaps even more remarkably, shortly after the victim's apparent 5:00 a.m. arrival at defendant's house two weeks before the shooting, defendant's son texted, "Grandma can't call the cops because she doesn't own the place *and you better not shoot* [*the victim*] *because we need you around and not in jail*." (Emphasis added.) It is hard to conceive of a more prejudicial statement in defendant's murder trial.[9]

The texts showed numerous crass jokes. When a bird was stuck in a chimney, defendant's mother complained about being "too fat to get away from the thing." When defendant told her mother she was "[l]aying here naked relaxing till I get motivated to get the house clean,"

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8. As the State heavily emphasized in closing arguments, "Two shots in the back is what the defense likes to call a bad fact. That's pretty difficult to overcome . . . . It's not to the side. It's not under the arm. It's in the back. Pretty dead on, too, both of them."

9.. It is also notable that the State's witness read aloud to the jury almost *all* of the other texts on this page—including those located almos*t immediately* before and almost *immediately* after this highly injurious message. Surely jurors would have noticed this message so conspicuously omitted from the State's read-aloud.

her mother asked, "How long [does] it takes to wash a pussy[?]" There were jokes about defecation, being hungry enough to "eat a horse butt," calling breasts "built in floaties," and an obese man who "[l]ooks like he wear[s] a bra" because "when he puts his arms down the man boobs goes down."

The texts showed defendant's sexual deviance. They showed how she used sex props and sent sexual photos to her friend. In texts the prosecution referred to in court as "girl talk," defendant asked a friend if she could send her "a picture of me in restraints." The friend responded that the picture looked like something out of Fifty Shades of Grey, and the two of them talked about "hav[ing] a picture exchange contest." In another exchange with that same friend—which was read aloud to the jury—defendant wrote: "Hey my freaky Awesome girl Guess who coming over to play with me [smiling emoji] in a hour hehe." She also asked the friend to provide "request[s] or instructions," to which the friend said, "Use . . . hot wax."

The texts showed how defendant discussed her sex life with her sixteen-year-old son and her mother. When defendant described how the victim stayed with her one night until 3:15 a.m., defendant's mother said, "I need a creature like that LOL."

The texts contained mockery of the victim's infidelity by a woman named Sherry:

["Sherry":]
Y'all a couple now or still playing?

[Defendant:]
Still playing lol

["Sherry":]
Y'all crazy!! . . .

Is he the married one?

[Defendant:]
Yes

["Sherry":]
SMH...when's he gonna leave [his wife] and get divorced?

[Defendant:]
Idk

["Sherry":]
Oh my!!!! SMH he can't have his cake a eat it too!!

[Defendant:]
Oh iknow that's right lol

These texts were read aloud to the jury, even though the State admitted it did not "have any idea who Sherry is."

The *very* last page of Exhibit 174 contained messages received by defendant's phone in the hours after the shooting. On this extremely prominent page, defendant's drug dealer wrote: "Figured I was blocked again and wouldn[']t hear from u after helping you again, next time when u get ready to call be ready to suck dick." Despite its minimal relevance to the trial, this text, too, was read aloud to the jury.

Of the 2,431 text messages contained in Exhibit 174, only *one* was redacted: text no. 1,361, which contained a social security number. That this relatively obscure message in the middle of the packet was redacted certainly implies that someone had, in fact, closely reviewed all of the messages in Exhibit 174.

That these texts were nevertheless quite literally placed in jurors' laps for three days is alarming. Similarly alarming is the flippancy with which these exhibits were treated. The trial court allowed Exhibits 174 and 175 to be published without even a rudimentary inquiry of what they contained. Although these two exhibits were of enormous consequence, the two exchanges with the trial court regarding their publication to the jury were so short that together they take up merely two pages within the 2,589-page trial transcript.

Instead of trying to determine what the two packets contained before allowing them to be published to the jury, the trial court simply announced to the gallery: "I've taken [the State] at [it]s word that we're going to discuss some things now in text messages that may not be pleasant to listen to for folks in this courtroom." At best, that puts it mildly.

The State also told the trial court that it chose to give each juror personal copies of the exhibits "as opposed to displaying them in the courtroom" "[b]ecause of the sensitive nature of the messages." But this did not render the messages any less prejudicial. Defendant did not stand trial in front of the members of the gallery who were shielded from the exhibits' inflammatory contents. Rather, she stood trial in front of members of the *jury*, each of whom had unlimited access to this incendiary material for three days. If these exhibits were too provocative for

the gallery, how could it possibly have been appropriate to give them to the jury?

As a threshold matter, many of the texts contained in the exhibits had quite literally no relevance to defendant's murder trial. How, for example, were texts about a "crazy bitch stab[ing] [a mutual friend] in the back of the neck" of any relevance whatsoever to defendant's murder trial? How about texts telling defendant's soon-to-be-suspended son that he should have lied to school administrators by saying the girl he was skipping class with to put his "dick . . . in her mouth" had actually "sta[in]ed her rag" or "had the shits and need[ed] clean pants"? Such messages likely could have, and should have, been excluded under Rule 402. To reiterate, *none* of the first 968 text messages contained in Exhibit 174 were sent to or by the victim, as were hundreds more included elsewhere in Exhibits 174 and 175.

I recognize that Exhibits 174 and 175 were not composed exclusively of completely irrelevant messages barred by Rule 402. Indeed, the exhibits contained many messages sent to or received from the victim, and several of these messages can fairly be described as vitriolic, expletive-laden, rollercoaster conversations that demonstrate the couple's cyclical, toxic relationship.

However, even for those messages that had some modicum of relevance to the trial, the defense still could have, and almost certainly should have, moved for exclusion. Relevant evidence must be excluded when it is unfairly prejudicial, needlessly cumulative, or confusing of the issues. N.C.G.S. § 8C-1, Rule 403 (2025). Publishing these thousands of text messages in their entirety, given as a packet, most certainly crossed this line.

Although defendant's trial was hotly contested, the jury convicted decisively, a clear indication that it discredited defendant's testimony describing acts of self-defense. Today, on plain error review, the majority is unconvinced that it is "significantly more likely than not" that defendant would have been acquitted if portions of Exhibits 174 and 175 had not been erroneously published. However, this is not to say that defendant could not prevail in an ineffective assistance of counsel claim. Indeed, for the reasons stated above, there very well may be a reasonable probability that publication of the exhibits inflamed jurors and caused them to improperly convict based on passion and bias, thereby depriving defendant of a fair trial.

I am sympathetic to the struggles defendant may encounter in fashioning an ineffective assistance of counsel claim without aid of the

memory of her trial attorney, who has since passed away. Nevertheless, she can still argue that her trial was plagued by a wide array of blunders, ranging from the delivery of erroneous jury instructions to allowing an avalanche of irrelevant and incendiary texts to be thrust into jurors' hands for their unlimited perusal and consideration. It seems improbable that these blunders were the result of any viable defense strategy. I am seriously concerned that defendant did not receive the fair trial to which she was constitutionally entitled.

Judge Wood, writing for the Court of Appeals' majority, correctly characterized the texts and photos given to jurors as nothing short of "character assassination." *Hicks III*, 297 N.C. App. at 484. As was said at oral argument, these texts were "slut-shaming . . . . They were showing that [defendant] was a bad woman, a bad mother, [and] presumably a bad wife."

It was one thing for jurors to hear testimony of defendant's sexual behavior. "It [wa]s another matter entirely for . . . jurors each to be given a packet visually—and viscerally—depicting [d]efendant engaging in such activity and to have one of the State's witnesses identify the type of sexual activity involved." *Id.* at 478. Enlarged, duplicative, pornographic images of defendant having extramarital sex with the victim "only served the purpose of shocking and disgusting the jury." *Id.* at 479.

As if their contents were not prejudicial enough, the exhibits' impact was exacerbated by physically placing them in jurors' laps for three days without limiting instructions. Throughout those three days, a juror needed to do nothing more than "open up the . . . exhibit[s] and view the[ir] [contents] . . . to be reminded" of defendant's morally repulsive behaviors. *Id.*

The deluge of incendiary material "disgusted [the] jury" and "cause[d] [it] to reach [its] decision based on passion, namely, a personal revulsion toward [d]efendant." *Id.* at 480, 484. It seems clear that this vivid display of "highly inflammatory and prejudicial information" transfixed jurors and "caused them to ignore" "the substantial and persuasive evidence demonstrating [defendant] acted in self-defense." *Id.* at 484.

Much of the exhibits' contents "serv[ed] only to inflame the jurors' emotions." *Id.* at 474. Together, I am convinced that they caused jurors to convict "based on their distaste of [d]efendant rather than the relevant facts and law." *Id.* Such cannot have been the "fair" trial to which defendant was entitled and should have received. *See Malachi*, 371 N.C. at 733.

One hopes that when a conviction is secured, the defendant's guilt is proven with evidence—not by assailing her character with mounds of dirty laundry. When each juror received their own copy of thousands of almost entirely irrelevant, highly inflammatory text messages, defendant's trial was converted into a dog and pony show focused on her character. Unfortunately, this mudslinging worked, and the jury convicted decisively despite large amounts of evidence of self-defense. As a result, defendant was prejudiced. Compelled by the belief that defendant did not receive a fair trial, I fundamentally disagree with the majority's decision. I respectfully dissent.

STATE OF NORTH CAROLINA
v.
JULIE ANN MINCEY

No. 68A24

Filed 22 May 2026

Appeal and Error—guilty plea—limited right of appeal—statutory exception inapplicable—appellate jurisdiction improper

After the defendant in a prosecution for embezzlement and obtaining property by false pretenses pleaded guilty to attaining habitual felon status, the Court of Appeals erred in concluding that defendant had a right of appeal from the entry of her guilty plea under one of the exceptions to the general limitation on such appeals: specifically, N.C.G.S. § 15A-1444(a2)(3), which allows an appeal as of right where the duration of a prison sentence is not statutorily authorized for the defendant's class of offense and prior record level. This exception did not apply to defendant's appeal, which challenged the factual basis for the guilty plea rather than the duration of defendant's sentence. Consequently, the Court of Appeals—having dismissed defendant's petition for a writ of certiorari as moot—lacked jurisdiction to review the merits of defendant's appeal, prompting the Supreme Court to reverse that court's decision and to remand the case for further proceedings.

Appeal pursuant to N.C.G.S. § 7A-30(2) (2023) from the decision of a divided panel of the Court of Appeals, 292 N.C. App. 345 (2024), affirming the trial court's judgment entered on 23 January 2023 by John E. Nobles Jr., in Superior Court, Craven County. On 11 December

2024, the Supreme Court allowed the State's petition for discretionary review pursuant to N.C.G.S. § 7A-31 and petition for writ of certiorari as to additional issues. Heard in the North Carolina Supreme Court on 9 September 2025.

Jeff Jackson, *Attorney General*, *by Kristin J. Uicker*, *Special Deputy Attorney General*, *for the State-appellee.*

Glenn Gerding, *Appellate Defender*, *by Aaron Thomas Johnson*, *Assistant Appellate Defender*, *for defendant-appellant.*

RIGGS, Justice.

In this case, we are asked to determine whether the Court of Appeals erred as a preliminary matter when it held that defendant Julie Ann Mincey had a right of appeal under N.C.G.S. § 15A-1444(a2)(3) from her guilty plea to attaining habitual felon status, and whether the Court of Appeals further erred in its review of the merits of Ms. Mincey's appeal. In addressing the merits, the Court of Appeals considered whether the trial court complied with N.C.G.S. § 15A-1022(c)'s statutory mandate requiring the court to determine whether there was a factual basis for Ms. Mincey's guilty plea. *State v. Mincey*, 292 N.C. App. 345, 350 (2024). Because we hold that Ms. Mincey lacked the right to appeal from her guilty plea to attaining habitual felon status and that, therefore, the Court of Appeals did not have jurisdiction to review the trial court's judgment, we reverse the decision of the Court of Appeals and remand this case for proceedings not inconsistent with this opinion.

I. Factual and Procedural Background

Julie Ann Mincey moved from Colorado to New Bern, North Carolina, and operated a travel agency through which she systematically defrauded victims, primarily elderly retirees, through elaborate travel booking schemes that netted her over $100,000. Her victims trusted her to arrange complex international and domestic travel packages, including anniversary trips, historic train tours, cruises, and specialty excursions. Ms. Mincey would collect deposits and payments for her services promising to handle all travel arrangements, but then she would suddenly cancel the trips and cease communication, leaving the victims with no trip, no refunds, and no way to get in touch with her.

A grand jury indicted Ms. Mincey for sixteen felony offenses—fourteen counts of embezzlement and two counts of obtaining property by false pretenses—and for attaining habitual felon status.

Ms. Mincey's trial was held from 1 August to 8 August 2022. Of the charged offenses, five were dismissed, and eleven ultimately reached the jury, including ten counts of embezzlement and one count of obtaining property by false pretenses.

At trial, Ms. Mincey admitted to attaining habitual felon status. The trial court engaged in a colloquy to ensure Ms. Mincey understood the consequences of her admission on her right to appeal, and after Ms. Mincey confirmed her understanding of the consequences, she pleaded guilty to the habitual felon status.

The State presented its factual basis for the habitual felon status through evidence of three Colorado felony convictions from when Ms. Mincey lived in Colorado: attempted theft from 13 January 1987 (convicted 31 March 1989) under Colo. Rev. Stat. § 18-4-401 in the District Court, Arapahoe County; second-degree forgery from 15 March 1990 (convicted 22 April 1991) under Colo. Rev. Stat. § 18-5-103 in the District Court, Denver County; and five counts of theft committed between 3 February and 31 March 2001 (convicted 26 February 2004) under Colo. Rev. Stat. § 18-5-102 in the District Court, Douglas County. The State presented copies of the Colorado statutes in effect on the dates of Ms. Mincey's Colorado convictions as well as certified records of the prior convictions.

In response to the State's factual basis presentation, Ms. Mincey's defense counsel agreed with the State that "the statutes under which [Ms. Mincey] was convicted, three predicate felonies, were all designated as felonies under Colorado law at the time and [were] still designated as felonies." Based on those representations, the trial court found a factual basis for Ms. Mincey's guilty plea to attaining habitual felon status and found that "the plea is the informed choice of the defendant given freely, voluntarily and understandingly."

The jury found Ms. Mincey guilty of nine counts of embezzlement and one count of obtaining property by false pretenses. The trial court consolidated the offenses, including attaining habitual felon status, into one judgment, imposing a sentence in the mitigated range of forty-four to sixty-five months imprisonment and ordering restitution of $53,402.58. Ms. Mincey gave oral notice of appeal in open court.

On appeal, Ms. Mincey argued that the trial court failed to comply with N.C.G.S. § 15A-1022(c). *See* N.C.G.S. § 15A-1022(c) (2025) (requiring trial courts not to accept a guilty plea without first determining that there is a factual basis for the plea). Ms. Mincey's defense counsel had incorrectly stated that the second-degree forgery conviction was still a

felony in Colorado, and Ms. Mincey later determined Colorado had, in 1993, reclassified the crime as a misdemeanor, subsequent to her 1991 conviction. *Mincey*, 292 N.C. App. at 347–48. Thus, Ms. Mincey argued there was no factual basis for the guilty plea because the second underlying felony used to determine that she had attained habitual felon status was no longer a felony at the time she was being sentenced. *Id.* at 347. She contended that the Court of Appeals "should consider whether a defendant's underlying felonies are still felonies at the time a defendant committed the substantive offense for which he or she is currently being sentenced." *Id.* Finally, Ms. Mincey asked the Court of Appeals to vacate the judgment and remand for resentencing absent the habitual felon sentencing enhancement. *Id.* at 348.

Before reaching the merits, the Court of Appeals first determined whether it had jurisdiction to consider Ms. Mincey's appeal, which required the court to determine whether Ms. Mincey had the right to appeal after pleading guilty to attaining habitual felon status. *Id.* The Court of Appeals ultimately determined that Ms. Mincey had a statutory right of appeal under N.C.G.S. § 15A-1444(a2)(3) because she was asserting that a deficient plea to habitual felon status resulted in an unauthorized term of imprisonment. *Id.* at 348–49; *see also* N.C.G.S. § 15A-1444(a2)(3) (2025). The Court of Appeals then dismissed as moot Ms. Mincey's petition for writ of certiorari, which she had also filed with the court below, because she had a statutory right of appeal. *Mincey*, 292 N.C. App. at 349.

The Court of Appeals then reviewed the merits of Ms. Mincey's appeal. Regarding Ms. Mincey's challenge to the sufficiency of the factual basis for the trial court's acceptance of a guilty plea for habitual felon status, the Court of Appeals held that the trial court complied with subsection 15A-1022(c) and affirmed the judgment. *Id.* at 349–51. The court then explained that the trial court did not err in determining there was a factual basis for Ms. Mincey's guilty plea because the second-degree forgery was a felony at the time of Ms. Mincey's conviction in 1991. *Id.* at 350–51. Acknowledging that the Colorado law had subsequently changed, the Court of Appeals relied on both N.C.G.S. § 14-7.1(a), the habitual felon statute, and *State v. Ross*, 221 N.C. App. 185, 188 (2012), to conclude that any person who is convicted of or pleads guilty to three felony offenses attains habitual felon status. *Mincey*, 292 N.C. App. at 350. It held that the application of the habitual felon statute was compatible with the "primary goals" of the "recidivist statute" meant to "deter repeat offenders." *Id.* at 350–51 (cleaned up). Thus, the Court of Appeals declined to adopt Ms. Mincey's argument that habitual felon status should be determined based on whether the

predicate felonies were felonies at the time of the offense for which the defendant was being sentenced. *Id.* at 351.

In his dissent, Judge Arrowood opined that he would have held that Ms. Mincey lacked a right of appeal under N.C.G.S. § 15A-1444(a2), but that he would have allowed her petition for writ of certiorari to review the adequacy of the factual bases underlying Ms. Mincey's guilty plea. *Id.* at 352 (Arrowood, J., dissenting). Further, Judge Arrowood explained that, in his view, statutory interpretation of the habitual felon statute and caselaw supported the conclusion that "courts are meant to examine the classifications of prior offenses at the time of the offense the defendant is being sentenced, not at the time the prior offense was committed." *Id.* at 352–54.

On 12 March 2024, Ms. Mincey filed the present appeal based on the dissent, seeking review of the trial court's acceptance of her guilty plea to attaining habitual felon status. Then, on 25 March 2024, the State also filed a notice of appeal based on the dissent, seeking this Court's review of whether the Court of Appeals erred in holding there was a right to appeal following Ms. Mincey's guilty plea to habitual felon status under N.C.G.S. § 15A-1444(a2)(3). Further, the State filed a petition for discretionary review as to additional issues and, in the alternative, a petition for writ of certiorari as to additional issues for this Court to determine whether the Court of Appeals erred in holding there was a right to appeal and whether the factual bases of a guilty plea are reviewed using a de novo standard. This Court allowed both of the State's petitions on 11 December 2024.

II. Analysis

A. Standard of Review

"This Court reviews the decision of the Court of Appeals to determine whether it contains any errors of law." *State v. Melvin*, 377 N.C. 187, 192 (2021) (quoting *State v. Golder*, 374 N.C. 238, 244 (2020)); *see also* N.C. R. App. P. 16(a). Determining whether the Court of Appeals erred when it held that Ms. Mincey had a right of appeal turns on the interpretation of N.C.G.S. § 15A-1444. Questions of law, such as questions of statutory interpretation, are reviewed de novo. *In re D.S.*, 364 N.C. 184, 187 (2010).

B. Ms. Mincey did not have a right of appeal.

In North Carolina, the right to appeal a criminal proceeding is created through our state statutes. *See generally* N.C.G.S. § 15A-1444(a), (g) (2025) (providing when a defendant may appeal or file a petition for

writ of certiorari); *State v. Berryman*, 360 N.C. 209, 214 (2006) ("Similar to federal procedure, a North Carolina criminal defendant's right to appeal a conviction is provided entirely by statute."). A guilty plea limits a defendant's right to appeal. Subsection 15A-1444(e) of the General Statutes provides:

> Except as provided in subsections (a1) and (a2) of this section and G.S. 15A-979, and except when a motion to withdraw a plea of guilty or no contest has been denied, the defendant is not entitled to appellate review as a matter of right when he has entered a plea of guilty or no contest to a criminal charge in the superior court, but he may petition the appellate division for review by writ of certiorari. If an indigent defendant petitions the appellate division for a writ of certiorari, the presiding superior court judge may in his discretion order the preparation of the record and transcript of the proceedings at the expense of the State.

N.C.G.S. § 15A-1444(e) (2025).

As outlined by the statute, the right to appeal following a guilty plea is narrow. There are limited circumstances when a defendant is still entitled to an appeal of right after entry of a guilty plea, such as when the sentence imposed resulted from certain errors related to the defendant's prior record or conviction levels. N.C.G.S. § 15A-1444(a1), (a2) (2025). Most relevant here, subsection (a2)(3) provides an exception to the general limitation on appeals from a guilty plea for when a defendant's sentence "[c]ontains a term of imprisonment that is for a duration not authorized by G.S. 15A-1340.17 or G.S. 15A-1340.23 for the defendant's class of offense and prior record or conviction level." N.C.G.S. § 15A-1444(a2)(3) (2025); *see also id.* §§ 15A-1340.17, 15A-1340.23 (prescribing the aggravated, presumptive, and mitigated range of sentencing for each class of offense and prior record level).

Our statutes and case law make clear that a defendant "is not entitled to appellate review as a matter of right" of the contention that the trial court improperly accepted a guilty plea, particularly where the defendant did not raise one of the challenges prescribed under the statute, withdraw the guilty plea, or petition for a writ of certiorari. *See* N.C.G.S. § 15A-1444(e); *State v. Bolinger*, 320 N.C. 596, 601–02 (1987) (explaining the limited bases under N.C.G.S. § 15A-1444 for appellate review of judgments entered upon guilty pleas). A defendant may petition the

appellate division for a writ of certiorari, and the appellate division, which maintains jurisdiction and authority to issue prerogative writs, may then choose to exercise its authority to issue a writ of certiorari. *See* N.C.G.S. § 7A-32(c) (2025); N.C.G.S. § 15A-1444(e). In fact, this Court has said that a defendant may obtain appellate review of the acceptance of a guilty plea only upon issuance of a writ of certiorari. *Bolinger*, 320 N.C. at 601 (holding that the defendant who entered a guilty plea was not entitled to appellate review as a matter of right when the defendant did not withdraw a guilty plea and failed to petition for a writ of certiorari); *State v. Ledbetter*, 371 N.C. 192, 195 (2018) ("Subsection 15A-1444(e) specifically addresses review of a defendant's guilty plea through issuance of a writ of certiorari and contains no language limiting the Court of Appeals' jurisdiction or discretionary authority.").

After having been informed that a guilty plea would limit her right to direct appeal, Ms. Mincey entered the guilty plea willingly and voluntarily. She became subject to the limitations set forth under N.C.G.S. § 15A-1444(e), and, unless certain exceptions applied, she was not entitled to right of appeal outside an issuance of a writ of certiorari. *See Bolinger*, 320 N.C. at 601.

The Court of Appeals misinterpreted N.C.G.S. § 15A-1444(a2)(3) in holding that Ms. Mincey had a right of appeal. Though habitual felon status would enhance Ms. Mincey's sentencing, whether the second-degree forgery conviction from 1991 could sufficiently serve as a factual basis for her guilty plea to attaining habitual felon status under N.C.G.S. § 14-7.1 centers on interpretation of the habitual felon statute itself. *See generally* N.C.G.S. § 14-7.1(a) (2025) (prescribing persons defined as habitual felons, including which felony offenses are considered in determining whether someone has attained habitual felon status); *id.* § 14-7.1(b) ("For the purpose of this Article, a felony offense is defined to include all of the following: [listing applicable offenses] . . . ."). This was not a question of whether her sentence "[c]ontains a term of imprisonment that is for a duration not authorized by G.S. 15A-1340.17 or G.S. 15A-1340.23 for the defendant's class of offense and prior record or conviction level." N.C.G.S. § 15A-1444(a2)(3). Notably, Ms. Mincey conceded that based on the plea that was entered, the sentence would have been correct, or at least, would not have been challenged if not for her contention that the trial court erroneously accepted the guilty plea. Oral Argument at 8:58, *State v. Mincey*, No. 68A24 (N.C. Sep. 9, 2025), https://www.youtube.com/watch?v=hZ2lwReJqZA.

Having concluded there was no statutory right of appeal and that the Court of Appeals erred, we also hold that the Court of Appeals erred

in reviewing the merits of Ms. Mincey's appeal as it lacked jurisdiction to do so. The only way the Court of Appeals could have reached the merits of Ms. Mincey's appeal was via a writ of certiorari, which the court dismissed as moot.

The North Carolina Constitution and the Rules of Appellate Procedure prescribe authority for appellate review in our state. *See Ledbetter*, 371 N.C. at 194 ("The Court of Appeals shall have such appellate jurisdiction as the General Assembly may prescribe." (quoting N.C. Const. art. IV, § 12(2))); *Berryman*, 360 N.C. at 214 ("Procedures for appeal to the appellate division are as provided in this Article, the rules of the appellate division, and Chapter 7A of the General Statutes." (quoting N.C.G.S. § 15A-1444(d) (2005))); *see also State v. Woolard*, 385 N.C. 560, 567–68 (2023) (holding that where no right of appeal existed, the State could petition this Court for certiorari and where a writ of certiorari was properly granted, this Court had jurisdiction to reach the merits); N.C. Const. art. IV, § 12(1) (providing this Court's ability to issue any remedial writs necessary in furtherance of its "general supervision and control over the proceedings of other courts").

The decision to issue a writ of certiorari ultimately rests in the sound discretion of the presiding court, and this Court has explained that certiorari is an "extraordinary remedial writ" that we use sparingly. *Cryan v. Nat'l Council of YMCAs*, 384 N.C. 569, 572–73 (2023) (cleaned up); *Woolard*, 385 N.C. at 568. To issue a writ of certiorari, we require petitioners to "show merit or that error was probably committed below" and "extraordinary circumstances." *Cryan*, 384 N.C. at 572. When the Court of Appeals decides to issue the writ, then this Court reviews the issuance for abuse of discretion. *Id.* at 573. However, in this case, the Court of Appeals expressly declined to review Ms. Mincey's appeal through certiorari review. Instead of adhering to N.C.G.S. § 15A-1444, which established a well-defined structure for limited appeals from guilty pleas, the Court of Appeals improperly concluded that Ms. Mincey's appeal fell under the exception prescribed in N.C.G.S. § 15A-1444(a2)(3), which erroneously permitted her to retain the benefit of pleading guilty while preserving the right to challenge her conviction for attaining habitual felon status. Further, because the Court of Appeals did not properly allow certiorari review below, it exercised jurisdiction that it did not have to reach the merits. *See Woolard*, 385 N.C. at 568–69.

Appellate courts cannot exercise jurisdiction that they do not possess. *See Veazey v. City of Durham*, 231 N.C. 357, 364 (1950) (holding that an appeal to the Supreme Court from a non-appealable order of the trial court confers no power on the Supreme Court); *see also State*

v. Wagner, 356 N.C. 599, 601 (2002) (vacating a Court of Appeals' opinion as it pertained to a conviction over which the trial court, and consequently the Court of Appeals, lacked jurisdiction). When a court decides a matter over which it lacks jurisdiction, the proceeding is null and void. *See In re T.R.P.*, 360 N.C. 588, 590 (2006) (explaining that a court must have jurisdiction over a case and the type of relief sought to decide the case; otherwise, its judgment is void).

Having determined that Ms. Mincey had no right of appeal and therefore the Court of Appeals did not have jurisdiction to reach the merits of Ms. Mincey's appeal, we decline the State's invitation to overturn the standard of review set forth in *State v. Robinson*, 381 N.C. 207 (2022), regarding an appellate court's review of a trial court's determination of a factual basis for a guilty plea. *See In re Peoples*, 296 N.C. 109, 147 (1978) (stating that this Court's function is not to "entertain or proceed with a cause merely to determine abstract propositions of law"); *In re A.K.*, 360 N.C. 449, 452 (2006) (stating that this Court will usually "decide a case only if the controversy which gave rise to the action continues at the time of appeal"); *Hoke Cnty. Bd. of Educ. v. State*, No. 425A21-3, slip op. at 86 (N.C. Apr. 2, 2026) (stating that "[a]n appellate court, for instance, must first review its own [subject matter] jurisdiction" and the jurisdiction of the court below to determine whether it has the authority to pass on the merits of a case).

III. Conclusion

We hold that the Court of Appeals erred in holding that Ms. Mincey had a right of appeal. The Court of Appeals therefore lacked jurisdiction to reach the merits of Ms. Mincey's appeal. Thus, we reverse the decision of the Court of Appeals and remand to that court for proceedings not inconsistent with this opinion.

REVERSED AND REMANDED.

STATE OF NORTH CAROLINA
v.
DONNIE RAY NUNNALLY

No. 216A25

Filed 22 May 2026

Constitutional Law—effective assistance of counsel—defense counsel's purported concessions of guilt—defendant's stipulations—Harbison inapplicable

In defendant's appeal from his convictions for possession of a firearm by a felon and two counts of assault with a deadly weapon, the Court of Appeals' determination that the record failed to show whether defendant knowingly consented in advance to his trial counsel's admission of guilt—and its resulting remand of the case to the trial court for an evidentiary hearing on that issue—was reversed. There was no deficiency in defense counsel's performance regarding concessions—let alone per se prejudicial error pursuant to *State v. Harbison*, 315 N.C. 175 (1985), and *State v. McAllister*, 375 N.C. 455 (2020), which together provide the appropriate framework when a client's autonomy, not counsel's competence, is in issue—where defendant stipulated on the record to his counsel's purported concessions in two separate colloquies with the trial court and, moreover, counsel did not actually concede defendant's guilt, either explicitly or implicitly.

Chief Justice NEWBY concurring by separate opinion.

Justice RIGGS dissenting.

Justice EARLS joins in this dissenting opinion.

Appeal pursuant to N.C.G.S. § 7A-30(2) from the unpublished decision of a divided panel of the Court of Appeals, No. COA24-550 (N.C. Ct. App. Aug. 6, 2025), reviewing judgments entered on 20 January 2023 by Judge William D. Wolfe in Superior Court, Durham County, and remanding the case. Heard in the Supreme Court on 18 February 2026.

Jeff Jackson, Attorney General, by Ashley Weathers, Special Deputy Attorney General, for the State-appellant.

Joseph P. Lattimore for defendant-appellee.

BERGER, Justice.

A Durham County jury found defendant guilty of possession of a firearm by a felon and two counts of assault with a deadly weapon. Defendant was sentenced in the aggravated range to twenty-four to thirty-eight months in prison for possession of a firearm by a felon, to run consecutively with a 150-day sentence for the misdemeanor assaults.

In separate colloquies with the trial court, defendant stipulated that he had a prior felony conviction and that he possessed a firearm when the incident occurred. Despite these stipulations, defendant argues on appeal that his defense counsel's jury argument contained an implied admission related to these stipulations which was per se prejudicial pursuant to *State v. Harbison*, 315 N.C. 175 (1985), *cert. denied*, 476 U.S. 1123 (1986), and *State v. McAllister*, 375 N.C. 455 (2020). Under those cases, "when counsel to the surprise of his client admits his client's guilt, the harm is so likely and so apparent that the issue of prejudice need not be addressed." *Harbison*, 315 N.C. at 180; *see also McAllister*, 375 N.C. at 475, 477 (holding that "under *Harbison* and its progeny defense counsel was required to obtain the informed consent of defendant" prior to conceding guilt and remanding to the trial court "for the sole purpose of determining whether defendant knowingly consented in advance to his attorney's admission of guilt to the . . . charge").

A divided panel of the Court of Appeals determined that "the record fails to show whether defendant knowingly consented in advance to his trial counsel's admission of guilt" and remanded the case to the trial court for an evidentiary hearing on that issue alone. *State v. Nunnally*, No. COA24-550, 2025 WL 2234017, at *5 (N.C. Ct. App. Aug. 6, 2025). Because defendant stipulated on the record to defense counsel's purported concessions and counsel did not explicitly or implicitly concede defendant's guilt, we reverse.

I. Factual and Procedural Background

Defendant was indicted on two counts of assault with a deadly weapon with intent to kill and one count of possession of a firearm by a felon following an August 2021 incident with his former girlfriend, Geneicia Connor. Ms. Connor was following her uncle, Paul Connor, in her vehicle while helping him move to a new home. A black van pulled in front of Ms. Connor's car at a traffic signal, and defendant jumped out of the van holding a gun. Ms. Connor exited her vehicle, and defendant

hit her with the gun, causing her to fall backwards into the grass. Seeing Ms. Connor fall, Mr. Connor exited his own car and saw defendant fire "two or three shots" in Ms. Connor's direction. Then defendant turned towards Mr. Connor and "shot at least three, four rounds." No one was struck by any of the rounds.

Defendant's matter came on for trial in January 2023. During pretrial proceedings, defendant, his attorney, and the State executed and filed a written stipulation with the trial court in which defendant admitted that he had a prior felony conviction. Thereafter, a colloquy between defendant and the trial court occurred on the record concerning the stipulation.

> THE COURT: All right. The Court has been handed a stipulation of the parties that reads, "In September 27, 2004, in Guilford County Superior Court, the Defendant pled guilty to a felony that was committed on December 19th, 2003, in violation of the laws of the State of North Carolina."
>
> . . . .
>
> Well, [defense counsel], I assume you're stipulating for the purpose of avoiding the jury hearing what the felony is, is that right?
>
> [DEFENSE COUNSEL]: That is correct, Your Honor. . . .
>
> . . . .
>
> THE COURT: Mr. Nunnally, can you stand up for just a minute? I've just got to ask you a question.
>
> Mr. Nunnally, did you understand what your lawyer just said? That basically by virtue of this stipulation, basically it's just something you—on which your lawyer and the State's lawyer agree. They're basically agreeing that you were convicted of a felony on September 24—September 27th, excuse me, 2004 in Guilford County.
>
> That basically does admit an element of the offense. Your lawyer can't do that without your permission. Does he have your permission to do that?
>
> DEFENDANT: Is it in my best interest?

> [DEFENSE COUNSEL]: Yeah. Otherwise they're going to read what the felony was.
>
> DEFENDANT: Yes, I agree.
>
> THE COURT: Okay. So he does have your permission to do that?
>
> DEFENDANT: Yes.

During trial, defense counsel informed the trial court that the court "needed to possibly make a [separate] *Harbison* inquiry because there may be a point in the trial when the defense may admit [defendant] actually possessed the firearm." The trial court engaged in a second colloquy with defendant.

> THE COURT: Mr. Nunnally, can you stand for me? Just got to ask you a quick question. It's kind of [the] same question I asked you before about the other stipulation.
>
> Your lawyer has told me that there may be a point in this trial, either during one of his arguments or maybe if you testify—don't know whether that's going to happen yet or not—where he may concede on your behalf that you actually possessed a firearm during this incident. Because that's an element of one of the crimes, I have to ask you whether or not he has your permission to do that, because he's not allowed to concede any element of the crimes without your permission.
>
> There may be tactical reasons why that's a good idea or not. I don't know, that's between you and your lawyer. But I just need to know whether or not he has your permission, if he does that.
>
> DEFENDANT: He has my permission. Can I ask you a question?
>
> . . . .
>
> THE COURT: . . . Right now I'm just trying to find out whether or not—because the point in time that that admission may come out might happen before we get to the point of testifying. I don't know. And I just need to make sure he's got your permission to do

> that because that's required. And so if he does, fine, just tell me so; if not, then I need to know that too.
>
> . . . .
>
> THE COURT: Just trying to find out if your lawyer has permission from you to admit during this incident you may have possessed a firearm. That's all.
>
> . . . .
>
> THE COURT: So does he have your permission?
>
> DEFENDANT: Yes, sir.

At the close of the State's evidence, defendant declined to testify or put on any evidence. During closing argument, defense counsel almost exclusively argued that the intent element necessary to convict on assault with a deadly weapon with intent to kill was not satisfied. Defense counsel recounted and discussed the eyewitness testimony offered by the State, arguing that specific intent had not been proven. Counsel did not explicitly argue the elements of possession of a firearm by a felon or otherwise ask the jury to find defendant not guilty of that charge.

> The circumstances that you can draw the deduction from is what Mr. Connor said. He was standing mere feet, standing over Geneicia Connor when he pulled the trigger. If he had intended to kill her, Paul Connor's words, a reasonable and prudent person, he'd have done it. . . .
>
> From every other witness that absolutely would have looked like he was shooting at her. But Paul Connor says he wasn't. Then turned as Mr. Connor is coming. Same thing. Mr. Connor said he was close enough. I mean, closer than we are. And missed with multiple shots. That's a circumstance where you can say just a horrible shot. Or you can say never intended to kill.
>
> The State says, why would you ever shoot a gun at somebody without an intent to kill? Warning shots scare people off. There's lots of reasons, whether they are rational reasons or reasons you would do, that's a different issue. But certainly just the fact that you point a gun in the direction of somebody and pull the trigger does not prove beyond a reasonable doubt

> that you had an intent to kill that person, especially when all the other circumstances are you didn't even strike them. And you were close enough that if that was your intent, you would not have missed.
>
> You know, the State wants to quote the stuff from the Court of Appeals, natural consequences. Pointing a gun at somebody and shooting, if you intend to kill them a natural consequence is you hit them. Pointing a gun at somebody and shooting and not hitting them is a natural consequence of not having an intent to kill that person. Just because someone points a gun in the direction of somebody does not mean there was an intent to kill.

The jury found defendant guilty of two counts of misdemeanor assault with a deadly weapon and one count of possession of a firearm by a felon. The jury also found as an aggravating factor that defendant committed these offenses while on pretrial release for other charges.[1] The trial court sentenced defendant in the aggravated range to twenty-four to thirty-eight months in prison for the possession of a firearm by a felon conviction, to run consecutively with a 150-day sentence for the misdemeanor assaults.

Defendant appealed, arguing "he received per se ineffective assistance of counsel because the record does not establish whether he knowingly consented to his counsel's implicit admission of guilt to the possession of a firearm by a convicted felon charge." *Nunnally*, 2025 WL 2234017, at *1. A divided panel at the Court of Appeals held that "the record fails to show whether defendant knowingly consented in advance to his trial counsel's admission of guilt." *Id.* at *5. The majority remanded for an evidentiary hearing "to determine whether defendant understood the consequence of the concession of the second element." *Id.*

The dissent argued that "[t]he record establishes that [defendant] expressly authorized both the admission of possession of a firearm and the prior felony conviction after proper inquiry by the trial court." *Id.* at *6 (Murry, J., dissenting). Further, the concessions were part of counsel's "strategy" and defendant "was not prejudiced by [the] admission." *Id.*

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1. When this incident took place, defendant was on pretrial release for drug trafficking, possession with intent to sell or deliver cocaine, resisting a public officer, possession of a controlled substance in a prison or jail facility, and other drug related charges.

The State filed a notice of appeal based upon the dissent below.[2] We reverse for the reasons stated herein.

II. Discussion

"A defendant's right to counsel includes the right to the effective assistance of counsel." *State v. Braswell*, 312 N.C. 553, 561 (1985); *see* U.S. Const. amend. VI ("In all criminal prosecutions, the accused shall . . . have the assistance of counsel for his defence."); N.C. Const. art. I, § 23 ("In all criminal prosecutions, every person charged with crime has the right . . . to have counsel for defense . . . .").

Generally, "[w]hen a defendant attacks his conviction on the basis that counsel was ineffective, he must show that his counsel's conduct fell below an objective standard of reasonableness." *Braswell*, 312 N.C. at 561–62 (citing *Strickland v. Washington*, 466 U.S. 668, 688 (1984)). To succeed on such a claim, a defendant must show (1) "that counsel's performance was deficient" and (2) "that the deficient performance prejudiced the defense." *Id.* (quoting *Strickland*, 466 U.S. at 687). "Whether a defendant was denied the effective assistance of counsel is a question of law that is reviewed de novo." *State v. Clark*, 380 N.C. 204, 215 (2022).

The two-part *Strickland* test recognizes that "litigants are not entitled to receive 'perfect' trials; instead, they are entitled to receive 'a fair trial, free of prejudicial error.' " *State v. Malachi*, 371 N.C. 719, 733 (2018) (quoting *State v. Ligon*, 332 N.C. 224, 243 (1992)). Thus, "a showing of prejudice is generally required before appellate relief is granted in this jurisdiction." *Id.* at 734. But North Carolina is among the minority of jurisdictions that will presume prejudice under the second prong of *Strickland* when defense counsel admits a defendant's guilt without the defendant's consent. *See Harbison*, 315 N.C. at 180.

In *Harbison*, the defendant was charged with first-degree murder and assault with a deadly weapon. He argued on appeal that his trial counsel admitted his guilt without his consent. 315 N.C. at 177. There, during closing argument, the defendant's counsel stated to the jury, "I don't feel that [the defendant] should be found innocent. I think he

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2. The General Assembly repealed the portion of N.C.G.S. § 7A-30 that conferred a right to appeal to the Supreme Court based on a Court of Appeals dissent. *See* Current Operations Appropriations Act of 2023, S.L. 2023-134, § 16.21(d) (d)–(e), 2023 N.C. Sess. Laws 760, 1171. We proceed with mandatory review because this appeal was filed and docketed at the Court of Appeals on 2 June 2023, which was before the effective date of that act. *See Bottoms Towing & Recovery, LLC v. Circle of Seven, LLC*, 386 N.C. 359, 361 n.1 (2024).

should do some time to think about what he has done. I think you should find him guilty of manslaughter and not first degree." *Id.* at 177–78. Ultimately, the defendant was convicted of second-degree murder and assault with a deadly weapon inflicting serious bodily injury. *Id.* at 176.

While the concession made by counsel is an important consideration, the rationale underlying *Harbison* is focused on consent. The Court stated that a defendant's "right to plead 'not guilty' has been carefully guarded by the courts" and must "remain in the defendant's hands." *Id.* at 180; *see also McCoy v. Louisiana*, 584 U.S. 414, 422 (2018) ("Some decisions . . . are reserved for the client—notably, whether to plead guilty . . . ."). When counsel concedes his client's guilt to the jury without consent, "[t]he practical effect is the same as if counsel had entered a plea of guilty without the client's consent." *Harbison*, 315 N.C. at 180.

We concluded that "when counsel to the surprise of his client admits his client's guilt, the harm is so likely and so apparent that the issue of prejudice need not be addressed." *Id.* Thus, "[i]neffective assistance of counsel, per se in violation of the Sixth Amendment, has been established in every criminal case in which the defendant's counsel admits the defendant's guilt to the jury without the defendant's consent." *Id.* Stated another way, when counsel concedes a defendant's guilt without consent, prejudice is presumed and the defendant is not required to demonstrate any specific harm.

More recently, in *State v. McAllister*, 375 N.C. 455 (2020), this Court extended *Harbison* to implied concessions but reinforced that a defendant's consent is the critical focus of any *Harbison* inquiry. *See id.* at 477. There, the defendant was charged with multiple offenses, including assault on a female. *Id.* at 458–59. In his videotaped interview with law enforcement, the defendant admitted that he assaulted the female victim but denied the more serious offenses with which he was charged, including rape. *Id.* at 459.

The trial court did not conduct a *Harbison* colloquy with the defendant, and there was no evidence in the record that the defendant consented to an admission of guilt by his counsel related to the defendant's statements in the video. *See id.* at 460. During closing argument, defense counsel stated, "You heard [the defendant] admit that things got physical. You heard him admit he did wrong. God knows he did." *Id.* at 473. Counsel thereafter encouraged the jury to find his client not guilty of the more serious offenses but was silent regarding the assault on a female charge. *Id.* at 460–61. The defendant was convicted of assault on a female and acquitted of the other charges. *Id.* at 461.

The Court determined that *Harbison* "encompass[es] situations in which defense counsel impliedly concedes his client's guilt without prior authorization," *id.* at 473, and remanded the case for an evidentiary hearing on consent, *id.* at 477. While no singular definition of implied concession was provided,[3] the Court held that an implied concession had occurred because counsel (1) "attested to the accuracy of the admissions made by defendant in his videotaped statement," (2) expressed "his own personal opinion that 'God knows [the defendant] did [wrong],' " and (3) explicitly asked the jury to find the defendant not guilty of the more serious offenses but "conspicuously omitt[ed] mention of the assault on a female charge." *Id.* at 474 (second alteration in original).

Ultimately, although failing to provide a consistent and workable definition for implied concession, *McAllister* remained faithful to the touchstone of *Harbison*: a trial counsel's admission of a defendant's guilt, whether explicit or implicit, is per se ineffective assistance of counsel unless the defendant consented to the admission. The *McAllister* Court remanded for an evidentiary hearing "for the sole purpose of determining whether [the] defendant knowingly consented in advance to his attorney's admission of guilt," *McAllister*, 375 N.C. at 477, thereby acknowledging that a defendant's consent conclusively defeats any *Harbison* claim.

Accordingly, the *Harbison–McAllister* framework is appropriate when "a client's autonomy, not counsel's competence, is in issue." *See McCoy*, 584 U.S. at 426. In other words, when counsel usurps the defendant's exclusive "ability to decide whether to maintain his innocence"

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3. *McAllister* articulated at least three different standards for determining when an implied concession has occurred. At one point, *McAllister* states that *Harbison* error occurs "where defense counsel's statements are the functional equivalent of an outright admission of the defendant's guilt." 375 N.C. at 475. Later, the Court, in circular fashion, posits that an implied admission occurs when "defense counsel's statements to the jury cannot logically be interpreted as anything other than an implied concession of guilt." *Id.* And finally, *McAllister* also suggests that an implied concession occurs when defense counsel declines to expressly argue an offense during closing and "the only logical inference in the eyes of the jury would have been that defense counsel was implicitly conceding [the] defendant's guilt as to that charge." *Id.* at 474.

The last standard is particularly unhelpful, as we discuss in greater detail herein. Such a dubious statement by the *McAllister* Court is perhaps defensible under the facts of that case, but we are doubtful that formulation would serve as an effective standard going forward as there are many reasons counsel may choose not to argue a particular point or issue to a jury.

But between the first and second standards, the former would appear to be the more appropriate lens through which to view *Harbison*'s per se rule, and we use the "functional equivalent" standard herein.

by conceding guilt without the defendant's consent, *id.* at 423, *Harbison* is triggered because the defendant has been deprived of his autonomy to decide whether to plead guilty under the Sixth Amendment. *See Harbison*, 315 N.C. at 180 (*Harbison* error occurs when counsel admits guilt "to the surprise of his client").

But the inverse is also true. With a defendant's consent, counsel is permitted to concede the defendant's guilt to the jury. Similarly, when a defendant stipulates to elements of a crime on the record, counsel may present argument to the jury in accord with those stipulations. *See State v. McNeill*, 346 N.C. 233, 238 (1997) (no *Harbison* error when the "defendant signed the stipulation, understood its effect, and realized that the information contained therein could be presented to the jury"); *see also State v. Matthews*, 358 N.C. 102, 109 (2004) (no *Harbison* error when the "defendant *knew* his counsel were going to make such a concession"). Thus, when the record reveals a defendant knowingly stipulated to certain elements of an offense and his counsel's concessions do not exceed the scope of those stipulations, no *Harbison* error has occurred.

We have stated that "an on-the-record exchange between the trial court and the defendant is the preferred method of determining whether the defendant knowingly and voluntarily consented to an admission of guilt during closing argument." *McAllister*, 375 N.C. at 477 (cleaned up). And while *Harbison* does not "specif[y] a particular procedure that the trial court must invariably follow when confronted with a defendant's concession, . . . we have urged both the bar and the trial bench to be diligent in making a full record of a defendant's consent." *State v. Berry*, 356 N.C. 490, 514 (2002) (cleaned up). At a minimum, "the facts must show . . . that [the] defendant *knew* his counsel w[as] going to make such a concession." *Matthews*, 358 N.C. at 109.

On appeal, defendant argued that "even though the record reveals his consent to the separate concession of both elements of the charge, it does not show his appreciation and understanding that such concessions equated to an admission of guilt." *Nunnally*, 2025 WL 2234017, at *3. But defendant's argument ignores that the stipulations he agreed to on the record match counsel's purported concessions to the jury, and review of the record herein establishes that the purported concessions were not made to the surprise of defendant.

In addition to the written stipulation signed by defendant which related to his prior felony conviction, the trial court conducted two separate colloquies with defendant. During the first colloquy, defendant confirmed his authorization to admit the written stipulation after

counsel explained it precluded the State from disclosing the nature of defendant's underlying felony conviction to the jury. The trial court then inquired if the defendant understood that his stipulation "admit[ted] an element of the offense" and if counsel had his permission to make the admission. After defendant asked on the record if the stipulation was "in [his] best interest," counsel said yes. The trial court asked defendant again, "does [counsel] have your permission to do that?" Defendant replied in the affirmative.

The second colloquy related to conceding defendant possessed a firearm during the incident. On the record, defense counsel informed the trial court that another *Harbison* inquiry was appropriate "because there may be a point in the trial when the defense may admit [defendant] actually possessed the firearm." The transcript shows that during this exchange, the trial court advised defendant that his attorney "may concede on your behalf that you actually possessed a firearm during th[e] incident." The trial court informed defendant that "[b]ecause that's an element of one of the crimes," counsel could not make any concessions or admissions related thereto "without [defendant's] permission." Defendant replied on the record, "He has my permission." The trial court later inquired again if counsel had permission to admit defendant possessed the firearm, and defendant replied, "Yes, sir."

Defendant cannot reasonably contend that he was surprised by defense counsel's purported admissions or the effects thereof because he knowingly consented to the admissions after the trial court engaged in two separate *Harbison* colloquies. During both colloquies, defendant was directed to consult with his attorney about questions he may have related to the concessions. Further, defendant asked counsel whether stipulating to the prior felony conviction was in his best interest, demonstrating that he was informed and engaged in his defense. Defendant thereafter made the decision to consent to counsel's actions.

Unlike in *Harbison* and *McAllister* where there was no evidence of consent, defendant here stipulated on the record to both elements of possession of a firearm by a felon. "In arguing in accord with defendant's stipulation[s], defense counsel cannot be said to have rendered ineffective legal assistance." *McNeill*, 346 N.C. at 238. Moreover, counsel's duty to consult with their client "does not require counsel to obtain the defendant's consent to 'every tactical decision,' " such as a precise script to be read during closing argument. *Florida v. Nixon*, 543 U.S. 175, 187 (2004) (quoting *Taylor v. Illinois*, 484 U.S. 400, 417–18 (1988)). Indeed, "[t]rial management is the lawyer's province: Counsel provides his or her assistance by making decisions such as what arguments to pursue,

what evidentiary objections to raise, and what agreements to conclude regarding the admission of evidence." *McCoy*, 584 U.S. at 422 (cleaned up) (quoting *Gonzalez v. United States*, 553 U.S. 242, 248 (2008)). When a defendant stipulates to elements of an offense, defense counsel is permitted to pursue arguments in line with those stipulations. As with any such ex post review by an appellate court, parties and judges can imagine various additional questions which could have been asked during the colloquies. However, the limited inquiry before us is whether the record is sufficient to show defendant consented to the stipulations. It cannot be controverted that, based upon the record here, defendant knowingly entered into both stipulations, and *Harbison* is not implicated.

But even if we were unable to conclude from the record whether defendant consented, defendant's *Harbison* claim still fails because counsel did not explicitly or implicitly concede guilt or otherwise exceed the scope of defendant's stipulations. In fact, defendant admits that "counsel did not explicitly convey his surrender in closing." Accordingly, we review for implicit concessions, i.e., statements made by defense counsel that "are the functional equivalent of an outright admission of . . . defendant's guilt" to the offense of possession of a firearm by a felon. *See McAllister*, 375 N.C. at 475.

At the outset, we note that defendant faces a high bar. *McAllister* cautioned that a "finding of *Harbison* error based on an implied concession of guilt should be a rare occurrence." *Id.* at 476. Indeed, courts "must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance," *Strickland*, 466 U.S. at 689; *see also People v. Johnson*, 538 N.E.2d 1118, 1125 (Ill. 1989) ("[A] defendant faces a high burden before he can forsake the two-part *Strickland* test.").

Upon reviewing counsel's purported admissions during closing argument, we conclude that the concessions in *McAllister* are distinguishable from counsel's statements in this case. Here, counsel did not "attest[ ] to the accuracy" of the State's evidence or insert "his own personal opinion" about defendant's actions. *See McAllister*, 375 N.C. at 474. During closing, counsel merely commented on Mr. Connor's testimony—explicitly labeling the remarks as "Paul Connor's words" rather than his own—and argued that if Mr. Connor's description of events is accepted, then defendant did not necessarily have the intent to kill. Specifically, counsel argued "the fact that you point a gun in the direction of somebody and pull the trigger does not prove beyond a reasonable doubt that you had an intent to kill that person" and "[j]ust because someone points a gun in the direction of somebody does not mean there

was an intent to kill." Notably, counsel did not specify that defendant engaged in such action during his argument; rather, he used hypothetical language and rhetoric to argue that it is possible for a person to point a gun in the direction of another without having the intent to kill.

Defendant argues that defense counsel "embraced the testimony of the State's witnesses that [defendant] fired a gun at two people, thereby depriving [defendant] of his right to have the jury determine whether the State met its burden on that issue." But "embracing" testimony is not conceding guilt. And defendant's logic would seemingly require counsel to ignore and refrain from commenting on adverse testimony proffered by the State.

Defendant also relies on *McAllister* to argue that "by not expressly mentioning [the possession of a firearm by a felon charge] at all during the entire closing argument—the only logical inference in the eyes of the jury would have been that defense counsel was implicitly conceding defendant's guilt" to that offense. But even in *McAllister* this factor was not dispositive. There, the defense counsel's concessions sent an "unmistakable message" of the defendant's guilt, "a message that was *magnified* by defense counsel's failure to ask for a not guilty verdict as to that charge as he did for the other three charges." *McAllister*, 375 N.C. at 476 (emphasis added). In other words, a defense counsel's failure to argue a specific charge cannot be the sole basis for finding an implied concession occurred. Instead, a reviewing court must look at the argument as a whole.

Further, the failure to argue is often evidence of competent and effective advocacy rather than per se ineffective assistance of counsel. "In situations where there is overwhelming evidence of guilt and no defense, if counsel contests all charges he is liable to lose credibility with the trier of fact when it comes to charges where a legitimate defense exists." *Johnson*, 538 N.E.2d at 1125. And not only is this tactic often a sound trial strategy, but ethical considerations might demand attorneys take that approach in certain cases. *See* N.C. R. Prof. Cond. 3.1, cmt. 2. A lawyer must "determine that they can make good faith arguments in support of their clients' positions." *Id.* When this is not possible, such an argument is deemed "frivolous." *Id.*

While these distinctions may appear to be subtle, they are crucial to preserving the role of defense counsel. Competent defense counsel will directly confront the State's strongest evidence while maintaining their client's innocence, and in doing so, reviewing courts must be mindful that counsel must be granted sufficient latitude to address the

realities of the State's evidence and arguments. *Harbison* error is therefore appropriately limited to the "rare occurrence," *see McAllister*, 375 N.C. at 476, where counsel admits guilt "to the surprise of his client." *See Harbison*, 315 N.C. at 180.

Not only is this leeway for counsel a practical necessity, but it also reinforces the principles underlying *Harbison*. There, per se ineffective assistance of counsel was appropriate because the harm from a defense counsel's surprise admission of guilt is "so likely and so apparent that the issue of prejudice need not be addressed." *Id.* But counsel's performance here stands in stark contrast. The uncontroverted testimony proffered by the State tended to show that defendant possessed and fired a gun during the incident. Counsel responded by arguing that *even if* the jury accepts these facts, defendant did not have the intent to kill. While the ultimate result of a trial will not excuse a *Harbison* violation when one occurs, no reasonable argument can be made that counsel here "failed to function in any meaningful sense as the [State]'s adversary." S*ee United States v. Cronic*, 466 U.S. 648, 666 (1984).

III. Conclusion

We decline to extend *Harbison* in a way that perverts its intended protections by hindering the ability of defense counsel to effectively advocate for their clients and advance arguments in accord with their client's stipulations. To assert a *Harbison* violation, the record must (1) establish that the defendant did not consent to an admission by counsel and (2) clearly demonstrate that an admission of guilt occurred. When the record reveals the defendant's express consent to counsel's purported admissions, *Harbison*'s per se rule is not applicable.

The majority below concluded that "the record fails to show whether defendant knowingly consented in advance to his trial counsel's admission of guilt." *Nunnally*, 2025 WL 2234017, at *5. But that conclusion overlooks that defendant stipulated on the record to counsel's purported concessions and presupposes that an admission of guilt took place. We reverse the judgment of the Court of Appeals.

REVERSED.

Chief Justice NEWBY concurring.

The majority's analysis of defendant's Sixth Amendment ineffective assistance of counsel (IAC) claim is a correct application of *State*

v. Harbison, 315 N.C. 175, 337 S.E.2d 504 (1985), and its progeny. Defendant failed to show that his counsel's performance was deficient. We therefore have no reason to proceed past the deficient-performance prong of the *Strickland* Test, meaning we have no occasion to invoke the *Harbison* Rule of presumed prejudice in this case. Therefore, I respectfully concur.

I write separately to highlight that the *Harbison* Rule has been undermined by the United States Supreme Court. In a future case where this Court must reach the prejudice prong of the *Strickland* Test and is asked to apply the *Harbison* Rule, or where the parties ask us to reconsider the *Harbison* Rule, we should realign our Sixth Amendment IAC jurisprudence with controlling authority from the United States Supreme Court.[1]

In *Harbison*, this Court considered an IAC claim brought under the Sixth Amendment by a defendant who "steadfastly maintained that he acted in self[ ]defense" until his trial counsel told the jury in closing argument that, in his opinion, the defendant should not be found innocent but should be found guilty of a lesser charge. *Id.* at 177–78, 337 S.E.2d at 506. The defendant's counsel did so without the defendant's permission. *Id.* at 177, 337 S.E.2d at 506. This Court concluded that the defendant's counsel had acted deficiently. *Id.* at 180–81, 337 S.E.2d at 507–08.

In our analysis, we acknowledged the general standard for IAC claims—the two-pronged *Strickland* Test:

> First, the defendant must show that counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the "counsel" guaranteed by the Sixth Amendment. Second, the defendant must show that

1. In this case defendant's IAC claim is predicated entirely on his Sixth Amendment right to counsel. Like the Federal Constitution, the North Carolina Constitution also enshrines the right to counsel. In Article I, Section 23, the state constitution provides, "In all criminal prosecutions, every person charged with crime has the right . . . to have counsel for defense . . . ." N.C. Const. art. I, § 23. Our state constitutional test for IAC claims is synchronized with the federal *Strickland* Test. *See State v. Braswell*, 312 N.C. 553, 562–63, 324 S.E.2d 241, 248 (1985) ("[W]e expressly adopt the test set out in *Strickland* . . . as a uniform standard to be applied to measure ineffective assistance of counsel under the North Carolina Constitution."). We refuse to apply a "less stringent rule" because we believe doing so will "encourage convicted defendants to assert frivolous claims which [will] result in unwarranted trial of their counsels." *Id.* at 562, 324 S.E.2d at 248 (quoting *State v. Weaver*, 306 N.C. 629, 640, 295 S.E.2d 375, 381 (1982)).

> the deficient performance prejudiced the defense. This requires showing that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable.

Id. at 178–79, 337 S.E.2d at 506 (quoting *State v. Braswell*, 312 N.C. 553, 562, 324 S.E.2d 241, 248 (1985) (quoting *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064 (1984))). But we also cited *United States v. Cronic*, 466 U.S. 648, 104 S. Ct. 2039 (1984), where the United States Supreme Court recognized that some instances of deficient performance "are so likely to prejudice the accused that the cost of litigating their effect in a particular case is unjustified." *Harbison*, 315 N.C. at 179, 337 S.E.2d at 507 (quoting *Cronic*, 466 U.S. at 658, 104 S. Ct. at 2046).

We took for granted that a defense counsel performs deficiently when he concedes guilt without the defendant's knowing, voluntary consent, and we also concluded that a concession of guilt without the defendant's knowing, voluntary consent is a type of deficient performance that warrants *Cronic*'s presumption of prejudice. *See id.* at 178–80, 337 S.E.2d at 506–07. We stated, "[W]hen counsel to the surprise of his client admits his client's guilt, the harm is so likely and so apparent that the issue of prejudice need not be addressed." *Id.* at 180, 337 S.E.2d at 507.

The upshot of *Harbison* was the adoption of an automatic rule: "[I]neffective assistance of counsel, per se in violation of the Sixth Amendment, [is] established in *every* criminal case in which the defendant's counsel admits the defendant's guilt to the jury without the defendant's consent." *Id.* at 180, 337 S.E.2d at 507–08 (emphasis added). So long as a defendant could show that his counsel conceded guilt without knowing, voluntary consent, the defendant's Sixth Amendment right to counsel would be deemed violated automatically. There would be no further inquiries into whether defense counsel's concession was the result of reasonable professional judgment or whether there was a reasonable probability of a different outcome but for the concession. This Court subsequently expanded the *Harbison* Rule "to also encompass situations in which defense counsel impliedly concedes his client's guilt without prior authorization." *State v. McAllister*, 375 N.C. 455, 473, 847 S.E.2d 711, 722 (2020).

The United States Supreme Court, however, has rejected *Harbison*'s approach. Indeed, in *Florida v. Nixon*, 543 U.S. 175, 125 S. Ct. 551 (2004), a case where the Florida Supreme Court employed an analysis virtually

identical to this Court's analysis in *Harbison*,[2] the United States Supreme Court reminded all courts how Sixth Amendment IAC claims are to be analyzed when defense counsel concedes guilt without the defendant's knowing, voluntary consent—by routine application of both prongs of the *Strickland* Test. *Id.* at 178–79, 185–92, 125 S. Ct. at 555, 559–63 (citing *Nixon v. Singletary*, 758 So. 2d 618, 622–25 (Fla. 2000)).

According to the United States Supreme Court, *Cronic*'s presumption of prejudice is "narrow" and is to be applied "infrequently." *Id.* at 190, 125 S. Ct. at 562. The United States Supreme Court clarified that the "*Cronic* Exception" to the prejudice prong has a high threshold. For it to apply, defense counsel must "fail [to] meaningfully oppose the [State's] case," "entirely fail[ ] to function as the client's advocate," "entirely fail[ ] to subject the [State]'s case to meaningful adversarial testing," and "fail to function in any meaningful sense as the [State's] adversary." *Id.* at 179, 189–90, 125 S. Ct. at 555, 561–62. This "failure must be complete." *Id.* at 190, 125 S. Ct. at 562 (quoting *Bell v. Cone*, 535 U.S. 685, 696–97, 122 S. Ct. 1843, 1851 (2002)). Thus, "[a] presumption of prejudice is not in order based solely on a defendant's failure to provide express consent to a tenable [concession] strategy counsel has adequately disclosed to and discussed with the defendant." *Id.* at 179, 125 S. Ct. at 555.

The United States Supreme Court held that the Florida Supreme Court had erred by automatically treating every instance of a defense counsel's conceding guilt without the defendant's permission as an instance of deficient performance warranting *Cronic*'s presumption of prejudice. Instead, IAC claims asserting that defense counsel conceded guilt without the defendant's knowing, voluntary consent are supposed to be fully evaluated under both prongs of the *Strickland* Test. The defendant must establish (1) that his counsel's performance was deficient, and (2) that the deficient performance prejudiced his defense. Infrequently, a defense counsel's concession of guilt without the defendant's knowing, voluntary consent may amount to a complete failure to function as the defendant's advocate. On those uncommon occasions, the "narrow" *Cronic* Exception may be invoked and the prejudice prong may be presumptively satisfied.

Harbison—like the Florida Supreme Court's decision in *Nixon*—flips this arrangement on its head and allows the *Cronic* Exception

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2. In fact, the Florida Supreme Court cited *Harbison* several times. *See Nixon v. Singletary*, 758 So. 2d 618, 623, 625 (Fla. 2000).

to effectively swallow the general rule, which requires review of both prongs of the *Strickland* Test. Under *Harbison*, every instance of a defense counsel's conceding guilt without the defendant's knowing, voluntary consent is treated as an instance of deficient performance where "the harm is so likely and so apparent that the issue of prejudice need not be addressed." 315 N.C. at 180, 337 S.E.2d at 507. By always presuming that conceding guilt without knowing, voluntary consent is prejudicial IAC instead of generally engaging in a prejudice analysis and "infrequently" applying the *Cronic* Exception, this Court has strayed from the United States Supreme Court's framework for IAC claims. *Nixon* repudiated the Florida Supreme Court's erroneous IAC framework, and, by extension, this Court's.

Although *Harbison* was issued by this Court, the case concerned the Sixth Amendment right to counsel only—i.e., it was based exclusively on federal law. *Id.* at 178, 180, 337 S.E.2d at 506–07. The United States Supreme Court is the ultimate authority on questions of federal law, *see State v. Tirado*, 387 N.C. 104, 128–30, 911 S.E.2d 51, 69–71 (2025), including the test for determining when conduct constitutes IAC in violation of the Sixth Amendment.

Accordingly, we should follow *Nixon* in future cases when considering IAC claims under the Sixth Amendment. But because the *Harbison* Rule is ultimately not triggered in this case, and because the State did not argue for the realignment of our Sixth Amendment IAC jurisprudence with *Nixon*, this is not the case to address our *Harbison* jurisprudence. That case is in the future. I respectfully concur.

Justice RIGGS dissenting.

I disagree with the majority's conclusion that Mr. Nunnally stipulated on the record to defense counsel's purported concessions and that the alleged stipulations presupposed that an admission of guilt took place for the possession of a firearm by a felon offense. While I agree with the majority that "the rationale underlying *Harbison* is focused on consent," majority *supra* Part II, the record does not clearly establish that Mr. Nunnally knowingly consented to the second element of the possession of a firearm by a felon offense. This case is a closer call than what the majority portrays it to be, and I would hold that the Court of Appeals did not err in remanding this matter for an evidentiary hearing on that question. Thus, I respectfully dissent.

The offense of possession of a firearm by a felon has only two essential elements: (1) the defendant has been convicted of a felony,[1] and (2) the defendant subsequently possessed a firearm. *State v. Mercer*, 373 N.C. 459, 462 (2020) (citing *State v. Floyd*, 369 N.C. 329, 333 (2016)). Defense counsel commits per se ineffective assistance of counsel when, "to the surprise of his client[,] . . . counsel admits the defendant's guilt to the jury without the defendant's consent." *State v. Harbison*, 315 N.C. 175, 180 (1985). The majority states Mr. Nunnally failed to establish either prong of *Harbison*, concluding that Mr. Nunnally's *Harbison* claim fails because Mr. Nunnally knowingly provided consent for counsel to concede stipulations for both elements and that even if consent could not be deduced from the record, counsel did not explicitly or implicitly concede Mr. Nunnally's guilt to the possession offense. *See* majority *supra* Part II. As a preliminary matter, unlike the majority, I would hold that counsel did concede Mr. Nunnally's guilt to the possession of a firearm by a felon offense.

I agree with the majority that defense counsel focused his closing argument predominantly on the counts of assault with a deadly weapon with intent to kill, rather than the possession offense, and did not explicitly argue the possession offense's elements. However, in the process of arguing about the intent element of the assault offenses, defense counsel implicitly conceded Mr. Nunnally's guilt to the possession offense. Defense counsel argued, "Yes, the witnesses said it was pointed at them. Well, clearly it wasn't pointed directly at them or they would have been shot. . . . [Defendant] must have been shooting around [the witness]." In this and other similar statements, defense counsel could not have made the argument that Mr. Nunnally did not intend to shoot the witnesses without implicitly conceding that Mr. Nunnally was holding and firing the weapon. Therefore, defense counsel effectively conceded Mr. Nunnally's guilt to possession of a firearm by a felon. *See State v. McAllister*, 375 N.C. 455, 475 (2020) ("[W]here . . . defense counsel's statements to the jury cannot logically be interpreted as anything other than an implied concession of guilt to a charged offense, *Harbison* error exists unless the defendant has previously consented to such a trial strategy.").

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1. I agree with the majority's analysis that Mr. Nunnally stipulated to the first element of the possession of a firearm by a felon offense. The record clearly reflects that the State and defense counsel agreed on behalf of Mr. Nunnally to stipulate that Mr. Nunnally had a prior felony conviction. That stipulation was memorialized and filed with the trial court on the first day of trial. The trial court engaged in a *Harbison* colloquy with Mr. Nunnally, and Mr. Nunnally confirmed that defense counsel had permission to concede that stipulation—the first element of the possession offense—and that he understood the consequence of such a stipulation.

In concluding that defense counsel made no actual concession, the majority insists that Mr. Nunnally's case is distinguishable from *McAllister*. I disagree. In *McAllister*, the defendant was charged with rape, a sexual offense, assault by strangulation, and assault on a female. *Id.* at 458–59. In closing argument, defense counsel never explicitly mentioned the assault on a female charge. *Id.* at 473. Instead, defense counsel focused on the other charges and conceded that the defendant "engaged in assaultive conduct" in arguing for the jury to find defendant not guilty of the other charges, without mentioning the assault on a female charge. *Id.* at 473–76. This Court concluded that "the only logical inference in the eyes of the jury would have been that defense counsel was implicitly conceding defendant's guilt as to [the assault on a female] charge." *Id.* at 474. Like defense counsel in *McAllister*, defense counsel here did not explicitly mention the possession charge in closing, focused on the other charges, and conceded that Mr. Nunnally was in possession of a weapon in arguing that Mr. Nunnally should not be found guilty of the other charges.[2] Therefore, the same result as *McAllister* should follow here—defense counsel implicitly conceded Mr. Nunnally's guilt to the possession offense.

Turning to the issue of whether Mr. Nunnally consented to defense counsel conceding his guilt, the court engaged in two *Harbison* colloquies with Mr. Nunnally regarding each element of the possession offense. With respect to the second element, the following discussion took place between the court and Mr. Nunnally:

> THE COURT: . . . Madam Reporter, during the testimony of the last witness, we had a brief bench conference in which defense counsel informed me that I needed to possibly make a Harbison inquiry because there may be a point in the trial when the defense may admit the Defendant actually possessed the firearm.
>
> Is that correct, [defense counsel]?
>
> [DEFENSE COUNSEL]: Yes, Your Honor.
>
> THE COURT: Mr. Nunnally, can you stand up for me? Just got to ask you a quick question. It's kind

2. Defense counsel emphasized that Mr. Nunnally did not have the requisite intent to commit the assault offenses, essentially arguing that Mr. Nunnally should not be found guilty of assault with a deadly weapon with intent to kill. The jury ultimately found Mr. Nunnally guilty of the lesser-included offense of misdemeanor assault with a deadly weapon.

of same question I asked you before about the other stipulation.

Your lawyer has told me that there may be a point in this trial, either during one of his arguments or maybe if you testify—don't know whether that's going to happen yet or not—where he may concede on your behalf that you actually possessed a firearm during this incident. Because that's an element of one of the crimes, I have to ask you whether or not he has your permission to do that, because he's not allowed to concede any element of the crimes without your permission.

There may be tactical reasons why that's a good idea or not. I don't know, that's between you and your lawyer. But I just need to know whether or not he has your permission, if he does that.

DEFENDANT: He has my permission. Can I ask you a question?

THE COURT: Sure. Be careful not to tell me anything about the confidential conversations between you and your lawyer, but, yes, you may ask me a question.

DEFENDANT: I wanted to be, you know, open and honest, you know, during the whole court—

THE COURT: Yes, sir.

DEFENDANT: —situation. And I'm not going to hold anything back. So, you know, the court could proceed efficiently and not waste anybody's time. And that's why—

[DEFENSE COUNSEL]: We're not at that point yet, so—we'll get to that. He's asking about—the decision on whether to testify or not.

THE COURT: Oh, I see.

[DEFENSE COUNSEL]: And that will happen once the State—

THE COURT: Oh, yes, we'll have a conversation about that later, Mr. Nunnally. You don't have to

decide that right now, but I will ask you some questions about that, too, later.

Right now I'm just trying to find out whether or not—because the point in time that that admission may come out might happen before we get to the point of you testifying. I don't know. And I just need to make sure he's got your permission to do that because that's required. And so if he does, fine, just tell me so; if not, then I need to know that too.

DEFENDANT: You know, I didn't want to like waste, you know, court—and I wanted to kind of like explain to you, because I never had a chance—

[DEFENSE COUNSEL]: That's not—this is the trial. We're not—

THE COURT: Just trying to find out if your lawyer has permission from you to admit that during this incident you may have possessed a firearm. That's all.

DEFENDANT: At a later date, you know, during the trial, will I get a chance to talk to you?

THE COURT: You'll have, yes, an opportunity to testify. We will discuss that decision later.

DEFENDANT: Thank you.

THE COURT: So does he have your permission?

DEFENDANT: Yes, sir.

THE COURT: Thank you. That's all I need to know.

From the start, as shown by defense counsel's request for the court to perform a *Harbison* inquiry, defense counsel clearly intended to concede the possession element and did in fact concede the possession element during closing. Beyond forecasting the concession, this exchange also highlights several different problems with the *Harbison* inquiry. Divorced from full context, Mr. Nunnally's statements of "[h]e has my permission" and "[y]es, sir" would seem to indicate Mr. Nunnally consented on the record to his counsel conceding the second element of possession of a firearm. Indeed, the majority casts the colloquy in that light by not including the full discussion that occurred. But in viewing the colloquy in full, Mr. Nunnally is plainly distracted and myopically focused on making sure he can ask the trial court about his choice

whether to testify. The court seemed to recognize that because it reiterated the question notwithstanding Mr. Nunnally's first answer. The exchange also shows that because of Mr. Nunnally's fixation on asking about testifying, the trial court and defense counsel had to repeatedly clarify the record and refocus Mr. Nunnally on the purpose of the colloquy. Further, the trial court also intervened to emphasize to Mr. Nunnally that he should be careful not to reveal any communications protected by attorney-client privilege. All the interventions were obviously appropriate, but they distracted from the matter at hand—establishing whether Mr. Nunnally understood the trial court's question about the concession and the consequences of the concession.

Taken together, it is not clear whether Mr. Nunnally understood the potential consequences of providing consent for conceding to the possession element—that he was in effect conceding to the whole, completed offense and accepting the significant sentence that would accompany his guilt.[3] This Court has held that where the defendant stipulates to all the elements of the offense defense counsel may infer consent to admit a defendant's guilt to the whole offense. *See State v. McNeill*, 346 N.C. 233, 238 (1997). In *McNeill*, the defendant testified to the elements—intentionally stabbing the victim—in front of the jury who ultimately found the defendant guilty of first-degree murder. *See id.* at 235–37. The *McNeill* defendant was obviously not surprised by the consequences of defense counsel's concession. That same result should not follow here where the second colloquy is so scattered, where Mr. Nunnally did not coherently string the elements together in a single narrative, and where it is unclear whether Mr. Nunnally fully appreciated the consequences of providing consent.

I agree with the majority's initial framing of the central intent of the *Harbison* inquiry: acknowledging that "[a] defendant's right to plead 'not

3. The jury ultimately found Mr. Nunnally guilty of two counts of misdemeanor assault with a deadly weapon and one count of possession of a firearm by a felon. For the possession conviction, Mr. Nunnally received a sentence of twenty-four to thirty-eight months. Had Mr. Nunnally pleaded guilty to the possession offense, a trial court would have had to comply with N.C.G.S. § 15A-1022 and would not have been able to accept Mr. Nunnally's guilty plea "without first addressing him personally" and "[i]nforming him of the maximum possible sentence . . . and of the mandatory minimum sentence" for the offense, among other disclosures and determinations. *See* N.C.G.S. § 15A-1022(a) (2025). While *Harbison* and its progeny do not require that (and it might be difficult to do so with the same precision as with a guilty plea), the mandates of that statute by analogy shed light on what kind of understanding a defendant should have of the consequences in order to be able to provide knowing consent to a concession of guilt.

guilty' has been carefully guarded by the courts" and must "remain in the defendant's hands" given the gravity of the consequences. *See Harbison*, 315 N.C. at 180. And there are instances where a defendant may choose, in collaboration with counsel, to concede guilt to an offense or element as part of an agreed-upon trial strategy. *See*, *e.g.*, *State v. Thompson*, 359 N.C. 77, 115–20 (2004) (holding no ineffective assistance of counsel where defendant had consented to the trial strategy); *State v. Moore*, 286 N.C. App. 341, 345–50 (2022) (same); *State v. Holder*, 218 N.C. App. 422, 424–28 (2012) (same). But, while it is certainly desirable for defendants to effectively collaborate with defense counsel and pursue trial strategies that are in the defendant's best interest, at the end of the day, the choice to concede guilt remains in the defendant's hands as "[i]t is the defendant—not his attorney—whose liberty is placed at risk as a result of such a strategic decision." *McAllister*, 375 N.C. at 476; *see also*, *e.g.*, *State v. Maready*, 205 N.C. App. 1, 13–14 (2010) (holding defense counsel committed *Harbison* error when he did not obtain the defendant's consent in advance even though he acted "in a manner he believed to be the best trial strategy for Defendant"). Here, as admirable as defense counsel's lawyering skills were, the ineffective assistance of counsel analysis in *Harbison* ultimately requires that we place more value on a defendant's agency rather than the risk of "hindering the ability of defense counsel to effectively advocate for their clients." *See* majority *supra* Part III.

Accordingly, I would hold that defense counsel implicitly conceded Mr. Nunnally's guilt to possession of a firearm by a felon. And, based on the second colloquy, the record fails to establish Mr. Nunnally's knowing consent to the second element of the possession offense. Therefore, I respectfully dissent and would hold that the Court of Appeals judgment should be affirmed.

Justice EARLS joins in this dissenting opinion.

STATE OF NORTH CAROLINA
v.
WILLIAM EUGENE ROBINSON

No. 142A12

Filed 22 May 2026

Criminal Law—capital case—executive clemency—death sentence commuted to life imprisonment without parole— effect on right of direct appeal to Supreme Court

In a capital case, where defendant applied for clemency while his appeal from a judgment sentencing him to death for first-degree murder was still pending in the Supreme Court, which resulted in the governor commuting defendant's death sentence to life imprisonment without parole, the Supreme Court granted defendant's motion to remand the appeal to the Court of Appeals on the ground that, because he no longer faced execution, he did not retain his statutory right of direct appeal to the Supreme Court under N.C.G.S. §§ 7A-27(a)(1) and 15A-2000(d), since the legislative purpose under those statutes for allowing direct Supreme Court review—to prevent arbitrary or unjust executions—no longer applied to his case, which had become a non-capital felony case requiring appellate review in the Court of Appeals under N.C.G.S. § 7A-27(b)(1).

Justice BERGER dissenting.

Appeal pursuant to N.C.G.S. § 7A-27(a)(1) from a judgment imposing a sentence of death entered on 9 December 2011 in Superior Court, Stanly County, upon a jury verdict finding defendant guilty of first-degree murder. On 28 May 2025, the Supreme Court entered a special order directing the parties to brief two questions presented since Governor Roy Cooper commuted defendant's death sentence on 31 December 2024. This matter was calendared for argument in the Supreme Court on 30 October 2025 but determined on the briefs without oral argument pursuant to Rule 30(f) of the North Carolina Rules of Appellate Procedure.

Jeff Jackson, Attorney General, by Caden William Hayes, Assistant Attorney General, for the State-appellee.

Glenn Gerding, Appellate Defender, by Katy Dickinson-Schultz and John F. Carella, Assistant Appellate Defenders, for defendant-appellant.

ALLEN, Justice.

Direct appeals from final judgments in felony cases typically go from the superior court to the Court of Appeals with the possibility of further review by this Court. *See* N.C.G.S. § 7A-27(b)(1) (2025). Defendant William Eugene Robinson's appeal is before this Court pursuant to N.C.G.S. § 7A-27(a)(1), which gives defendants who have received death sentences for first-degree murder the right to appeal directly to the Supreme Court of North Carolina. *See* N.C.G.S. § 7A-27(a)(1) (2025). We must decide whether defendant lost his right of direct appeal to this Court under N.C.G.S. § 7A-27(a)(1) when then-Governor Roy Cooper commuted his death sentence to life imprisonment without parole. As explained below, we conclude that the General Assembly created direct appeals to this Court in death penalty cases to guard against arbitrary or unjust executions. Because defendant no longer faces the prospect of execution, affording him a direct appeal in this case would contravene legislative intent. We therefore remand this case to the Court of Appeals for appellate review.

I.

On 12 March 2007, defendant was indicted for the first-degree murder of Keith Crump.[1] Additional indictments charged him with assault, robbery, and attempted murder.

Defendant filed a pre-trial motion under the Racial Justice Act (RJA) to prohibit the imposition of the death penalty.[2] The case was nonetheless declared capital. Defendant and the State agreed that the trial court did not have to hear defendant's RJA claim prior to trial, and the trial court entered a consent order memorializing the parties' agreement.

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1. No record on appeal has been filed in this case due to this Court's order of 12 April 2012 staying appellate proceedings. Consequently, the background information in this opinion comes largely from defendant's principal brief to this Court. The State did not contest defendant's description of the relevant facts or procedural history. *See* N.C. R. App. P. 28(c) (providing that an appellee's brief "does not need to contain a statement of the . . . procedural history of the case . . . [or] . . . the facts . . . unless the appellee disagrees with the appellant's statements and desires to make a restatement").

2. Enacted in 2009, the RJA established postconviction procedures through which death row defendants could challenge their death sentences as having been imposed on the basis of race. *See* North Carolina Racial Justice Act, S.L. 2009-464, 2009 N.C. Sess. Laws 1213. The General Assembly repealed the RJA in 2013. Act of June 13, 2013, S.L. 2013-154, § 5.(a), 2013 N.C. Sess. Laws 368, 372.

On 1 December 2011, the jury found defendant guilty of larceny of a firearm, possession of firearm by a felon, two counts of robbery with a dangerous weapon, assault with a deadly weapon with intent to kill inflicting serious injury, attempted first-degree murder, and first-degree murder. Thereafter the court conducted a capital sentencing hearing, and the jury recommended the death penalty for the murder of Mr. Crump. The trial court sentenced defendant to death for the first-degree murder conviction and to active, consecutive prison terms for the other convictions. Defendant appealed.

On 4 April 2012, defendant filed amended RJA motions in this Court and in the trial court. That same day, he moved this Court to stay all appellate proceedings pending the disposition of his RJA motions. On 12 April 2012, this Court allowed the motion to stay.

During the pendency of his appeal, defendant applied to then-Governor Roy Cooper for clemency. On 31 December 2024, Governor Cooper issued an order commuting defendant's death sentence to life imprisonment without parole.

On 19 May 2025, defendant moved this Court to dissolve the stay and remand this case to the Court of Appeals, arguing that the commutation of his death sentence transformed this matter into a non-capital appeal that should be reviewed by the Court of Appeals. The State did not file a response to the motion.

On 28 May 2025, this Court entered a special order directing the parties to brief the following questions:

1. When the Governor commutes a defendant's death sentence to life imprisonment but no court has vacated, altered, or amended the judgment that includes a sentence of death, does initial appellate jurisdiction now rest with the Court of Appeals under N.C.G.S. § 7A-27?

2. When a defendant is convicted of murder in the first degree together with other offenses in the same criminal trial and the court enters multiple judgments following a single sentencing, one of which includes a sentence of death, does initial appellate jurisdiction over any judgments that do not include a sentence of death rest with the Court of Appeals under N.C.G.S. § 7A-27, including whether, for purposes of N.C.G.S. § 7A-27, all

> of a defendant's judgments in this circumstance together form a single "case" in which a judgment of the superior court includes a sentence of death[?]

II.

Under subsection 7A-27(a)(1), an "[a]ppeal lies of right directly to the Supreme Court in . . . [a]ll cases in which the defendant is convicted of murder in the first degree and the judgment of the superior court includes a sentence of death." N.C.G.S. § 7A-27(a)(1). Defendant argues that N.C.G.S. § 7A-27(a)(1) no longer applies to his appeal following the Governor's commutation of his death sentence. He requests that we "dissolve the stay in this matter and remand [this] case to the Court of Appeals for further proceedings as a non-capital direct appeal."

In support of this position, defendant argues that N.C.G.S. § 7A-27(a)(1) must be construed alongside N.C.G.S. § 15A-2000(d). He contends that the text and legislative history of N.C.G.S. § 7A-27(a)(1) and N.C.G.S. § 15A-2000(d) "all point to the same conclusion: [defendant's] appeal should begin in the Court of Appeals."

Subsection (d) of N.C.G.S. § 15A-2000 provides that "[t]he judgment of conviction and sentence of death is subject to automatic review by the Supreme Court of North Carolina pursuant to procedures established by the Rules of Appellate Procedure." N.C.G.S. § 15A-2000(d)(1) (2025). While both N.C.G.S. § 7A-27(a)(1) and N.C.G.S. § 15A-2000(d) create a right of appeal directly to this Court for defendants under sentences of death, subsection 15A-2000(d) makes the appeal automatic.

Subsection 15A-2000(d) further directs this Court to "consider the punishment as well as any arguments raised on appeal" and to overturn a death sentence and instead impose a life sentence

> upon a finding that the record does not support the jury's findings of any aggravating circumstance or circumstances upon which the sentencing court based its sentence of death, or upon a finding that the sentence of death was imposed under the influence of passion, prejudice, or any other arbitrary factor, or upon a finding that the sentence of death is excessive or disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant.

Id. § 15A-2000(d)(1)–(2) (2025).

Defendant notes that our General Assembly enacted N.C.G.S. § 15A-2000(d) just a few months after the Supreme Court of the United States issued its decision in *Gregg v. Georgia*, 428 U.S. 153 (1976), upholding Georgia's appeal procedures for death penalty cases. *See* An Act to Establish Procedures for Sentencing in Capital Cases and to Fix the Punishment for Murder, ch. 406, 1977 N.C. Sess. Laws 407. Like N.C.G.S. § 15A-2000(d), the Georgia law "provide[d] for automatic appeal of all death sentences to the State's Supreme Court." *Gregg*, 428 U.S. at 198. It also required the Georgia Supreme Court to determine whether each death sentence "was imposed under the influence of passion or prejudice, whether the evidence support[ed] the jury's finding of a statutory aggravating circumstance, and whether the sentence [was] disproportionate compared to those sentences imposed in similar cases." *Id.*

According to defendant, when N.C.G.S. § 7A-27(a)(1) and N.C.G.S. § 15A-2000(d) are considered together, it becomes clear that "[t]he elimination of [defendant's] death sentence removed every justification for automatic review, because questions of aggravating and mitigating factors, improper influence over the jury's decision to reach a death verdict, and the proportionality of the death sentence have become moot." "What remains," defendant insists, "is an ordinary direct appeal from a criminal conviction." To interpret N.C.G.S. § 7A-27(a)(1) to allow an appeal of right to this Court in these circumstances "would lead to an absurd result."

Defendant further observes that, prior to 1995, N.C.G.S. § 7A-27(a) granted an appeal of right not just to defendants convicted of first-degree murder and sentenced to death but also to defendants convicted of first-degree murder and sentenced to life imprisonment. *See* An Act to Provide for the Court of Appeals to Hear Certain Appeals in Which Life Sentences are Imposed, ch. 204, 1995 N.C. Sess. Laws 389. Over the thirty-year period since the General Assembly eliminated an appeal of right to this Court for defendants sentenced to life imprisonment for first-degree murder, defendant maintains, "[a] sentence of death has remained the defining feature of this Court's jurisdiction over direct appeals from Superior Court judgments in criminal cases."

The State argues that the Governor's exercise of clemency has no impact on defendant's right of appeal under N.C.G.S. § 7A-27(a)(1). For one thing, the State asserts, the "plain language" of N.C.G.S. § 7A-27(a)(1) "dictates that an appeal from a capital 'judgment of the superior court'—such as [d]efendant's here—flows directly to this Court." For another, N.C.G.S. § 7A-27(a)(1) makes no reference to N.C.G.S. § 15A-2000(d). Moreover, the State describes defendant's reliance on legislative history

as "misplaced" because this Court disfavors the use of such history when the text of a statute is unambiguous.

The State likewise discerns no merit in defendant's "absurdity" argument. It contends that the courts rarely refuse to follow the plain language of a statute out of concern that doing so would produce absurd results. According to the State, "[d]efendant has not shown how the application of N.C.G.S. § 7A-27(a)(1) to a recipient of clemency is the 'rare' situation where absurdity overrides the General Assembly's plain language."

III.

"The intent of the legislature controls the interpretation of a statute." *Mazda Motors of Am., Inc. v. Sw. Motors, Inc.*, 296 N.C. 357, 361 (1979). "When construing a statute, we first examine the plain words of the statute, as the best indicia of legislative intent is the language of the statute itself." *Wynn v. Frederick*, 385 N.C. 576, 581 (2023) (cleaned up).

"If the language of a statute is clear, the court must implement the statute according to the plain meaning of its terms so long as it is reasonable to do so." *Lenox, Inc. v. Tolson*, 353 N.C. 659, 664 (2001). The plain meaning rule is a foundational principle of statutory construction. Consistent with the separation of powers, it prevents the courts from rewriting unambiguous statutes to reach judicially preferred outcomes contrary to what the legislature wished to achieve.

On the other hand, the plain meaning rule does not mandate a crudely literal approach to reading statutes. As this Court recently remarked, "[t]extual interpretation seeks to give statutes their plain and ordinary meaning. Literalism is not proper textual analysis; we must reject readings that defy our common sense." *Happel v. Guilford Cnty. Bd. of Educ.*, 387 N.C. 186, 206 (2025). Similarly, our precedents require us to reject literal statutory readings that contravene the "manifest purpose of the [l]egislature" and "the reason and purpose of the law." *State v. Barksdale*, 181 N.C. 621, 625 (1921). Thus, the plain meaning rule cannot be invoked to justify decisions that are patently unreasonable or incompatible with the legislative intent evident from the statutory context. *See generally Robinson v. Shell Oil Co.*, 519 U.S. 337, 341 (1997) ("The plainness or ambiguity of statutory language is determined by reference to the language itself, the specific context in which that language is used, and the broader context of the statute as a whole.").

According to the State, the legislature's use of the phrase "and the judgment of the superior court includes a sentence of death" in N.C.G.S. § 7A-27(a)(1) permits only one conclusion: if the judgment of the trial

court includes a death sentence for first-degree murder, the defendant has an appeal of right to this Court, period. Any act of clemency by the Governor has no bearing on the matter.

Of course, we asked for briefing on this question precisely because N.C.G.S. § 7A-27(a)(1) says nothing whatsoever about the impact of executive clemency on a defendant's right of direct appeal to this Court. Granted, one could infer from the omission that the General Assembly did not mean for clemency to have any effect on a direct appeal to this Court in a death penalty case. It is just as plausible, however, that the legislature saw no need to address the impact of executive clemency on an appeal under N.C.G.S. § 7A-27(a)(1) because governors so rarely grant clemency during the direct appeal phase of capital litigation. *See Bacon v. Lee*, 353 N.C. 696, 708 (2001) ("[T]he executive in North Carolina does not ordinarily consider clemency requests in capital cases until the applicant has exhausted all avenues of relief within the federal and state judiciary.").

Given the relative infrequency of clemency in capital cases on direct appeal, defendants who have been sentenced to death will almost always remain subject to active death sentences as their direct appeals work their way through the courts. Consequently, the General Assembly could have regarded the phrase "and the judgment of the superior court includes a sentence of death" in N.C.G.S. § 7A-27(a)(1) as merely a formal way of referring to an active death sentence.

Yet we need not tie ourselves in knots speculating about whether the General Assembly intended to create a direct appeal to this Court for defendants whose death sentences have been commuted by the Governor. The provisions of N.C.G.S. § 15A-2000(d) illuminate the legislature's "reason and purpose" sufficiently to enable us to answer the question.[3] *Barksdale*, 181 N.C. at 625.

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3. The dissent would have us ignore N.C.G.S. § 15A-2000(d) and read N.C.G.S. § 7A-27(a)(1) in a vacuum. Inasmuch as N.C.G.S. § 15A-2000(d) directly concerns the very matter at issue—the right of direct appeal to this Court in capital cases—we do not consider ourselves free to disregard what it tells us about legislative intent. *See generally* Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 252 (2012) ("Any word or phrase that comes before a court for interpretation is part of a whole statute, and its meaning is therefore affected by other provisions of the same statute. It is also . . . part of an entire *corpus juris*. So, if possible, it should no more be interpreted to clash with the rest of that corpus than it should be interpreted to clash with other provisions of the same law. Hence laws dealing with the same subject . . . should . . . be interpreted harmoniously").

On its face, subsection 15A-2000(d)—like N.C.G.S. § 7A-27(a)(1)—expressly creates an appeal of right to this Court when a defendant has been sentenced to death. N.C.G.S. § 15A-2000(d)(1). Specifically, subsection 15A-2000(d) requires "automatic review" by this Court of "[t]he judgment of conviction and sentence of death . . . pursuant to procedures established by the Rules of Appellate Procedure." *Id.*[4]

Unlike N.C.G.S. § 7A-27(a)(1), subsection 15A-2000(d) delineates the parameters of our review of direct appeals in death penalty cases. We must "consider the punishment imposed as well as any arguments raised on appeal." *Id.* And as noted previously, we must overturn a defendant's death sentence and instead impose life imprisonment if we find that: (1) the record does not support any aggravating circumstances or any circumstances on which the court based the death sentence; (2) passion, prejudice, or any other arbitrary factor influenced the decision to impose the death sentence; or (3) the death sentence is excessive or disproportionate as compared to the penalty imposed in similar cases, taking into account the crime and the defendant. N.C.G.S. § 15A-2000(d)(2). Finally, this Court must order a new sentencing hearing if it reverses "the sentence of death and the judgment of the trial court" because of an error made during the sentencing phase of a defendant's trial. N.C.G.S. § 15A-2000(d)(3) (2025).

Viewed as a whole, the provisions of N.C.G.S. § 15A-2000(d) unmistakably reveal the legislature's principal concern in creating direct appeals to this Court from judgments imposing the death penalty: to prevent arbitrary or unjust executions. Our view of the text is reinforced by the fact that the General Assembly obviously enacted N.C.G.S. § 15A-2000(d) in response to the Supreme Court's *Gregg* decision. On the same day that it issued *Gregg*, the Supreme Court struck down a North Carolina law that had mandated the death penalty for all first-degree murder convictions. *Woodson v. North Carolina*, 428 U.S. 280, 305 (1976). The similarities between N.C.G.S. § 15A-2000(d) and the statutory scheme upheld in *Gregg* indicate that the General Assembly was anxious to adopt constitutionally adequate appeal procedures for death penalty cases.

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4. Subsection 15A-2000(d) also directs this Court to conduct its review "within 24 months of entry of judgment unless the Chief Justice of the Supreme Court makes a written finding of extraordinary circumstances that provide good cause for delay." N.C.G.S. § 15A-2000(d).

Here the Governor's commutation of defendant's death sentence has eliminated any risk that the State will arbitrarily or unjustly execute defendant for the murder of Mr. Crump. Thus, allowing defendant to continue pursuing a direct appeal to this Court would do nothing to advance the legislative intent evident in N.C.G.S. § 15A-2000(d). Moreover, defendant has already obtained the primary relief available under N.C.G.S. § 15A-2000(d), namely, the substitution of life imprisonment for the death penalty. We do not believe that the legislature meant for this Court to conduct the review specified in N.C.G.S. § 15A-2000(d) when doing so would serve no practical purpose.

Likewise the legislative history of N.C.G.S. § 7A-27(a)(1) provides good reason to doubt that the General Assembly intended the provision to create direct appeals to this Court for defendants who are not subject to active death sentences. As defendant notes in his brief, the original version of N.C.G.S. § 7A-27(a) expressly allowed a direct appeal to this Court "[f]rom any judgment of a superior court which includes a sentence of death *or imprisonment for life*." N.C.G.S. § 7A-27(a) (1969) (emphasis added).[5] In 1995 the General Assembly deleted the words "or imprisonment for life" from N.C.G.S. § 7A-27(a). *See* An Act to Provide for the Court of Appeals to Hear Certain Appeals in Which Life Sentences are Imposed, ch. 204, 1995 N.C. Sess. Laws 389.

Clearly the legislature adopted the 1995 amendment to eliminate direct appeals to this Court for defendants who are not in jeopardy of being executed. In arguing that defendant still has an appeal of right to this Court even though his maximum punishment is now life imprisonment, the State urges this Court to adopt a position that seems squarely at odds with what the legislature wanted the 1995 amendment to accomplish.

In contrast a remand of this case to the Court of Appeals appears entirely consistent with the legislative intent behind N.C.G.S. § 7A-27(b)(1), the provision granting the Court of Appeals jurisdiction over most direct appeals from the final judgments of superior courts. Under subsection 7A-27(b)(1), a defendant sentenced to life imprisonment without parole for first-degree murder has a right of direct appeal to the Court of Appeals, not to this Court. N.C.G.S. § 7A-27(b)(1). Thus,

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5. In 1987 the legislature amended N.C.G.S. § 7A-27(a) to specify that the provision applies to defendants convicted of first-degree murder. An Act to Provide for the Court of Appeals to Hear Certain Appeals in Which Life Sentences are Imposed, ch. 679, § 1, 1987 N.C. Sess. Laws 1259, 1259.

in remanding this case to the Court of Appeals, we will be putting defendant in the same boat as other defendants whose maximum punishment for first-degree murder is life imprisonment without parole. In addition to aligning with the legislature's rationale for enacting N.C.G.S. §§ 7A-27(a)(1) and 15A-2000(d), this outcome also has the virtue of being fair.

For the reasons discussed above, we hold that the Governor's commutation of defendant's death sentence to life imprisonment without parole foreclosed defendant's appeal of right to this Court under both N.C.G.S. § 7A-27(a)(1) and N.C.G.S. § 15A-2000(d). Accordingly, jurisdiction over defendant's appeal lies with the Court of Appeals as provided by N.C.G.S. § 7A-27(b)(1). In light of our holding, it is unnecessary for us to reach the second issue set out in our special order of 28 May 2025.

IV.

We allow defendant's motion to dissolve the stay entered on 12 April 2012 and remand this case to the Court of Appeals for review of defendant's appeal pursuant to N.C.G.S. § 7A-27(b)(1).

REMANDED.

Justice BERGER dissenting.

The majority has articulated a number of reasonable policy considerations to arrive at presumed legislative intent to justify its preferred result here. But as Justice Scalia notably remarked, "when the text of a statute is clear, that is the end of the matter." Antonin Scalia, *A Matter of Interpretation* 16 (Amy Gutmann ed., 1997). Indeed, our recent case law reflects that bedrock principle of textualism: "If the plain language of the statute is unambiguous, we apply the statute as written." *Wynn v. Frederick*, 385 N.C. 576, 581 (2023) (cleaned up).[1]

The jurisdictional directive in N.C.G.S. § 7A-27(a)(1) is clear and unambiguous. An "[a]ppeal lies of right directly to the Supreme Court

1. *See also N.C. Farm Bureau Mut. Ins. Co. v. Hebert*, 385 N.C. 705, 711 (2024) ("If the statute's plain language is clear and unambiguous, this Court applies the statute as written and does not engage in further statutory construction."); *In re McClatchy Co.*, 386 N.C. 77, 86 (2024) (same); *State v. Applewhite*, 386 N.C. 431, 436 (2024) ("When the language of a statute expresses the legislative intent in clear and unambiguous terms, the words employed must be taken as the final expression of the meaning intended . . . ." (cleaned up)).

in . . . [*a*]*ll* cases in which the defendant is convicted of murder in the first degree and the judgment of the superior court includes a sentence of death." N.C.G.S. § 7A-27(a)(1) (2025) (emphasis added). "Could anyone maintain with a straight face that [this statute] is unclear?" *King v. Burwell*, 576 U.S. 473, 510 (2015) (Scalia, J., dissenting). " 'All' means all and not substantially all." *Nat'l Steel & Shipbuilding Co. v. United States*, 419 F.2d 863, 875 (Ct. Cl. 1969). Full stop. There is no ambiguity here, and the legislative intent is evident from the plain language of the statute: this Court receives direct appeals in "all cases" in which a defendant is convicted of first-degree murder and the judgment contains a sentence of death.

The majority correctly acknowledges that courts do not "rewrit[e] unambiguous statutes." Yet they rewrite that statute, apparently determining that "all" is ambiguous without bothering to tell us so. They seem to reason that because N.C.G.S. § 7A-27(a)(1) is silent about what should occur if clemency is granted, that gives this Court license to rewrite the statute to conform with what they think the legislature must have meant. That's not the way textualism works. *See Schwegmann Bros. v. Calvert Distillers Corp.*, 341 U.S. 384, 397 (1951) (Jackson, J., concurring) ("We do not inquire what the legislature meant; we ask only what the statute means." (cleaned up)); *Lunsford v. Mills*, 367 N.C. 618, 623 (2014) ("[I]t is our duty to give effect to the words actually used in a statute and not to delete words used or to insert words not used."). Again, all means all, not some lesser portion.

In addition, the majority's analysis of the clemency power and its effect on the judicial branch is noticeably absent. Although they mention separation of powers, they fail to address the constitutional implications of executive clemency on judicial proceedings. The effect of this opinion, however, is a blurring of clear lines.

Article III, § 5(6) of the Constitution of North Carolina vests clemency decisions exclusively with the Governor, and this power is "an Executive Branch function separate from adjudicatory proceedings within the Judicial Branch." *Bacon v. Lee*, 353 N.C. 696, 704 (2001). "[T]he power to determine guilt and to assess punishment for crime are functions of the courts, whereas the power of [clemency] is vested exclusively in . . . the executive branch." *State v. Conner*, 241 N.C. 468, 469 (1955). *See also Bacon*, 353 N.C. at 706 ("[C]lemency proceedings are not part of the trial—or even the adjudicatory process. They do not determine the guilt or innocence of the defendant. . . . They are conducted by the executive branch, independent of direct appeal and collateral relief proceedings." (second alteration in original) (quoting *Ohio*

Adult Parole Auth. v. Woodard, 523 U.S. 272, 284 (1998))). "[T]he nature of clemency is inherently one of executive 'grace' or 'mercy[.]' " *Bacon*, 353 N.C. at 713.

Article IV of our Constitution establishes the "judicial power" exclusively in the courts. *See* N.C. Const. art. IV. This Court has held "providing relief from a judgment is a judicial act," and that "judicial power extends not only to entering judgments but also to providing relief from them." *Doe 1K v. Roman Cath. Diocese of Charlotte*, 387 N.C. 12, 16 (2025). Executive actions such as parole, clemency, and commutation are unrelated to judicial proceedings. *See Conner*, 241 N.C. at 469–70.

The Separation of Powers Clause in our state constitution provides the "legislative, executive, and supreme judicial powers of the State government shall be forever separate and distinct from each other." N.C. Const. art. I, § 6. It is axiomatic then that the executive cannot wield judicial authority and the clemency power does not alter the judgment entered herein because it constitutionally cannot. Put another way, the clemency power is an executive function wholly separate and distinct from the constitutionally committed judicial function of entering judgments in criminal cases. Holding that an act of executive grace (1) can modify a judgment of trial court already rendered and in so doing (2) can negate appellate jurisdiction established by the General Assembly is a remarkable change to our separation of powers jurisprudence.

Express statutory language and constitutional concerns notwithstanding, the majority insists their result is correct if we look at context, legislative history, and purpose. *But see King*, 576 U.S. at 501 (Scalia, J., dissenting) ("[Context] is a tool for understanding the terms of the law, not an excuse for rewriting them."); *Schwegmann Bros.*, 341 U.S. at 395 (Jackson, J., concurring) ("Resort to legislative history is only justified where the face of the Act is inescapably ambiguous[.]"); *Kloeckner v. Solis*, 568 U.S. 41, 55 n.4 (2012) ("[E]ven the most formidable argument concerning the statute's purposes could not overcome the clarity [of] the statute's text.").

Turning to the Criminal Procedure Act for justification, the majority contends N.C.G.S. § 15A-2000(d)(1) "creates an appeal of right to this Court." But this provision is not jurisdictional. Instead, it establishes the scope of judicial review. Put another way, N.C.G.S. § 15A-2000(d)(1) does not limit this Court's jurisdiction but rather describes what the Court reviews once jurisdiction is established in a capital case: punishment, arguments raised, and proportionality. *See* N.C.G.S. § 15A-2000(d)(1) (2025). Thus, N.C.G.S. § 7A-27(a)(1) is a specific statute which establishes

jurisdiction, while N.C.G.S. § 15A-2000(d)(1) more generally tells this Court what to review under the broader criminal procedure scheme.

The majority asserts that this Court is not free to "disregard what [subsection 15A-2000(d)(1)] tells us about legislative intent" because that subsection "directly concerns the very matter at issue—the right of direct appeal to this Court in capital cases." But as noted above, the characterization of subsection 15A-2000(d) as *directly* concerning this Court's jurisdiction over capital cases is more than a stretch. The majority acknowledges this when it states that subsection 15A-2000(d), "[u]nlike N.C.G.S. § 7A-27(a)(1) . . . delineates the parameters of our review of direct appeals in death penalty cases."

The only portion of subsection 15A-2000(d)(1) that could arguably be construed as touching on jurisdiction is the first sentence, which provides that our "automatic review" of capital cases is conducted "*pursuant* to procedures established by the Rules of Appellate Procedure." N.C.G.S. § 15A-2000(d)(1) (emphasis added). Interestingly and unsurprisingly, the Rules of Appellate Procedure echo the plain language and clear meaning of section 7A-27. *Compare* N.C. R. App. P. 4(d) ("An appeal of right from a judgment of a superior court by any person who has been convicted of murder in the first degree and sentenced to death shall be filed in the Supreme Court. In all other cases, appeal shall be filed at the Court of Appeals") *with* N.C.G.S. § 7A-27(a)(1) ("Appeal lies of right to the Supreme Court in . . . [a]ll cases in which the defendant is convicted of murder in the first degree and the judgment of the superior court includes a sentence of death."); *see also* N.C.G.S. § 7A-27(b)(1) ("Except as provided in subsection (a) of this section, appeal lies of right directly to the Court of Appeals . . . [f]rom any final judgment of a superior court, other than one based on a plea of guilty or nolo contendere . . . .").

And ironically, although the Rules of Appellate Procedure undercut the majority's reasoning, the majority could achieve the same practical result by simply following N.C.G.S. § 7A-27 instead of judicially amending it. We could accept the properly noticed appeal, declare that the sentencing issues are moot, and remand consideration of other guilt-innocence phase issues to the Court of Appeals.

I certainly understand the appeal of the majority's result. Some could see it as being in our rational self-interest to seek less work for the Court. But if the legislature "enacted into law something different from what it intended, then it should amend the statute to conform to its intent." *King*, 576 U.S. at 515 (Scalia, J., dissenting).

Regardless, the specific jurisdictional statement in N.C.G.S. § 7A-27(a)(1) must control because that section unambiguously assigns this case to the Supreme Court of North Carolina, and nothing in the statute exempts commuted death sentences from its express terms. In discovering limits to this Court's jurisdiction which cannot be found in the statute, the majority abandons textualist dogma and replaces the legislature's unambiguous jurisdictional pronouncement with their preferred language. In so doing, the majority has committed the cardinal sin of legislating from the bench.

STATE OF NORTH CAROLINA
v.
TERREL DAWAYNE ROWDY

No. 300PA24

Filed 22 May 2026

Search and Seizure—traffic stop—warrantless search—reasonable suspicion—probable cause—totality of circumstances—marijuana odor

The trial court properly denied defendant's motion to suppress evidence where law enforcement officers had, under the totality of the circumstances, reasonable suspicion to conduct a *Terry* search of defendant's person and probable cause to conduct a warrantless search of defendant's vehicle. Relevant factors included: defendant's failure to pull over in response to a police vehicle's blue lights and sirens; defendant's presence in a "high crime area"; a marijuana odor coming from defendant's vehicle; defendant's evasive behavior during questioning; and defendant's prior criminal history. These circumstances, including the subsequent discovery of a marijuana "blunt" in defendant's pants pocket, were sufficient to create an inference that evidence of criminal activity would be discovered in the car; thus, the searches of defendant's person and vehicle were objectively reasonable under the Fourth Amendment.

On discretionary review pursuant to N.C.G.S. § 7A-31 from the decision of the Court of Appeals, 296 N.C. App. 272 (2024), finding no error in the trial court's judgment entered on 7 June 2023 by Judge Eric C. Morgan in Superior Court, Forsyth County. Heard in the Supreme Court on 9 September 2025.

Jeff Jackson, *Attorney General*, *by Alan D. McInnes*, *Special Deputy Attorney General*, *for the State-appellee.*

Stephen D. Fuller for defendant-appellant.

RIGGS, Justice.

This is a companion case to today's decision in *State v. Dobson*, No. 190PA24 (N.C. May 22, 2026), which reiterates that the odor of marijuana is a factor to be considered when analyzing the totality of the circumstances to determine whether an officer had probable cause to conduct a search.

Terrel Rowdy was subject to two searches in connection with a traffic stop: a search of his person and a warrantless search of his automobile. The searches were only proper if officers had reasonable suspicion to conduct the search of Mr. Rowdy's person and probable cause to conduct the warrantless automobile search. The reasonable suspicion and probable cause analyses examine whether the totality of the circumstances, including the odor of marijuana, justifies a stop, search, or seizure. Under the totality of the circumstances, the search of Mr. Rowdy's person was justified by his refusal to pull over for the traffic stop, his presence in a "high crime area," his prior convictions for narcotics and weapons offenses, the odor of marijuana, and his evasive behavior during questioning. The warrantless search of his automobile was justified by the above factors and the additional discovery of what officers "believed to be a marijuana blunt" during the search of his person. We hold that the search of Mr. Rowdy's person met the reasonable suspicion standard and the warrantless search of his automobile met the probable cause standard, so the trial court did not err in denying his motion to suppress evidence.

I. Factual and Procedural Background

On 26 July 2020, Deputy Brandon Baugus witnessed Terrel Rowdy commit a traffic violation and initiated a traffic stop. Mr. Rowdy failed to stop in response to the blue lights and sirens on Deputy Baugus's police vehicle, and instead drove into the parking lot of the West Wall Street Apartments, which Deputy Baugus testified was a high crime and "high narcotic" area. Deputy Baugus followed Mr. Rowdy into the parking lot, where he again activated his siren and Mr. Rowdy again did not stop. Instead, Mr. Rowdy reversed his car as if to back into a parking space

and did not stop until Deputy Baugus pulled his police vehicle behind Mr. Rowdy's car.

Once stopped, Deputy Baugus approached Mr. Rowdy's vehicle. Mr. Rowdy, who was sitting in the driver's seat, rolled down the passenger's side window to hand Deputy Baugus his license and registration. At that point, Deputy Baugus observed a faint odor of marijuana coming from the interior of Mr. Rowdy's car. Deputy Baugus went back to his vehicle and checked whether there were any outstanding warrants for Mr. Rowdy. The check revealed that Mr. Rowdy had prior convictions for narcotics offenses and carrying a concealed gun.

Another officer, Deputy M.D. Mitchell, arrived to assist Deputy Baugus. Deputy Mitchell testified that he also observed a marijuana odor coming from Mr. Rowdy's vehicle. Deputy Baugus asked Mr. Rowdy to step out of his vehicle. Once Mr. Rowdy was out of the car, Deputy Baugus asked him questions about the odor of marijuana. Mr. Rowdy said that he had not been around anyone who smoked marijuana, nor had he smoked it himself, and that he did not have any marijuana.

Mr. Rowdy then began to speak on his cell phone, stopped answering Deputy Baugus's questions, and "bladed" his body away from Deputy Baugus. Deputy Baugus testified that "blading" occurs when a person turns away from the officer towards the inside of their vehicle and indicates that a person is becoming confrontational or attempting to avoid conversation. At that point, Deputy Baugus decided to detain Mr. Rowdy.

While detaining Mr. Rowdy, Deputy Mitchell conducted a frisk to ensure Mr. Rowdy did not have a weapon on his person. During the frisk, Deputy Mitchell found what he "believed to be a marijuana blunt" in Mr. Rowdy's left front pants pocket. When he retrieved the blunt, Deputy Mitchell informed Mr. Rowdy that it was "marijuana" and Mr. Rowdy did not object or claim that it was legal industrial hemp. While Mr. Rowdy was detained, Deputy Baugus searched Mr. Rowdy's car and found a firearm.

Mr. Rowdy was indicted on charges of carrying a concealed weapon under N.C.G.S. § 14-269(a1), carrying a concealed weapon under N.C.G.S. § 14-269(c), and possession of a stolen firearm under N.C.G.S. § 14-71.1. His trial began on 5 June 2023 in Forsyth County.

Mr. Rowdy filed a motion to suppress evidence obtained as a result of the searches. He argued that, because illegal marijuana is indistinguishable from legal hemp without laboratory testing, "the sight or odor

of Cannabis sativa does not indicate with any certainty that the defendant was engaged in, or about to engage in any illegal activity." Because of this, Mr. Rowdy argued the officers did not have probable cause to stop, search, and seize evidence from him. The motion to suppress was heard on the first day of Mr. Rowdy's trial, before jury selection.

At the hearing, Deputy Baugus testified that he was not aware of a difference between marijuana and legal hemp, which he conceded smell and look the same and can only be differentiated by a laboratory test. Nonetheless, he did not perform a field or laboratory test on the blunt found in Mr. Rowdy's pocket. Further, Deputy Mitchell testified to the following: he had received training to identify marijuana, marijuana and legal hemp look and smell similar, the blunt could have been legal hemp, and the officers did not perform any testing on the blunt.

The trial court denied Mr. Rowdy's motion to suppress because, in addition to the odor of marijuana, several factors gave the officers justification for their actions: (1) Mr. Rowdy's failure to immediately stop and pull over when Deputy Baugus initiated the traffic stop; (2) the fact that, in the experience of Deputies Baugus and Mitchell, the West Wall Street Apartments were a "high crime area"; (3) Mr. Rowdy's prior convictions for narcotics offenses and carrying a concealed gun; and (4) Mr. Rowdy's blading, speaking on the phone during questioning, and refusing to answer questions. The trial court concluded that Mr. Rowdy's constitutional rights were not violated because it found that, based on the totality of the circumstances, the officers had reasonable suspicion to frisk Mr. Rowdy and probable cause to search his vehicle.[1]

On 7 June 2023, the jury found Mr. Rowdy guilty of carrying a concealed gun and not guilty of possession of a stolen firearm. He was sentenced to eight to nineteen months of incarceration, suspended for thirty months of supervised probation. Mr. Rowdy orally entered a notice of appeal in open court.

The Court of Appeals held that the trial court properly denied Mr. Rowdy's motion to suppress evidence and that he received a trial without error. *State v. Rowdy*, 296 N.C. App. 272, 285 (2024). Judge Arrowood concurred in the outcome but wrote separately to ask this Court to

1. Mr. Rowdy objected to the trial court's denial of his motion to suppress at the 5 June 2023 hearing, but he did not renew his objection to the admission of the evidence at trial, so whether the trial court erred by admitting evidence discovered during the searches must be reviewed under the plain error standard. *See* N.C. R. App. P. 10(a)(4).

clarify whether the odor of marijuana alone is sufficient to constitute probable cause, given the legalization of industrial hemp. *Id.* at 285–86 (Arrowood, J., concurring).

Mr. Rowdy appealed, seeking this Court's review of the Court of Appeals' opinion. On 19 March 2025, this Court entered a special order allowing discretionary review of what the appropriate legal test is when assessing whether the odor of marijuana gives rise to reasonable suspicion or probable cause of the commission of a crime.

II. Standard of Review

Trial court decisions regarding motions to suppress are "strictly limited to determining whether the trial judge's underlying findings of fact are supported by competent evidence, in which event they are conclusively binding on appeal, and whether those factual findings in turn support the judge's ultimate conclusions of law." *State v. Cooke*, 306 N.C. 132, 134 (1982). Unchallenged findings of fact are "deemed to be supported by competent evidence and are binding on appeal." *State v. Biber*, 365 N.C. 162, 168 (2011); *see also State v. Watkin*s, 337 N.C. 437, 438 (1994). The trial court's conclusions of law are reviewed de novo. *State v. Julius*, 385 N.C. 331, 336 (2023); *see also Biber*, 365 N.C. at 168; *State v. Jackson*, 368 N.C. 75, 78 (2015).

III. Analysis

"No right is held more sacred, or is more carefully guarded, . . . than the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law." *Terry v. Ohio*, 392 U.S. 1, 9 (1968) (quoting *Union Pac. Ry. Co. v. Botsford*, 141 U.S. 250, 251 (1891)). Both the Fourth Amendment to the United States Constitution and Article I, Section 20 of the North Carolina Constitution protect against unreasonable searches and seizures. *State v. Otto*, 366 N.C. 134, 136 (2012) (citing U.S. Const. amend. IV; N.C. Const. art. I, § 20). The "central inquiry under the Fourth Amendment" is "the reasonableness in all the circumstances of the particular governmental invasion of a citizen's personal security." *Terry*, 392 U.S. at 19.

At issue is whether the officers had reasonable suspicion to conduct the search of Mr. Rowdy's person and probable cause to conduct the warrantless search of his automobile. We hold that, considered under the totality of the circumstances, the officers had reasonable suspicion and probable cause to conduct the searches.

A. The totality of the circumstances is the proper legal test for assessing whether law enforcement had reasonable suspicion or probable cause of the commission of a crime.

This case involves both an investigatory *Terry* search and a warrantless search of an automobile. *Terry* searches are subject to the reasonable suspicion standard, *Terry*, 392 U.S. at 30–31, while warrantless searches of automobiles require probable cause, *Collins v. Virginia*, 584 U.S. 586, 592 (2018). Consistent with our longstanding approach, we consider the totality of the circumstances in deciding whether law enforcement had reasonable suspicion and probable cause for searches and seizures. *See Watkins*, 337 N.C. at 441; *Maryland v. Pringle*, 540 U.S. 366, 371 (2003) (first citing *Illinois v. Gates*, 462 U.S. 213, 232 (1983); and then citing *Brinegar v. United States*, 338 U.S. 160, 175 (1949)); *Florida v. Harris*, 568 U.S. 237, 244 (2013). The odor of marijuana is a factor to be considered under the totality of the circumstances.

When an officer "has reason to believe that he is dealing with an armed and dangerous individual, regardless of whether he has probable cause to arrest the individual for a crime," an officer may conduct a "reasonable search for weapons for the protection of the police officer." *Terry*, 392 U.S. at 27. An officer is permitted to "conduct a brief investigatory stop of an individual based on reasonable suspicion that the individual is engaged in criminal activity." *Jackson*, 368 N.C. at 77 (citing *Terry*, 392 U.S. at 30–31). In determining whether an officer has reasonable suspicion to conduct an investigatory *Terry* search, courts must consider "the totality of the circumstances—the whole picture." *Watkins*, 337 N.C. at 441 (quoting *United States v. Cortez*, 449 U.S. 411, 417 (1981)).

The reasonable suspicion required to justify a *Terry* search is a less demanding standard than probable cause or a preponderance of the evidence. *See United States v. Sokolow*, 490 U.S. 1, 7 (1989); *State v. Barnard*, 362 N.C. 244, 247 (2008)). To meet the reasonable suspicion standard, the *Terry* search "must be based on specific and articulable facts, as well as the rational inferences from those facts, as viewed through the eyes of a reasonable, cautious officer, guided by his experience and training." *Watkins*, 337 N.C. at 441–42 (first citing *Terry*, 392 U.S. at 21–22; and then citing *State v. Thompson*, 296 N.C. 703, 706 (1979)). Mere "inchoate and unparticularized suspicion or 'hunch' " is insufficient to meet the reasonable suspicion standard. *Terry*, 392 U.S. at 27; *see also Jackson*, 368 N.C. at 77–78.

Warrantless searches, including of automobiles, require a higher standard than *Terry* searches and are "presumptively unreasonable,

though the Court has recognized a few limited exceptions to this general rule." *State v. Terrell*, 372 N.C. 657, 665 (2019) (quoting *United States v. Karo*, 468 U.S. 705, 717 (1984)). The warrantless search of an automobile can be reasonable if the officer has probable cause to search the vehicle. *Collins*, 584 U.S. at 592.

Probable cause does not require "proof of guilt, or even . . . prima facie evidence of guilt, but it must be such as would actuate a reasonable man acting in good faith." *State v. Harris*, 279 N.C. 307, 311 (1971) (quoting 5 Am. Jur. 2d *Arrests* § 44 (1962)). Probable cause requires "information of facts which, if submitted to a magistrate, would require the issuance of an arrest warrant." *Id.* (quoting 5 Am. Jur. 2d *Arrests* § 44). The probable cause standard "depends on the totality of the circumstances." *Pringle*, 540 U.S. at 371 (first citing *Gates*, 462 U.S. at 232; and then citing *Brinegar*, 338 U.S. at 175); *see also Harris*, 568 U.S. at 244.

B. Under the totality of the circumstances, the officers had reasonable suspicion to conduct a *Terry* search.

In the order denying Mr. Rowdy's motion to suppress, the trial court found that the officers had reasonable suspicion to conduct a *Terry* search because, "[i]n addition to the odor of marijuana," (1) Mr. Rowdy failed to "immediately heed the blue lights and siren of Baugus and immediately pull over rather than driving into the West Wall Apartment complex"; (2) the apartment complex was a "high crime area"; (3) Deputy Baugus discovered Mr. Rowdy's prior convictions for narcotics offenses and carrying a concealed gun while searching for any outstanding warrants; and (4) Mr. Rowdy bladed away from Deputy Baugus, remained on the phone, and stopped answering questions. These additional factors, when considered in the totality of the circumstances with the odor of marijuana, provided the officers with reasonable suspicion to conduct a *Terry* search.

At the Court of Appeals, Mr. Rowdy challenged four factual findings that the officers smelled or saw marijuana:

> 9. As he received the license and registration from Defendant, Deputy Baugus was only at the window of the Blue Mustang for a very short time, and he observed a faint odor of marijuana coming from the interior of the Blue Mustang.
>
> 16. Deputy Mitchell approached the Defendant, and asked him to roll the window down. While he was speaking to the Defendant, Deputy Mitchell

> observed a strong odor of marijuana coming from the Blue Mustang.
>
> 22. Defendant was frisked by Deputy Mitchell, and, during that frisk, Deputy Mitchell pulled a "blunt" out of the Defendant's left front pants pocket, and placed it on the spoiler of the Blue Mustang. When Deputy Mitchell pulled the "blunt" out, he informed the Defendant that it was "marijuana." The Defendant did not, at any point, claim that he possessed industrial hemp.
>
> 23. The blunt removed from Defendant's pocket appeared to be, in the training and experience of both Deputy Baugus and Deputy Mitchell, a marijuana "blunt."

Rowdy, 296 N.C. App. at 276 (emphasis omitted). If challenged factual findings are supported by competent evidence, they are binding on appeal, and appellate courts must determine whether they supported the trial court's conclusions of law. *Cooke*, 306 N.C. at 134. The officers testified that they had experience and training in identifying marijuana and detected what seemed to be the odor of marijuana. Further, both officers testified that Deputy Mitchell found a blunt in Mr. Rowdy's pocket during the search of his person that he "believed to be a marijuana blunt." The officers did not testify that Mr. Rowdy claimed he possessed or used legal hemp. Therefore, the Court of Appeals correctly held that the challenged findings were supported by competent evidence.

Marijuana is a Schedule VI controlled substance, which is illegal to manufacture, sell, deliver, or possess. N.C.G.S. § 90-94(b)(1) (2025); *id.* § 90-95(a), (b)(2) (2025). In 2015, the North Carolina General Assembly legalized industrial hemp by amending N.C.G.S. § 90-87(16), defining marijuana, to add that "marijuana" "does not include industrial hemp." Industrial Hemp Act of 2015, S.L. 2015-299, § 2, 2015 N.C. Sess. Laws 1483, 1486–87. The North Carolina State Bureau of Investigation has written that "[t]here is no easy way for law enforcement to distinguish between industrial hemp and marijuana. There is currently no field test which distinguishes the difference." N.C. State Bureau of Investigation, *Industrial Hemp/CBD Issues* 2, https://www.sog.unc.edu/sites/default/files/doc_warehouse/NC%20SBI%20-%20Issues%20with%20Hemp%20and%20CBD%20Full.pdf (last visited May 12, 2026). The SBI further stated that hemp and marijuana are indistinguishable because they "look the same and have the same odor, both unburned and burned." *Id.*

Even with the legalization of industrial hemp, the odor of marijuana may still be considered as a factor in the totality of the circumstances inquiry. *See Dobson*, No. 190PA24.

The odor of marijuana is one factor in this case, but it is not the only factor that gave the officers reason to search Mr. Rowdy's person and automobile. Officers must consider the entire situation to determine if they have adequate justification to conduct a search or seizure. We look to the totality of the circumstances when deciding whether law enforcement had reasonable suspicion or probable cause to conduct a search. In addition to the odor of marijuana, the trial court's factual findings related to Mr. Rowdy's failure to stop, presence in a high-crime area, prior convictions, and evasive behavior support that, under the totality of the circumstances, Deputy Mitchell had reasonable suspicion to conduct a *Terry* search.

After committing a traffic violation, Mr. Rowdy "did not immediately stop in response to the blue lights and sirens, but proceeded into the parking lot" of a local apartment complex. Mr. Rowdy continued not to stop once in the parking lot, even after Deputy Baugus activated his siren several times. When a defendant flees or fails to stop when signaled to do so, it is "not necessarily indicative of wrongdoing, but it is certainly suggestive of such." *Wardlow*, 528 U.S. at 124. A defendant's failure to stop when an officer signals can contribute to the totality of the circumstances. *See id.*; *State v. Mitchell*, 358 N.C. 63, 69 (2004).

The apartment complex was "an area with many police calls, and was a high crime area, with numerous reports of narcotics." The fact that the stop occurred in a high-crime area is "among the relevant contextual considerations in a *Terry* analysis." *Wardlow*, 528 U.S. at 124. Even if the location being a "high crime area" is insufficient standing alone to establish reasonable suspicion, *see Jackson*, 368 N.C. at 80; *State v. Johnson*, 378 N.C. 236, 245 (2021), "officers are not required to ignore the relevant characteristics of a location in determining whether the circumstances are sufficiently suspicious to warrant further investigation," *Wardlow*, 528 U.S. at 124. This Court has held that a defendant's "presence in a high crime and high drug area" may be considered as one of the factors under the totality of the circumstances test. *See Jackson*, 368 N.C. at 80.

When Deputy Baugus checked whether Mr. Rowdy had any outstanding warrants, he learned that Mr. Rowdy had a prior record of narcotics offenses and a prior conviction for carrying a concealed gun. Mr. Rowdy's criminal record "for which [he] has already paid his debt to society" is not, alone, sufficient to prove reasonable suspicion, but it

may be considered under the totality of the circumstances. *See Johnson*, 378 N.C. at 245.

While Deputy Baugus asked him questions about the odor of marijuana, Mr. Rowdy began speaking on his cell phone, refused to answer Deputy Baugus's questions, and bladed away from Deputy Baugus. While individuals have a right to ignore police officers and refuse to cooperate when a police officer approaches them without reasonable suspicion or probable cause, "nervous, evasive behavior is a pertinent factor in determining reasonable suspicion." *Wardlow*, 528 U.S. at 124; *see also Florida v. Rodriguez*, 469 U.S. 1, 6 (1984) (per curiam) (reasoning that the defendant's "strange movements in his attempt to evade the officers aroused further justifiable suspicion"). This Court has also considered a defendant's act of blading under the totality of the circumstances when conducting the reasonable suspicion analysis. *See Johnson*, 378 N.C. at 245.

"[W]hen a criminal defendant files a motion to suppress challenging an initial investigatory stop, the trial court can deny that motion only if it concludes, after considering the totality of the circumstances known to the officer, that the officer possessed reasonable suspicion to justify the challenged stop." *Jackson*, 368 N.C. at 78. The reasonable suspicion standard requires "specific, articulable facts indicating present, ongoing criminal activity," not "a mere inchoate suspicion or 'hunch.' " *Id.* at 77–78. Even if some of the above factors are insufficient to prove reasonable suspicion on their own, "we do not assess each of these factors . . . in isolation." *Johnson*, 378 N.C. at 245–46 (citing *Jackson*, 368 N.C. at 80). Instead, "[w]e examine the totality of the circumstances . . . in order to achieve a comprehensive analysis as to whether the officer's conclusion that defendant may have been armed and dangerous was reasonable." *Id.* at 246. Taken together, the odor of marijuana, Mr. Rowdy's failure to pull over, the location in a "high crime area," Mr. Rowdy's prior convictions for narcotics offenses and carrying a concealed gun, and Mr. Rowdy's evasive behavior when questioned, under the totality of the circumstances, provided reasonable suspicion for the *Terry* search. The trial court did not err in denying Mr. Rowdy's motion to dismiss as to the *Terry* search.

C. Under the totality of the circumstances, the officers had probable cause to search Mr. Rowdy's car.

Deputy Baugus's search of Mr. Rowdy's vehicle was conducted without a warrant, so it was only reasonable under the Fourth Amendment if he had probable cause. *See Collins*, 584 U.S. at 592 (citing *Carney*, 471 U.S. at 392–93). An officer has probable cause to conduct a search when "the facts available to him would warrant a person of reasonable caution

in the belief that contraband or evidence of a crime is present." *Harris*, 568 U.S. at 243 (cleaned up). Probable cause requires "the kind of 'fair probability' on which 'reasonable and prudent [people,] not legal technicians, act.' " *Id.* at 244 (alteration in original) (quoting *Gates*, 462 U.S. at 231). The probable cause standard "consistently look[s] to the totality of the circumstances." *Id.* (first citing *Pringle*, 540 U.S. at 371; then citing *Gates*, 462 U.S. at 232; and then citing *Brinegar*, 338 U.S. at 176).

When Deputy Mitchell conducted a *Terry* search of Mr. Rowdy's person, he discovered what he "believed to be a marijuana blunt" in his left front pants pocket. Deputy Mitchell informed Mr. Rowdy that it was "marijuana," and Mr. Rowdy did not claim that it was legal hemp. A person of reasonable caution, when discovering a blunt that he believed to be illegal marijuana, could believe that it was contraband or evidence of a crime, particularly when the defendant does not claim it is legal hemp.

All of the factors that created reasonable suspicion for Deputy Mitchell to conduct a *Terry* search contributed to probable cause for Deputy Baugus to conduct a warrantless search of Mr. Rowdy's automobile. Mr. Rowdy refused to stop in response to police lights and sirens, he parked in a "high crime area," Deputy Baugus discovered his prior convictions for drug and weapons charges, the officers smelled marijuana, and Mr. Rowdy bladed and refused to answer questions. The subsequent discovery of what officers "believed to be a marijuana blunt" only added to the reasonable suspicion the officers had and satisfied the higher probable cause standard.

When considered with the reasonable suspicion factors, the discovery of the blunt gave the officers probable cause to search Mr. Rowdy's car without a warrant. The trial court did not err in denying Mr. Rowdy's motion to suppress as to the warrantless search of his automobile. Because the trial court properly concluded that the officers had reasonable suspicion to conduct a *Terry* search and probable cause to conduct a warrantless search of Mr. Rowdy's automobile, the court did not err in denying Mr. Rowdy's motion to suppress.

IV. Conclusion

The trial court properly denied Mr. Rowdy's motion to suppress, and he received a trial without error. Thus, we modify the Court of Appeals' decision consistent with the rule articulated in this opinion to apply a totality of the circumstances test for probable cause and affirm the Court of Appeals' judgment.

MODIFIED AND AFFIRMED.

STATE OF NORTH CAROLINA
v.
BRYAN SCOTT TADLOCK

No. 191PA25

Filed 22 May 2026

Appeal and Error—preservation of issues—insufficiency of evidence—two separate assault charges—general motion to dismiss

In a prosecution for multiple crimes arising from a domestic violence incident between defendant and his wife, defendant failed to preserve for appellate review his argument that insufficient evidence supported two separate charges of assault by strangulation rather than a single charge arising from one, continuous offense. Under Appellate Rule 10(a)(3), which precludes defendants from raising sufficiency of the evidence issues on appeal unless a motion to dismiss is made at trial, a motion to dismiss for insufficiency of the evidence is offense specific, meaning that a motion to dismiss one offense preserves all sufficiency issues with respect to that offense alone. Consequently, defendant's general motion to dismiss at trial did not preserve his argument regarding the two assault charges, especially where he announced to the trial court that he was excluding those specific charges from his motion.

Chief Justice NEWBY concurring by separate opinion.

On discretionary review pursuant to N.C.G.S. § 7A-31 of the decision of a divided panel of the Court of Appeals, 299 N.C. App. 754 (2025), finding no error after appeal from judgments entered on 26 October 2023 by Judge Gary M. Gavenus in Superior Court, Haywood County. Heard in the Supreme Court on 19 February 2026.

Jeff Jackson, *Attorney General*, *by Teresa M. Postell*, *Special Deputy Attorney General*, *for the State-appellee.*

Phoebe W. Dee for defendant-appellant.

BERGER, Justice.

Defendant was tried and convicted of, among other things, two counts of assault by strangulation. At the close of the State's evidence, defense counsel moved to dismiss "some of the indictments," but he specifically exempted the assault by strangulation charges from his motion to dismiss. Defense counsel informed the trial court that he could not "stand here in good faith and ask the court to dismiss [the assault by strangulation charges because] . . . there's evidence to go to a jury to consider there. So my motions are with respect to four of the six charges."

Defendant renewed his motion to dismiss at the close of all evidence, and the trial court sua sponte asked "why there are two distinct charges of strangulation" and "how they are distinct in time." Defense counsel declined to take a position, responding simply that he would "just leave it in the court's discretion."

The Court of Appeals reached the merits of defendant's argument and concluded that the State presented sufficient evidence to survive a motion to dismiss the two separate counts of assault by strangulation despite the fact that no such motion was made in the trial court. *State v. Tadlock*, 299 N.C. App. 754, 762 (2025). The dissent would have held the trial court "erred in denying defendant's motion to dismiss one of the two assault by strangulation charges." *Id.* at 775 (Freeman, J., concurring in part and dissenting in part).

We allowed defendant's petition for discretionary review to consider whether the Court of Appeals' majority erred in determining the State presented sufficient evidence to support two separate counts of assault by strangulation. In analyzing this question, we must consider as a preliminary matter whether the Court of Appeals erred under Rule 10 of the Rules of Appellate Procedure in reaching the merits of an argument that was not properly preserved. We reverse in part and vacate in part the decision of the Court of Appeals.

I. Factual and Procedural Background

The State's evidence tended to show that defendant was married to the victim in this case, K.S.[1] On 18 March 2022, defendant had been drinking heavily and later assaulted K.S. in a dispute over a necklace. Defendant held K.S. at gun point, dragged her by her hair, and later placed the barrel of the firearm into K.S.'s mouth.

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1. We use the victim's initials throughout to protect her identity. *See* N.C. R. App. P. 42.

When K.S. fought back against the attack, defendant wrapped his hands around K.S.'s neck from behind and began to choke her. K.S. then fell when defendant struck her in the head with the firearm, and while she was on the floor, defendant began choking her again with one hand while holding his gun in the other hand. At some point during the struggle, defendant dropped his gun on the ground to choke K.S. with both hands and K.S. was able to throw the gun across the room. As the two continued to struggle on the floor, defendant pressed his arm against K.S.'s throat, and she lost consciousness.

K.S. regained consciousness, and defendant initiated sexual intercourse with K.S. She did not resist out of fear of retaliation by defendant. K.S. planned to leave the house when defendant fell asleep, and she "did whatever he wanted, said whatever he wanted, [and] agreed to whatever he wanted so that he wouldn't get angry again." K.S. later went to the hospital to be treated.

Defendant was indicted for attempted murder, first-degree kidnapping, first-degree forcible rape, assault with a deadly weapon with intent to kill inflicting serious injury, and two counts of assault by strangulation under N.C.G.S. § 14-32.4. At the close of the State's evidence, defense counsel moved to dismiss "some of the indictments" but specifically exempted the assault by strangulation charges from his motion to dismiss. Defense counsel stated:

> Now, with respect, Judge, to the assault by strangulation, I can't stand here in good faith and ask the court to dismiss those. I can perhaps make other arguments, but as far as the allegations, the charges, there's evidence to go to a jury to consider there. So my motions are with respect to four of the six charges.

After the State responded to defendant's motions to dismiss and notably omitted any argument regarding the assault by strangulation charges, the trial court denied defendant's motions.

Defendant renewed his motion to dismiss at the close of all evidence, and the trial court sua sponte asked "why there are two distinct charges of strangulation" and "how they are distinct in time." Defense counsel responded by stating, "[T]he only thing [is] . . . [i]t could have been conceivably consolidated into one indictment[,] . . . [b]ut I'll just leave it in the court's discretion, Judge." The State requested the trial court "let both [charges] go to the jury, and then if [it] feel[s] like it's one continuous assault, [it] can always arrest judgment on one of them."

After hearing from the parties, the trial court again denied defendant's motions to dismiss.

The jury found defendant not guilty of attempted first-degree murder, but found him guilty on all other felony charges, including both counts of assault by strangulation. Defendant was sentenced to 73 to 100 months imprisonment for kidnapping, 25 to 42 months for assault with a deadly weapon inflicting serious injury, 240 to 348 months for forcible rape, and 6 to 17 months for each charge of assault by strangulation.

On appeal, defendant argued the trial court erred by: (1) refusing to instruct the jury on the defense of voluntary intoxication; (2) failing to distinguish between the injuries caused by each assault by strangulation; (3) failing to intervene ex mero motu during the State's closing arguments; and (4) assessing a $25,000 fine against defendant at sentencing. *Tadlock*, 299 N.C. App. at 759. The Court of Appeals majority rejected all of defendant's arguments, concluded there was "no error at trial," and affirmed the judgments of the trial court. *Id.* at 772. Defendant also contended that the trial court erred in denying his motion to dismiss one count of assault by strangulation. *Id.* at 759.

The Court of Appeals recognized that defendant "did not actually make a motion to dismiss either charge of [a]ssault by [s]trangulation" and that "[n]either party has addressed preservation of this issue on appeal," but determined the issue was preserved under this Court's decision in *State v. Golder*, 374 N.C. 238 (2020). *Tadlock*, 299 N.C. App at 762.

In reaching the merits, the majority rejected all of defendant's arguments and concluded that the trial court did not err in submitting both assault by strangulation charges to the jury because the State presented sufficient evidence "from which the jury could find a distinct interruption between [d]efendant's strangulation of K.S. with his hands and his strangulation of K.S. with his arm." *Id.* at 765. One judge on the panel disagreed and reasoned that under this Court's precedent in *State v. Dew*, 379 N.C. 64 (2021), the State failed to present sufficient evidence of a distinct interruption because "[w]hile there is evidence of defendant's distinct actions within the assault, the only apparent distinct interruption occurred when the victim fell unconscious after defendant choked her for the third time." *Tadlock*, 299 N.C. App. at 773–75 (Freeman, J., concurring in part and dissenting in part).

We allowed defendant's petition for discretionary review to determine whether, under *Dew*, the State failed to present sufficient evidence to support multiple charges of assault by strangulation. However, because the issue was not properly preserved, we conclude the Court of

Appeals erred in reaching the merits of defendant's appeal concerning the motion to dismiss. Accordingly, we reverse the Court of Appeals' determination that this issue was preserved for appellate review and therefore vacate the portion of the Court of Appeals' decision addressing the merits of this issue. As no other portion of the Court of Appeals' decision is before us, we do not address the other issues reached by the Court of Appeals.

II. Discussion

Preservation rules "serve[ ] crucial functions in our justice system," *State v. Reber*, 386 N.C. 153, 157 (2024), and the Rules of Appellate Procedure generally prohibit appellate review of issues not properly preserved, *see* N.C. R. App. P. 10. Rule 10(a)(3) states that "[i]n a criminal case, a defendant may not make insufficiency of the evidence to prove the crime charged the basis of an issue presented on appeal unless a motion to dismiss the action, or for judgment as in case of nonsuit, is made at trial." N.C. R. App. P. 10(a)(3). Thus, a defendant may not argue sufficiency of the evidence on appeal when no motion to dismiss is made.

This Court has recognized that "a motion to dismiss places an affirmative duty upon the trial court to determine whether, when taken in the light most favorable to the State, there is substantial evidence for every element of each charge against the accused." *Golder*, 374 N.C. at 246. Such a motion "preserves all insufficiency of the evidence issues for appellate review." *Id.*

By the rule's plain language, a defendant may not challenge sufficiency of the evidence in the appellate courts, *inter alia*, "*unless* a motion to dismiss the action . . . is made at trial." N.C. R. App. P. 10(a)(3) (emphasis added). Neither Rule 10(a)(3) nor *Golder* allow defendants to circumvent or otherwise bypass preservation requirements.

Here, defense counsel moved to dismiss four charges at the close of the State's evidence. Defense counsel did not move to dismiss either of the assault by strangulation charges and specifically announced to the trial court that he could not in good conscience request the trial court dismiss those charges. Thus, with respect to the strangulation charges, he made no motion at all.

Defense counsel was given another opportunity to make a motion to dismiss when the trial court inquired if the State's evidence was sufficient to sustain the two assault by strangulation charges. Defense counsel declined to assert any argument, other than saying he would leave it in the trial court's discretion. Defense counsel did not attempt to make

a motion following up on the trial court's inquiry, and he did not request dismissal or otherwise assert that the State's evidence was deficient.

The Court of Appeals correctly acknowledged that defendant did not move to dismiss either charge of assault by strangulation. It concluded, however, that the issue was reviewable because the trial court heard arguments from both parties. *Tadlock*, 299 N.C. App. at 762. The Court of Appeals relied on *Golder*'s holding that a "defendant's simple act of moving to dismiss at the proper time preserved all issues related to the sufficiency of the evidence for appellate review." *Id.* (quoting *Golder*, 374 N.C. at 246). But the Court of Appeals did not point to any act by defendant that could reasonably be construed as a motion, and the mere statement that the matter was in the trial court's discretion does not qualify as such.

Golder addressed what a timely motion to dismiss preserves for appellate review, and neither *Golder* nor the text of Rule 10 excuse a defendant's failure to make such a motion. The Court of Appeals misconstrued *Golder*, and its reasoning would essentially gut the preservation requirements of Rule 10(a)(3).[2]

We also note that preservation under Rule 10(a)(3) is offense specific. The rule provides that when a defendant's motion to dismiss is allowed or "sustained on appeal, it shall have the force and effect of a verdict of 'not guilty' as to such defendant." N.C. R. App. P. 10(a)(3). The Court of Appeals reading of *Golder* and Rule 10(a)(3) neglects the fact that jury verdicts of "guilty" or "not guilty" are rendered on an offense-by-offense basis, not for all offenses joined for trial. It cannot reasonably be argued that the rule contemplates that a motion to dismiss made for one offense somehow applies to all offenses for which a defendant is being tried. Put another way, although *Golder* indicates that a motion to dismiss preserves all issues related to sufficiency as to that

2. We also note that defense counsel's acknowledgement that he could not in good faith make an argument for the assault by strangulation charges is consistent with Rule 3.1 of the North Carolina Rules of Professional Conduct, which requires attorneys to advance only meritorious claims. *See* N.C. Rules of Pro. Conduct r. 3.1. The comment to that section specifically states that lawyers must determine if "they can make good faith arguments in support of their clients' positions." When this is not possible, such an argument is deemed frivolous and may not be advanced. *Id.* It would be incongruent for an appellate court to say on the one hand that defense counsel did not assert an argument because it would have been frivolous, yet on the other hold that such frivolous argument was preserved.

charge, it does not preserve sufficiency issues related to a defendant's other charges.[3]

It is the burden of the party, not the trial court, to preserve issues for appellate review. Except in narrow circumstances where preservation exists by operation of law or review is authorized pursuant to an argument for plain error, issues not preserved in the trial court are not properly before the appellate court. To hold that a motion to dismiss one charge would extend the right to appeal based on the sufficiency of the evidence as to all charges in a case would be an egregious expansion of appellate review and inconsistent with the safeguards our appellate rules and courts have strictly upheld.

III. Conclusion

Under Rule 10(a)(3), motions to dismiss for sufficiency of the evidence are offense specific. Defendant declined to make a motion to dismiss at trial for his two assault by strangulation offenses, and the Court of Appeals erred in treating the issue as preserved. We therefore reverse in part and vacate in part the decision of the Court of Appeals.

REVERSED IN PART; VACATED IN PART.

Chief Justice NEWBY concurring.

I join the majority's opinion in full. I agree that the Court of Appeals majority decision should be modified and affirmed because defendant failed to preserve for appellate review any motion to dismiss the second count of assault by strangulation.

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3. Defendant and the Court of Appeals appear to suggest that even when there are multiple charges of assault by strangulation and there is evidence from which, when taken in the light most favorable to the State, a jury could reasonably infer that the defendant strangled the victim multiple times, this somehow precludes submitting those charges to the jury for consideration. This front-end determination essentially provides a volume discount to a defendant and prevents the jury from fully considering the evidence presented. As the State correctly pointed out, to the extent the legal issue of distinct interruption from *State v. Dew*, 379 N.C. 64 (2021), is implicated, when the facts lead to multiple guilty verdicts, it is for the trial court to make the legal determination if merger should occur under *Dew* and judgment arrested on any necessary conviction. *See State v. Fields*, 374 N.C. 629, 637 (2020) ("Our holding that defendant could not be punished for habitual misdemeanor assault on the facts of this case is not the result of any fatal defect existing in the record. Rather, it is based [in part] on . . . the fact that both of defendant's convictions arose from the same assaultive act. Accordingly, we agree that the Court of Appeals should have arrested the trial court's judgment for habitual misdemeanor assault rather than vacating the judgment.").

I write separately to point out that if the issue had been properly before this Court, each successive strangulation committed by defendant constitutes a unique felonious action, as contemplated by the criminal statute. *See* N.C.G.S. § 14-32.4(b) (2025); *State v. Rambert*, 341 N.C. 173, 459 S.E.2d 510 (1995). The *Dew* "distinct interruption" analysis simply does not apply to the crime of assault by strangulation. *See State v. Dew*, 379 N.C. 64, 864 S.E.2d 268 (2021).

"Unless the conduct is covered under some other provision of law providing greater punishment, any person who assaults another person and inflicts physical injury by strangulation is guilty of a Class H felony." N.C.G.S. § 14-32.4(b).[1] Strangulation is "a form of asphyxia characterized by closure of the blood vessels and/or air passages of the neck as a result of external pressure on the neck brought about by hanging, ligature, or the manual assertion of pressure." N.C.P.I.—Crim. 208.61 n.1 (June 2023); *see State v. Braxton*, 183 N.C. App. 36, 42, 643 S.E.2d 637, 642 (using the Pattern Jury Instructions to define "strangulation"), *disc. rev. denied*, 361 N.C. 697, 653 S.E.2d 4 (2007). This Court has never addressed how to delineate between successive strangulations. If defendant's motion to dismiss had been preserved properly, this case would have given us an opportunity to determine whether the "distinct interruption" test applies to the felony crime of assault by strangulation, or whether each completed "strangulation" constitutes an independent chargeable offense.

We adopted the "distinct interruption" test for general assault crimes in *State v. Dew*. There this Court determined that a man could be charged with two general assault crimes—two counts of assault with a deadly weapon inflicting serious injury—when he continuously beat his girlfriend for two hours in a trailer, forced her to clean up the mess, and then continuously beat her again for two hours in a car. *Dew*, 379 N.C. at 73–74, 864 S.E.2d at 276. This Court determined that the break in time and the change in location constituted a "distinct interruption" to support charging the man with two counts of assault with a deadly weapon inflicting serious injury. *Id.*

In doing so, we provided a framework on how to charge general assault crimes. We defined "assault" as

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1. The General Assembly criminalized assault by strangulation in a 2004 act meant to heighten protection for victims of domestic violence. *See* An Act to Strengthen the Laws Against Domestic Violence, to Provide Additional Assistance to Domestic Violence Victims, and to Make Other Changes as Recommended by the House Select Committee on Domestic Violence, S.L. 2004-186, § 9.1, 2004 N.C. Sess. Laws 716, 733 (codified at N.C.G.S. § 14-32.4(b)).

> an overt act or an attempt, or the unequivocal appearance of an attempt, with force and violence, to do some immediate physical injury to the person of another, which show of force or menace of violence must be sufficient to put a person of reasonable firmness in fear of immediate bodily harm.

Id. at 70, 864 S.E.2d at 273–74 (quoting *State v. Roberts*, 270 N.C. 655, 658, 155 S.E.2d 303, 305 (1967)). In other words, assault is " '[t]he threat or use of force on another that causes that person to have a reasonable apprehension of imminent harmful or offensive contact' and '[p]opularly, any attack.' " *Id.* at 70, 864 S.E.2d at 274 (alterations in original) (quoting *Assault*, Black's Law Dictionary (11th ed. 2019)). "From these definitions," we deduced that "assault is a broad concept that can include more than one contact with another person"—i.e., a "single punch" or "a deluge of punches in a single fight." *Id.*

Using this framework, we explained that "[m]ultiple contacts can still be considered a single assault, even though each punch or kick would require a different thought process." *Id.* at 72, 864 S.E.2d at 275. As such, we held that "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.* A distinct interruption can "take the form of 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.*

This Court previously determined that a different standard applied to a more specific offense than a general assault crime. In *State v. Rambert*, a defendant fired three gunshots into a vehicle. 341 N.C. at 174, 459 S.E.2d at 511. He argued that double jeopardy principles prevented him from being charged with three counts of discharging a firearm into occupied property. *Id.* This Court determined that each time the defendant fired the weapon constituted a "separate and distinct act[ ]." *Id.* at 176, 459 S.E.2d at 512. We reasoned that "[e]ach shot, fired from a pistol, as opposed to a machine gun or other automatic weapon, required that [the] 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.* at 176–77, 459 S.E.2d at 513. Accordingly, firing three consecutive shots into an occupied vehicle supported charging the criminal defendant with three counts of discharging a firearm into occupied property. *Id.* at 177, 459 S.E.2d at 513.

In *Dew*, this Court distinguished general assault crimes from the firearm offense at issue in *Rambert*. *Dew*, 379 N.C. at 72, 864 S.E.2d at 275. Specifically, this Court stated that "[d]ischarging a firearm means firing a shot; each distinctly fired shot is a separate discharge of a firearm. The same is not true of assault which . . . might refer to a single harmful contact or several harmful contacts within a single incident." *Id*. Thus, an "assault" can include multiple, continuous actions, whereas the crime of discharging a firearm into occupied property requires only one action—firing the weapon.

This Court has drawn a similar distinction between certain sex offenses. For the general crime of taking indecent liberties with a child, we applied *Dew*'s "distinct interruption" test. *See State v. Calderon*, 388 N.C. 700, 709–11, 923 S.E.2d 530, 537–39 (2025). Contrarily, for the more specific sex crime of rape, we have stated that "rape is not a continuous offense," meaning that "each act of intercourse constitutes a distinct and separate offense." *State v. Dudley*, 319 N.C. 656, 659, 356 S.E.2d 361, 363 (1987) (quoting *State v. Small*, 31 N.C. App. 556, 559, 230 S.E.2d 425, 427 (1976), *cert. denied*, 291 N.C. 715, 232 S.E.2d 207 (1977)). Like the distinction between assault and discharging a firearm into occupied property, the crime of taking indecent liberties with a child can be made up of multiple, continuous actions, whereas the crime of rape requires only one action.

By criminalizing the specific crime of "assault *by strangulation*," the General Assembly intended the act of strangulation to be punished like the specific crimes charged in *Rambert* and *Dudley*—discharging a firearm and rape. Accordingly, the "distinct interruption" test applied to general crimes like assault and taking indecent liberties with a child does not apply to the crime of assault by strangulation. Each completed strangulation—i.e., each time a defendant has supplied "external pressure on the [victim's] neck . . . by hanging, ligature, or the manual assertion of pressure" that results in "a form of asphyxia characterized by closure of the blood vessels and/or air passages of the neck"—supports charging a defendant with independent counts of assault by strangulation. N.C.P.I.—Crim. 208.61 n.1.

Therefore, the evidence presented in the instant case supported charging defendant with multiple counts of assault by strangulation. But, as the majority opinion observes, defendant did not move to dismiss the second count. The Court of Appeals' decision is properly modified and affirmed.

I respectfully concur.

SURGEON v. TKO SHELBY, LLC

[389 N.C. 652 (2026)]

GARY A. SURGEON AND MARLA LEPLEY-STARR, INDIVIDUALLY AND ON BEHALF OF THOSE SIMILARLY SITUATED

v.

TKO SHELBY, LLC, TRADING AS NISSAN OF SHELBY, INTEGRITY AUTOMOTIVE PROMOTIONS, LLC, A TO Z STAFFED EVENTS, INC., BRIAN LEACHMAN, MICHAEL SMITH, AND TRAVIS K. OSTROM D/B/A THE TKO GROUP, DEFENDANTS; DEALER COMPLIANCE SERVICES, INC., CROSS-CLAIM DEFENDANT

No. 198A22-2

Filed 22 May 2026

Class Actions—class certification—conflict between class definition and court's analysis—ascertainability

In a class action lawsuit arising from an allegedly deceptive promotional flyer that a car dealership sent to plaintiffs—who were led to believe that they had won either a large cash prize or a free car when, in fact, they had won only two dollars—the trial court's class certification order (entered on remand from a prior appeal) was vacated where the court defined the class to include people who received the flyer, called the promotional hotline number shown on the flyer, and then visited the dealership to claim their prize. This definition conflicted with the court's analysis, wherein the court found that one of the named plaintiffs did not call the hotline—rather, her grandmother did—but nevertheless allowed her to remain a named plaintiff representing the class; in turn, this inconsistency prevented meaningful appellate review. Additionally, the proposed class was not ascertainable where there were no records identifying which of the 2,118 people who called the hotline number were among the 927 who also visited the dealership during the promotional period.

Appeal pursuant to N.C.G.S. § 7A-27(a)(4) from an order granting plaintiffs' motion for class certification entered on 15 November 2024 by Judge Forrest Donald Bridges in Superior Court, Gaston County. Heard in the Supreme Court on 29 October 2025.

Higgins Benjamin, PLLC, by John F. Bloss, Frederick L. Berry, and Robert N. Hunter Jr., for plaintiff-appellees.

Gray, Layton, Kersh, Solomon, Furr & Smith, P.A., by Michael L. Carpenter and Stratton L. Stone; Lewis Brisbois, by Jeremy A. Stephenson; Barnes, Alford, Stork & Johnson, LLP, by Curtis W. Dowling and Matthew G. Gerrald, for defendant-appellants.

DIETZ, Justice.

This class action case returns to us after we vacated the trial court's certification order and remanded the case to resolve conflicting legal analysis. In this second appeal we are struck with déjà vu. The trial court's latest order, like the first, contains a conflict between the definition of the class and the court's analysis concerning a named plaintiff.

In the first appeal, defendants argued that there were deeper ascertainability problems that precluded class certification. We declined to reach those issues because we believed they might become moot after the trial court clarified the class definition. That did not happen. In this second appeal, these same ascertainability issues persist, and we can no longer ignore them.

Specifically, the putative class cannot be ascertained without individualized fact assessments that would predominate over issues common to all class members. To identify the class members, the trial court must determine which of 2,118 people who called a car dealer's promotional hotline number are among the 927 people who later visited the dealership to claim a promotional prize. Because there are no records of who visited the dealership, this fact question cannot be resolved without individualized determinations for each of those 2,118 people.

Plaintiffs contend that the dealership should not be "rewarded" for failing to keep records of who visited it. But plaintiffs do not identify any legal reason why the dealership was obligated to retain those records (assuming they once existed), and there is no indication in the record that plaintiffs pursued spoliation or destruction-of-evidence claims in the trial court. Our ruling today does not address these discovery-related claims and does not preclude plaintiffs from pursuing them on remand. We hold only that, on the current record, plaintiffs cannot satisfy the legal criteria for class certification, and we must therefore vacate the trial court's class certification order.

Facts and Procedural History

In 2018, plaintiffs received a promotional flyer in the mail advertising a "Game On Tent Sale Event" at Nissan of Shelby, an automobile dealership. The promotion offered a chance to win one of six "grand prizes," including a 2018 Nissan Sentra SR or $20,000 in cash. The flyer contained a scratch-off section with instructions stating that "if the scratch off below matches one of the six lucky number game prize boxes, you are a guaranteed winner of one of these prizes." The flyer instructed recipients whose code matched a winning prize to call the

event hotline and then come to the dealership during the sales event to claim their prize.

Plaintiffs allege that the scratch-off portion of *all* the flyers matched the number for the car or $20,000 grand prize, misleading recipients into believing they won the grand prize. Instead—according to defendants' interpretation of the contest rules—a separate "activation code" printed on each flyer governed the prize associated with that flyer. For all known contestants who attempted to claim a prize, the activation code awarded a $2 cash prize.

Plaintiffs brought claims for breach of contract and unfair and deceptive trade practices against the dealership and various other parties connected to the sales promotion. During discovery, defendants produced records showing that approximately 50,000 households received the promotional flyer and 2,118 people called the promotional hotline number to claim their prize as the flyer instructed. Defendants also produced records indicating that 927 people visited the dealership during the promotional period. There is conflicting evidence about whether, during the promotional period, the dealership had more detailed records of those 927 people. But it is undisputed that those records, if they once existed, no longer exist. As a result, there is no documentary evidence of who visited the dealership to claim a prize.

In 2021, the trial court granted plaintiffs' motion to certify a class consisting of the 927 people who visited the dealership. *Surgeon v. TKO Shelby, LLC*, No. 18 CVS 3983, 2021 WL 9772618, at *5 (N.C. Super. Ct. Dec. 13, 2021). Defendants appealed that certification order to this Court under N.C.G.S. § 7A-27(a)(4). We vacated the order because of a "mismatch" between the trial court's class definition and the analysis used to certify the class. *Surgeon v. TKO Shelby, LLC*, 385 N.C. 772, 778, 782 (2024). We remanded for the trial court to address the conflicting analysis and, if appropriate, enter a new certification order with consistent legal reasoning. *Id.* at 782.

On remand, the trial court again certified a class. Defendants again appealed to this Court under N.C.G.S. § 7A-27(a)(4).

Analysis

I. Class certification criteria

This Court has reaffirmed the appropriate standard for class certification in a number of recent decisions. *See, e.g.*, *Armistead v. Cnty. of Carteret*, 926 S.E.2d 886 (N.C. 2026); *Wardson Constr., Inc. v. City of Raleigh*, 926 S.E.2d 903 (N.C. 2026). "As a threshold matter, the party

seeking class certification bears the burden to show that a proper class exists, meaning the named and unnamed members each have an interest in either the same issue of law or of fact, and that issue predominates over issues affecting only individual class members." *Jackson v. Home Depot U.S.A., Inc.*, 388 N.C. 109, 113 (2025) (cleaned up). "Beyond this threshold requirement, the party seeking class certification also must satisfy a number of other certification criteria designed to protect the interests of the absent class members, such as notice and adequacy of representation." *Armistead*, 926 S.E.2d at 889 (cleaned up). These legal criteria for class certification are questions of law that we review de novo. *Wardson*, 926 S.E.2d at 908.

"Once these legal prerequisites are met, the trial court may, in its discretion, certify a class." *Armistead*, 926 S.E.2d at 890. "In evaluating whether class certification is appropriate, the trial court should consider whether a class action is superior to other available methods to adjudicate the controversy and whether the class action is likely to serve useful purposes such as preventing a multiplicity of suits or inconsistent results." *Id.* "The court also considers whether the class mechanism is efficient and economically reasonable given the administrative costs and the likely recovery for individual claimants." *Id.* (cleaned up).

On appeal, "the trial court's legal analysis of the class certification criteria is reviewed de novo, the court's corresponding fact findings are reviewed for competent evidence, and the court's ultimate determination to certify a class as the superior method of adjudicating the claims is reviewed solely for abuse of discretion." *Wardson*, 926 S.E.2d at 908.

II. Conflicting class analysis

When this case first came to us on appeal, we vacated and remanded because of a "mismatch between the class the trial court analyzed and the one it ultimately certified." *Surgeon*, 385 N.C. at 778. Specifically, when analyzing the class criteria, the trial court described the class as people who received the promotional flyer, called the hotline number on the flyer, and went to the dealership to claim a prize. But when later defining the class, the court stated that the class members were those who received the flyer and went to the dealership. This second definition did not require class members to have also called the hotline number.

These "mismatched" definitions created tension within the court's analysis. Even among the two named plaintiffs, we noted that the record suggested one called the hotline number, but the other did not. *Id.* at 781. We therefore vacated the trial court's certification order and remanded

the case because the decision to certify the class "cannot be squared with the reasoning used to reach that decision." *Id.* at 778.

On remand, the trial court resolved the mismatched definitions by concluding that class members must satisfy three requirements: (1) received the promotional flyer; (2) called the hotline number shown on the flyer; and (3) then visited the dealership to claim their prize.

But in the trial court's fact findings, the court also found that one of the named plaintiffs did not call the hotline number. Instead, the plaintiff's grandmother called the number. Nevertheless, the court permitted her to remain a named plaintiff representing the class.

Once again, this creates an irreconcilable tension in the court's analysis that prevents meaningful appellate review of the court's order. *See id.* Did the court determine that *someone* must call the hotline number, but it need not be the class members themselves? Did the court believe the named plaintiff's grandmother was acting as her agent in claiming the prize? Or did the court, as in the first order, use two different class definitions and analyses in two different parts of the order?

We do not know. Accordingly, we must again vacate the trial court's class certification order because the conflicting analyses preclude meaningful appellate review. *See id.*

III. Ascertainability analysis

In the first appeal in this case, we acknowledged that defendants focused primarily on more fundamental problems with the class certification order—most notably a series of ascertainability concerns—but we held that "we need not address all of defendants' arguments in this appeal, many of which may be mooted by entry of a new order on remand." *Id.* at 779. We examined only the issues "intertwined with the mismatched class definitions." *Id.*

In this second appeal, defendants insist that it is time to examine these deeper issues with the legal criteria for class certification. We agree that it will not serve the interests of justice to ignore these issues a second time. Shortly before oral argument in this case, plaintiffs voluntarily dismissed the claims of the named plaintiff who did not call the hotline number. Defendants have raised legitimate concerns about the propriety of that voluntary dismissal because several issues involving that plaintiff are the subject of this appeal. Regardless of whether that dismissal is effective, it cannot cure the conflict in the trial court's reasoning. But if we remand solely to correct the conflicting class analyses involving that named plaintiff, as we did in the last appeal, there will

likely be yet another interlocutory appeal on class certification, raising the remaining unaddressed arguments, which would further delay the resolution of this case. To avoid that outcome, we will examine defendants' other challenges to class certification.

Defendants' central argument is that the class is not ascertainable because there is no way to know "who exactly is a member of the class" without individualized fact determinations that will predominate over the common issues.

Ascertainability is one of the "legal criteria" for class certification. *Armistead*, 926 S.E.2d at 890. "To ensure that class members receive the required notice, the trial court must confirm that there is a feasible, objective way to identify who those class members are." *Id.* "Importantly, ascertaining the members of the class cannot be done in a manner that defeats other legal criteria for class certification," such as the predominance requirement. *Id.* Thus, "if class members cannot be identified without separate evidence for each class member and then separate resolution by a factfinder, the ascertainability requirement would not be satisfied because the identification process would devolve into a series of mini-trials that would dwarf the adjudication of the common issues." *Id.* (cleaned up).

Here, whatever the ultimate class definition in this case, the parties acknowledge that it must be limited to people who went to the dealership to claim a prize listed on the promotional flyer. Undisputed records from defendants indicate that 927 people came to the dealership during the promotional period. But these records do not identify who those 927 people are. Other records contain the telephone numbers of 2,118 people who called the hotline number listed on the promotional flyer. But we do not know how many of those 2,118 people are among the 927 people who later went to the dealership.

As a result, there is no "feasible, objective way" to identify the 927 people who went to the dealership to claim a prize. *See id.* The only option would be to contact the 2,118 people who called the hotline and ask them to "self-identify" as class members by asserting that they are among the 927 people who later visited the dealership. *Id.* at 890–91. As we explained in *Armistead*, "this self-identification process would cause the case to devolve into individualized mini trials, including the need for discovery, to determine if the claimant in fact did or did not" go to the dealership. *Id.* at 891 (cleaned up). This, in turn, would create a predominance problem that precludes class certification. Accordingly, on the current record, the proposed class is not ascertainable, and we must vacate the trial court's certification order.

We close by noting that, in their briefing to this Court, plaintiffs state that defendants "should not be rewarded for their failure to maintain these business records." This issue is beyond the scope of our review of this class certification order. Notably, plaintiffs do not argue that defendants *wrongfully* discarded these records, nor do they point to any legal basis for defendants to retain them. Moreover, during the two years of intensive discovery in this case, plaintiffs did not assert spoliation or destruction-of-evidence claims. Likewise, plaintiffs did not raise these issues during the trial court's multiple class certification hearings, instead arguing that there was no need to ascertain the identities of class members until after final judgment, when money would need to be disbursed.

We do not have the full trial record before us and do not know if there was a discovery order or deadlines for motions practice that have since passed. We leave this issue, should plaintiffs seek to pursue it, in the hands of the trial court. We note only that our holding today does not preclude the trial court from examining this question, if appropriate, and imposing a sanction should plaintiffs show that defendants wrongfully destroyed records necessary to ascertain the members of this putative class.

Conclusion

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

VACATED AND REMANDED.

HATCHER v. RODRIGUEZ

[389 N.C. 659 (2026)]

JAMES HATCHER

v.

JEREMY R. RODRIGUEZ, INDIVIDUALLY, AND JEREMY R. RODRIGUEZ, IN HIS CAPACITY AS A MEMBER OF LAURINBURG POLICE DEPARTMENT, AND CITY OF LAURINBURG

From N.C. Court of Appeals
23-1108

From Scotland
22CVS269

No. 189P25

ORDER OF THE COURT

The parties in this case have reached a settlement. Thus, we allow the joint motion to withdraw defendants' petition for discretionary review and leave the decision of the Court of Appeals undisturbed but without precedential value. *See Mole' v. City of Durham*, 384 N.C. 78 (2023) (stating that a decision of the Court of Appeals is undisturbed but without precedential value).

By order of the Court this the 17th day of April 2026.

Justice Earls concurs that the joint motion should be allowed, but dissents from the remainder of this order for the reasons explained in her dissenting opinion in *Mole' v. City of Durham*, 384 N.C. 78, 91-98 (2023) (Earls, J., dissenting).

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 17th day of April 2026.

s/Grant E. Buckner

Grant E. Buckner
Clerk of the Supreme Court

STATE v. SLADE

[389 N.C. 660 (2026)]

STATE OF NORTH CAROLINA	From N.C. Court of Appeals 23-1157
v.	
CHAUNCEY JAMAL SLADE	From Guilford 15CRS93186-88, 19CRS25103-07

No. 264PA24

ORDER OF THE COURT

Amicus curiae North Carolina Conference of District Attorneys' Motion for Leave to Participate in Oral Argument is allowed to permit amicus curiae to use ten minutes of the State's oral argument time.

By order of the Court this the 21st day of May 2026.

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 21st day of May 2026.

s/Grant E. Buckner

Grant E. Buckner
Clerk of the Supreme Court

STATE v. THOMAS

[389 N.C. 661 (2026)]

STATE OF NORTH CAROLINA	From N.C. Court of Appeals 23-210
v.	
KEDRICK DAQUANE THOMAS	From Wake 09CRS221093-94, 21CRS1787

No. 248PA24

ORDER OF THE COURT

The parties are directed to file supplemental briefs within thirty days from the date of this order addressing the following issues:

(1) Whether defendant waived his objection to admission of the challenged ankle monitor data by affirmatively disclaiming any objection or failing to object to the repeated admission of maps and other exhibits containing the information from the ankle monitor data, such as location, timestamps, coordinates, addresses, speed, and direction of travel.

(2) Whether defendant waived his objection to the admission of the challenged ankle monitor data by providing it to defendant's expert witness for use beyond explaining, impeaching, or attacking its evidentiary weight, such as by eliciting testimony comparing it with location data from a witness's cell phone to bolster the credibility of defendant's statements to law enforcement officers.

By order of the Court this the 27th day of May 2026.

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 27th day of May 2026.

s/Grant E. Buckner

Grant E. Buckner
Clerk of the Supreme Court

HALE v. MacLEOD

[389 N.C. 662 (2026)]

MIKE HALE

v.

WILLIAM ERIC MacLEOD, MD, JONATHAN PAGE, AND GREEN FARMS COMPANY, LLC

FROM N.C. COURT OF APPEALS
23-285

FROM BUNCOMBE
21CVS3299

No. 201P24

ORDER OF THE COURT

Plaintiff's petition for discretionary review is allowed only as to Issue #3:

> Does Federal Law prevent the application of the anti-fraud provisions of North Carolina's Securities Fraud statutes?

Issues #1, #2, and #4 are denied.

By order of the Court this the 17th day of June 2026.

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 19th day of June 2026.

s/Grant E. Buckner

Grant E. Buckner
Clerk of the Supreme Court

IN RE CHALLENGE TO CANDIDACY OF DUPRE

[389 N.C. 663 (2026)]

IN RE CHALLENGE OF JERRY BRYAN REINOEHL TO THE CANDIDACY OF MARGOT DUPRE	FROM N.C. COURT OF APPEALS P26-117 FROM N.C. BOARD OF ELECTIONS

No. 59P26

ORDER OF THE COURT

Petitioner Margot Dupre's motion for a temporary stay filed 20 February 2026 is hereby denied. The Respondent N.C. State Board of Elections' motion to dismiss Petitioner's appeal, filed 5 March 2026, is allowed because the Court agrees with Respondent that Petitioner's appeal is still pending at the Court of Appeals and therefore any review by this Court at this time would be premature. Petitioner's petition for discretionary review filed 20 March 2026 is denied pursuant to Appellate Procedure Rule 15(h). The petitioner's petition for writ of supersedeas filed 20 March 2026 is denied. Finally, Jay N. Delancy's Pro Se Motion for Leave to File Amicus Brief, filed 12 March 2026, is dismissed because arguments regarding whether any issues raised in this appeal are moot are properly directed to the Court of Appeals, where the appeal is presently pending.

By order of the Court this the 16th day of June 2026.

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 16th day of June 2026.

s/Grant E. Buckner

Grant E. Buckner
Clerk of the Supreme Court

IN RE D.S.

[389 N.C. 664 (2026)]

IN THE MATTER OF

D.S., K.R., J.R., S.R.

From N.C. Court of Appeals
25-448

From Durham
19JA000090-310, 19JA000093-310,
19JA000094-310, 19JA000095-310

No. 99P26

ORDER OF THE COURT

When reviewing permanency planning orders under Chapter 7B of our General Statutes, this Court has instructed the Court of Appeals "to draw plausible inferences from findings to determine simply whether the 'trial court adequately addressed the substance and concerns of the statute.' " *In re L.L.*, 386 N.C. 706, 714 (2024) (quoting *In re L.R.L.B.*, 377 N.C. 311, 323 (2021)). The decision of the Court of Appeals in this case failed to fully heed that instruction.

Accordingly, we allow joint petitioners' petition for discretionary review for the limited purpose of reversing the portions of that decision which:

(1) concluded the trial court failed to make adequate findings addressing subsections 7B-906.1(n) and 7B-912(a), and

(2) remanded the trial court's permanency planning order for further findings.

The remainder of the Court of Appeals' decision, and by extension the trial court's permanency planning order, is affirmed.

By order of the Court this the 17th day of June 2026.

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 19th day of June 2026.

s/Grant E. Buckner

Grant E. Buckner
Clerk of the Supreme Court

IN RE J.A.S.F.

[389 N.C. 665 (2026)]

IN THE MATTER OF

J.A.S.F., J.A.S.F., M.S.S-F.

FROM N.C. COURT OF APPEALS
24-10016

FROM CALDWELL
22JA000020, 22JA000021, 22JA000134

No. 151PA25

ORDER OF THE COURT

Upon consideration of the petition filed on the 22nd day of June 2025 by Petitioner and Guardian ad Litem in this matter for discretionary review of the North Carolina Court of Appeals pursuant to G.S. 7A-31, the following order was entered and is hereby certified to the Court of Appeals:

Petition allowed.

By order of the Court this the 17th day of June 2026.

Therefore the case is docketed as of the date of this order's certification. Briefs of the respective parties shall be submitted to this Court within the times allowed and in the manner provided by Appellate Rule 15(g)(2).

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 19th day of June 2026.

s/Grant E. Buckner
Clerk of the Supreme Court

M.C. Hackney
Assistant Clerk

Justice BERGER concurring.

Chances are you have heard the familiar aphorism that justice delayed is justice denied. It is frequently invoked by judges as if merely uttering the words was a safeguard. But the phrase is meaningless when courts allow cases to languish for no apparent reason, especially in child abuse, neglect, and dependency cases like this one.

The Guardian ad Litem and the Caldwell County Department of Social Services filed a petition for discretionary review almost a year

ago on 22 June 2025. Why has it taken more than eleven months to allow this petition? No one disputes that these issues require prompt resolution, and the Court of Appeals certainly did its job: the case was heard on 23 April 2025 and that court issued an opinion twenty-eight days later.

This Court's inexcusable delay in resolving the petition for discretionary review here undermines the Juvenile Code's goal of providing children with permanency within a *reasonable* time. *See* N.C.G.S. § 7B-100(5) (2025). Unfortunately, however, this is not an isolated incident.

In December 2025, this Court entered an order allowing a petition for discretionary review in *In re B.M.T.*, No. 32PA23-2. But the petition was filed nearly two priors prior on 27 February 2024. What was the final resolution there? We dismissed the matter as improvidently allowed on 22 May 2026—815 days after the petition was filed. *See In re B.M.T.*, No. 32PA23-2, 2026 WL 145923 (N.C. May 22, 2026). Right result. Awful timing.

If this Court has a procedure to flag aging juvenile cases, it failed here. If there is no mechanism in place to bring the delay to the attention of the chambers assigned to the petition, that is an indictment on this institution. Cases cannot simply move, or not move, through the system with no one at a supervisory level noticing, and no apparent consequence for delay, other than to the children left in limbo for significant portions of their formative years.

If justice delayed is truly justice denied, then we have a duty to the People of this State to discharge the responsibilities of our offices in a timely and attentive manner. It is ironic that a court tasked with reviewing a determination of parental fitness would itself engage in such apparent neglect.

IN RE J.B.P.

[389 N.C. 667 (2026)]

IN THE MATTER OF J.B.P.

From N.C. Court of Appeals
23-269

From Beaufort
20JB10

No. 182P25

ORDER OF THE COURT

The respondent's petition for discretionary review is allowed for the limited purpose of vacating the Court of Appeals' decision and remanding this matter to the Court of Appeals for reconsideration in light of *State v. Dobson*, No. 190PA24 (May 22, 2026), and *State v. Rowdy*, No. 300PA24 (May 22, 2026). The respondent's motion to dismiss appeal is dismissed without prejudice to refile in the Court of Appeals.

The respondent's petition for writ of supersedeas is denied and the temporary stay is dissolved.

By order of the Court this the 17th day of June 2026.

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 19th day of June 2026.

s/Grant E. Buckner

Grant E. Buckner
Clerk of the Supreme Court

JAY SINGLETON, D.O., AND SINGLETON VISION CENTER, P.A.

v.

NORTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES; JOSH STEIN, GOVERNOR OF THE STATE OF NORTH CAROLINA, IN HIS OFFICIAL CAPACITY; DEVDUTTA SANGVAI, NORTH CAROLINA SECRETARY OF HEALTH AND HUMAN SERVICES, IN HER OFFICIAL CAPACITY; PHIL BERGER, PRESIDENT PRO TEMPORE OF THE NORTH CAROLINA SENATE, IN HIS OFFICIAL CAPACITY; AND DESTIN HALL, SPEAKER OF THE NORTH CAROLINA HOUSE OF REPRESENTATIVES, IN HIS OFFICIAL CAPACITY

FROM N.C. COURT OF APPEALS
21-558, 26-230

FROM WAKE
20CVS5150-910

No. 260PA22-2

ORDER OF THE COURT

Upon consideration of the petition filed by Plaintiffs on the 25th day of March 2026 in this matter for discretionary review under G.S. 7A-31 prior to a determination by the North Carolina Court of Appeals, the following order was entered and is hereby certified to the North Carolina Court of Appeals:

Petition denied.

By order of the Court this the 17th day of June 2026.

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 28th day of June 2024.

s/Grant E. Buckner
Clerk of the Supreme Court

M.C. Hackney
Assistant Clerk

Justice DIETZ concurring.

I understand why Singleton filed this bypass petition. After all, we previously allowed discretionary review of these same issues, in this same case.

We could not reach the merits of those issues solely because our review hit a snag. We identified a jurisdictional flaw in the trial court's judgment. Our jurisdiction to rule on a particular legal question is derived from the lower courts' own jurisdiction over that same issue. *See Gordon v. Sanderson*, 83 N.C. 1, 2 (1880). Thus, to ensure that these important constitutional questions were properly before us when we ruled, we remanded the case to correct the jurisdictional defect. *Singleton v. N.C. Dep't of Health & Hum. Servs.*, 386 N.C. 597, 599 (2024).

With this procedural history in mind, this case seems like an obvious candidate for a bypass petition. But this Court, as currently composed, has taken a cautious approach to bypass petitions because an earlier composition of the Court overused them. That practice led to a number of high-profile, rushed decisions that were flawed in ways that might have been avoided if the cases had worked their way through the appellate courts in the ordinary course. *See*, *e.g.*, *Hoke Cnty. Bd. of Educ. v. State*, 389 N.C. 198, 333 (2026) (Dietz, J., dissenting); *Harper v. Hall*, 382 N.C. 314, 318 (2022) (Barringer, J., dissenting).

Here, too, there are many aspects of this case that could benefit from review and refinement at the Court of Appeals. For example, I find it puzzling that the trial court analyzed the Monopolies Clause claim without citing *In re Certificate of Need for Aston Park Hospital*. That decision contains a discussion of different types of monopolies and an acknowledgement that the constitutional analysis may not be the same for all industries because a "hospital is not comparable to an ordinary business establishment" like, say, a car dealership. In our previous opinion in this case, we gave a rather obvious signal that *Aston Park* was a key precedent to examine: "The complaint contains allegations that, if proven, could render the Certificate of Need law unconstitutional in all its applications. *See In re Certificate of Need for Aston Park Hosp., Inc.*, 282 N.C. 542, 551–52, 193 S.E.2d 729 (1973)." *Singleton*, 386 N.C. at 599.

Now, to be fair, there is tension between *Aston Park* and a decision the trial court did cite, *American Motors Sales Corp. v. Peters*, 311 N.C. 311 (1984). Perhaps that tension confounded the trial court. But the Court of Appeals has found ways to resolve that tension in the past, and we could benefit from their analysis again here. *See Rockford-Cohen Grp., LLC v. N.C. Dep't of Ins.*, 230 N.C. App. 317, 321 (2013).

Likewise, our previous opinion expressly directed the trial court to examine *Kinsley v. Ace Speedway Racing, Ltd.*, 386 N.C. 418 (2024), a recent decision from this Court concerning the Fruits of Their Labor Clause. Under *Ace Speedway*, a court addressing the reasonableness

prong of the Fruits of Their Labor Clause test must examine "two fact-specific questions—first, how effective is the state action at achieving the desired public purpose and, second, how burdensome is that state action to the targeted businesses." *Id.* at 426. Again, I find the trial court order puzzling because it cited *Ace Speedway* in its decision but then determined that it was bound by *Hope—A Women's Cancer Center, P.A. v. State*, 203 N.C. App. 593 (2010), a Court of Appeals decision that predates *Ace Speedway* and that didn't examine either of the two "fact-specific questions" that our precedent requires courts to address.

Simply put, this case involves challenging, unanswered constitutional questions that require a reviewing court to do more than simply regurgitate a bunch of quotations from past decisions. I see little in the trial court's order that will assist us and thus believe this Court would benefit from the wisdom of our colleagues on the Court of Appeals. I therefore concur in the Court's decision to allow the Court of Appeals to render a decision in this appeal in the ordinary course.

Justices BERGER and BARRINGER join in this concurrence.

STATE v. HOLLARS

[389 N.C. 671 (2026)]

STATE OF NORTH CAROLINA	From N.C. Court of Appeals 18-932, 24-929
v.	
JACK HOWARD HOLLARS	From Watauga 13CRS2118-21

No. 324A19-2

ORDER OF THE COURT

Defendant's counsel has notified this Court that defendant passed away on 28 October 2025. This occurred after the Court of Appeals filed its opinion in this matter on 15 October 2025, but before that court's mandate issued on 4 November 2025. Defendant's counsel has filed a petition for writ of certiorari seeking appropriate relief in these circumstances. In light of defendant's death, this Court allows the petition for the limited purpose of ordering that the action be abated.

When a defendant dies while his appeal is pending, the entire proceeding abates ab initio. *State v. Dixon*, 265 N.C. 561, 562 (1965). Accordingly, the Court of Appeals' decision and the trial court's judgment entered against Mr. Hollars are hereby vacated. The State's motion to dismiss the petition for writ of certiorari is dismissed as moot.

By order of the Court this the 17th day of June 2026.

WITNESS my hand and the seal of the Supreme Court of North Carolina, this 19th day of June 2026.

s/Grant E. Buckner

Grant E. Buckner
Clerk of the Supreme Court

STATE OF NORTH CAROLINA	From N.C. Court of Appeals 23-890, 23-890-2
v.	
GRANT LEE HUNT	From Robeson 19CR050642-770, 22CR01726-770

No. 280A24-2

ORDER OF THE COURT

Upon careful consideration of the defendant's Petition for Discretionary Review filed on 8 April 2026, the Court hereby denies the defendant's petition and leaves the decision of the Court of Appeals undisturbed but without precedential value. *See Mole' v. City of Durham*, 384 N.C. 78 (2023) (stating that a decision of the Court of Appeals is undisturbed but without precedential value).

By order of the Court this the 17th day of June 2026.

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 19th day of June 2026.

s/Grant E. Buckner

Grant E. Buckner
Clerk of the Supreme Court

STATE v. SHOE

[389 N.C. 673 (2026)]

STATE OF NORTH CAROLINA	From N.C. Court of Appeals P25-838
v.	
KENNETH MICHAEL SHOE	From Alamance 21CR056436-000

No. 58P26

ORDER OF THE COURT

The State's petition for writ of certiorari filed 16 February 2026 is allowed. The State's petition for writ of supersedeas filed 16 February 2026 is allowed for the limited purpose of preserving the mandates from this Court's 20 February 2026 order: the Alamance County District Attorney's Office is permitted to represent the State in the prosecution of matters pertaining to the pretrial release, detention, or custody of the defendant including the prosecution of any motion to revoke bond, and parties may be permitted to engage in any remaining discovery if otherwise appropriate, but the District Attorney's office is prohibited from participating in a plea hearing or calling this matter for trial. The provision directing the Conference of District Attorneys to take action remains stayed. The petition for writ of supersedeas is otherwise denied and the trial court's order barring the District Attorney's office from communicating or using the allegedly privileged information remains in effect.

By order of the Court this the 17th day of June 2026.

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 19th day of June 2026.

s/Grant E. Buckner

Grant E. Buckner
Clerk of the Supreme Court

DISPOSITION OF PETITIONS FOR DISCRETIONARY REVIEW UNDER G.S. 7A-31

19 JUNE 2026

3P18-2	Jason Carmona v. Kelly Martin, et al.	Plt's Pro Se Petition for Writ of Certiorari	Dismissed
3P26	Stephanie Welbourne, in her individual capacity, and Stephanie Welbourne, in her capacity as the Administratrix of the Estate of Zachary Thomas Welbourne v. Knox Barbee and Geromy Barbee	1. Plt's Motion for Temporary Stay (COA25-325) 2. Plt's Petition for Writ of Supersedeas 3. Defs' Motion to Dissolve Temporary Stay 4. Plt's PDR Under N.C.G.S. § 7A-31 5. Plt's Petition in the Alternative for Writ of Certiorari to Review Decision of the COA	1. Allowed **01/06/2026** 2. Allowed 3. Denied 4. Allowed 5. Dismissed as moot
7P26-2	Mary Sun v. Tracey Milcarek	Plt's Pro Se Motion for Rehearing/ Reconsideration	Dismissed
12P26	Julio Simuel, Administrator of the Estate of Tiyquasha Simuel, and Julio Simuel, Administrator of the Estate of K'yson Kawhi Finley v. N.C. Administrative Office of the Courts	1. Plt's Notice of Appeal Based Upon a Constitutional Question (COA25-142) 2. Plt's PDR Under N.C.G.S. § 7A-31 3. Def's Motion to Dismiss Appeal 4. Def's Conditional PDR Under N.C.G.S. § 7A-31	1. --- 2. Denied 3. Allowed 4. Dismissed as moot
13P26	W. Noah Reynolds v. Devotion Family, LLC; and Brook E. Reynolds	1. Def's (Brook E. Reynolds) PDR Under N.C.G.S. § 7A-31 (COA24-711) 2. Def's (Brook E. Reynolds) Motion for Temporary Stay 3. Def's (Brook E. Reynolds) Petition for Writ of Supersedeas 4. Plt's PDR Under N.C.G.S. § 7A-31 5. Def's (Brook E. Reynolds) Motion to Amend PDR by Submission of Additional Authorities	1. Denied 2. Allowed **01/20/2026** Dissolved 3. Denied 4. Denied 5. Allowed
17P25-2	State v. Holly Wen Chiann Yeh	1. Def's Pro Se Motion to Reopen 2. Def's Pro Se Motion to Dismiss Charges 3. Def's Pro Se Motion to Sanction Prosecutors for Misconduct 4. Def's Pro Se Motion to Sanction Tara Seidel Due to Deceive to All Judges, Bar Association, and Jury 5. Def's Pro Se Motion to Dismiss Charge and Seek Expungement	1. Dismissed **03/20/2026** 2. Dismissed **03/20/2026** 3. Dismissed **03/20/2026** 4. Dismissed **03/20/2026** 5. Dismissed **03/20/2026**

DISPOSITION OF PETITIONS FOR DISCRETIONARY REVIEW UNDER G.S. 7A-31

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		6. Def's Pro Se Motion to Prosecute Victim 7. Def's Pro Se Motion to Remove and Prosecute 8 Prosecutors 8. Def's Pro Se Emergency Motion to Dismiss Charge Due to Lower Court Failed to Wait	6. Dismissed **03/20/2026** 7. Dismissed **03/20/2026** 8. Dismissed **03/20/2026**
19P26	State v. David Raymond Richards	1. Def's Motion for Temporary Stay (COA24-1037) 2. Def's Petition for Writ of Supersedeas (COA24-1037) 3. Def's PDR Under N.C.G.S. § 7A-31	1. Allowed **01/13/2026** Dissolved 2. Denied 3. Denied
21P26	The Law Office of Robert Forquer PLLC, Interpleader Plaintiff v. Susan Arcuri, Jonathan Bernard Renegar, and Stephanie Ann Vincent, Interpleader Defendants and Susan Arcuri, Jonathan Bernard Renegar, and Stephanie Ann Vincent, Crossclaim Plaintiffs and Crossclaim Defendant	Crossclaim Def's (Susan Arcuri) PDR Under N.C.G.S. § 7A-31 (COA25-522)	Denied
22P26	State v. Christopher Dobbins	Def's Pro Se PDR Under N.C.G.S. § 7A-31 (COA25-23)	Denied
24P25-5	Jeremy Keith Fincannon v. Chief Justice Newby	Petitioner's Pro Se Petition for Writ of Certiorari to Review Other Decision	Dismissed **03/26/2026** **Newby, C.J., recused**
24P25-6	Jeremy Keith Fincannon v. Warden Jamel James	Petitioner's Pro Se Petition for Writ of Habeas Corpus	Denied **06/15/2026**
24P26	State v. Kevin Paul Vebber	Def's PDR Under N.C.G.S. § 7A-31 (COA25-137)	Denied

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25P26	Laney Fox, Nakia Hooks, Ashley Woodroffe, Michaela Dixon, Sydney Wilson, Tamerah Brown, Kennedy Weigt, Korbin Tipton, and Fatou Sall v. Grahm Smith	Plts' PDR Prior to a Determination by the COA (COA26-27)	Denied
27P26	State v. William Charles Waters	1. Def's PDR Under N.C.G.S. § 7A-31 (COA25-175) 2. Def's Petition for Writ of Certiorari to Review Decision of the COA	1. Denied 2. Denied
28P26	Rebecca Edwards v. Strata Solar, LLC	1. Def's PDR Under N.C.G.S. § 7A-31 (COA25-605) 2. Def's Motion for Temporary Stay 3. Def's Petition for Writ of Supersedeas	1. Denied 2. Allowed **03/11/2026** Dissolved 3. Denied
30A26	State v. Durward Wilson Leggett, III	1. Def's Notice of Appeal Based Upon a Constitutional Question (COA25-288) 2. State's Motion to Dismiss Appeal	1. --- 2. Allowed
35P26	Southland National Insurance Corporation in Liquidation, Bankers Life Insurance Company in Rehabilitation, Colorado Bankers Life Insurance Company in Rehabilitation, and Southland National Reinsurance Corporation in Rehabilitation v. Greg E. Lindberg, Global Growth Holdings, LLC, Edwards Mill Asset Management, LLC, New England Capital, LLC, and Private Bankers Life and Annuity Co., Ltd.	1. Defs' PDR Under N.C.G.S. § 7A-31 (COA25-167) 2. Defs' (Greg E. Lindberg and Global Growth Holdings, LLC) Motion for Temporary Stay 3. Defs' (Greg E. Lindberg and Global Growth Holdings, LLC) Petition for Writ of Supersedeas	1. Denied 2. Denied **02/19/2026** 3. Denied

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38P26	US Right to Know v. The University of North Carolina at Chapel Hill	Plt's PDR Under N.C.G.S. § 7A-31 (COA25-420)	Denied
41P26-3	State v. Julia Catherine Stanley	1. Def's Pro Se Petition for Writ of Habeas Corpus 2. Def's Pro Se Motion for Juries	1. Denied **06/02/2026** 2. Dismissed **06/02/2026**
43P26	David Peace & Kim Peace v. Jeffrey Talmadge Willis as Executor of the Estate of Sybil Bridges Willis	Def's Pro Se PDR Under N.C.G.S. § 7A-31 (COA25-361)	Denied
44P26	LDI Shallotte 179 Holdings, LLC v. State of North Carolina Department of Environmental Quality, Division of Energy, Mineral, and Land Resources	1. Def's Motion for Temporary Stay (COA24-443) 2. Def's Petition for Writ of Supersedeas 3. Plt's PDR Under N.C.G.S. § 7A-31 4. Def's Notice of Appeal Based Upon a Constitutional Question 5. Def's PDR Under N.C.G.S. § 7A-31	1. Allowed **02/10/2026** 2. Allowed 3. Allowed 4. Dismissed *ex mero motu* 5. Allowed
46P23-2	State v. David Raeford Tripp, Jr.	1. Def's Pro Se Petition for Writ of Certiorari to Review Order of Superior Court, Brunswick County 2. Def's Pro Se Motion to Proceed *In Forma Pauperis*	1. Dismissed 2. Allowed
46A26	Patrick Whalen individually, and Cu Sobe, LLC, Plaintiffs v. Michael M. Tuttle, Defendant ——————— Michael M. Tuttle, individually and derivatively, Third-Party Plaintiff v. Kristin Whalen et al., Third-Party Defendants	Def's Motion for Sanctions	Denied
47P26	State v. Issac Mason	1. Def's Pro Se Petition for Writ of Certiorari to Review Order of the COA (COAP25-968) 2. Def's Pro Se Motion for Temporary Stay 3. Def's Pro Se Petition for Writ of Supersedeas	1. Dismissed 2. Dismissed **02/25/2026** 3. Dismissed

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		4. Def's Pro Se Emergency Petition for Writ of Certiorari to Review Order of the COA	4. Dismissed
		5. Def's Pro Se Motion to Proceed *In Forma Pauperis*	5. Allowed
		6. Def's Pro Se Motion for Leave to File Amended Brief	6. Dismissed as moot
48P26	State v. Terrance Lamont Williams	Def's PDR Under N.C.G.S. § 7A-31 (COA24-838)	Denied
53P25-2	Anthony Dove v. Nash Corrections Warden Talena Lee, N.C. Department of Safety Chief Medical Officer Dr. Arthur Campbell	Petitioner's Pro Se Petition for Writ of Mandamus	Denied
53P26	Joshua H. Stein, in his official capacity as Governor of the State of North Carolina, Plaintiff v. Destin C. Hall, in his official capacity as Speaker of the North Carolina House of Representatives; Philip E. Berger, in his official capacity as President Pro Tempore of the North Carolina Senate, Defendants and Bradford B. Briner, in his official capacity as Treasurer of the State of North Carolina, Intervenor	1. Plt's Notice of Appeal Based Upon a Constitutional Question (COA25-745)	1. ---
		2. Plt's PDR Under N.C.G.S. § 7A-31	2. Allowed
		3. Defs' Motion to Dismiss Appeal	3. Allowed
		4. Defs' Conditional PDR Under N.C.G.S. § 7A-31	4. Allowed
55A26	Tanger Properties Limited Partnership v. ACE American Insurance Company and Liberty Mutual Fire Insurance Company	1. Defs' Motion for Temporary Stay	1. Allowed **02/17/2026** Dissolved
		2. Defs' Petition for Writ of Supersedeas	2. Denied
		3. Def's (ACE American Insurance Company) Motion to Admit Andrew Levine Pro Hac Vice	3. Allowed
		4. Def's (ACE American Insurance Company) Motion to Admit Zoheb Noorani Pro Hac Vice	4. Allowed
		5. Def's (ACE American Insurance Company) Motion to Admit Richard B. Goetz Pro Hac Vice	5. Allowed

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		6. Def's (Liberty Mutual Fire Insurance Company) Motion to Admit Melissa D'Alelio Pro Hac Vice	6. Allowed
		7. Def's (Liberty Mutual Fire Insurance Company) Motion to Admit Sandra Badin Pro Hac Vice	7. Allowed
		8. Plt's Motion to Dismiss Appeal	8. Allowed
		9. Plt's Motion to Admit Robert J. Gilbert Pro Hac Vice	9. Allowed
		10. Plt's Motion to Admit Margaret A. Upshaw Pro Hac Vice	10. Allowed
		11. Plt's Motion to Admit Samuel A. Barrows Pro Hac Vice	11. Dismissed as moot
		12. Defs' Petition for Writ of Certiorari to Review Decision of Business Court	12. Denied
		13. Plt's Motion to Admit John M. Wilson Pro Hac Vice	13. Allowed
58P26	State v. Kenneth Michael Shoe	1. State's Motion for Temporary Stay (COAP25-838)	1. Special Order **02/20/2026**
		2. State's Petition for Writ of Supersedeas	2. Special Order
		3. State's Petition for Writ of Certiorari to Review Order of Superior Court, Alamance County	3. Special Order
		4. State's Motion for Order to Transmit ex parte Singagliese Report and Sealed Motions	4.
59P26	In re Challenge of Jerry Bryan Reinoehl to the Candidacy of Margot Dupre	1. Petitioner's Pro Se Notice of Appeal Based Upon a Constitutional Question (COAP26-117)	1. ---
		2. Petitioner's Pro Se PDR Under N.C.G.S. 7A-31	2. Special Order **06/16/2026**
		3. Petitioner's Pro Se Motion for Temporary Stay	3. Special Order **06/16/2026**
		4. Petitioner's Pro Se Petition for Writ of Supersedeas	4. Special Order **06/16/2026**
		5. Respondent's Motion to Dismiss Appeal	5. Special Order **06/16/2026**
		6. Jay N. Delancy's Pro Se Motion for Leave to File Amicus Brief	6. Special Order **06/16/2026**

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61P25	Lisa Higgins, Administrator of the Estate of Michael S. Higgins v. Omar Romero Mendoza, in his individual capacity, and Brandon Cesar Cruz, in his individual capacity	1. Def's (Omar Romero Mendoza) Motion for Temporary Stay (COA24-140) 2. Def's (Omar Romero Mendoza) Petition for Writ of Supersedeas 3. Def's (Omar Romero Mendoza) PDR Under N.C.G.S. § 7A-31	1. Allowed **02/21/2025** Dissolved 2. Denied 3. Denied
61A26	Fred Smith Company, et al. v. Virginia Reid Smith	Parties' Joint Motion to Stay the Appeal and Hold in Abeyance All Deadlines	Allowed **04/06/2026**
64P26-2	Charles Dexter Johnson v. Robert Peter Dowd, II, Jonathan Cater Dowd, Whitaker's Holdings, LLC, Gary D. Bullard, Kimberly Ann Bullard, GDBKB, LLC, William M. Van O'Linda, Jr., Rex A. Whitaker, Van Camp & Van O'Linda, PLLC, Aaron C. Low, Stott Hollowell Windham & Stancil, PLLC, and First Citizens Bank & Trust Company	1. Plt's Pro Se Emergency Motion to Supplement Petition for Immediate Writ of Supersedeas and Stay (COAP26-144) 2. Plt's Pro Se Motion for Emergency Order to the Honorable Judge Stephen C. Stokes Prohibiting Entry of Proposed Orders Pending Resolution of this Petition 3. Plt's Pro Se Petition for Writ of Supersedeas 4. Plt's Pro Se Motion to Reinstate Plt's Notice of Lis Pendens Filed December 12, 2025, and Prohibit Any Property Transfer Pending Resolutions of No. 64P26 and No. P26-144 5. Plt's Pro Se Motion to Issue a Writ of Prohibition Barring Judge Stokes from Further Proceedings in Case No. 25CV002561-620 Until No. 64P26 and No. P26-144 are Resolved 6. Plt's Pro Se Motion for Reassignment of Case No. 25CV002561-620 to a Different Superior Court Judge 7. Plt's Pro Se Motion for Emergency Directive	1. Dismissed as moot **03/19/2026** 2. Dismissed as moot **03/19/2026** 3. Dismissed **03/19/2026** 4. Dismissed as moot **03/19/2026** 5. Dismissed **03/19/2026** 6. Dismissed **03/19/2026** 7. Dismissed **03/19/2026**

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64P26-3	Charles Dexter Johnson v. Robert Peter Dowd, II, Jonathan Cater Dowd, Whitaker's Holdings, LLC, Gary D. Bullard, Kimberly Ann Bullard, GDBKB, LLC, William M. Van O'Linda, Jr., Rex A. Whitaker, Van Camp & Van O'Linda, PLLC, Aaron C. Low, Stott Hollowell Windham & Stancil, PLLC, and First Citizens Bank & Trust Company	1. Plt's Pro Se Supplemental Emergency Petition for Supervisory Authority 2. Plt's Pro Se Motion for 60-Day Extension of Time to File Notice of Appeal	1. Dismissed **03/27/2026** 2. Dismissed **03/27/2026**
64P26-4	Charles Dexter Johnson v. Robert Peter Dowd, II, Jonathan Cater Dowd, Whitaker's Holdings, LLC, Gary D. Bullard, Kimberly Ann Bullard, GDBKB, LLC, William M. Van O'Linda, Jr., Rex A. Whitaker, Van Camp & Van O'Linda, PLLC, Aaron C. Low, Stott Hollowell Windham & Stancil, PLLC, and First Citizens Bank & Trust Company	1. Plt's Pro Se Motion for Reconsideration of Clerk's Dismissal Order of March 27, 2026 2. Plt's Pro Se Motion to be Placed Before Chief Justice Paul Martin Newby for Personal Review 3. Plt's Pro Se Motion for Stay of April 15, 2026 Appeal Deadline from Void March 16, 2026 Orders of Judge Stokes	1. Dismissed **04/01/2026** 2. Dismissed **04/01/2026** 3. Dismissed **04/01/2026**
64P26-5	Charles Dexter Johnson v. Robert Peter Dowd, II, Jonathan Cater Dowd, Whitaker's Holdings, LLC, Gary D. Bullard, Kimberly Ann Bullard, GDBKB, LLC, William M. Van O'Linda, Jr., Rex A. Whitaker, Van Camp & Van O'Linda, PLLC, Aaron C. Low, Stott Hollowell Windham & Stancil, PLLC, and First Citizens Bank & Trust Company	1. Plt's Pro Se Petition for Direct Review by Chief Justice Paul Martin Newby 2. Plt's Pro Se Motion to Vacate Clerk's Dismissal Order of April 1, 2026 3. Plt's Pro Se Motion for Stay of the April 15, 2026 Deadline to Perfect the Appeal	1. Dismissed **04/10/2026** 2. Dismissed **04/10/2026** 3. Dismissed **04/10/2026**

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64P26-6	Charles Dexter Johnson v. Robert Peter Dowd, II, Jonathan Cater Dowd, Whitaker's Holdings, LLC, Gary D. Bullard, Kimberly Ann Bullard, GDBKB, LLC, William M. Van O'Linda, Jr., Rex A. Whitaker, Van Camp & Van O'Linda, PLLC, Aaron C. Low, Stott Hollowell Windham & Stancil, PLLC, and First Citizens Bank & Trust Company	1. Plt's Pro Se Motion for Emergency Stay of All Deadlines 2. Plt's Pro Se Motion to Confirm that April 1, 2026 Tender of Filings to Clerk of Superior Court Constitutes Constructive Filing as of that Date 3. Plt's Pro Se Motion to Direct Court of Appeals to Refer April 7, 2026, Motions to a Three-Judge Panel for Emergency Consideration 4 4. Plt's Pro Se Motion to Declare that the Gatekeeper Order Cannot Lawfully Bar Appellant's Compliance with a COA Directive 5. Plt's Pro Se Motion in the Alternative to Refer Petition to a Single Justice for Emergency Consideration of the Stay Request Under N.C. RAP Rule 23	1. Dismissed **04/21/2026** 2. Dismissed **04/21/2026** 3. Dismissed **04/21/2026** 4. Dismissed **04/21/2026** 5. Dismissed **04/21/2026**
69P26	State v. Charles Brandon Gibbon	1. Def's Motion for Temporary Stay (COA25-415) 2. Def's Petition for Writ of Supersedeas (COA25-415) 3. Def's PDR Under N.C.G.S. § 7A-31	1. Allowed **03/03/2026** Dissolved 2. Denied 3. Denied
70P25-3	Robert Calvin Craig, Jr. v. Jennifer S. Holl, M.D.	1. Plt's Pro Se Petition for Writ of Certiorari to Review Order of the COA 2. Plt's Pro Se Motion for Court to Accept Exceptional Circumstances in this Case	1. Denied 2. Dismissed
70P26	Latoya Prather v. Alfred Holt, III	1. Def's Pro Se Notice of Appeal Based Upon a Constitutional Question (COA25-1176) 2. Def's Pro Se PDR Under N.C.G.S. § 7A-31 3. Def's Pro Se Petition in the Alternative for Writ of Certiorari to Review Order of the COA 4. Def's Pro Se Motion for Temporary Stay 5. Def's Pro Se Emergency Petition for Writ of Supersedeas	1. Dismissed *ex mero motu* **03/23/2026** 2. Denied **03/23/2026** 3. Denied **03/23/2026** 4. Denied **03/23/2026** 5. Denied **03/23/2026**
71P26	State v. Kenneth DeKeyser, Jr.	Def's Pro Se Petition for Writ of Certiorari to Review Order of Superior Court, Johnston County	Dismissed

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72P26	State v. Milton Ray Horton, Jr.	1. Def's PDR Under N.C.G.S. § 7A-31 (COA24-566)	1. Denied
		2. Def's Petition for Writ of Certiorari to Review Order of the COA	2. Denied
		3. Def's Petition for Writ of Certiorari to Review Order of Superior Court, Wake County	3. Denied
76P26	Charles Udoh v. Walmart Supercenter #3371	1. Plt's Pro Se Motion to Waive Filing Fee and for Printing Record and Processing on Appeal	1. Allowed
		2. Plt's Pro Se Motion for Extension of Time to Perfect Appeal	2. Dismissed
77P26	Mary Paula Zaytoun Steele v. Kevin I. Kenna, Jeffrey A. Kenna, Patrick E. Kenna, Peter L. Kenna, Thomas X. Kenna, Martha Zaytoun, Clare K. Zaytoun, Taylor M. Zaytoun, Reeves M. Zaytoun, Mary L. Zaytoun Berne, Henry S. Zaytoun, III, Jeremiah R. Zaytoun, Christian S. Zaytoun, Haynes Zaytoun, Blaise Waters, Becket Waters, Alexander Penny, Elena Penny, Mark Foster, Jr., Martha Lee Brissette, Augustus Howard, Charles N. Howard, Katie Allare, Gregory Allare, John Mickelson, Ashley Steele, Danny Steele, Brigid Steele, and Henry S. Zaytoun, Jr., as guardian for Margaret A. Zaytoun, and Rachel L. Zaytoun	Petitioner's PDR Under N.C.G.S. § 7A-31 (COA25-530)	Allowed

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78P26	Teresa Lane Waters v. State of North Carolina Judicial Standards Commission	1. Plt's Pro Se Motion for Extension of Time to File Notice of Appeal and PDR 2. Plt's Pro Se Motion for Writ of Supersedeas for Motion to Show Good Cause 3. Plt's Pro Se Motion for Extension of Time to File PDR 4. Plt's Pro Se Motion to Show Good Cause 5. Plt's Pro Se Motion to for Extension of Time to File PDR 6. Plt's Pro Se Motion to Show Good Cause 7. Plt's Pro Se Motion for Extension of Time to File PDR 8. Plt's Pro Se Motion to Proceed *In Forma Pauperis* 9. Plt's Pro Se Motion to Bypass and Show Good Cause 10. Plt's Pro Se Motion for Extension of Time to File PDR 11. Plt's Pro Se PDR Under N.C.G.S. § 7A-31	1. Dismissed 2. Denied 3. Dismissed 4. Dismissed 5. Dismissed 6. Dismissed 7. Dismissed 8. Allowed 9. Dismissed 10. Dismissed 11. Denied
79P17-3	State v. Jimmy Allen Roberts	Def's Pro Se Petition for Writ of Certiorari to Review Order of COA (COAP24-330)	Dismissed
81P26	Daniel Hubert Ross v. N.C. Department of Adult Corrections f/k/a N.C. Department of Public Safety and N.C. State Bureau of Investigation	1. Plt's Pro Se Petition for Writ of Certiorari to Review Order of COA 2. Plt's Pro Se Motion to Proceed *In Forma Pauperis* 3. Plt's Pro Se Petition for Writ of Certiorari to Review Decision of the COA 4. Plt's Pro Se PDR Under N.C.G.S. § 7A-31	1. Denied 2. Allowed 3. Denied 4. Dismissed
82P25	State v. Cynthia Anne Driscol Fearns	1. State's Motion for Temporary Stay (COA23-650) 2. State's Petition for Writ of Supersedeas 3. State's PDR Under N.C.G.S. § 7A-31	1. Allowed **03/26/2025** 2. Allowed 3. Allowed

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82P26	State v. Quentin Jackson	1. Def's PDR Under N.C.G.S. § 7A-31 (COA25-67)	1. Denied
		2. Def's Petition in the Alternative for Writ of Certiorari to Review Decision of the COA	2. Denied
		3. Def's Motion to Supplement and Amend Petition for Writ of Certiorari	3. Dismissed as moot
83P26	Oscar Jose Taveras v. Someria Graves	Def's Petition for Writ of Certiorari to Review Order of the COA (COAP25-728)	Denied
84P26	James E. Price v. Dustin Yuengling, et al.	1. Plt's Pro Se Motion for Entry of Nunc Pro Tunc Filing Date (COA24-522)	1. Dismissed
		2. Plt's Pro Se Notice of Appeal Based Upon a Constitutional Question	2. Dismissed
		3. Plt's Pro Se PDR under N.C.G.S. § 7A-31	3. Dismissed
		4. Plt's Pro Se Petition in the Alternative for Writ of Certiorari to Review Decision of the COA	4. Denied
		5. Plt's Pro Se Motion to Proceed *In Forma Pauperis*	5. Allowed
85P24-5	Paul Yongo Odindo v. Mary Terry Kanyi	1. Plt's Pro Se Motion to Stay DVPO	1. Dismissed
		2. Plt's Pro Se Petition for Writ of Certiorari	2. Dismissed
		3. Plt's Pro Se Petition for Writ of Mandamus	3. Dismissed
		4. Plt's Pro Se Petition for Writ of Prohibition	4. Dismissed
		5. Def's Motion for Filing Restrictions Under Rule 34	5. Denied **Riggs, J., recused**
85P26	State v. Dewayne Montray Blount	Def's Pro Se Motion for Appeal	Dismissed
87P26	Town of Fairview v. Michael Macon	1. Def's Motion for Temporary Stay (COAP26-202)	1. Allowed **03/27/2026**
		2. Def's Petition for Writ of Supersedeas	2.
88P26	Natalie Lane v. Mark William Farino	1. Def's Pro Se PDR Under N.C.G.S. § 7A-31 (COA26-33)	1. Denied
		2. Plt's Motion for Sanctions	2. Denied
		3. Def's Pro Se Motion to Strike or Disregard Response to PDR	3. Dismissed as moot

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89P26	State v. James Henry Rogers	1. Def's Pro Se PDR Under N.C.G.S. § 7A-31 (COA25-337) 2. Def's Pro Se Petition in the Alternative for Writ of Certiorari to Review Decision of the COA 3. Def's Pro Se Motion to Consider PDR Timely Filed	1. Dismissed 2. Denied 3. Dismissed
90P26	Charles Gregory Cummings, Petitioner v. N.C. State Board of Elections, Respondent and Allen G. Dial, Intervenor-Respondent	1. Petitioner's Motion for Temporary Stay (COA25-833) 2. Petitioner's Petition for Writ of Supersedeas	1. Denied **03/31/2026** 2. Dismissed **05/28/2026**
91P26	Cori McKee-Whipple v. David Whipple	1. Def's Motion for Temporary Stay (COA25-201) 2. Def's Petition for Writ of Supersedeas 3. Def's PDR Under N.C.G.S. § 7A-31	1. Allowed **03/24/2026** Dissolved 2. Denied 3. Denied
92P26	County of Durham, by and through Durham DSS, *ex rel.* Shantel Deans v. Ramone A. Council	1. Def's Pro Se Motion for Temporary Stay (COA26-137) 2. Def's Pro Se Petition for Writ of Supersedeas 3. Def's Pro Se PDR Under N.C.G.S. § 7A-31 4. Def's Pro Se Motion to Proceed *In Forma Pauperis* 5. Def's Pro Se Motion to Waive Costs and Fees 6. Def's Pro Se Motion to Deem Service Complete	1. Denied **04/17/2026** 2. Denied **04/17/2026** 3. Denied **04/17/2026** 4. Allowed **04/17/2026** 5. Allowed **04/17/2026** 6. Dismissed **04/21/2026**
93P26	Sadye Paez v. William Pettis	1. Def's Motion for Temporary Stay (COA25-168) 2. Def's Petition for Writ of Supersedeas 3. Def's PDR Under N.C.G.S. 7A-31	1. Allowed **03/26/2026** 2. 3.
94P26	State v. Jerry Locklear	1. Def's Notice of Appeal Based Upon a Constitutional Question (COA25-287) 2. Def's PDR Under N.C.G.S. § 7A-31 3. State's Motion to Dismiss Appeal (COA25-287)	1. --- 2. Denied 3. Allowed

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98P26	Camille Bryant, Administrator of the Estate of James R. Baggott v. N.C. Department of Health and Human Services	Plt's PDR Under N.C.G.S. § 7A-31 (COA25-377)	Denied
99P26	In the Matter of D.S., K.R., J.R., S.R.	1. Petitioner and Guardian ad Litem's PDR Under N.C.G.S.§ 7A-31 (COA25-448) 2. Respondent-Mother's Conditional PDR Under N.C.G.S. § 7A-31	1. Special Order 2. Denied
100P26	State v. Rashawn Harwell	Def's PDR Under N.C.G.S. § 7A-31 (COA25-348)	Denied
101P26	Keith Williams v. Custodian of Public Records N.C. Department of Justice	1. Plt's Pro Se Motion to Certify Appeal for Transfer to the North Carolina Supreme Court 2. Plt's Pro Se Motion for Leave to File Reply to Response to Motion to Certify Appeal for Transfer to the North Carolina Supreme Court	1. Dismissed 2. Dismissed
102P26	Derrick Michael Allen, Sr. v. John H. Baker, PSC, Wake County Detention Center, Judge Elkins, Ofc. T. Joyner, Ofc. R. Smith, Lauren Freedmon, Mayor Jenet Cowell, N.C. Department of Justice, Jeff Jackson, Governor Josh Stein	Plt's Pro Se Motion for Appeal (COAP26-82)	Dismissed
104P26	C&P Home Solutions, LLC v. Jason Amen Hetep	1. Def's Pro Se Motion for Temporary Stay 2. Def's Pro Se Petition for Writ of Supersedeas	1. Denied **04/01/2026** 2. Denied **04/01/2026**
107P26	In the Matter of M.G.C. and L.S.C.	Respondent-Parents' Pro Se PDR Under N.C.G.S. § 7A-31 (COA25-427)	Denied

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108P26	Angela N. Gray, Administrator of the Estate of Cash Walker Ray Whitaker v. Guilford County d/b/a Guilford County Department of Social Services (GCDSS) and Guilford County Department of Health and Human Services (GCDHHS)	1. Plt's PDR Prior to a Determination by the COA 2. Def's Conditional PDR Prior to a Determination by the COA (COA26-270)	1. Denied 2. Denied
109P26	Danah Reese Flynn v. James Benjamin Flynn	Def's Motion for Temporary Stay (COA25-842)	Dismissed as moot **03/31/2026**
110P26	State v. Thomas Davis Ingram, Jr.	1. Def's Motion for Temporary Stay (COA25-83) 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 **04/08/2026** 2. 3. 4. 5.
111P26	State v. John Ruben Butler, Jr.	1. State's Motion for Temporary Stay (COA25-9) 2. State's Petition for Writ of Supersedeas 3. State's PDR Under N.C.G.S. § 7A-31 4. Defendant's Conditional PDR Under N.C.G.S. § 7A-31	1. Allowed **04/07/2026** 2. 3. 4.
113P26	State v. Shantina Nicole Alston	1. Def's Motion for Temporary Stay (COA25-291) 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 **04/08/2026** 2. 3. 4. 5.
116P26	AMH N.C. Properties, LP v. Antonio Smith	1. Def's Pro Se Emergency Motion for Stay of Writ of Possession Pending Review of PDR (COAP25-803) 2. Def's Pro Se PDR Under N.C.G.S. § 7A-31	1. Dismissed **04/13/2026** 2. Dismissed **04/13/2026**

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117P26	In the Matter of T.M.	Respondent-Mother's Pro Se PDR Under N.C.G.S. § 7A-31 (COA25-534)	Denied
118P22-2	Timothy Shane Hoffman v. Marissa Curry	1. Def's Pro Se Emergency Motion for Temporary Stay 2. Def's Pro Se Petition for Writ of Supersedeas	1. Denied **04/24/2026** 2. Denied **04/24/2026**
119P26	Fletcher Hospital Inc. d/b/a AdventHealth Hendersonville, Petitioner v. N.C. Department of Health and Human Services, Division of Health Service Regulation, Health Care Planning & Certificate of Need Section, Respondent and MH Mission Hospital, LLLP, Respondent-Intervenor	1. Petitioner's PDR Under N.C.G.S. § 7A-31 (COA25-658) 2. Petitioner's Motion to Stay	1. 2. Allowed **04/13/2026**
123P25	State v. Martin Alexander Robinson	Def's PDR Under N.C.G.S. § 7A-31 (COA24-147)	Denied
123P26	In the Matter of the Foreclosure of a Deed of Trust Executed by Natasha Collins, Dated January 28, 2011 and Recorded in Book 6660 at Page 84 in the Durham County Public Registry, North Carolina	1. Respondent's Pro Se Motion for Temporary Stay 2. Respondent's Pro Se Petition for Writ of Supersedeas 3. Respondent's Pro Se Petition in the Alternative for Writ of Certiorari 4. Respondent's Pro Se Motion to Waive Any Supersedeas Bond or Set Just and Proper Security	1. Denied **04/22/2026** 2. Denied **04/22/2026** 3. Denied **04/22/2026** 4. Dismissed **04/22/2026**
124P23-2	State v. Jeffery Dean Tucker	1. Def's Pro Se Petition for Writ of Certiorari to Review Order of Superior Court, Catawba County 2. Def's Pro Se Motion to Appoint Counsel 3. Def's Motion to Withdraw Petition Without Prejudice	1. --- 2. Special Order **03/18/2026** 3. Allowed **04/21/2026**
124P26	State v. Godiet Corral	Def's Pro Se PDR Under N.C.G.S. § 7A-31 (COA25-298)	Denied

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126P26	State v. William Alfalla	1. Def's Pro Se Notice of Appeal Based Upon a Constitutional Question (COAP24-458)	1. Dismissed
		2. Def's Pro Se Motion for Extension of Time to File Any Further Legal Proceedings	2. Dismissed
		3. Def's Pro Se PDR Under N.C.G.S. § 7A-31	3. Dismissed
		4. Def's Pro Se Motion to Proceed *In Forma Pauperis*	4. Allowed
		5. Def's Pro Se Motion to Appoint Counsel	5. Dismissed as moot
127P26	State v. Alexander Pone	Def's Pro Se Motion to Dismiss	Dismissed
128P26	IH3 Property North Carolina LP v. Shanta Swinton	1. Def's Pro Se Motion for Temporary Stay (COA26-280)	1. Dismissed **04/22/2026**
		2. Def's Pro Se Emergency Petition for Writ of Supersedeas	2. Dismissed **04/22/2026**
		3. Def's Pro Se Motion to Proceed *In Forma Pauperis*	3. Allowed **04/22/2026**
130P26	Franklin C. Smith v. Sheriff Steve Bizzel and Johnston County Jail Administrators	Petitioner's Pro Se Petition for Writ of Habeas Corpus	Dismissed as moot **04/24/2026**
131P16-35	State v. Somchai Noonsab	1. Def's Pro Se Motion to Dismiss (COAP16-103)	1. Dismissed
		2. Def's Pro Se Motion to Waive All Costs and Fees	2. Allowed
		3. Def's Pro Se Motion for 15 Million Dollars in Lost Wages and Tax Credits and Transfer to Work Release	3. Dismissed
136P25	State v. Marvin Daniels, III	1. Def's Motion for Temporary Stay (COA24-429)	1. Allowed **06/18/2025** Dissolved
		2. Def's Petition for Writ of Supersedeas	2. Denied
		3. Def's PDR Under N.C.G.S. § 7A-31	3. Denied
136PA22-2	State v. Wendy Dawn Lamb Hicks	Def's Motion for Appropriate Relief	Dismissed
137P26	State v. Reginald Underwood Fullard	Def's Pro Se Petition for Writ of Habeas Corpus	Denied **04/27/2026**
139P26	Megan Howle v. John Paul Howle	1. Def's Pro Se Emergency Motion for Temporary Stay (COA26-241, P26-88)	1. Denied **04/28/2026**
		2. Def's Pro Se Petition for Writ of Supersedeas	2. Denied **04/28/2026**

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140P26	In the Matter of H.A.M.	1. Respondent-Mother's Pro Se PDR Under N.C.G.S. § 7A-31 (COA25-538) 2. Respondent-Mother's Pro Se Petition in the Alternative for Writ of Certiorari to Review Decision of the COA	1. Dismissed 2. Denied
142P26	Robert Ward MacIntyre v. Jeffrey Delannoy, Breanna Delannoy, Depot One, LLC, and Grandview BB LLC	1. Plt's Pro Se PDR Under N.C.G.S. § 7A-31 (COA26-287) 2. Plt's Pro Se Motion to Proceed as Indigent	1. Denied 2. Allowed
144A25	David R. Derkits, M.D. v. Pitt County Memorial Hospital, Incorporated; East Carolina University; Board of Governors of the University of North Carolina; and Richard W. Stair, M.D., in his official capacity and his individual capacity	1. Plt's Notice of Appeal Based Upon a Constitutional Question (COA24-158) 2. Defs' Motion to Dismiss Appeal (COA24-158)	1. --- 2. Allowed
144P26	State v. Deney Nicole Krystel Serieu Joseph	1. Def's Pro Se Notice of Appeal Based Upon a Constitutional Question (COA26-103) 2. Def's Pro Se PDR Under N.C.G.S. § 7A-31 3. State's Motion to Dismiss Appeal 4. State's Motion to Dismiss PDR 5. Def's Pro Se Motion for Temporary Stay 6. Def's Pro Se Petition for Writ of Supersedeas	1. --- 2. Denied **05/15/2026** 3. Allowed **05/15/2026** 4. Denied **05/15/2026** 5. Denied **05/15/2026** 6. Denied **05/15/2026**
146P26	Hamza Tebib v. Damon J. Chetson, in his official and individual capacities; Neal E. Reatter, in her official and individual capacity; Robert J. Harris, in his official and individual capacities; Tucker (sued under fictitious name-full name unknown); State of North Carolina	Plt's Pro Se PDR Under N.C.G.S. § 7A-31 (COAP26-107)	Denied

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147P26	State v. Paul Benthall, III	Def's Pro Se Notice of Appeal Based Upon a Constitutional Question (COA25-781)	Dismissed *ex mero motu*
148P26	In the Matter of A.C.	1. Respondent-Mother's Notice of Appeal Based Upon a Constitutional Question (COA25-727) 2. Respondent-Mother's PDR Under N.C.G.S. § 7A-31 3. Guardian ad Litem's Motion to Dismiss Appeal	1. --- 2. Denied 3. Allowed
150P25	In the Matter of Maria Esther Salgado	1. Respondent's Motion for Temporary Stay (COA24-757) 2. Respondent's Petition for Writ of Supersedeas 3. Respondent's PDR Under N.C.G.S. § 7A-31	1. Allowed **06/26/2025** 2. Allowed 3. Allowed
151P25	In the Matter of J.A.S.F., J.A.S.F., M.S.S-F.	1. Petitioner and Guardian ad Litem's PDR Under N.C.G.S. § 7A-31 (COA24-1006) 2. Petitioner and Guardian ad Litem's Motion for Temporary Stay 3. Petitioner and Guardian ad Litem's Petition for Writ of Supersedeas	1. Allowed 2. Allowed **06/27/2025** 3. Allowed
152P26	State v. Denzel Lamont Evans and Keh-Lyl Littlejohn	1. Def's (Denzel Lamont Evans) Notice of Appeal Based Upon a Constitutional Question (COA25-736) 2. Def's (Denzel Lamont Evans) PDR Under N.C.G.S. § 7A-31 3. State's Motion to Dismiss Appeal	1. --- 2. Denied 3. Allowed
154P26	State v. James Arthur Jones, III	1. Def's Pro Se PDR Under N.C.G.S. § 7A-31 (COA25-660) 2. Def's Pro Se Motion for Extension of Time to File PDR 3. Def's Pro Se PDR Under N.C.G.S. § 7A-31	1. Dismissed 2. Dismissed as moot 3. Dismissed
155P26	State v. Antonio Sharraid Posey	Def's Pro Se PDR Under N.C.G.S. § 7A-31 (COA25-862)	Denied

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156P26	RestorePro Reconstruction, Inc., Plaintiff, v. Geraldine F. Simpson, Defendant and Counterclaim Plaintiff, v. RestorePro Reconstruction, Inc. and State Farm Fire and Casualty Company, Counterclaim Defendants	1. Third-Party Def's (State Farm Fire and Casualty Company) Motion for Temporary Stay (COA24-923) 2. Third-Party Def's (State Farm Fire and Casualty Company) Petition for Writ of Supersedeas 3. Third-Party Def's (State Farm Fire and Casualty Company) PDR Under N.C.G.S. § 7A-31 4. Def's and Counterclaim Plt's Motion for Temporary Stay 5. Def's and Counterclaim Plt's Petition for Writ of Supersedeas 6. Def's and Counterclaim Plt's PDR Under N.C.G.S. § 7A-31 (COA24-923)	1. Allowed **05/22/2026** 2. 3. 4. Allowed **05/22/2026** 5. 6.
158P26	In the Matter of A.T.T., A.T.W., A.T.T., A.T.W., A.T.T.	Respondent-Mother's Pro Se PDR Under N.C.G.S. § 7A-31 (COA25-812)	Denied
160P26	Samuel Clement Wendt v. Warden Ben Anderson, Janet Dexter, and Monila Bond	Petitioner's Pro Se Motion for Enlargement of Time to File Petition for Certiorari (COAP25-186)	Dismissed
161P26	Christine Hutten v. Specialized Loan Servicing LLC; Fay Servicing LLC; Federal Home Loan Mortgage Corporation (Freddie Mac); U.S. Bancorp/US Bank, US Bank National Trust Association, VRMGT Asset Trust; Bank of America, NA	Plt's Pro Se Notice of Appeal Based Upon a Constitutional Question (COA26-203)	Dismissed *ex mero motu*
162P26	State v. Moses Damian Casti Gonzalez	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 Superior Court, Nash County 3. Def's Pro Se Motion to Proceed *In Forma Pauperis* 4. Def's Pro Se Motion to Appoint Counsel 5. Def's Pro Se Motion for Appropriate Relief	1. Denied **05/22/2026** 2. Dismissed **05/22/2026** 3. Allowed **05/22/2026** 4. Dismissed as moot **05/22/2026** 5. Dismissed **05/22/2026**

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163P26	State v. Derrick N. Reid	1. Def's Pro Se Petition for Writ of Certiorari to Review Order of Superior Court, Davidson County 2. Def's Pro Se Motion for Suspension of Rules	1. Dismissed 2. Denied
172P26	State v. Joshua Warren McDowell	1. Def's Pro Se Petition for Writ of Certiorari to Review Decision of the COA (COA25-993) 2. Def's Pro Se Motion for Temporary Stay 3. Def's Pro Se Petition for Writ of Supersedeas	1. Dismissed **06/08/2026** 2. Denied **06/08/2026** 3. Denied **06/08/2026**
173PA23-2	Southland National Insurance Corporation in Rehabilitation, Bankers Life Insurance Company in Rehabilitation, Colorado Bankers Life Insurance Company in Rehabilitation, and Southland National Reinsurance Corporation in Rehabilitation v. Greg E. Lindberg, Global Growth Holdings, Inc. f/k/a Academy Association, Inc., Edwards Mill Asset Management, LLC, New England Capital, LLC, and Private Bankers Life and Annuity Co., Ltd.	1. Defs' (Greg E. Lindberg and Global Growth Holdings, LLC) PDR Under N.C.G.S. § 7A-31 (COA25-183) 2. Defs' (Greg E. Lindberg and Global Growth Holdings, LLC) Motion for Temporary Stay 3. Defs' (Greg E. Lindberg and Global Growth Holdings, LLC) Petition for Writ of Supersedeas	1. Denied 2. Denied **02/13/2026** 3. Denied
175PA24-2	State v. Demistrus McKinley Ingram	1. Def's Notice of Appeal Based Upon a Constitutional Question (COA23-748-2) 2. Def's PDR Under N.C.G.S. § 7A-31 3. State's Motion to Dismiss Appeal	1. --- 2. Denied 3. Allowed
177P26	State v. Greg Mark Gentry	1. State's Motion for Temporary Stay (COA25-22) 2. State's Petition for Writ of Supersedeas	1. Allowed **06/04/2026** 2.

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182P25	In the Matter of J.B.P.	1. Respondent's Motion for Temporary Stay (COA23-269) 2. Respondent's Petition for Writ of Supersedeas 3. Respondent's PDR Under N.C.G.S. § 7A-31 4. Respondent's Motion to Dismiss Appeal	1. Allowed **07/22/2025** Special Order 2. Special Order 3. Special Order 4. Special Order
185P26	State v. Theric Arnold Holt	1. State's Motion for Temporary Stay (COA25-560) 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 5. Def's Motion to Dismiss Appeal	1. Allowed **06/08/2026** 2. 3. 4. 5.
186P25	State v. Daniel Ryan Sutton	1. Def's Notice of Appeal Based Upon a Constitutional Question (COA24-524) 2. Def's PDR Under N.C.G.S. § 7A-31 3. State's Motion to Dismiss Appeal	1. --- 2. Denied 3. Allowed
187P26	State v. William Lavar Brawley	Def's Pro Se Motion for Extension of Time Where Time Has Expired	Denied
188P26	State v. Jonas Lee Eller	1. Def's Pro Se Motion to Extend Deadline 2. Def's Pro Se Petition for Writ of Habeas Corpus	1. Dismissed **06/09/2026** 2. Denied **06/09/2026**
189P25	James Hatcher v. Jeremy R. Rodriguez, individually, and Jeremy R. Rodriguez, in his capacity as a member of Laurinburg Police Department, and City of Laurinburg	1. Defs' PDR Under N.C.G.S. § 7A-31 (COA23-1108) 2. Parties' Joint Motion to Withdraw PDR	1. --- 2. Special Order **04/17/2026**
195P25	State v. Josalyn Rahshell Upchurch	Def's PDR Under N.C.G.S. § 7A-31 (COA24-460)	Denied
199P25-2	Elizabeth Ann Davis and Jan A. Davis v. Lenoir County and James E. Rouse	1. Petitioners' Motion for Temporary Stay (COAP25-150) 2. Petitioners' Petition for Writ of Supersedeas 3. Petitioners' Petition for Writ of Certiorari to Review Order of the COA	1. Denied **09/12/2025** 2. Denied 3. Denied

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200P26-1	Kelly Pelletier v. Brian Chism, Sheriff	Plt's Pro Se Petition for Writ of Habeas Corpus	Denied **06/17/2026**
201P24	Mike Hale v. William Eric MacLeod, M.D., Jonathan Page, and Green Farms Company, LLC	Plt's PDR Under N.C.G.S. § 7A-31 (COA23-285)	Special Order
209P25	Camp Carefree, Inc., Micris, LLC, Brandon W. Leebrick and Amy E. Leebrick, Donald Dohm and Christine Dohm, David Forbes and Wendy Forbes, Mary Lea Anderson, Jeffrey Darren Scott, and Jill N. Meier v. Rockingham County, Julie J. Sanders, Ellen J. Whitesell, Linda J. Carmichael, Susan J. Murray f/k/a Susan J. Jones, and N.C. Development Holdings, LLC	Def's (Rockingham County) PDR Under N.C.G.S. § 7A-31 (COA24-666)	Allowed **Berger, J., recused**
210A24-2	Charles Schwab & Co., Inc. v. Lauren Elizabeth Marilley and Peter Joseph Marilley	1. Def's (Peter Joseph Marilley) Motion for Temporary Stay 2. Def's (Peter Joseph Marilley) Petition for Writ of Supersedeas 3. Def's (Lauren Elizabeth Marilley) Motion for Leave to File Response in Opposition to Petition for Writ of Supersedeas	1. Allowed **05/14/2026** 2. 3.
213P25	State v. Norman Louis Ammerman	Def's PDR Under N.C.G.S. § 7A-31 (COA24-456)	Denied
214P25	State v. Roger Lee Davis	Def's PDR Under N.C.G.S. § 7A-31 (COA24-871)	Denied
217P25	David Cason v. Ronari Davell Galloway	1. Plt's PDR Under N.C.G.S. § 7A-31 (COA23-1169) 2. Plt's Motion to Deem PDR as Timely Filed 3. Plt's Motion in the Alternative to Consider PDR as Petition for Writ of Certiorari	1. Denied 2. Denied 3. Allowed

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221P25	In the Matter of Craig Edward Marshall Reynolds	1. Petitioner's Pro Se Petition for Writ of Certiorari to Review Decision of District Court, Mecklenburg County 2. Petitioner's Pro Se Petition for Writ of Prohibition 3. Petitioner's Pro Se Motion for Oral Argument Pursuant to N.C. Rules of Appellate Procedure 28(a)(1) and 30(f)	1. Denied 2. Dismissed 3. Dismissed as moot
231P25	State v. Delarrio Laquone Goode	Def's PDR Under N.C.G.S. § 7A-31 (COA24-697)	Denied
234P23-2	State v. Elwood Joseph Cephus	Def's Pro Se Motion for PDR (COAP25-794)	Denied
235PA23-2	Thurman Crofton Savage v. N.C. Department of Transportation	1. Petitioner's PDR Under N.C.G.S. § 7A-31 (COA22-673) 2. Petitioner's Motion for Temporary Stay 3. Petitioner's Petition for Writ of Supersedeas 4. Petitioner's Motion to Amend PDR 5. Respondent's Conditional PDR Under N.C.G.S. § 7A-31 6. Petitioner's Petition for Writ of Certiorari to Review Order of the COA	1. Denied 2. Allowed **12/29/2025** Dissolved 3. Denied 4. Allowed 5. Dismissed as moot 6. Denied
248PA24	State v. Kedrick Daquane Thomas	The Court's Order for Supplemental Briefing	Special Order **05/27/2026**
254P25	State v. Damien Alejandro Quiterio-Morrison	Def's PDR Under N.C.G.S. § 7A-31 (COA24-955)	Denied
258P25	State v. Travis Ray Creed	1. State's Motion for Temporary Stay (COA25-184) 2. State's Petition for Writ of Supersedeas 3. State's PDR Under N.C.G.S § 7A-31	1. Allowed **10/09/2025** 2. Allowed 3. Allowed

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259P25	Debra Gail M. Funderburk, Widow and Administratrix of the Estate of Marion Ralph Funderburk, Deceased Employee v. Continental Tire the Americas, Employer, Self-Insured, and General Tire, Inc./ Gencorp, Inc., Employer, Liberty Mutual Insurance Company, Carrier	Defs' (Continental Tire the Americas and Liberty Mutual Insurance Company) PDR Under N.C.G.S. § 7A-31 (COA24-192)	Denied **Dietz, J., recused**
260PA22-2	Jay Singleton, D.O., and Singleton Vision Center, P.A. v. N.C. Carolina Department of Health and Human Services; Josh Stein, Governor of the State of North Carolina, in his official capacity; Devdutta Sangvai, North Carolina Secretary of Health and Human Services, in her official capacity; Phil Berger, President Pro Tempore of the North Carolina Senate, in his official capacity; and Destin Hall, Speaker of the North Carolina House of Representatives, in his official capacity	1. Plts' PDR Prior to Determination by the COA (COA26-230) 2. Renée D. Flaherty's Motion to Be Admitted Pro Hac Vice	1. Denied 2. Dismissed as moot
260P24-2	State v. Alexander Thomas	Def's Pro Se Petition for Writ of Certiorari to Review Order of Superior Court, Robeson County	Denied
260P25	Lynn Morrison, Widow and Executrix of the Estate of David K. Morrison, Deceased Employee v. Continental Tire the Americas, Employer, Self-Insured	Def's PDR Under N.C.G.S. § 7A-31 (COA24-206)	Denied **Dietz, J., recused**

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261P25	Carl Eugene Dry, II, Employee v. Continental Tire the Americas, Employer, Self-Insured, Duke Energy Carolinas, Employer (Sedgwick CMS, Third-Party Administrator)	Defs' PDR Under N.C.G.S. § 7A-31 (COA24-332)	Denied **Dietz, J., recused**
262P25	Martha Jacobs Hunt, Widow and Executrix of the Estate of Homer Hunt, Deceased Employee v. Continental Tire the Americas, Employer, Self-Insured	Def's PDR Under N.C.G.S. § 7A-31 (COA24-340)	Denied **Dietz, J., recused**
263P25	Julia Lanham, Administratrix of the Estate of Johnnie Arthur Jones, Deceased Employee v. Continental Tire the Americas, Employer, Self-Insured, and General Tire, Inc./ Gencorp, Inc., Employer, Liberty Mutual Insurance Company, Carrier	Defs' (Continental Tire the Americas and Liberty Mutual Insurance Company) PDR Under N.C.G.S. § 7A-31 (COA24-355)	Denied **Dietz, J., recused**
264PA24	State v. Chauncey Jamal Slade	North Carolina Conference of District Attorneys' Motion for Leave to Participate in Oral Argument	Special Order **05/21/2026**
264P25	Ernest Daniel Rice, Employee v. Continental Tire the Americas, Employer, Self-Insured	Def's PDR Under N.C.G.S. § 7A-31 (COA24-295)	Denied **Dietz, J., recused**

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265P25	Corey A. Stewart, Son and Administratrix of the Estate of Charles Stewart, Jr., Deceased Employee v. Continental Tire the Americas, Employer, Self-Insured, and General Tire, Inc./ Gencorp, Inc., Employer, Liberty Mutual Insurance Company, Carrier	Defs' (Continental Tire the Americas and Liberty Mutual Insurance Company) PDR Under N.C.G.S. § 7A-31 (COA24-284)	Denied **Dietz, J., recused**
266P25	Charles E. Gibson, Jr., Personal Representative of the Estate of Charles E. Gibson, Sr., Deceased Employee v. Continental Tire the Americas, Employer, Self-Insured, and General Tire, Inc./ Gencorp, Inc., Employer, Liberty Mutual Insurance Company, Carrier	Defs' (Continental Tire the Americas and Liberty Mutual Insurance Company) PDR Under N.C.G.S. § 7A-31 (COA24-467)	Denied **Dietz, J., recused**
267P24	State v. Bryant R. Little	Def's PDR Under N.C.G.S. § 7A-31 (COA23-410)	Denied
267P25	Barbara Bigham, Executrix of the Estate of Leroy Bigham, Deceased Employee v. Continental Tire the Americas, Employer, Self-Insured, and General Tire, Inc./ Gencorp, Inc., Employer, Liberty Mutual Insurance Company, Carrier	Defs' (Continental Tire the Americas and Liberty Mutual Insurance Company) PDR Under N.C.G.S. § 7A-31 (COA24-280)	Denied **Dietz, J., recused**

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268P25	Kenneth M. Smyth, Special Administrator of the Estate of Leopold Taperek, Deceased Employee v. Continental Tire the Americas, Employer, Self-Insured	Def's PDR Under N.C.G.S. § 7A-31 (COA24-368)	Denied **Dietz, J., recused**
269P24-2	Theodore Justice v. Fred's Towing & Transport	1. Plt's Pro Se Motion for Rehearing 2. Plt's Pro Se PDR Under N.C.G.S. § 7A-31 3. Plt's Pro Se Motion to Proceed *In Forma Pauperis* 4. Plt's Pro Se Motion to Supplement PDR with Post-Filing Developments 5. Plt's Pro Se Motion for Supervisory Relief 6. Plt's Pro Se Motion to Substitute Corrected PDR 7. Plt's Pro Se Motion to Correct Material Misrepresentation of Record in Appellee's Opposition	1. Dismissed 2. Denied 3. Allowed 4. Dismissed as moot 5. Dismissed as moot 6. Dismissed as moot 7. Dismissed
269P25	Harold E. Scott, Employee v. Continental Tire the Americas, Employer, Self-Insured, Liberty Mutual Ins. Co., Prior Carrier	Defs' PDR Under N.C.G.S. § 7A-31 (COA24-307)	Denied **Dietz, J., recused**
270P25	William Wesley Huffstetler, Employee v. Continental Tire the Americas, Employer, Self-Insured, and General Tire, Inc./ Gencorp, Inc., Employer, Liberty Mutual Insurance Company, Carrier	Defs' (Continental Tire the Americas and Liberty Mutual Insurance Company) PDR Under N.C.G.S. § 7A-31 (COA24-488)	Denied **Dietz, J., recused**

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271P25	Karen Denise Blue Gilbert, Administrator of the Estate of Gilbert Billy Larson Blue, Deceased Employee v. Continental Tire the Americas, Employer, Self-Insured, and General Tire, Inc./ Gencorp, Inc., Employer, Liberty Mutual Insurance Company, Carrier	Defs' (Continental Tire the Americas and Liberty Mutual Insurance Company) PDR Under N.C.G.S. § 7A-31 (COA24-477)	Denied **Dietz, J., recused**
275P25	State v. Demont Maurice Forte	1. Def's Pro Se Petition for Writ of Certiorari to Review Decision of the COA (COA24-950) 2. Def's Pro Se Petition for Writ of Certiorari to Review Order of Superior Court, Mecklenburg County	1. Denied 2. Dismissed
280A24-2	State v. Grant Lee Hunt	Def's PDR Under N.C.G.S. § 7A-31 (COA23-890-2)	Special Order
281P06-21	Joseph E. Teague, Jr., P.E., C.M. v. N.C. Department of Transportation, J.E. Boyette, Secretary	Plt's Pro Se Motion to Vacate and for Rehearing Based on New Constitutional Authority	Dismissed
292P25	State v. Michael Jared Medley	1. Def's PDR Under N.C.G.S. § 7A-31 (COA24-543) 2. State's Motion to Deem Response Timely Filed	1. Denied 2. Allowed
304P20-8	Clyde Junior Meris v. Leslie Cooley Dismukes	Petitioner's Pro Se Petition for Writ of State Habeas Corpus	Denied **03/27/2026**
305P16-3	State v. Jeremy Daniel Russom	Def's Pro Se Petition for Writ of Certiorari to Review Order of Superior Court, Watauga County	Dismissed **Berger, J., recused**
307P25	Kathleen M. Camacho, Employee v. N.C. Department of Adult Correction f/k/a North Carolina Department of Public Safety, Employer, Self-Insured (CCMSI, Third-Party Administrator)	Plt's PDR Under N.C.G.S. § 7A-31 (COA24-636)	Denied

DISPOSITION OF PETITIONS FOR DISCRETIONARY REVIEW UNDER G.S. 7A-31

19 JUNE 2026

309P15-8	State v. Reginald Underwood Fullard	Def's Pro Se Motion for Reversal of Both Convictions	Dismissed
316P25	State v. Brian Branham	Def's PDR Under N.C.G.S. § 7A-31 (COA24-927)	Allowed
318P25	State v. Marcus Allen McClinton	Def's PDR Under N.C.G.S. § 7A-31 (COA24-1096)	Denied
324A19-2	State v. Jack Howard Hollars	1. Def's Petition for Writ of Certiorari to Review Decision of the COA (COA24-929) 2. State's Motion to Dismiss Petition for Writ of Certiorari	1. Special Order 2. Special Order
331A19	State v. David Isaiah Godwin	1. Def's Motion for Extension of Time to Seek Judicial Settlement 2. Def's Motion to Designate Judge to Oversee Judicial Settlement 3. Def's Motion for Extension of Time to Seek Judicial Settlement 4. Def's Motion for Extension of Time to Seek Judicial Settlement 5. Def's Motion to Toll Deadline to Seek Judicial Settlement of Record Due to Current Impossibility of Compliance with Appellate Rule 11(c) 6. Def's Renewed Motion to Designate Judge to Oversee Judicial Settlement	1. Allowed **04/02/2026** 2. Allowed **05/26/2026** 3. Allowed **05/06/2026** 4. Allowed **05/18/2026** 5. Allowed **05/26/2026** 6. Dismissed as moot **05/26/2026**
331P25	State v. Joseph Nunez	Def's PDR Under N.C.G.S. § 7A-31 (COA24-1061)	Denied
333P25	Joshua H. Stein, in his official capacity as Governor of the State of North Carolina v. Philip E. Berger, in his official capacity as President Pro Tempore of the North Carolina Senate, et al.	1. Legislative Def's Notice of Appeal Based Upon a Constitutional Question (COA24-440) 2. Legislative Def's PDR Under N.C.G.S. § 7A-31 3. Plt's Motion to Dismiss Appeal 4. Plt's Conditional PDR Under N.C.G.S. § 7A-31	1. --- 2. Allowed 3. Allowed 4. Allowed
337P25	State v. Dwight Judd Jr.	1. Def's Notice of Appeal Based Upon a Constitutional Question (COA24-190) 2. Def's PDR Under N.C.G.S. § 7A-31 3. State's Motion to Dismiss Appeal	1. --- 2. Denied 3. Allowed

DISPOSITION OF PETITIONS FOR DISCRETIONARY REVIEW UNDER G.S. 7A-31

19 JUNE 2026

343P25	In re Theodore Justice, Petitioner	1. Petitioner's Pro Se Petition for Writ of Mandamus 2. Petitioner's Pro Se Motion to Proceed as a Poor Person and Waive All Applicable Fees	1. Dismissed 2. Allowed
351P25	Jerry W. McRoy; Kenneth A. Jones; Marcus J. Karachun; Jeffrey S. Thomas; Sandy K. Phillips; North Carolina Division of Sons of Confederate Veterans, Inc.; Rose L. Quasebarth; Margaret G. Wilson; and the United Daughters of the Confederacy North Carolina Division, Inc. v. Pitt County, North Carolina	1. Plts' Notice of Appeal Based Upon a Constitutional Question (COA25-30) 2. Plts' PDR Under N.C.G.S. § 7A-31	1. Dismissed *ex mero motu* 2. Denied
353P25	Ptolemy T. Allport v. Simon J. Allport	1. Def's PDR Under N.C.G.S. § 7A-31 (COA24-369) 2. Def's Petition in the Alternative for Writ of Certiorari to Review Decision of the COA	1. Denied 2. Denied
356P25	Kathryn A. Hayner, Harry T. Jones, III, William P. Jones, Margaret Jones Berry, and Nancy Jones Fox v. Town of Montreat, North Carolina and Mountain Retreat Association, Inc.	1. Petitioners' PDR Under N.C.G.S. § 7A-31 (COA24-316) 2. Respondent's (Mountain Retreat Association, Inc.) Conditional PDR Under N.C.G.S. § 7A-31	1. Allowed 2. Allowed
358P25	Fletcher Hospital, Inc. d/b/a AdventHealth Hendersonville and AdventHealth Asheville, Inc. v. N.C. Department of Health and Human Services, Division of Health Service Regulation, Health Care Planning & Certificate of Need and MH Mission Hospital, LLLP, Intervenor	1. Petitioners' PDR Under N.C.G.S. § 7A-31 (COA24-994) 2. Petitioners' Motion to Stay	1. 2. Allowed **04/13/2026**

DISPOSITION OF PETITIONS FOR DISCRETIONARY REVIEW UNDER G.S. 7A-31

19 JUNE 2026

360PA25	State v. Wayne Douglas Wilson	Def's Motion for Expedited Review Pursuant to Rule 2 (COA24-581)	Dismissed as moot **04/30/2026**
367P25	Anshi Hospitality Charlotte LLC v. Whitne Robinson	Def's Pro Se PDR Under N.C.G.S. § 7A-31 (COA25-156)	Denied
369P25	State v. Deysi Martinez	Def's PDR Under N.C.G.S. § 7A-31 (COA24-1082)	Denied
371P25	State v. Jimmy Jamison	1. Def's Notice of Appeal Based Upon a Constitutional Question (COA24-1031) 2. Def's PDR Under N.C.G.S. § 7A-31 3. State's Motion to Dismiss Appeal 4. State's Conditional PDR Under N.C.G.S. § 7A-31	1. --- 2. Denied 3. Allowed 4. Dismissed as moot
387P04-2	State v. Antjuan Antonio Williams	Def's Pro Se PDR Under N.C.G.S. § 7A-31(COA25-568)	Denied
417P14-3	State v. Melvin Lee Luckey	1. Def's Pro Se Motion for Reconsideration (COAP26-274) 2. Def's Pro Se Petition for Writ of Certiorari to Review Order of the COA	1. Dismissed 2. Dismissed
425A21-1	Hoke County Board of Education, et al., Plaintiffs and Charlotte-Mecklenburg Board of Education, Plaintiff-Intervenor and Rafael Penn, et al., Plaintiff-Intervenors v. State of North Carolina and the State Board of Education, Defendants and Charlotte-Mecklenburg Board of Education, Realigned Defendant	1. Plts' Notice of Appeal Based Upon a Constitutional Question (COAP21-511) 2. Plts' PDR Under N.C.G.S. § 7A-31 3. Plts' Petition in the Alternative for Writ of Certiorari to Review Order of the COA 4. Plt-Intervenors' (Rafael Penn, et al.) Notice of Appeal Based Upon a Constitutional Question 5. Plt-Intervenors' (Rafael Penn, et al.) PDR Under N.C.G.S. § 7A-31 6. Plt-Intervenors' (Rafael Penn, et al.) Petition for Writ of Certiorari to Review Order of COA 7. Controller's Motion to Dismiss Appeals 8. Controller's Conditional Petition for Writ of Supersedeas 9. Legislative-Intervenors' Motion to Dismiss Appeals 10. Legislative-Intervenors' Renewed Motion for Leave to Brief Additional Issues	1. Dismissed as moot 2. Dismissed as moot 3. Dismissed as moot 4. Dismissed as moot 5. Dismissed as moot 6. Dismissed as moot 7. Dismissed as moot 8. Dismissed as moot 9. Dismissed as moot 10. Dismissed as moot

DISPOSITION OF PETITIONS FOR DISCRETIONARY REVIEW UNDER G.S. 7A-31

19 JUNE 2026

		11. Legislative-Intervenors' Renewed Conditional Petition for Writ of Certiorari	11. Dismissed as moot
425A21-3	Hoke County Board of Education, et al. v. State of North Carolina et al.	Plts' Petition for Rehearing (COA23-788)	Denied **05/15/2026**
459P13-2	State v. John Edward Kuplen	1. Def's Pro Se Motion for Notice of Appeal (COAP25-960)	1. Dismissed
		2. Def's Pro Se Motion for PDR	2. Denied
		3. Def's Pro Se Motion for Indigent Status	3. Allowed
		4. Def's Pro Se Motion for Suspension of Rules	4. Denied
		5. Def's Pro Se Motion for Appointment of Appellate Counsel	5. Dismissed as moot
468P13-4	State v. Donald Jay Young	1. Def's Pro Se Petition for Writ of Certiorari to Review Order of the COA (COAP25-949)	1. Dismissed
		2. Def's Pro Se Motion to Proceed *In Forma Pauperis*	2. Allowed
492A99-3	State v. Ted Anthony Prevatte	Def's Pro Se Motion to Order I.D.S. to Appoint Substitute Counsel	Dismissed

AMENDMENTS TO THE RULES AND REGULATIONS OF THE NORTH CAROLINA STATE BAR:

RULES GOVERNING DISCIPLINE AND DISABILITY RULES

The following amendments to the Rules and Regulations and the Certificate of Organization of the North Carolina State Bar were duly adopted by the Council of the North Carolina State Bar at its quarterly meeting on April 24, 2026.

BE IT RESOLVED by the Council of the North Carolina State Bar that the Rules and Regulations of the North Carolina State Bar as set forth in 27 N.C.A.C. 01B, Section .0100, Rule .0120, *Rules Governing Discipline and Disability Rules*, be amended as shown in the following attachment:

27 N.C.A.C. 01B, Section .0100, Rule .0120,
Reciprocal Discipline and Disability Proceedings

NORTH CAROLINA
WAKE COUNTY

I, Peter Bolac, Secretary-Treasurer of the North Carolina State Bar, do hereby certify that the foregoing amendments to the Rules and Regulations of the North Carolina State Bar were duly adopted by the Council of the North Carolina State Bar at a regularly called meeting on April 24, 2026.

Given over my hand and the Seal of the North Carolina State Bar, this the 28th day of April, 2026.

s/Peter Bolac
Peter Bolac, Secretary

After examining the foregoing amendments to the Rules and Regulations of the North Carolina State Bar 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 17th day of June, 2026.

s/Paul Newby
Paul Newby, Chief Justice

On this date, the foregoing amendments to the Rules and Regulations of the North Carolina State Bar were entered upon the minutes of the Supreme Court. The amendment 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 17th day of June, 2026.

s/Riggs, J.
For the Court

27 NCAC 01B .0120 is amended without notice pursuant to G.S. 84-23, 150B-21.21 as follows:

27 NCAC 01B .0120 RECIPROCAL DISCIPLINE AND DISABILITY PROCEEDINGS

(a) Definitions - For purposes of this rule, the following definitions apply:

(1) Another jurisdiction/other jurisdiction: Any state entity responsible for regulating the legal profession, state or federal court, or tribal court of any Indian tribe officially recognized by the United States. North Carolina state courts are not "other jurisdictions" for purposes of this rule, as they have concurrent jurisdiction with the North Carolina State Bar over matters of lawyer discipline and disability.

(2) Reciprocal action: The imposition of identical or substantially similar discipline or disability status in this state as was imposed in another jurisdiction

(b) Duty to Report ~~Notice to Secretary~~ - ~~All members who have been disciplined in any state or federal court for a violation of the Rules of Professional Conduct in effect in such state or federal court or who have been transferred to disability inactive status or its equivalent by any state of federal court will~~ A North Carolina lawyer who has been disciplined by another jurisdiction for a violation of the Rules of Professional Conduct or their equivalent in that jurisdiction, or who has been transferred to disability inactive status or its equivalent by another jurisdiction, shall inform the ~~secretary~~ State Bar Counsel of such action in writing no later than 30 days after entry of the order of discipline or transfer ~~to disability inactive status~~. Failure to make the report required by ~~in~~ this paragraph may subject the ~~member~~ lawyer to professional discipline ~~as set out in~~ pursuant to Rule 8.3 of the ~~Revised~~ North Carolina Rules of Professional Conduct.

(c~~b~~) ~~Administration~~ Preliminary Review; Notice of Reciprocal ~~Discipline~~ Proceedings - ~~Except as provided in Paragraph (c) of this Rule which applies to disciplinary proceedings in certain federal courts, reciprocal discipline and disability proceedings will be administered as follows: (1) Notice and Challenge -~~ Upon receipt of ~~a certified copy of an order demonstrating that a member has been disciplined or transferred~~ another jurisdiction's order disciplining a North Carolina lawyer or transferring the lawyer to disability inactive status or its equivalent ~~in another jurisdiction, state or federal~~, the chairperson of the Grievance Committee will ~~forthwith issue a notice directed to the member containing a copy~~

~~of the order from the other jurisdiction and an order directing that the member inform the committee within 30 days from service of the notice of any claim by the member that the imposition of the identical discipline or an order transferring the member to disability inactive status in this state would be unwarranted and the reasons therefor. This notice is to be served on the member in accordance with the provisions of Rule 4 of the North Carolina Rules of Civil Procedure~~ conduct a preliminary review of the order. If based on this review, the chairperson determines that (i) the misconduct established by the other jurisdiction's order warrants substantially different discipline in North Carolina or (ii) the discipline imposed by the other jurisdiction is not of a type permitted by these rules, the chairperson will direct the Office of Counsel to substantively investigate the misconduct or disability described in the other jurisdiction's order rather than following the reciprocal discipline procedures set forth in this rule. In all other cases, the Chair will issue a notice of reciprocal proceedings to the lawyer. The notice shall:

(1) be served in accordance with Rule 4 of the North Carolina Rules of Civil Procedure;

(2) enclose a copy of the other jurisdiction's discipline or disability order;

(3) direct the lawyer, within 30 days after service of the notice, to submit to the Office of Counsel a written objection setting forth any grounds upon which the lawyer contends reciprocal action is unwarranted; and

(4) inform the lawyer that reciprocal action will be deemed accepted if the lawyer does not submit a written objection within 30 days after service of the notice.

(d) Administration of Reciprocal Discipline and Disability Proceedings - Following service of the notice described in subsection (c), reciprocal proceedings arising from another jurisdiction's discipline or disability order shall be administered as follows:

(1~~2~~) Effect of Stay - If the ~~discipline or transfer order imposed in the~~ other jurisdiction's discipline or disability order has been stayed, any reciprocal ~~discipline or transfer to disability inactive status imposed in this state~~ action under this rule will be deferred until ~~such~~ the stay ~~expires~~is lifted.

(2~~3~~) ~~Imposition of Discipline - Upon the expiration of 30 days from service of the notice issued pursuant to the provisions of Rule .0120(b)(1) above,~~ Acceptance of Reciprocal Action - If the lawyer affirmatively consents to reciprocal action or does not, within 30 days of service of the notice, submit a

written objection stating the grounds upon which the lawyer contends reciprocal action is unwarranted, the chairperson of the Grievance Committee will ~~impose the identical discipline or enter an order transferring the member to disability inactive status unless the Grievance Committee concludes:~~ enter an order imposing discipline or disability status that is identical or substantially similar to that imposed by the other jurisdiction.

(3) Objection to Reciprocal Action - If the lawyer submits a written objection within the 30-day response period stating the grounds upon which the lawyer contends reciprocal action is unwarranted, the Grievance Committee shall determine whether any of the following grounds for not taking reciprocal action are established:

(A) ~~that~~ the procedure in the other jurisdiction was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; ~~or~~

(B) there was such an infirmity of proof establishing the misconduct or disability as to give rise to the clear conviction that the Grievance Committee ~~could~~ cannot, consistent with its duty, accept the other jurisdiction's findings as final ~~the conclusion on that subject;~~ ~~or~~

(C) ~~that~~ the imposition of ~~the same~~ identical or substantially similar discipline would result in grave injustice; ~~or~~

(D) ~~that~~ the misconduct established warrants substantially different discipline in this state; ~~or~~

(E) the discipline imposed by the other jurisdiction is not of a type permitted by these rules; or

(F~~E~~) ~~that~~ in the case of a transfer to disability inactive status, the reason for the original transfer ~~to disability inactive status~~ no longer exists.

(4) ~~Dismissal - Where the Grievance Committee determines that any of the elements listed in Rule .0120(b)(3) above exist, the committee will dismiss the case or direct that a complaint be filed.~~ Notice, Materials, & Opportunity to Appear - The process set forth in 27 N.C.A.C.1B.0113(e) shall apply to a lawyer whose written objection to reciprocal action will be considered by the Grievance Committee.

(5) ~~Effect of Final Adjudication in Another Jurisdiction - If the elements listed in Rule .0120(b)(3) above are found not to exist, a~~

~~final adjudication in another jurisdiction that an attorney has been guilty of misconduct or should be transferred to disability inactive status will establish the misconduct or disability for purposes of reciprocal discipline or disability proceedings in this state.~~ Basis for Committee Decision - The Committee's determination under Subparagraph (d)(3) of this Rule shall be based on the lawyer's written objection including any supporting documentation, any additional information provided by the Office of Counsel, and any information provided during the lawyer's opportunity to address the Committee.

(6) Disposition Upon Committee Consideration of Objection

(A) If the Grievance Committee determines that any of the grounds listed in Subparagraph (d)(3) of this Rule exist, the Committee may: (i) dismiss the matter, (ii) dismiss the matter with a Letter of Caution or Letter of Warning pursuant to 27 N.C.A.C.1B .0113(j), (iii) issue proposed written discipline pursuant to 27 N.C.A.C.1B .0113(k) that constitutes a lesser sanction than the discipline imposed by the other jurisdiction, or (iv) direct the Office of Counsel to further investigate the misconduct or disability described in the other jurisdiction's order.

(B) If the Grievance Committee determines that none of the grounds listed in Subparagraph (d)(3) of this Rule exist, the chairperson of the Grievance Committee shall enter an order imposing discipline or disability status that is identical or substantially similar to that imposed by the other jurisdiction.

(C) The Grievance Committee's determination regarding the existence of any of the grounds for not taking reciprocal action is final and not subject to further review.

(e) Effect of Final Adjudication and Findings by Another Jurisdiction – Except in instances where the grounds set forth in Parts (d)(3)(A) or (B) of this Rule above are established, a final adjudication in another jurisdiction that a North Carolina lawyer has engaged in misconduct or should be transferred to disability inactive status shall conclusively establish the misconduct or disability for purposes of reciprocal proceedings under this rule, and the findings of fact in the other jurisdiction's order will be binding upon the State Bar and the lawyer in reciprocal proceedings under this rule.

(f) Service & Effective Date of Reciprocal Order - Unless otherwise expressly provided by the Grievance Committee, reciprocal action

shall be effective upon service of the reciprocal order entered by the chairperson of the Grievance Committee. The reciprocal order may be served upon the lawyer by mailing a copy of the order to the lawyer's last known address on file with the State Bar. Service shall be complete upon mailing in accordance with Rule 5 of the North Carolina Rules of Civil Procedure.

~~(c) Reciprocal Discipline in the District of North Carolina, Fourth Circuit, or US Supreme Court - Reciprocal discipline with certain federal courts will be administered as follows:~~

~~(1) Notice and Challenge - Upon receipt of a certified copy of an order demonstrating that a member has been disciplined in a United States District Court in North Carolina, in the United States Fourth Circuit Court of Appeals, or in the United States Supreme Court, the chairperson of the Grievance Committee will forthwith issue a notice directed to the member. The notice will contain a copy of the order from the court and an order directing the member to inform the committee within 10 days from service of the notice whether the member will accept reciprocal discipline which is substantially similar to that imposed by the federal court. This notice is to be served on the member in accordance with the provisions of Rule 4 of the North Carolina Rules of Civil Procedure. The member will have 30 days from service of the notice to file a written challenge with the committee on the grounds that the imposition of discipline by the North Carolina State Bar would be unwarranted because the facts found in the federal disciplinary proceeding do not involve conduct which violates the North Carolina Rules of Professional Conduct. If the member notifies the North Carolina State Bar within 10 days after service of the notice that he or she accepts reciprocal discipline which is substantially similar to that imposed by the federal court, substantially similar discipline will be ordered as provided in Rule .0120(c)(2) below and will run concurrently with the discipline ordered by the federal court.~~

~~(2) Acceptance of Reciprocal Discipline - If the member notifies the North Carolina State Bar of his or her acceptance of reciprocal discipline as provided in Rule .0120(c)(1) above the chairperson of the Grievance Committee will execute an order of discipline which is of a type permitted by these rules and which is substantially similar to that ordered by the federal court and will cause said order to be served upon the member.~~

~~(3) Effect of Stay - If the discipline imposed by the federal court has been stayed, any reciprocal discipline imposed by the North Carolina State Bar will be deferred until such stay expires.~~

~~(4) Imposition of Discipline - Upon the expiration of 30 days from service of the notice issued pursuant to the provisions of Rule .0120(c)(1) above, the chairperson of the Grievance Committee will enter an order of reciprocal discipline imposing substantially similar discipline of a type permitted by these Rules to be effective throughout North Carolina unless the member requests a hearing before the Grievance Committee and at such hearing:~~

~~(A) the member demonstrates that the facts found in the federal disciplinary proceeding did not involve conduct which violates the North Carolina Rules of Professional Conduct, in which event the case will be dismissed; or~~

~~(B) the Grievance Committee determines that the discipline imposed by the federal court is not of a type described in Rule .0127(a) of this subchapter and, therefore, cannot be imposed by the North Carolina State Bar, in which event the Grievance Committee may dismiss the case or direct that a complaint be filed in the commission.~~

~~(5) Federal Findings of Fact - All findings of fact in the federal disciplinary proceeding will be binding upon the North Carolina State Bar and the member.~~

~~(6) Discipline Imposed by Other Federal Courts - Discipline imposed by any other federal court will be administered as provided in Rule .0120(b) above.~~

~~(d) Imposition of Discipline - If the member fails to accept reciprocal discipline as provided in Rule .0120(c) above or if a hearing is held before the Grievance Committee under either Rule .0120(b) above or Rule .0120(c) above and the committee orders the imposition of reciprocal discipline, such discipline will run from the date of service of the final order of the chairperson of the Grievance Committee unless the committee expressly provides otherwise.~~

History Note: *Authority G.S. 84-23; 84-28;*
Readopted Eff. December 8, 1994;
Amendments Approved by the Supreme Court: June 17, 2026; September 22, 2016; December 30, 1998; March 7, 1996.

BOARD OF LAW EXAMINERS

AMENDMENTS TO THE RULES AND REGULATIONS OF THE NORTH CAROLINA STATE BAR:

RULES GOVERNING THE BOARD OF LAW EXAMINERS AND THE TRAINING OF LAW STUDENTS

The following amendments to the Rules and Regulations and the Certificate of Organization of the North Carolina State Bar were duly adopted by the Council of the North Carolina State Bar at its quarterly meeting on January 23, 2026.

BE IT RESOLVED by the Council of the North Carolina State Bar that the Rules and Regulations of the North Carolina State Bar as set forth in 27 N.C.A.C. 01C, Section .0100 Rule .0105, *Rules Governing the Board of Law Examiners and the Training of Law Students* be amended as shown in the following attachment:

TAB#3: 27 N.C.A.C. 01C, Section .0100, Rule .0105,
Approval of Law Schools

NORTH CAROLINA
WAKE COUNTY

I, Peter Bolac, Secretary-Treasurer of the North Carolina State Bar, do hereby certify that the foregoing amendments to the Rules and Regulations of the North Carolina State Bar were duly adopted by the Council of the North Carolina State Bar at a regularly called meeting on January 23, 2026.

Given over my hand and the Seal of the North Carolina State Bar, this the 10th day of February, 2026.

s/Peter Bolac
Peter Bolac, Secretary

After examining the foregoing amendments to the Rules and Regulations of the North Carolina State Bar 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 17th day of June, 2026.

s/Paul Newby
Paul Newby, Chief Justice

BOARD OF LAW EXAMINERS

On this date, the foregoing amendments to the Rules and Regulations of the North Carolina State Bar were entered upon the minutes of the Supreme Court. The amendment 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 17th day of June, 2026.

s/Riggs, J.
For the Court

27 NCAC 01C .0105 is amended without notice pursuant to G.S. 84-23, 150B-21.21 as follows:

27 NCAC 01C .0105 APPROVAL OF LAW SCHOOLS

Every applicant for admission to the North Carolina State Bar must meet the requirements set out in at least one of the numbered paragraphs below:

(1) The applicant holds an LL.B or J.D. degree from a law school that was approved by the American Bar Association at the time the degree was conferred; or

(2) Prior to August 1995, the applicant received an LL.B., J.D., LL.M., or S.J.D. degree from a law school that was approved by the council of the N.C. State Bar at the time the degree was conferred;

(3) Prior to August 2005, the applicant received an LL.M or S.J.D. degree from a law school that was approved by the American Bar Association at the time the degree was conferred.

(4) The applicant holds a law degree (LL.B, J.D., LL.M, S.J.D., or other similar degree) that was deemed sufficient for licensure purposes in another state of the United States or the District of Columbia, successfully passed that jurisdiction's bar examination, and was licensed in said jurisdiction.~~an LL.B. or J.D. degree from a law school that was approved for licensure purposes in another state of the United States or the District of Columbia and was licensed in such state or district.~~

History Note: *Authority G.S. 84-24;*
Adopted March 3, 1999;
Amendments Approved by the Supreme Court: June 17, 2026; September 22, 2016; March 5, 2015; February 27, 2003.

AMENDMENTS TO THE RULES AND REGULATIONS OF THE NORTH CAROLINA STATE BAR:

RULES GOVERNING THE PROCEDURES FOR THE ADMINISTRATIVE COMMITTEE

The following amendments to the Rules and Regulations and the Certificate of Organization of the North Carolina State Bar were duly adopted by the Council of the North Carolina State Bar at its quarterly meeting on January 23, 2026.

BE IT RESOLVED by the Council of the North Carolina State Bar that the Rules and Regulations of the North Carolina State Bar as set forth in 27 N.C.A.C. 01D, Section .0900, Rule .0902, *Rules Governing Procedures for the Administrative Committee*, be amended as shown in the following attachment:

TAB#2A: 27 N.C.A.C. 01D, Section .0900, Rule .0902,
Reinstatement from Inactive Status

TAB#2B: 27 N.C.A.C. 01D, Section .0900, Rule .0904,
Reinstatement from Suspension

NORTH CAROLINA
WAKE COUNTY

I, Peter Bolac, Secretary-Treasurer of the North Carolina State Bar, do hereby certify that the foregoing amendments to the Rules and Regulations of the North Carolina State Bar were duly adopted by the Council of the North Carolina State Bar at a regularly called meeting on January 23, 2026.

Given over my hand and the Seal of the North Carolina State Bar, this the 17th day of June, 2026.

s/Peter Bolac
Peter Bolac, Secretary

After examining the foregoing amendments to the Rules and Regulations of the North Carolina State Bar 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 17th day of June, 2026.

s/Paul Newby
Paul Newby, Chief Justice

ADMINISTRATIVE COMMITTEE PROCEDURES

On this date, the foregoing amendments to the Rules and Regulations of the North Carolina State Bar were entered upon the minutes of the Supreme Court. The amendment 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 17th day of June, 2026.

s/Riggs, J.
For the Court

27 NCAC 01D .0902 is amended without notice pursuant to G.S. 84-23, 150B-21.21 as follows:

27 NCAC 01D .0902 REINSTATEMENT FROM INACTIVE STATUS

(a) Eligibility to Apply for Reinstatement

Any member who has been transferred to inactive status may petition the council for an order reinstating the member as an active member of the North Carolina State Bar.

(b) Definition of "Year"

As used in this rule, a year is a 365 day period of time unless a calendar year is specified.

(c) Requirements for Reinstatement

(1) Completion of Petition.

The member must provide the information requested on a petition form prescribed by the council and must sign the petition under oath.

(2) CLE Requirements Before Inactive.

Unless the member was exempt from such requirements pursuant to Rule .1517 of this subchapter or is subject to the requirements in ~~paragraph~~Subparagraph (c)(5) of this rule, the member must satisfy the minimum continuing legal education requirements, as set forth in Rule .1518 of this subchapter, for the calendar year in which the member was transferred to inactive status (the "subject year") if such transfer occurred on or after July 1 of the subject year, including any deficit from a prior calendar year that was carried forward and recorded in the member's CLE record for the subject year.

(3) Character and Fitness to Practice.

The member must have the moral qualifications, competency and learning in the law required for admission to practice law in the state of North Carolina, and must show that the member's resumption of the practice of law within this state will be neither detrimental to the integrity and standing of the Bar or the administration of justice nor subversive of the public interest.

(4) Additional CLE Requirements.

If more than one year has elapsed between the date of the entry of the order transferring the member to inactive status

and the date that the petition is filed, the member must complete 12 hours of approved CLE for each year that the member was inactive up to a maximum of 7 years. The CLE hours must be completed within two years prior to filing the petition. For each 12-hour increment, 2 hours must be earned by attending courses in the areas of professional responsibility and/or professionalism. If during the period of inactivity the member complied with mandatory CLE requirements of another state where the member is licensed, those CLE credit hours may be applied to the requirements under this provision without regard to whether they were taken during the two years prior to filing the petition.

(5) Bar Exam and MPRE Requirement If Inactive Seven or More Years. If seven years or more have elapsed between the date of the entry of the order transferring the member to inactive status and the date that the petition is filed, the member must satisfy the following requirements in lieu of the CLE requirements in Subparagraphs (c)(2) and (c)(4) of this rule:

(A) attainment of a passing score, within nine months following an order conditionally granting the petition, on a regularly-scheduled Uniform Bar Examination prepared by the National Conference of Bar Examiners;

(B) successful completion, within nine months following an order conditionally granting the petition, of the State-Specific Component prescribed by the North Carolina Board of Law Examiners; and

(C) attainment of a passing score, within nine months following an order conditionally granting the petition, on a regularly-scheduled Multistate Professional Responsibility Examination administered by the National Conference of Bar Examiners.

(6) A member may offset the inactive status period for the purpose of calculating the seven years necessary to actuate the requirements of Subparagraph (c)(5) of this rule as follows:

(A) Active Licensure in Another State. Each year of active licensure in another state during the period of inactive status shall offset one year of inactive status for the purpose of calculating the seven years necessary to actuate the requirements of Subparagraph (c)(5) of this rule. If the member is not required to satisfy the requirements of Subparagraph (c)(5) of this rule because of offsetting, the member shall satisfy the CLE requirements set forth

in Subparagraph (c)(4) of this rule for each year that the member was inactive up to a maximum of seven years.

(B) Military Service or Spouse of a Service Member. Each calendar year in which an inactive member served on full-time, active military duty, or the spouse of a military service member required to relocate outside of North Carolina due to military orders, shall offset one year of inactive status for the purpose of calculating the seven years necessary to actuate the requirements of Subparagraph (c)(5). If the member is not required to satisfy the requirements of Subparagraph (c)(5) of this rule because of offsetting, the member shall satisfy the CLE requirements set forth in Subparagraph (c)(4) of this rule for each year that the member was inactive up to a maximum of seven years.

(C) Federal Court Judicial Service. Each calendar year in which an inactive member served in the federal judiciary, shall offset one year of inactive status for the purpose of calculating the seven years necessary to actuate the requirements of Subparagraph (c)(5) of this rule. Such service shall also satisfy the CLE requirements set forth in Subparagraph (c)(4) of this rule for each year, or portion thereof, that the member served as a federal judge.

~~(5) Bar Exam and MPRE Requirement If Inactive Seven or More Years.~~

~~(A) If seven years or more have elapsed between the date of the entry of the order transferring the member to inactive status and the date that the petition is filed, the member must satisfy the following requirements in lieu of the CLE requirements in paragraphs (c)(2) and (c)(4):~~

~~(1) attainment of a passing score, within nine months following an order conditionally granting the petition, on a regularly-scheduled Uniform Bar Examination prepared by the National Conference of Bar Examiners;~~

~~(2) successful completion, within nine months following an order conditionally granting the petition, of the State-Specific Component prescribed by the North Carolina Board of Law Examiners; and~~

~~(3) attainment of a passing score, within nine months following an order conditionally granting the petition,~~

on a regularly-scheduled Multistate Professional Responsibility Examination administered by the National Conference of Bar Examiners.

(B) A member may offset the inactive status period for the purpose of calculating the seven years necessary to actuate the requirements of paragraph (A) as follows:

(1) Active Licensure in Another State. Each year of active licensure in another state during the period of inactive status shall offset one year of inactive status for the purpose of calculating the seven years necessary to actuate the requirements of paragraph (A). If the member is not required to satisfy the requirements of paragraph (A) as a consequence of because of offsetting, the member shall satisfy the CLE requirements set forth in paragraph (c)(4) for each year that the member was inactive up to a maximum of seven years.

(2) Military Service or Spouse of a Service Member. Each calendar year in which an inactive member served on full-time, active military duty, or the spouse of a military service member required to relocate outside of North Carolina due to military orders, whether for the entire calendar year or some portion thereof, shall offset one year of inactive status for the purpose of calculating the seven years necessary to actuate the requirements of paragraph (A). If the member is not required to satisfy the requirements of paragraph (A) as a consequence of because of offsetting, the member shall satisfy the CLE requirements set forth in paragraph (c)(4) for each year that the member was inactive up to a maximum of seven years.

(3) Federal Court Judicial Service. Each calendar year in which an inactive member served in the federal judiciary, whether for the entire calendar year or some portion thereof, shall offset one year of inactive status for the purpose of calculating the seven years necessary to actuate the requirements of paragraph (A). Such service shall also satisfy the CLE requirements set forth in paragraph (c)(4) for each year, or portion thereof, that the member served as a federal judge.

(67) Payment of Fees, Assessments and Costs.

The member must pay all of the following:

(A) a reinstatement fee in an amount to be determined by the council;

(B) the membership fee and the Client Security Fund assessment for the year in which the application is filed;

(C) the annual membership fee, if any, of the member's district bar for the year in which the application is filed and any past due annual membership fees for any district bar with which the member was affiliated prior to transferring to inactive status;

(D) all attendee fees owed the Board of Continuing Legal Education for CLE courses taken to satisfy the requirements of Subparagraphs (c)(2), (c)(4), and (c)(5); of this rule;

(E) any costs previously assessed against the member by the chairperson of the Grievance Committee, the Disciplinary Hearing Commission, and/or the secretary or council of the North Carolina State Bar; and

(F) all costs incurred by the North Carolina State Bar in investigating and processing the application for reinstatement.

(d) Service of Reinstatement Petition

The petitioner shall serve the petition on the secretary. The secretary shall transmit a copy of the petition to the members of the Administrative Committee and to the counsel.

(e) Investigation by Counsel

The counsel may conduct any necessary investigation regarding the petition and shall advise the members of the Administrative Committee of any findings from such investigation.

(f) Recommendation of Administrative Committee

After any investigation of the petition by the counsel is complete, the Administrative Committee will consider the petition at its next meeting and shall make a recommendation to the council regarding whether the petition should be granted. The chair of the Administrative Committee may appoint a panel composed of at least three members of the committee to consider any petition for reinstatement and, on behalf of the Administrative Committee, to make a recommendation to the council regarding whether the petition should be granted.

(1) Conditions Precedent to Reinstatement. Upon a determination that the petitioner has failed to demonstrate competence to return to the practice of law, the committee may require the petitioner to complete a specified number of hours of continuing legal education, which shall be in addition to the requirements set forth in ~~Rule .0902~~Subparagraphs(c)(2) and (c)(4) above, as a condition precedent to the committee's recommendation that the petition be granted,

(2) Conditions Subsequent to Reinstatement. Upon a determination that the petitioner is fit to return to the practice of law pursuant to the reasonable management of his or her substance abuse, addiction, or debilitating mental condition, the committee may recommend to the council that the reinstatement petition be granted with reasonable conditions to which the petitioner consents. Such conditions may include, but are not limited to, an evaluation by a mental health professional approved by the Lawyer Assistance Program (LAP), compliance with the treatment recommendations of the mental health professional, periodic submission of progress reports by the mental health professional to LAP, and waiver of confidentiality relative to diagnosis and treatment by the mental health professional.

(3) Failure of Conditions Subsequent to Reinstatement. In the event the petitioner fails to satisfy the conditions of the reinstatement order, the committee shall issue a notice directing the petitioner to show cause, in writing, why the petitioner should not be suspended from the practice of law. Notice shall be served and the right to request a hearing shall be as provided in Paragraph~~Rule .0902~~(g) below. The hearing shall be conducted as provided in Section .1000 of this subchapter provided, however, the burden of proof shall be upon the petitioner to show by clear, cogent, and convincing evidence that he or she has satisfied the conditions of the reinstatement order.

(g) Hearing Upon Denial of Petition for Reinstatement

(1) Notice of Council Action and Request for Hearing

If the council denies a petition for reinstatement, the petitioner shall be notified in writing within 14 days after such action. The notice shall be served upon the petitioner pursuant to Rule 4 of the N.C. Rules of Civil Procedure and may be served by a State Bar investigator or any other person authorized by Rule 4 of the N.C. Rules of Civil Procedure to serve process.

(2) The petitioner shall have 30 days from the date of service of the notice to file a written request for hearing upon the secretary. The request shall be served upon the secretary pursuant to Rule 4 of the N.C. Rules of Civil Procedure.

(3) Hearing Procedure

The procedure for the hearing shall be as provided in Section .1000 of this subchapter.

(h) Reinstatement by Secretary of the State Bar

Notwithstanding paragraph (f) of this rule, an inactive member may petition for reinstatement pursuant to paragraphs (a) and (b) of this rule and may be reinstated by the secretary of the State Bar upon a finding that the inactive member has complied with or fulfilled the conditions for reinstatement set forth in this rule; there are no issues relating to the inactive member's character or fitness; and the inactive member has paid all fees owed to the State Bar including the reinstatement fee. Reinstatement by the secretary is discretionary. If the secretary declines to reinstate a member, the member's petition shall be submitted to the Administrative Committee at its next meeting and the procedure for review of the reinstatement petition shall be as set forth in paragraph (f) of this rule.

(i) Denial of Petition

When a petition for reinstatement is denied by the council in a given calendar year, the member may not petition again until the following calendar year. The reinstatement fee, costs, and any fees paid pursuant to Subparagraph (c)(6) shall be retained. However, the State Bar membership fee, Client Security Fund assessment, and district bar membership fee assessed for the year in which the application is filed shall be refunded.

History Note: *Authority G.S. 84-23;*
Readopted Eff. December 8, 1994;
Amendments Approved by the Supreme Court: September 7, 1995; March 7, 1996; March 5, 1998; March 3, 1999; February 3, 2000; March 6, 2002; February 27, 2003; March 3, 2005; March 10, 2011; August 25, 2011; March 8, 2012; March 8, 2013; March 6, 2014; October 2, 2014; September 22, 2016; September 20, 2018; September 25, 2020; December 14, 2021; June 17, 2026.
Amendments Approved by the Supreme Court March 1, 2023 and re-entered into the Supreme Court's minutes March 20, 2024.

27 NCAC 01D .0904 is amended without notice pursuant to G.S. 84-23, 150B-21.21 as follows:

27 NCAC 01D .0904 REINSTATEMENT FROM SUSPENSION

(a) Compliance Within 30 Days of Service of Suspension Order.

A member who receives an order of suspension for failure to comply with an obligation of membership may preclude the order from becoming effective and shall not be required to file a formal reinstatement petition or pay the reinstatement fee if the member shows within 30 days after service of the suspension order that the member has done the following:

(1) fulfilled the obligations of membership set forth in the order;

(2) paid the administrative fees associated with the issuance of the suspension order, including the costs of service;

(3) paid any other delinquency shown on the financial records of the State Bar including outstanding judicial district bar dues;

(4) signed and filed CLE annual report forms as required by Rule .1522 of this subchapter;

(5) completed CLE hours as required by Rules .1518 and .1522 of this subchapter; and

(6) filed any IOLTA certification required by Rule .1319 of this subchapter.

(b) Reinstatement More than 30 Days after Service of Suspension Order.

At any time more than 30 days after service of an order of suspension on a member, a member who has been suspended for failure to comply with an obligation of membership may petition the council for an order of reinstatement.

(c) Definition of "Year."

As used in this rule, a year is a 365 day period of time unless a calendar year is specified.

(d) Requirements for Reinstatement

(1) Completion of Petition

The member must provide the information requested on a petition form prescribed by the council and must sign the petition under oath.

(2) CLE Requirements Before Suspended

Unless the member was exempt from such requirements pursuant to Rule .1517 of this subchapter or is subject to the requirements in Subparagraph (d)(4) of this rule, the member must satisfy the minimum continuing legal education (CLE) requirements, as set forth in Rule .1518 of this subchapter, for the calendar year in which the member was suspended (the "subject year") if such transfer occurred on or after July 1 of the subject year, including any deficit from a prior year that was carried forward and recorded in the member's CLE record for the subject year. The member shall also sign and file any delinquent CLE annual report form.

(3) Additional CLE Requirements

If more than one year has elapsed between the effective date of the suspension order and the date upon which the reinstatement petition is filed, the member must complete 12 hours of approved CLE for each year that the member was suspended up to a maximum of seven years. The CLE must be completed within two years prior to filing the petition. For each 12-hour increment, 2 hours must be earned by attending courses in the areas of professional responsibility and/or professionalism. If during the period of suspension the member complied with mandatory CLE requirements of another state where the member is licensed, those CLE credit hours may be applied to the requirements under this provision without regard to whether they were taken during the two years prior to filing the petition.

(4) Bar Exam and MPRE Requirement If Suspended Seven or More Years. If seven years or more have elapsed between the effective date of the suspension order and the date that the petition is filed, the member must satisfy the following requirements in lieu of the CLE requirements in Subparagraphs (d)(2) and (d)(3) of this rule:

(A) attainment of a passing score, within nine months following an order conditionally granting the petition, on a regularly-scheduled Uniform Bar Examination prepared by the National Conference of Bar Examiners;

(B) successful completion, within nine months following an order conditionally granting the petition, of the State-Specific Component prescribed by the North Carolina Board of Law Examiners; and

(C) attainment of a passing score, within nine months following an order conditionally granting the petition, on a regularly-scheduled Multistate Professional Responsibility Examination administered by the National Conference of Bar Examiners.

(5) A member may offset the suspended status period for the purpose of calculating the seven years necessary to actuate the requirements of Subparagraph (d)(4) of this rule as follows:

(A) Active Licensure in Another State. Each year of active licensure in another state during the period of suspension shall offset one year of suspension for the purpose of calculating the seven years necessary to actuate the requirements of Subparagraph (d)(4). If the member is not required to satisfy the requirements of Subparagraph (d)(4) of this rule because of offsetting, the member shall satisfy the CLE requirements set forth in Subparagraph (d)(3) for each year that the member was suspended up to a maximum of seven years.

(B) Military Service or Spouse of a Service Member. Each calendar year in which a suspended member served on full-time, active military duty, or the spouse of a military service member required to relocate outside of North Carolina due to military orders , shall offset one year of suspension for the purpose of calculating the seven years necessary to actuate the requirements of Subparagraph (d)(4) of this rule. If the member is not required to satisfy the requirements of Subparagraph (d)(4) of this rule because of offsetting, the member shall satisfy the CLE requirements set forth in Subparagraph (d)(3) for each year that the member was suspended up to a maximum of seven years.

~~(4) Bar Exam and MPRE Requirement If Suspended Seven or More Years~~

~~(A) If seven years or more have elapsed between the effective date of the suspension order and the date that the petition is filed, the member satisfy the following requirements in lieu of the CLE requirements in paragraphs (d)(2) and (d)(3):~~

~~(1) attainment of a passing score, within nine months following an order conditionally granting the petition, on a regularly-scheduled Uniform Bar Examination prepared by the National Conference of Bar Examiners;~~

(2) successful completion, within nine months following an order conditionally granting the petition, of the State-Specific Component prescribed by the North Carolina Board of Law Examiners; and

(3) attainment of a passing score, within nine months following an order conditionally granting the petition, on a regularly-scheduled Multistate Professional Responsibility Examination administered by the National Conference of Bar Examiners.

(B) A member may offset the suspended status period for the purpose of calculating the seven years necessary to actuate the requirements of paragraph (A)Part (A) of this Paragraph as follows:

(1) Active Licensure in Another State. Each year of active licensure in another state during the period of suspension shall offset one year of suspension for the purpose of calculating the seven years necessary to actuate the requirements of paragraph (A). If the member is not required to satisfy the requirements of paragraph (A) Part (A) of this Paragraph as a consequence of because of offsetting, the member shall satisfy the CLE requirements set forth in paragraph (d)(3) for each year that the member was suspended up to a maximum of seven years.

(2) Military Service or Spouse of a Service Member. Each calendar year in which a suspended member served on full-time, active military duty, or the spouse of a military service member required to relocate outside of North Carolina due to military orders whether for the entire calendar year or some portion thereof, shall offset one year of suspension for the purpose of calculating the seven years necessary to actuate the requirements of paragraph (A). Part (A) of this Paragraph. If the member is not required to satisfy the requirements of paragraph (A)Part (A) of this Paragraph as a consequence of because of offsetting, the member shall satisfy the CLE requirements set forth in paragraph (d)(3) for each year that the member was suspended up to a maximum of seven years.

(56) Character and Fitness to Practice

The member must have the moral qualifications, competency and learning in the law required for admission to practice law in

the state of North Carolina, and must show that the member's resumption of the practice of law will be neither detrimental to the integrity and standing of the Bar or the administration of justice nor subversive of the public interest.

(67) Payment of Fees, Assessments and Costs

The member must pay all of the following:

(A) a reinstatement fee in an amount to be determined by the Council or a $250.00 reinstatement fee if suspended for failure to comply with CLE requirements;

(B) all membership fees, Client Security Fund assessments, and late fees owed at the time of suspension and owed for the year in which the reinstatement petition is filed;

(C) all district bar annual membership fees owed at the time of suspension and owed for the year in which the reinstatement petition is filed;

(D) all attendee fees, fines and penalties owed the Board of Continuing Legal Education at the time of suspension and attendee fees for CLE courses taken to satisfy the requirements of Subparagraphs (d)(2) and (d)(3) above;

(E) any costs assessed against the member by the chairperson of the Grievance Committee, the Disciplinary Hearing Commission, and/or the secretary or council of the North Carolina State Bar; and

(F) all costs incurred by the North Carolina State Bar in suspending the member, including the costs of service, and in investigating and processing the application for reinstatement.

(78) Pro Hac Vice Registration Statements

The member must file any overdue pro hac vice registration statement for which the member was responsible.

(89) IOTLA Certification

The member must complete any IOLTA certification required by Rule .1319 of this subchapter.

(910) Wind Down of Law Practice During Suspension

The member must demonstrate that the member fulfilled the obligations of a disbarred or suspended member set forth in Rule .0128 of Subchapter 1B during the 30 day period after the effective date of the order of suspension, or that such

obligations do not apply to the member due to the nature of the member's legal employment.

(e) Procedure for Review of Reinstatement Petition.

The procedure for review of the reinstatement petition shall be as set forth in Rule .0902(c)-(f) ~~above.~~of this Subchapter.

(f) Reinstatement by Secretary of the State Bar.

At any time during the year after the effective date of a suspension order, a suspended member may petition for reinstatement pursuant to paragraphs (b) and (c) of this rule and may be reinstated by the secretary of the State Bar upon a finding that the suspended member has complied with or fulfilled the obligations of membership set forth in the order; there are no issues relating to the suspended member's character or fitness; and the suspended member has paid the costs of the suspension and reinstatement procedure including the costs of service and the reinstatement fee. Reinstatement by the secretary is discretionary. If the secretary declines to reinstate a member, the member's petition shall be submitted to the Administrative Committee at its next meeting and the procedure for review of the reinstatement petition shall be as set forth in Rule .0902(c)-(f).

(g) Reinstatement from Disciplinary Suspension.

Notwithstanding the procedure for reinstatement set forth in the preceding paragraphs of this Rule, if an order of reinstatement from disciplinary suspension is granted to a member pursuant to Rule .0129 of Subchapter 1B of these rules, any outstanding order granting inactive status or suspending the same member for failure to fulfill the obligations of membership under this section shall be dissolved and the member shall be reinstated to active status.

(h) Denial of Petition.

When a petition for reinstatement is denied by the council in a given calendar year, the member may not petition again until the following calendar year. The reinstatement fee, costs, and any fees paid pursuant to Subparagraph (d)~~(6)~~(7) of this rule shall be retained. However, the State Bar membership fee, Client Security Fund assessment, and district bar membership fee assessed for the year in which the application is filed shall be refunded.

History Note: *Authority G.S. 84-23;*
Readopted Eff. December 8, 1994;

ADMINISTRATIVE COMMITTEE PROCEDURES

Amendments Approved by the Supreme Court: September 7, 1995; March 7, 1996; March 5, 1998; February 27, 2003; October 1, 2003; March 2, 2006; November 16, 2006; October 8, 2009; March 11, 2010; March 10, 2011; March 8, 2012; March 8, 2013; August 27, 2013; March 6, 2014; October 2, 2014; September 22, 2016; September 20, 2018; September 25, 2020; December 14, 2021; June 17, 2026.

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