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ADVANCE SHEETS

OF

CASES

ARGUED AND DETERMINED IN THE

SUPREME COURT

OF

NORTH CAROLINA

NOVEMBER 6, 2026

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

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OF
NORTH CAROLINA

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SUPREME COURT OF NORTH CAROLINA

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W**rit of certiorari—prior petition dismissed without prejudice to refile—second petition properly granted—**Where one panel of the Court of Appeals disposed of defendant's first petition for a writ of certiorari—to review his criminal judgment based on his counsel's failure to timely file notice of appeal—by dismissing it without prejudice to refile with the inclusion of possible issues of merit, the discretionary decision by a different panel to issue a writ of certiorari upon defendant's second petition did not constitute an impermissible overruling of the first panel. **State v. Martinez, 172.**

Writ of certiorari—two-part test—loss of right to direct appeal—criminal case—counsel's deficient performance—discretionary decision—Where the Court of Appeals properly applied the two-part test set forth in *Cryan v. Nat'l Council of YMCAs*, 384 N.C. 569 (2023), for determining whether to issue a writ of certiorari, it acted within its discretion when it granted defendant's petition for writ of certiorari to review his criminal judgment. First, defendant's petition established merit or that probable error was committed below because it was accompanied by his counsel's affidavit acknowledging that, although he understood defendant wanted to appeal his judgment, counsel failed to speak with defendant or take any steps to timely file notice of appeal. Second, extraordinary circumstances existed to justify issuance of the writ where defendant lost the right to appeal due to his counsel's constitutionally deficient performance. **State v. Martinez, 172.**

CIVIL PROCEDURE

Rule 12(b)(6) motion to dismiss—standard of review—documents outside of complaint—incorporation-by-reference doctrine—In an appeal regarding an order granting a Civil Procedure Rule 12(b)(6) motion to dismiss claims raised against a private school by parents whose children were expelled from the school after the parents complained about controversial changes to the curriculum, the Supreme Court expressly endorsed the incorporation-by-reference doctrine, which states that a court reviewing a Rule 12(b)(6) motion may consider documents that are not attached to the complaint but are submitted by the movant if: (1) the document is referenced in the complaint, (2) the document is central to the factual allegations or the claims asserted, and (3) there is no dispute about the document's authenticity. **Turpin v. Charlotte Latin Schools, Inc., 281.**

CONSTITUTIONAL LAW

Right to counsel—waiver—knowing, intelligent, and voluntary—course of conduct—sufficiency of colloquy—In a prosecution for multiple sexual offenses, the trial court's determination that defendant clearly and unequivocally expressed his desire to proceed pro se and that defendant's waiver of his right to appointed counsel was knowing, intelligent, and voluntary was supported by the totality of the circumstances; therefore, the decision of the Court of Appeals granting defendant a new trial after finding otherwise was reversed. Over the course of the case defendant cycled through five appointed attorneys and twice filed handwritten waivers of counsel in which he asked to represent himself with the assistance of standby counsel. Further, the trial court conducted a colloquy with defendant that substantially complied with the requirements set forth in N.C.G.S. § 15A-1242; although the trial court's statement of the range of permissible punishments was not precise, its miscalculation and the actual range of possible punishments both amounted to more than defendant's natural life. **State v. McGirt, 179.**

CONTRACTS

Breach—private school enrollment contract—termination by school—sufficiency of complaint—notice pleading standard met—In a lawsuit filed against a private school and its leadership (defendants) where, after plaintiffs—the parents of two students at the school—complained about the addition of polarizing political issues into the curriculum, the school terminated plaintiffs' enrollment contracts and expelled their children, the trial court improperly granted defendants' motion to dismiss under Civil Procedure Rule 12(b)(6) where plaintiffs alleged a narrow set of facts that, if taken as true and viewed in the light most favorable to plaintiffs, stated a proper breach of contract claim. Specifically, the complaint alleged that: a clause in the enrollment contracts permitted the school to terminate enrollment if certain criteria were satisfied; the school expelled plaintiffs' children for reasons not permitted under the contract and then used the termination clause as a false pretext; and, as a result, the school violated the termination clause and, therefore, breached the enrollment contracts. **Turpin v. Charlotte Latin Schools, Inc., 281.**

EVIDENCE

Expert testimony—sexual offenses against a child—impermissible vouching for victim's credibility—no plain error—In a prosecution for multiple charges of taking indecent liberties with a child and first-degree statutory sexual offense, where the evidence consisted solely of witness testimony, the trial court's admission of two expert witnesses' testimonies did not constitute plain error because, even if both experts had impermissibly vouched for the victim's credibility when testifying, nothing in the record suggested that the jury probably would have reached a different verdict absent those testimonies. Firstly, the victim's uncorroborated testimony, even standing alone, was legally sufficient to convict defendant where it established each element of the charged offenses. Additionally, the State introduced other evidence—namely, the expert testimony of a child abuse evaluation specialist who conducted a forensic interview with the victim, and the testimony of the social worker who conducted the victim's initial intake and the investigation that followed—that supported the jury's finding of guilt independent of the alleged vouching testimony. **State v. Wingate, 264.**

FIREARMS AND OTHER WEAPONS

Possession of a firearm by a felon—constructive possession—evidence viewed in the light most favorable to the State—In reviewing the denial of defendant's motion to dismiss a charge of possession of a firearm by a felon—for insufficient evidence that he constructively possessed a firearm—the Court of Appeals erred by viewing the evidence in the light most favorable to defendant, resolving evidentiary conflicts in defendant's favor, and, as a result, reversing the judgment entered upon defendant's conviction. Properly considered (that is, in the light most favorable to the State), the evidence—that defendant shared nonexclusive possession of the bedroom where the firearm was found; had a key to the house and, upon seeing law enforcement approach, hurried inside; and was arrested a few steps away from the dresser where the firearm was discovered—showed defendant's occupation of the house, control of the premises, proximity to the firearm, and suspicious conduct, which in turn supported an inference that defendant constructively possessed the firearm. **State v. Norris, 211.**

FRAUD

Private school enrollment contract—termination by school—sufficiency of complaint—notice pleading standard met—In a lawsuit filed against a private school and its leadership (defendants) where, after plaintiffs—the parents of two students at the school—complained about the addition of polarizing political issues into the curriculum, the school terminated plaintiffs' enrollment contracts and expelled their children, the trial court improperly granted defendants' motion to dismiss under Civil Procedure Rule 12(b)(6) where the complaint, in accordance with the applicable "notice pleading" standard of review, alleged a narrow set of facts sufficiently stating a claim of fraud. Specifically, plaintiffs alleged that: defendants promised there would be no "blowback" or "retaliation" against plaintiffs or their children if they met with school leadership to discuss their concerns; this promise was false, made with the intent to deceive and lure plaintiffs into the meeting to create a pretext for expelling the children; plaintiffs believed defendants' promise and therefore spoke openly during the meeting; and the school, at the same meeting, expelled the children, resulting in damage to plaintiffs. Importantly, taking the allegations as true and viewing them in the light most favorable to plaintiffs, the promise of "no blowback" included a promise not to terminate the enrollment contracts and expel plaintiffs' children. **Turpin v. Charlotte Latin Schools, Inc., 281.**

HOMICIDE

Jury instruction—castle doctrine—occupant of motor vehicle—need not be physically inside—presumption—In a prosecution where defendant was convicted of voluntary manslaughter for killing a man during an altercation—the exact facts of which were disputed at trial, but that began with the victim approaching defendant while defendant was inside his car and ended with defendant exiting his vehicle and fatally shooting the victim—defendant was entitled to a jury instruction on the castle doctrine. Under the plain language of the relevant statute (N.C.G.S. § 14-51.2(b)), although defendant chose to exit his vehicle during the incident, he was an "occupant" for purposes of the castle doctrine instruction. Further, the doctrine's presumption (that a lawful occupant had a reasonable fear of imminent death or serious bodily injury to himself or others) applied to defendant despite the victim's discontinuation of efforts to enter defendant's vehicle, which went toward rebutting the presumption rather than the statute's applicability. Accordingly, the Court

of Appeals' decision—remanding for a new trial—was affirmed, but was modified as it pertained to the interpretation of the statute, which was not ambiguous in its application to the matter at bar. **State v. Williams, 246.**

INDICTMENT AND INFORMATION

Statutory sexual offense with a child by an adult—lesser-included offense listed on indictment—not fatally flawed—In the prosecution of a father accused of sexually abusing his twelve-year-old son, where defendant was ultimately sentenced for committing statutory sexual offense with a child by an adult under N.C.G.S. § 14-27.28, but where his indictment expressly charged him with the lesser-included offense of first-degree statutory sexual offense under N.C.G.S. § 14-27.29, the indictment was not fatally flawed such that defendant was entitled to a new trial. The factual allegations in the indictment addressed all elements required for the more serious charge, including that defendant was at least eighteen years old at the time of the abuse, thereby rendering the incorrect statutory reference a harmless scrivener's error. Furthermore, both the allegations in the indictment and the frequent references to the more serious offense throughout the proceedings put defendant on constructive notice of the offense with which he was actually being charged. **State v. Wingate, 264.**

JURY

Juror replacement during deliberations—N.C.G.S. § 15A-1215(a)—application of Chambers test—In reviewing convictions (including for second-degree murder) arising from a drive-by shooting at a Raleigh convenience store, where a juror was replaced with an alternate during deliberations and the resulting jury was instructed to start their deliberations afresh, the Supreme Court reversed the Court of Appeals' grant of a new trial to defendant by applying the holding of *State v. Chambers*, 387 N.C. 521 (2025). *Chambers* upheld the constitutionality of N.C.G.S. § 15A-1215(a)—which authorizes trial courts to replace a juror with an alternate after deliberations have begun—in light of statutory safeguards of the right to a twelve-person jury: (1) substituting an alternate juror only after a sitting juror is excused, and then (2) instructing the newly composed jury to begin deliberations anew. After employing the special preservation rule from *Chambers* to reach the merits of defendant's argument despite his failure to object to the juror substitution at trial, the court declined defendant's request to frame the *Chambers* test as a case-by-case inquiry into how long the jury deliberated, how recently the jury was instructed to begin deliberations anew, or what additional instructions the court provided. **State v. Thomas, 228.**

KIDNAPPING

Restraint—independent from restraint inherent in murder by suffocation—sufficiency of evidence—In a prosecution for first-degree murder and first-degree kidnapping, the State presented substantial evidence that the victim was restrained beyond the restraint that was inherent in the murder, which defendant perpetrated by suffocating the victim. Defendant not only bound his wife's hands, knees, and feet in such a manner as to prevent her from removing the plastic bags and duct tape over her head and mouth that caused her to suffocate, but he used additional restraints—including cables and zip ties—that were not inherent in the murder and, thus,

KIDNAPPING—Continued

supported a separate conviction for kidnapping. The decision of the Court of Appeals vacating the kidnapping conviction was therefore reversed. **State v. Moore, 194.**

LIBEL AND SLANDER

Defamation—private school curriculum dispute—school characterization of parents' concerns—sufficiency of complaint—In a lawsuit filed against a private school and its leadership (defendants) by parents (plaintiffs) whose children were expelled from the school after plaintiffs complained about controversial changes to the curriculum, the trial court improperly dismissed plaintiffs' defamation per quod claim pursuant to Civil Procedure Rule 12(b)(6) where the complaint alleged that defendants circulated an email to the greater school community accusing plaintiffs of making racist comments during a presentation at a parental focus group meeting. On appeal, the Supreme Court clarified that statements critiquing Critical Race Theory in education or advocating for meritocracy over race-conscious hiring and admissions were not legally equivalent to racist remarks; thus, the alleged defamatory statements—that the presentation referred to minority students and faculty as not having "earned their positions and honors" at the school and being "not up to the merit of the school" when compared to their white peers—did not accurately characterize the presentation, and therefore plaintiffs adequately pleaded that the statements were materially false. Additionally, the complaint adequately alleged the statements were "of and concerning" plaintiffs, since they were identifiable members of the focus group. **Turpin v. Charlotte Latin Schools, Inc., 281.**

NEGLIGENCE

Negligent misrepresentation—private school enrollment contract—termination by school—forward-looking promise—improper basis for claim—In a lawsuit filed against a private school and its leadership (defendants) where, after plaintiffs—the parents of two students at the school—complained about the addition of polarizing political issues into the curriculum, the school terminated plaintiffs' enrollment contracts and expelled their children, the trial court properly dismissed plaintiffs' negligent misrepresentation claim pursuant to Civil Procedure Rule 12(b)(6). Plaintiffs' allegations—namely, that the school promised plaintiffs there would be "no blowback" or "retaliation" against them if they met with school leadership to discuss their concerns, and that this promise was false at the time it was made—were based on the type of forward-looking promise that, according to the relevant case precedent, could not serve as the basis of a negligent misrepresentation claim. **Turpin v. Charlotte Latin Schools, Inc., 281.**

PLEADINGS

Sufficiency—negligent infliction of emotional distress—negligent retention—discretionary review improvidently allowed—In an appeal about an order granting a Civil Procedure Rule 12(b)(6) motion to dismiss claims raised against a private school by parents whose children were expelled from the school after the parents complained about controversial changes to the curriculum, the Supreme Court held that discretionary review was improvidently allowed with respect to their dismissed claims for negligent infliction of emotional distress and negligent retention, since neither claim involved matters over which there was any conflict in current jurisprudence, or issues sufficiently significant to meet the standard for discretionary review. **Turpin v. Charlotte Latin Schools, Inc., 281.**

UNFAIR TRADE PRACTICES

Unfair and deceptive trade practices—private school enrollment contract—termination by school—sufficiency of complaint—In a lawsuit filed against a private school and its leadership (defendants) where, after plaintiffs—the parents of two students at the school—complained about the addition of polarizing political issues into the curriculum, the school terminated plaintiffs' enrollment contracts and expelled their children, plaintiffs' complaint sufficiently stated a claim of unfair and deceptive trade practices (UDTP) under the applicable "notice pleading" standard of review, where: the allegations, which concerned the regular activities of a private school that charges fees in exchange for its educational services, established that defendants' conduct was "in or affecting commerce;" and, because plaintiffs properly pleaded a fraud claim, as determined on appeal before the Supreme Court, the complaint also satisfied the unfair or deceptive element of the UDTP claim. Thus, the trial court erred in dismissing plaintiffs' UDTP claim pursuant to Civil Procedure Rule 12(b)(6). **Turpin v. Charlotte Latin Schools, Inc., 281.**

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 OF NORTH CAROLINA
v.
DUSTIN J. MARTINEZ

No. 101PA25

Filed 14 August 2026

1. Appeal and Error—writ of certiorari—prior petition dismissed without prejudice to refile—second petition properly granted

Where one panel of the Court of Appeals disposed of defendant's first petition for a writ of certiorari—to review his criminal judgment based on his counsel's failure to timely file notice of appeal—by dismissing it without prejudice to refile with the inclusion of possible issues of merit, the discretionary decision by a different panel to issue a writ of certiorari upon defendant's second petition did not constitute an impermissible overruling of the first panel.

2. Appeal and Error—writ of certiorari—two-part test—loss of right to direct appeal—criminal case—counsel's deficient performance—discretionary decision

Where the Court of Appeals properly applied the two-part test set forth in *Cryan v. Nat'l Council of YMCAs*, 384 N.C. 569 (2023), for determining whether to issue a writ of certiorari, it acted within its discretion when it granted defendant's petition for writ of certiorari to review his criminal judgment. First, defendant's petition established merit or that probable error was committed below because it was accompanied by his counsel's affidavit acknowledging that, although he understood defendant wanted to appeal his judgment, counsel failed to speak with defendant or take any steps to timely file notice of appeal. Second, extraordinary circumstances existed to justify issuance of the writ where defendant lost the right to appeal due to his counsel's constitutionally deficient performance.

On writ of certiorari pursuant to N.C.G.S. § 7A-32(b) to review a unanimous order of the Court of Appeals, No. P24-254 (N.C. Ct. App. Mar. 31, 2025) (order), allowing defendant's petition for writ of certiorari to review judgments entered on 18 February 2021 by Judge Craig Croom in Superior Court, Wilson County. Heard in the Supreme Court 16 April 2026.

Jeff Jackson, Attorney General, by Caden William Hayes, Assistant Attorney General, and Benjamin Szany, Special Deputy Attorney General, for the State.

North Carolina Prisoner Legal Services, by Kristen L. Todd, for defendant.

The Law Office of Christopher J. Heaney, PLLC, by Christopher J. Heaney, for Advocates for Justice, and Ivy Johnson, for American Civil Liberties Union of North Carolina Legal Foundation, amici curiae.

BERGER, Justice.

North Carolina's appellate courts must apply a two-part test when determining whether a writ of certiorari should issue. *Cryan v. Nat'l Council of YMCAs*, 384 N.C. 569 (2023). This straightforward test "examines (1) the likelihood that the case has merit or that error was committed below and (2) whether there are extraordinary circumstances that justify issuing the writ." *Id.* at 570. Here, defendant filed a petition for writ of certiorari with the Court of Appeals alleging that his counsel's deficient performance caused him to lose his right to direct appeal to that court. A panel below determined that *Cryan* was met and issued a writ of certiorari in its discretion. We affirm.

I. Factual and Procedural Background

In October 2019, defendant was indicted for felony larceny and two counts of burglary. Attorney Christopher Lusby was appointed to represent defendant, and in February 2021, defendant was convicted of first-degree burglary and sentenced in the aggravated range to 96 to 128 months in prison.

Following sentencing, defendant failed to timely file a notice of appeal but thereafter filed a petition for writ of certiorari at the Court of Appeals. According to Mr. Lusby's sworn affidavit attached thereto, while defendant was being escorted by the bailiff from the courtroom due to his "overt reaction to the conviction," defendant said aloud, "[T]his isn't right, I'm going to take it up, I'm going to take it up." Mr. Lusby "understood [defendant] to mean he wanted to enter a direct appeal." Nevertheless, Mr. Lusby did not enter an oral notice of appeal at that time because he "believed [he] was going to have a chance to talk with [defendant] prior to the bailiffs taking [defendant] out of the back hallway of the courtroom into the jailed section below the courthouse." But defendant "was directly escorted into the jailed section" and Mr. Lusby did not speak with him. Mr. Lusby admits he "did not discuss [defendant's] desire to appeal with [defendant] directly, or explain appeals to [defendant] directly."

On 15 April 2024, North Carolina Prisoner Legal Services filed a petition for writ of certiorari on defendant's behalf in the Court of Appeals seeking a belated appeal because defendant's right to direct appeal was lost by Mr. Lusby's failure to take timely action to perfect the appeal. The Court of Appeals entered an order dismissing the petition "without prejudice to petitioner's right to refile a petition for writ of certiorari with [the Court of Appeals] that includes any issues of potential merit petitioner believes would be raised on appeal."

Defendant refiled his petition for writ of certiorari in November 2024, and in addition to arguing that Mr. Lusby rendered ineffective assistance of counsel, defendant also argued that he was prejudiced by counsel's failure to perfect the appeal. According to defendant, he was not required to brief issues of potential merit because *Garza v. Idaho*, 586 U.S. 232 (2019), requires that prejudice be presumed in these circumstances. The Court of Appeals allowed defendant's petition and remanded the matter to superior court to hold a hearing to determine whether defendant was entitled to appointment of counsel and a copy of the trial transcript at the State's expense.

The State thereafter filed a petition for writ of certiorari with this Court to review the order of the Court of Appeals allowing defendant's petition. The State argued the panel below erred by (1) allowing defendant's petition after the initial panel dismissed without prejudice, in violation of *North Carolina National Bank v. Virginia Carolina Builders*, 307 N.C. 563, 566–67 (1983), and (2) failing to properly apply the standard for granting certiorari articulated in *Cryan*, 384 N.C. 569. We granted certiorari, and based upon precedent from this Court, we affirm, reinforcing that the test articulated in *Cryan* is applicable to all petitions for writ of certiorari, including those advanced by parties in criminal cases.

II. Discussion

"We review the Court of Appeals' decision to allow a petition for writ of certiorari . . . for an abuse of discretion." *State v. Ricks*, 378 N.C. 737, 740 (2021). An abuse of discretion occurs when the court below made "[a]n error of law," *Slattery v. Appy City, LLC*, 385 N.C. 726, 729 (2024), or when the decision "was manifestly unsupported by reason, or so arbitrary that it could not have been the result of a reasoned decision," *Cryan*, 384 N.C. at 573 (cleaned up).

The State makes two arguments on appeal. First, the State contends the second panel at the Court of Appeals impermissibly overruled the first in violation of *Virginia Carolina Builders*. Second, the State asserts that even if the second panel did not overrule the first, the

second panel abused its discretion by failing to apply *Cryan*. We address each argument in turn.

A. *Virginia Carolina Builders*

[1] It is well-established "that once a panel of the Court of Appeals has decided a question in a given case that decision becomes the law of the case and governs other panels which may thereafter consider the case." *Virginia Carolina Builders*, 307 N.C. at 567. "[S]ince the power of one panel of the Court of Appeals is equal to and coordinate with that of another, a succeeding panel of that court has no power to review the decision of another panel on the same question in the same case." *Id.* This determination is often straightforward, but these types of inquiries can be nuanced. To determine whether one panel has overruled another, "the Court will examine the effect of the subsequent decision, rather than whether the term 'overrule' was actually employed." *In re Civil Penalty*, 324 N.C. 373, 384 (1989).

In *Virginia Carolina Builders*, the plaintiff sought to appeal a nonappealable interlocutory order—namely, the trial court's order setting aside default judgment. *Virginia Carolina Builders*, 307 N.C. at 565. Although plaintiff did not have an appeal of right because the order was interlocutory, plaintiff filed a notice of appeal at the Court of Appeals. *Id.* Plaintiff also petitioned the court for a writ of certiorari, which was denied. *Id.* Following the denial, plaintiff filed a record on appeal pursuant to its prior notice of appeal, and the defendant moved to dismiss the appeal because the order was nonappealable. *Id.*

A different panel at the Court of Appeals ignored the procedural defect to reach what it characterized as a "serious error regarding a matter of great importance" contained in the trial court's order. *Id.* To do so, the panel exercised its "discretion" to treat the notice of appeal like a petition for writ of certiorari and allowed review. *Id.* This Court reversed, reasoning that

> [t]he first panel determined in its discretion not to review the case. Later, the second panel determined to exercise its discretion in favor of review. Thus, on the question of reviewability, the second panel of the Court of Appeals in effect overruled the first.
>
> Although we have never considered the question, well-established analogies in our law lead us to conclude that the second panel of the Court of Appeals was without authority to overrule the first on the

> same question in the same case. Once an appellate court has ruled on a question, that decision becomes the law of the case and governs the question not only on remand at trial, but on a subsequent appeal of the same case.

Id. at 566. In such circumstances, the petitioning party should instead file a motion for rehearing or seek review by a higher court.

Here, the State argues that the second panel of the Court of Appeals violated *Virginia Carolina Builders* by allowing defendant's petition "[w]hen presented with the same arguments and evidence" that the initial panel "rejected." But contrary to the State's assertion and unlike in *Virginia Carolina Builders*, the initial panel here did not "reject" defendant's petition. Instead, it dismissed the petition without prejudice, giving defendant explicit license to refile. Further, defendant's second petition contained additional argument and law which the second panel was permitted to consider in its discretion. We therefore reject the State's argument that the second panel of the Court of Appeals here overruled the prior panel.

B. Application of *Cryan*

[2] This Court has repeatedly affirmed that "[t]o issue a writ of certiorari, we require petitioners to 'show merit or that error was probably committed below' and 'extraordinary circumstances.' " *State v. Mincey*, 929 S.E.2d 582, 588 (N.C. 2026) (quoting *Cryan*, 384 N.C. at 572). Despite this clear directive, our Court of Appeals has failed to consistently apply this standard in criminal cases. For example, as the State aptly notes in its primary brief to this Court, "three different panels at the Court of Appeals applied three different standards for certiorari in published opinions *on the same day.*"[1] While decisions to allow or deny certiorari have no precedential value, *see Jenkins v. Aetna Cas. & Sur. Co.*, 324 N.C. 394, 400 (1989), the standard reviewing courts employ must remain consistent.

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1. *State v. Hannah*, 299 N.C. App. 266, 271–72 (2025) (explaining that *Cryan* "articulated a two-factor test which provides a mandatory framework for how and when to properly exercise our discretion to issue writs of certiorari"); *State v. Gardner*, 299 N.C. App. 251, 254 (2025) ("In short, *Cryan* simply reaffirms our discretion to allow petitions for writ of certiorari in appropriate cases—the scope of which is guided by our precedent and our understanding of the equitable concerns in each case."); *State v. Owens*, 299 N.C. App. 290, 296 (2025) (allowing certiorari when a defendant "demonstrated a good faith effort to appeal his case").

"Certiorari is a discretionary writ, to be issued only for good or sufficient cause shown, and it is not one to which the moving party is entitled as a matter of right." *Womble v. Moncure Mill & Gin Co.*, 194 N.C. 577, 579 (1927). The writ of certiorari is one of the "prerogative writs" that the Court of Appeals may issue "in aid of its own jurisdiction." N.C.G.S. § 7A-32(c) (2025). However, the authorizing statute does not provide any criteria for the Court of Appeals' use of this prerogative writ. *See id.* ("The practice and procedure shall be as provided by statute or rule of the Supreme Court, or, in the absence of statute or rule, according to the practice and procedure of the common law."). Thus, the appropriate legal test is a question of law governed by case law from this Court. *See State v. Ledbetter*, 371 N.C. 192, 196–97 (2018).

We have established a two-part test.

> First, a writ of certiorari should issue only if the petitioner can show merit or that error was probably committed below. This step weighs the likelihood that there was some error of law in the case.
>
> Second, a writ of certiorari should issue only if there are extraordinary circumstances to justify it. We require extraordinary circumstances because a writ of certiorari is not intended as a substitute for a notice of appeal. If courts issued writs of certiorari solely on the showing of some error below, it would render meaningless the rules governing the time and manner of noticing appeals.
>
> There is no fixed list of 'extraordinary circumstances' that warrant certiorari review, but this factor generally requires a showing of substantial harm, considerable waste of judicial resources, or wide-reaching issues of justice and liberty at stake.

Id. at 572–73 (cleaned up).

While certiorari is a "discretionary writ," *see Womble*, 194 N.C. at 579, we emphasize that *Cryan*'s two-part test must be satisfied. The failure to apply *Cryan* is "[a]n error of law [that] constitutes an abuse of discretion." *Slattery*, 385 N.C. at 729. But when *Cryan* is satisfied, a reviewing court may grant or deny certiorari in its discretion.

With this framework in mind, we turn to the crux of the present appeal; specifically, whether defendant's petition satisfied *Cryan* such that the panel below was within its discretion to grant certiorari. First, we

note that defendant's petition established merit or probable error below. Mr. Lusby's affidavit, which was filed along with defendant's petition, acknowledged that he understood defendant wanted to enter notice of appeal but he nonetheless failed to speak with defendant or otherwise take the steps necessary to appeal defendant's case. When an attorney fails to timely enter notice of appeal for a client who wishes to do so, as defendant's counsel admitted under oath, his or her performance is necessarily deficient. *Garza*, 586 U.S. at 243–44 ("[W]hen counsel's constitutionally deficient performance deprives a defendant of an appeal that he otherwise would have taken, the defendant has made out a successful ineffective assistance of counsel claim[.]" (cleaned up)). The panel below was within its discretion to find merit or probable error on this record.

The State argues that Mr. Lusby's affidavit is insufficient because it is not part of the "objective 'cold record' that *Fair* and its progeny contemplate." But establishing ineffective assistance of counsel and establishing probable error are distinct inquiries. For the latter, a trial counsel's sworn affidavit may certainly aid the "merit or probable error" inquiry, even if such evidence, standing alone, is insufficient to conclusively establish ineffective assistance of counsel on appeal. In such cases, the reviewing court can and should dismiss the claim without prejudice to defendant's right to file an MAR so that an evidentiary hearing may be held. *See State v. Fair*, 354 N.C. 131, 167 (2001) ("[S]hould the reviewing court determine that IAC claims have been prematurely asserted on direct appeal, it shall dismiss those claims without prejudice to the defendant's right to reassert them during a subsequent MAR proceeding.").

Similarly, the panel below did not abuse its discretion by determining that defendant also showed extraordinary circumstances. Defendant alleged the loss of his right to direct appeal due to the constitutionally deficient performance of his counsel. As with the probable error discussed above, issuance of the writ based upon an allegation of extraordinary circumstances does not necessarily equate to success on appeal.

III. Conclusion

"Ultimately, the decision to issue a writ of certiorari rests in the sound discretion of the presiding court." *Cryan*, 384 N.C. at 573. Based upon the foregoing, we cannot say the decision to allow certiorari under these circumstances was manifestly unsupported by reason or so arbitrary that it could not have been the result of a reasoned decision and, we affirm.

AFFIRMED.

STATE OF NORTH CAROLINA
v.
DALLAS JEROME McGIRT

No. 91A25

Filed 14 August 2026

Constitutional Law—right to counsel—waiver—knowing, intelligent, and voluntary—course of conduct—sufficiency of colloquy

In a prosecution for multiple sexual offenses, the trial court's determination that defendant clearly and unequivocally expressed his desire to proceed pro se and that defendant's waiver of his right to appointed counsel was knowing, intelligent, and voluntary was supported by the totality of the circumstances; therefore, the decision of the Court of Appeals granting defendant a new trial after finding otherwise was reversed. Over the course of the case defendant cycled through five appointed attorneys and twice filed handwritten waivers of counsel in which he asked to represent himself with the assistance of standby counsel. Further, the trial court conducted a colloquy with defendant that substantially complied with the requirements set forth in N.C.G.S. § 15A-1242; although the trial court's statement of the range of permissible punishments was not precise, its miscalculation and the actual range of possible punishments both amounted to more than defendant's natural life.

Chief Justice NEWBY concurring.

On discretionary review pursuant to N.C.G.S. § 7A-31 of a divided decision of the Court of Appeals, 298 N.C. App. 223 (2025), vacating judgments entered on 1 June 2023 by Judge G. Bryan Collins in Superior Court, Wake County and remanding for a new trial. Heard in the Supreme Court on 18 February 2026.

Jeff Jackson, Attorney General, by Elizabeth B. Jenkins, Special Deputy Attorney General, for the State-appellant.

Mary McCullers Reece for defendant-appellee.

EARLS, Justice.

In this case, we consider whether the Court of Appeals erred in concluding that defendant, Dallas Jerome McGirt, did not knowingly,

intelligently, and voluntarily waive his right to counsel. After cycling through five court-appointed attorneys over the course of approximately fifty months, Mr. McGirt twice filed handwritten documents captioned "Waiver of Counsel"—the first of which expressly stated his desire to "go Pro Se and have Court Appointed Counsel on stand-by." The trial court conducted a colloquy with Mr. McGirt in open court and found that he had waived counsel. The Court of Appeals reversed and granted a new trial. For the reasons stated, we reverse the decision of the Court of Appeals.

I. Background

On 8 April 2019, defendant Dallas Jerome McGirt was indicted for six counts of statutory sexual offense with a child and ten counts of indecent liberties with a child. On 12 March 2019, the trial court found Mr. McGirt to be indigent and ordered that he be represented by counsel from the Wake County Public Defender's office.

Two months later, the assigned counsel moved to withdraw because the Public Defender's office had represented the mother of a victim, a probable witness at trial, during the time of the alleged incidents. On 14 May 2019, the Honorable Paul Ridgeway found that the conflict existed and allowed counsel to withdraw. The trial court then appointed Mr. James Wilson to represent Mr. McGirt. On 18 November 2019, after Mr. Wilson left private practice to join the Attorney General's Office, the Honorable Rebecca Holt allowed his former firm to withdraw and ordered that counsel outside the Public Defender's office be appointed.

In November 2019, the court appointed Ms. Cindy Popkin-Bradley. On 3 May 2021, Ms. Popkin-Bradley moved to withdraw, stating that for "personal reasons" she "cannot be effective in defending Mr. McGirt." The Superior Court released Ms. Popkin-Bradley that same day and ordered the Public Defender to appoint substitute counsel, noting conflicts with multiple attorneys and directing that outside counsel be appointed.

Ms. Margaret Lumsden was appointed as Mr. McGirt's fourth attorney in May 2021. On 19 April 2022, Mr. McGirt filed a handwritten motion expressing dissatisfaction with Ms. Lumsden's representation, including that she had refused to meet his objectives and had misrepresented to him that she was on vacation. He asked the trial court to "dismiss" her from his case. On 22 April 2022, Judge Ridgeway entered an order citing N.C.G.S. § 7A-457 and directing that there be an in-person colloquy in open court before the court granted the request to dismiss court-appointed counsel.

On 16 May 2022, Mr. McGirt filed a handwritten document captioned "Waiver of Counsel." In it Mr. McGirt cited N.C.G.S. § 7A-457 and asked to "go Pro Se and have Court Appointed Counsel on stand-by." On 3 June 2022, Judge Holt entered an order allowing Ms. Lumsden to withdraw and directing the Public Defender's Office to appoint outside counsel.

Mr. Charles Christopher was appointed as Mr. McGirt's fifth attorney. On 22 August 2022, defendant wrote to Judge Ridgeway stating that Mr. Christopher had not come to see him about his case and expressing his desire to "fire my attorney Mr. Charles Christopher." On 2 December 2022, Mr. McGirt filed with the court a letter he had written to Mr. Christopher setting forth counsel's failure to communicate with him.

On 4 April 2023, Mr. McGirt filed a second handwritten document captioned "Waiver of Counsel" listing reasons for his dissatisfaction with his current and previous counsel. Mr. Christopher filed a motion to withdraw.

On 4 May 2023, three weeks before the matter was set for trial, counsel's motion to withdraw came on for hearing. Mr. McGirt addressed the court, stating that he had filed the waiver of counsel "on March 29th" and that he had "been waiting for a response ever since." The trial court acknowledged the filing and noted that Mr. Christopher was Mr. McGirt's fifth attorney.

When the trial court asked defendant about the "waiver of counsel" he had filed, Mr. McGirt responded, "Yeah, that's what I—I filed it just to get him off my case." The trial court allowed counsel's motion to withdraw. The court then stated, "[w]e need to consider if you have effectively waived your right to the assistance of court-appointed counsel anyway and that you need to represent yourself or if we need to appoint standby counsel to assist you with this case." When asked what he was asking the court to do, Mr. McGirt responded by criticizing the performance of his prior counsel, stating, "I've been held almost 50 months, and it doesn't make sense," and recounting specific complaints about his third attorney's failure to request discovery. At no point during the hearing did Mr. McGirt request the appointment of a sixth attorney.

The State requested that the trial court appoint standby counsel and allow the trial to proceed. The trial court then conducted a colloquy, confirming that Mr. McGirt was able to hear and understand the proceedings, that he could read and write, that he understood his right to plead not guilty, that he had not recently consumed intoxicating substances, that he understood the right to be represented by counsel, and that he was aware of the elements of the offenses charged against him.

On the question of sentencing, the trial court confirmed that Mr. McGirt recognized "the possibility of . . . 25 years minimum" for each of the six statutory sex offense charges, to which Mr. McGirt responded, "I'm very well aware, Your Honor." The trial court did not separately address the sentencing range for the ten Class F felony charges or the maximum sentence of life without parole for the B1 felonies. Mr. McGirt was fifty-three years old at the time.

The trial court concluded that Mr. McGirt had waived his right to the assistance of counsel and then assigned standby counsel. The court's order dated 4 May 2023 stated: "DEFENSE MOTION TO WITHDRAW IS ALLOWED. DEFENDANT WAIVES COUNSEL AND THE PUBLIC DEFENDERS OFFICE IS TO APPOINT STAND BY COUNSEL."

On 18 May 2023, Mr. McGirt was brought to court to receive discovery materials, and the trial court ordered that he have access to the law library to prepare for trial. On 22 May 2023, Mr. McGirt appeared before Judge Rozier and requested the appointment of counsel. Judge Rozier denied the request, finding that Mr. McGirt had previously waived his right to court-appointed counsel but noted that standby counsel, Mr. Liles, remained available and that Mr. McGirt was free to hire a private attorney.

On 30 May 2023, the day the matter came on for trial, the State filed a motion to have standby counsel, rather than Mr. McGirt, examine the prosecuting witnesses. Mr. McGirt did not object, and the trial court allowed the motion. At trial, standby counsel questioned the prosecuting witnesses, and Mr. McGirt otherwise represented himself. The jury convicted Mr. McGirt of four counts of statutory sex offense with a child and ten counts of indecent liberties with a child. The trial court sentenced Mr. McGirt to minimum sentences totaling seventy-five years.

Mr. McGirt gave notice of appeal in open court. On 19 March 2025, the Court of Appeals vacated the convictions and remanded for a new trial, holding that Mr. McGirt had neither waived nor forfeited his right to counsel. *State v. McGirt*, 298 N.C. App. 223, 240 (2025).

II. Analysis

A. Standard of Review

The right to counsel in a criminal proceeding is protected by both the United States and North Carolina Constitutions. U.S. Const. amend. VI; N.C. Const. art. I, §§ 19, 23. A criminal defendant also has the right to waive counsel and proceed pro se. *State v. Fenner*, 387 N.C. 330, 334–35 (2025). This Court reviews de novo a trial court's determination that a

defendant has waived the right to counsel. *State v. Simpkins*, 373 N.C. 530, 533 (2020).

B. Applicable Law

A defendant may voluntarily relinquish the right to counsel by way of waiver. Section 15A-1242 of the North Carolina General Statutes provides that "[a] defendant may be permitted at his election to proceed in the trial of his case without the assistance of counsel." N.C.G.S. § 15A-1242 (2025). For a waiver to be constitutionally valid, the defendant must "clearly and unequivocally" express a desire to proceed pro se, and the trial court must ensure that the waiver is knowing, intelligent, and voluntary. *State v. Thomas*, 331 N.C. 671, 673–74 (1992). The trial court satisfies this obligation by conducting the "thorough inquiry" mandated by section 15A-1242, which requires the court to be satisfied that the defendant has been advised of the right to counsel, understands and appreciates the consequences of proceeding without counsel, and comprehends the nature of the charges and the range of permissible punishments. *Id.* at 674.

Critically, the statute requires only that the defendant make an "election" to proceed without counsel—it does not prescribe a particular form or magic words through which that election must be communicated. *See id.* at 674–76. A defendant's clear and unequivocal expression of the desire to proceed pro se may be assessed in light of the totality of the circumstances, including written filings, in-court statements, and the defendant's overall course of conduct. *See State v. Atwell*, 383 N.C. 437, 447 (2022).

As the Court of Appeals has noted, "[a] written waiver is important evidence to show a defendant wishes to act as [his] own attorney." *State v. Jenkins*, 273 N.C. App. 145, 151 (2020). Although a written waiver legitimately creates a presumption that the defendant's waiver of counsel was knowing, intelligent and voluntary, it is not a substitute for the requirements of N.C.G.S. § 15A-1242. *Id.*; *see also State v. Kinlock*, 152 N.C. App. 84, 89–90 (2002), *aff'd per curiam*, 357 N.C. 48 (2003) (noting that when a defendant executes a written waiver, it is presumed that the waiver of counsel was knowing, intelligent and voluntary "unless the rest of the record indicates otherwise" (cleaned up)). While providing for a written waiver, our statutes also clearly state that "[a]ny waiver of counsel shall be effective only if the court finds of record that at the time of waiver the indigent person acted with full awareness of his rights and of the consequences of the waiver." N.C.G.S. § 7A-457(a) (2025).

C. Mr. McGirt Clearly and Unequivocally Expressed the Desire to Proceed Pro Se

Viewing the record as a whole, the evidence establishes that Mr. McGirt clearly and unequivocally expressed his desire to waive counsel and proceed pro se. That expression was not confined to a single moment but was the culmination of a sustained course of conduct spanning approximately fifty months and five appointed attorneys—a course of conduct that, particularly in its final stages, left no doubt as to Mr. McGirt's intentions. This course of conduct was then confirmed in the court's colloquy with Mr. McGirt at the hearing on 4 May 2023.

Mr. McGirt's first three attorneys were released for reasons not attributable to his conduct: his first counsel withdrew due to a conflict within the Public Defender's office; his second left private practice; and his third withdrew for personal reasons. We do not rely on these changes of counsel as evidence of waiver. They do, however, form the backdrop against which Mr. McGirt's subsequent actions must be understood.

It is with the fourth and fifth attorneys that Mr. McGirt's conduct shifted from dissatisfaction with individual counsel to a clear pattern of rejecting appointed representation altogether. After Ms. Lumsden was appointed in May 2021, Mr. McGirt filed a handwritten motion in April 2022 seeking to "dismiss" her from his case. On 16 May 2022, he filed a document he himself captioned "Waiver of Counsel," in which he cited N.C.G.S. § 7A-457 and stated that he wished to "go Pro Se and have Court Appointed Counsel on stand-by." This filing was not ambiguous. Mr. McGirt invoked the statutory framework for waiver, used the term "Pro Se," and articulated precisely the arrangement he sought—self-representation with the assistance of standby counsel. That is, by definition, a waiver of the right to counsel. *See* N.C.G.S. § 15A-1243 (2025) (providing for appointment of standby counsel when a defendant elects to proceed pro se).

After Ms. Lumsden was released and Mr. Christopher was appointed as his fifth attorney, Mr. McGirt's dissatisfaction continued. He complained that Mr. Christopher had not communicated with him, and in December 2022 filed a letter detailing counsel's failures. On 4 April 2023, Mr. McGirt filed a second document captioned "Waiver of Counsel," again setting forth his dissatisfaction with appointed representation. Mr. Christopher thereafter filed his own motion to withdraw.

At the 4 May 2023 hearing, the trial court addressed both filings and Mr. Christopher's motion. When asked about the document he had filed, Mr. McGirt stated that he had filed it "just to get him off my case."

The Court of Appeals seized upon this statement as evidence that Mr. McGirt did not intend to waive counsel. We disagree. This single statement must be read in context—not in isolation. When the trial court asked Mr. McGirt what he was asking the court to do, he did not request new counsel. Instead, he complained at length about the inadequacies of his previous attorneys. He did not, at any point during the hearing, ask the trial court to appoint a sixth attorney. He had already twice filed documents he himself titled "Waiver of Counsel"—the first of which expressly requested to "go Pro Se"—and his conduct throughout the hearing was consistent with a defendant who had resolved to proceed without appointed counsel.

We do not suggest that any single filing or statement, standing alone, would necessarily constitute a clear and unequivocal expression of the desire to proceed pro se. But when a defendant files two written waivers of counsel, one of which uses the words "Pro Se" and invokes the governing statute, cycles through five appointed attorneys, and then appears before the trial court without requesting the appointment of a sixth, the totality of those circumstances constitutes a clear and unequivocal expression of the election to proceed without counsel within the meaning of section 15A-1242 and *State v. Thomas*, 331 N.C. 671 (1992).

D. *McCrowre* and *Hutchins* Involved Different Circumstances

Mr. McGirt relies on *State v. McCrowre*, 312 N.C. 478 (1984), and *State v. Hutchins*, 303 N.C. 321 (1981), for the proposition that a desire to change counsel is not an expression of intent to waive counsel. But those cases involve very different facts that are material to determining whether a defendant has knowingly, intelligently, and voluntarily waived the right to appointed counsel.

In *McCrowre* the defendant signed a form captioned "WAIVER OF RIGHT TO ASSIGNED COUNSEL" at arraignment, but did so only because he expected to hire a private attorney. 312 N.C. at 479–80. When he was unable to retain private counsel and appeared for trial without an attorney, he immediately asked the court to appoint someone to assist him. *Id.* at 480. The record in *McCrowre* thus "clearly indicate[d] that when [the] defendant signed the waiver of his right to assigned counsel, he did so with the expectation of being able to privately retain counsel," and there was "no evidence that [the] defendant ever intended to proceed to trial without the assistance of some counsel." *Id.*

Mr. McGirt's case presents a markedly different record. Unlike the defendant in *McCrowre*, Mr. McGirt did not sign a waiver in reliance on his ability to hire private counsel. He filed two separate handwritten

documents—months apart—each titled "Waiver of Counsel," the first of which expressly stated his desire to "go Pro Se." He did not, at the 4 May 2023 hearing, ask the court to appoint a sixth attorney. And the record reflects not a single, isolated waiver executed under a misapprehension but a consistent course of conduct across nearly two years in which Mr. McGirt rejected each appointed attorney in turn while simultaneously invoking the language of self-representation.

Likewise, the *Hutchins* principle that "[s]tatements of a desire not to be represented by court-appointed counsel do not amount to expressions of an intention to represent oneself," 303 N.C. at 339, does not control here. That principle applies where a defendant's statements, at most, reflect dissatisfaction with particular appointed counsel and a desire for a replacement. Mr. McGirt's statements went further. His 16 May 2022 filing did not merely ask for new counsel—it asked to "go Pro Se and have Court Appointed Counsel on stand-by." A defendant who uses the words "Pro Se," invokes the statutory waiver framework, and requests the specific arrangement contemplated by section 15A-1243 for defendants who elect self-representation has done more than express dissatisfaction with a particular lawyer. Mr. McGirt has expressed the desire to proceed without counsel.

E. The Trial Court's Colloquy Satisfied N.C.G.S. § 15A-1242 Under *Fenner*

Mr. McGirt additionally argues that, even if he expressed the desire to proceed pro se, the trial court's colloquy was constitutionally deficient because the court failed to apprise him of the full range of permissible punishments for all charges. In this case, the trial court's colloquy substantially complied with the statutory requirement and substantiates Mr. McGirt's two written waivers of counsel.

At the 4 May 2023 hearing, the trial court confirmed that Mr. McGirt could hear and understand the proceedings, that he could read and write, that he had not consumed any intoxicating substances, that he understood his right to counsel, and that he understood the right to plead not guilty. The court then informed Mr. McGirt that each of his six B1 felony charges carried a minimum sentence of twenty-five years. Mr. McGirt responded, "I'm very well aware, Your Honor." The trial court did not separately address the sentencing range for the ten Class F felony charges of indecent liberties with a child, each carrying a potential sentence of ten to fifty-nine months, and the court's phrasing—"not life"—may have understated the maximum for the B1 felonies, which in fact carried a maximum penalty of life without parole. N.C.G.S. §§ 14-27.28(b), 15A-1340.17 (2025).

This Court recently addressed a materially similar situation in *State v. Fenner*, 387 N.C. 330 (2025). In *Fenner* the trial court erroneously informed the defendant that he faced between 75 and 175 years in prison, when in fact he could have received multiple life sentences. *Id.* at 331. This Court concluded that "[i]f the trial court miscalculates the range of permissible punishments during the statutory colloquy, but both the miscalculation and the actual range are tantamount to the remainder of the defendant's life, the trial court complies with the statute." *Id.* at 335.

Fenner is directly on point: the same principle applies here. Mr. McGirt was fifty-three years old at the time of his trial. Six consecutive twenty-five-year sentences—the minimum the trial court communicated, which Mr. McGirt acknowledged hearing and understanding—would total 150 years. Whether Mr. McGirt understood his exposure to be 150 years or some greater figure encompassing the Class F felonies and the possibility of life without parole, either calculation was tantamount to more than the remainder of his life. There is no reasonable likelihood that Mr. McGirt would have altered his decision to proceed pro se had the trial court correctly informed him of the full sentencing range for all the charges he faced. Under *Fenner*, the trial court's misstatement here does not render the colloquy constitutionally deficient.

III. Conclusion

For the foregoing reasons, we hold that the trial court correctly concluded that Mr. McGirt had clearly and unequivocally expressed his desire to proceed pro se through his written filings, his in-court statements, and his overall course of conduct. Moreover, the trial court's colloquy, though imprecise as to the range of permissible sentences, substantially complied with N.C.G.S. § 15A-1242 because, under the standard set forth in *Fenner*, the miscalculation and the actual range of possible punishments both unequivocally amounted to more than his natural life. The Court of Appeals erred in concluding that his waiver of appointed counsel was not knowing, intelligent, and voluntary. Having concluded that the trial court was correct to find that Mr. McGirt knowingly, intelligently and voluntarily waived his right to court appointed counsel and that the court's colloquy satisfied statutory requirements, there is no need for us to consider whether Mr. McGirt forfeited his right to counsel in this matter. The decision of the Court of Appeals is reversed.

REVERSED.

Chief Justice NEWBY concurring.

I join the majority's conclusion that defendant waived his right to counsel. I agree also that our disposition of the case does not require us to consider whether defendant forfeited his right to counsel. Regardless, I write separately to address forfeiture in hopes of clarifying some lingering confusion about its relationship with waiver. I respectfully concur.

Although waiver and forfeiture are sometimes used interchangeably in casual parlance, the terms are not synonymous. *Contrast State v. McGirt*, 298 N.C. App. 223, 228, 235, 239, 913 S.E.2d 476, 480, 484, 487 (2025) (analyzing waiver, forfeiture, and "hybrid waiver by conduct with warning"), *with id.* at 244, 248, 913 S.E.2d at 490, 492 (Tyson, J., dissenting) (analyzing only "waiver of counsel" and "hybrid waiver and forfeiture" without a separate analysis for forfeiture).[1] They are separate concepts that address distinct concerns. Waiver guards the defendant's right to dictate his own defense. *See Faretta v. California*, 422 U.S. 806, 820–21, 95 S. Ct. 2525, 2533–34 (1975). Forfeiture protects the trial court's "legitimate interest in guarding against manipulation and delay." *State v. Simpkins*, 373 N.C. 530, 549, 838 S.E.2d 439, 454 (2020) (Newby, J., dissenting) (quotation omitted). Stated another way, waiver ensures that counsel does not control the defendant, while forfeiture ensures that the defendant does not control the courtroom. The difference is particularly important because forfeiture implicates an additional consideration: appellate deference to the trial court's "fundamental authority over the courtroom." *Id.* at 542, 838 S.E.2d at 450.

I begin with waiver. The Sixth Amendment to the United States Constitution guarantees that "[i]n all criminal prosecutions, the accused shall . . . have the Assistance of Counsel for his defence."[2] U.S. Const. amend. VI. But the Sixth Amendment does not mandate counsel. *Faretta*, 422 U.S. at 820–21, 95 S. Ct. at 2533–34. Rather, "[i]t speaks of the *assistance* of counsel, and an assistant, however expert, is still an assistant." *Id.* at 820, 95 S. Ct. at 2533 (emphasis added) (internal quotation marks omitted). The text of the Sixth Amendment accords with

1. The dissent below was not alone in this misapprehension. The trial court incorrectly described forfeiture as an "effective[ ] waive[r]," and the State's petition for discretionary review at this Court focused exclusively on waiver—leading us to issue a special order directing the parties to brief both waiver and forfeiture.

2. Article I, Section 23 of our state constitution guards the analogous right. *See* N.C. Const. art. I, § 23 ("In all criminal prosecutions, every person charged with crime has the right . . . to have counsel for defense . . . .").

its original public meaning: "[T]he notion of compulsory counsel was utterly foreign to" the Founding generation, *id.* at 833, 95 S. Ct. at 2540, which believed instead "that self-representation was a basic right of a free people," *id.* at 830 n.39, 95 S. Ct. at 2538 n.39. "And whatever else may be said of those who wrote the Bill of Rights, surely there can be no doubt that they understood the inestimable worth of free choice." *Id.* at 833–34, 95 S. Ct. at 2540.

Thus, defendants retain the ability to waive counsel and proceed pro se, should they choose. *Id.* at 834, 95 S. Ct. at 2541. "[W]aiver is . . . an intentional relinquishment or abandonment of a known right or privilege." *State v. Harvin*, 382 N.C. 566, 585, 879 S.E.2d 147, 159 (2022) (quoting *Johnson v. Zerbst*, 304 U.S. 458, 464, 58 S. Ct. 1019, 1023 (1938)). This means that the trial court may not accept a waiver of counsel unless the defendant "clearly and unequivocally" enters it "knowingly, intelligently, and voluntarily." *Id.* at 585, 879 S.E.2d at 160 (quoting *State v. Thomas*, 331 N.C. 671, 673–74, 417 S.E.2d 473, 475–76 (1992)). Waiver owes to choice both its justification in theory and application in practice. Axiomatically, waiver depends on choice.

Forfeiture is different. Forfeiture "results in the loss of a right regardless of the defendant's knowledge thereof and irrespective of whether the defendant intended to relinquish the right." *Id.* at 586, 879 S.E.2d at 160 (quoting *State v. Schumann*, 257 N.C. App. 866, 879, 810 S.E.2d 379, 388 (2018)). A criminal defendant may forfeit his right to counsel "in situations evincing egregious misconduct." *Id.* at 586, 879 S.E.2d at 160 (quoting *Simpkins*, 373 N.C. at 535, 838 S.E.2d at 446).

> Courts have recognized forfeiture by misconduct when a defendant (1) engages in flagrant or extended delaying tactics, such as repeatedly firing a series of attorneys; (2) employs offensive or abusive behavior, such as threatening counsel, cursing, spitting, or disrupting proceedings in court; or (3) refuses to acknowledge the trial court's jurisdiction or participate in the judicial process, or insists on nonsensical and nonexistent legal "rights."

Simpkins, 373 N.C. at 546, 838 S.E.2d at 452 (Newby, J., dissenting) (citation modified).

This case provides a helpful illustration. In the span of four years, defendant cycled through five court-appointed attorneys. Although defendant's first three lawyers withdrew from the case due to, respectively, a conflict of interest, a job change, and personal reasons due to

which the attorney could not effectively represent him, defendant took it upon himself to seek the dismissal of each of his final two lawyers. He accused each of ineffectiveness and unethical behavior.

By the time defendant sought to release his fifth and final attorney, both the trial court and State had expressed skepticism regarding his true motives. The State put it most bluntly at the 4 May 2023 pretrial waiver hearing:

> Your Honor, [defendant] is charged with six counts of first-degree sex offense with a child, twelve counts of taking indecent liberties with a child. There are four separate victims involved in this case. This is the second time that I have prepped these kids for trial. This is literally just creating more and more trauma for . . . four kids. The abuse started with these children when they were as young as five years old. They are now starting to almost get to the age where they are becoming adults. They would like this behind them. The State would like this behind [it]. This defendant has literally, every single time something starts to get towards a trial, has done some kind of thing with his attorney to get them to withdraw. We were set for trial with [defendant's third attorney, but defendant] did the same kind of stuff and [that attorney] was able to withdraw the week before trial. I just feel like these victims are getting kind of jerked around by the games that are being played, and I don't think that that's fair.
>
> In addition to that, this defendant has pro se filed motions for a speedy trial. The State has every single time tried to get this to trial, [but defendant] has continued to behave in ways that are making that impossible. The State is ready to proceed on May 30th.

Still, defendant insisted that he could not proceed to trial with his fifth attorney. For years, defendant had been mailing to the trial court handwritten letters—stylized as self-declared "[w]aiver[s] of [c]ounsel"—expressing intent to "fire" his lawyer and "go pro se." At the 4 May 2023 waiver hearing, defendant told the trial court his fifth attorney "ha[d] done nothing that [he] asked," going so far as to imply counsel had been working against his interests. When the trial court suggested the fifth attorney might remain on defendant's case as standby counsel

due to his familiarity with the matter, defendant vehemently refused: "Appoint anybody but him. I'll even take [the bailiff]. Anybody but [this attorney]."

And when the trial court eventually conducted the mandatory waiver colloquy, *see* N.C.G.S. § 15A-1242 (2025), defendant responded with confidence:

> THE COURT: . . . [Y]ou do understand that this case is headed for trial?
>
> THE DEFENDANT: Oh, yes.
>
> . . . .
>
> THE COURT: . . . [F]or each of the [six] statutory sex offenses, you recognize that there is the possibility of life—not life, but [twenty-five] years minimum for each of those six?
>
> THE DEFENDANT: I'm very well aware, Your Honor.
>
> THE COURT: Are there any—are you aware of each—the elements in each part of the offenses against you?
>
> THE DEFENDANT: Yes, I am.
>
> THE COURT: All right, sir, I'm going to find that you have—that you have waived your right to the assistance of counsel.

At first glance, these actions appear to show an unambiguous intent to waive counsel. But the issue is closer than it appears. Defendant argues that he believed "waiver of counsel" meant something akin to dismissing his current attorney and requesting a new one. Therefore, defendant submits that he did not intend to represent himself and—as a result—did not waive his right to counsel knowingly, intelligently, and voluntarily. This argument finds some support in our precedents: "Statements of a desire not to be represented by court-appointed counsel do not amount to expressions of an intention to represent oneself." *State v. Hutchins*, 303 N.C. 321, 339, 279 S.E.2d 788, 800 (1981); *see also Thomas*, 331 N.C. at 675, 417 S.E.2d at 476 ("[D]efendant did not 'clearly and unequivocally' state a desire to proceed *in propria persona*. Instead, he was confused about the choices available to him.").

The record lends additional support to defendant's argument. For instance, defendant's 16 May 2022 letter requests both "a new attorney" and that defendant be allowed to proceed pro se. This contradiction

suggests defendant may not have fully grasped what waiver entailed, at least at the time he sent this letter. Defendant also repeatedly confirmed to the trial court that he filed his March 2023 waiver of counsel to "get [his new attorney] off [his] case."

After considering the totality of the circumstances in the record, however, I fully agree with the majority in concluding that defendant waived his right to counsel.

But assume *arguendo* that defendant did not execute a valid waiver of counsel. That determination would not end our analysis. Instead, we would consider whether defendant forfeited his right. And here defendant's argument would collapse altogether.

At the forfeiture stage, problems with waiver—including the defendant's lack of knowledge or the inadequacy of the trial court's colloquy—fall by the wayside. *See Harvin*, 382 N.C. at 586, 879 S.E.2d at 160. The forfeiture inquiry asks whether the defendant's misconduct was so severe as to threaten the trial court's ability to exercise its "fundamental authority over the courtroom" and "provide orderly and just proceedings for all." *Simpkins*, 373 N.C. at 542, 549, 838 S.E.2d at 450, 454 (Newby, J., dissenting). Examples include the deployment of "flagrant or extended delaying tactics, such as repeatedly firing a series of attorneys." *Id.* at 546, 838 S.E.2d at 452 (citation modified).

Defendant engaged in that sort of misbehavior in this case. He lodged baseless accusations about several attorneys' competence and ethics and demanded the trial court furnish replacements for each one. The striking similarities between defendant's accusations call into question his sincerity. It strains credulity to believe the trial court appointed multiple consecutive lawyers who all decided to ignore this case, lie to defendant and his family, and skip scheduled meetings.[3] The timing of defendant's several attempts to dismiss counsel—two of which occurred less than a month before the scheduled start of trial—casts further doubt on his claims.

An examination of the cold record in its entirety shows the trial court had ample reason to think defendant was "attempting to obstruct the proceedings and prevent them from coming to completion." *Id.* at

3. In fact, defendant's fifth attorney averred the exact opposite: "*Defendant* refuses to discuss his case with this attorney or assist this attorney with his defense in any way. On [21 April 2023, for instance,] this attorney had scheduled an in person meeting with [d]efendant at the Wake County Detention Center. At that time, [*d*]*efendant* refused to meet with this attorney." (Emphases added).

538, 838 S.E.2d at 447 (majority opinion). The trial court acted well within its discretion when it determined defendant was not entitled to a sixth attorney. The Court of Appeals erred in holding otherwise.

That conclusion becomes especially clear when an appellate court approaches this question with humility, keeping in mind the structural differences between appellate and trial courts and our respective strengths and weaknesses. And this leads me to my final point: in evaluating forfeiture, reviewing courts must remember that "[t]he trial court understands courtroom dynamics in ways that cannot be gleaned from the cold transcript." *Id.* at 546, 838 S.E.2d at 452 (Newby, J., dissenting) (citation modified). Unlike appellate courts, the trial court can "observe a defendant's behavior, evaluate his tone of voice, and assess the sincerity of his conduct . . . ." *Id.* at 547, 838 S.E.2d at 452. "Thus, as this Court has noted in numerous contexts, some decisions are best made by the trial court." *Id.* at 546, 838 S.E.2d at 452 (collecting cases); *see also*, *e.g.*, *State v. Wilson*, 388 N.C. 488, 489, 920 S.E.2d 832, 835 (2025) (explaining and applying deference in the context of *Batson* challenges). To pretend otherwise is appellate arrogance.

I agree with the majority that defendant waived his right to counsel and that this disposition makes it unnecessary to reach forfeiture. Nonetheless, I analyze forfeiture with hopes of clarifying a frequently misunderstood area of our law. I respectfully concur.

STATE OF NORTH CAROLINA
v.
MICHAEL JOHN MOORE, SR.

No. 285A24

Filed 14 August 2026

1. Appeal and Error—scope of appellate review—single issue in lower court's dissent—additional issue not inherently intertwined

The Supreme Court limited its review of defendant's criminal case—in which he was convicted of first-degree murder and first-degree kidnapping—to the single ground stated by the dissenting judge in the Court of Appeals' decision: namely, whether the State presented substantial evidence of the victim's restraint beyond that inherent in the murder to support the kidnapping charge. Where the State did not petition for discretionary review of additional issues but nevertheless argued that a governing line of cases should be overruled, the State's challenges to precedential case law was not inherently intertwined with the issue stated in the dissent.

2. Kidnapping—restraint—independent from restraint inherent in murder by suffocation—sufficiency of evidence

In a prosecution for first-degree murder and first-degree kidnapping, the State presented substantial evidence that the victim was restrained beyond the restraint that was inherent in the murder, which defendant perpetrated by suffocating the victim. Defendant not only bound his wife's hands, knees, and feet in such a manner as to prevent her from removing the plastic bags and duct tape over her head and mouth that caused her to suffocate, but he used additional restraints—including cables and zip ties—that were not inherent in the murder and, thus, supported a separate conviction for kidnapping. The decision of the Court of Appeals vacating the kidnapping conviction was therefore reversed.

Chief Justice NEWBY concurring in the result only.

Justice BARRINGER joins in this concurring in the result only opinion.

Appeal pursuant to N.C.G.S. § 7A-30(2) (2023) from the decision of a divided panel of the Court of Appeals, 296 N.C. App. 264 (2024), vacating a judgment entered on 10 August 2022 by Judge Gale M. Adams in

Superior Court, Cumberland County. Heard in the Supreme Court on 14 April 2026.

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

Glenn Gerding, *Appellate Defender*, *by Brandon Mayes*, *Assistant Appellate Defender*, *for defendant-appellee.*

DIETZ, Justice.

Defendant Michael John Moore Sr. murdered his wife by taping her mouth shut and suffocating her with plastic bags. When law enforcement responded to missing person reports, they found the victim tied to a bed and bound with multiple restraints. The victim's hands, knees, and feet were all bound with handcuffs, zip ties, or cables. Other cables and zip ties bound the victim to the bed, attached her hands to her knees, and pulled her hands toward her feet.

A jury convicted Moore of both first-degree murder and first-degree kidnapping. On appeal, a divided panel of the Court of Appeals vacated the kidnapping conviction, reasoning that the restraints were an inherent part of the murder by suffocation. *State v. Moore*, 296 N.C. App. 264, 270 (2024). The dissent disagreed, asserting that there were "additional restraints" that went beyond those inherent in the murder. *Id.* at 271 (Thompson, J., dissenting).

As explained below, we agree with the dissent. The State presented evidence of additional bindings beyond any restraint inherent in a murder by suffocation, including cables and zip ties that confined the victim to the bed and contorted her body by pulling her hands to her knees and feet. We therefore reverse the decision of the Court of Appeals.

Facts and Procedural History

Defendant Michael John Moore Sr. met the victim in 2016. The two married in 2017.

In 2018, both the victim's mother and her employer contacted law enforcement to report her missing. When officers arrived at the home shared by Moore and the victim, no one appeared to be home and there was unretrieved mail that was a week old. After a K-9 acted "irregular" during an exterior sniff of the home, an officer climbed through a window. Inside, the officer noted a "very cold" temperature and a mixed

smell of chemical agents and human decomposition. More officers then entered the home and discovered the victim's body in a bedroom at the rear of the home.

The victim's nude body was tied to a bed. She had plastic bags around her head, secured by zip ties and electrical cords. Underneath the bags, the victim had duct tape wrapped around her head and mouth in multiple directions. In addition to these bindings around the head, there was an extension cord wrapped around the victim's neck that went underneath the bed's headboard, binding the victim to the bed.

The victim's hands and feet were also zip-tied, and her hands were bound in handcuffs. A brown extension cord wrapped around the handcuffs and pulled the victim's hands toward her feet. The victim also had zip ties around her wrists that bound her arms to the back of her knees. Finally, a separate electric cable bound the victim's feet to the bedframe.

Inscribed above the victim's body on the headboard was the phrase, "Here lies the ultimate of all strumpets." There was a single chair from the dining room in the bedroom. Near the chair was a cup filled with used cigarettes, a pack of cigarettes, more zip ties, and an empty roll of tape.

Medical examiners determined that the victim died of "asphyxia with plastic bag, tape, and ligature on head and neck." Law enforcement officers ultimately located Moore in Las Vegas, where he had pawned some of the victim's jewelry. The State charged Moore with first-degree murder, first-degree kidnapping, and common law robbery.

At the close of evidence, Moore moved to dismiss the kidnapping charge on the ground that there was insufficient evidence of any restraint beyond "what was inherent in the commission of the murder." The State responded that there was evidence of additional restraints beyond what was necessary to bind the victim and commit a murder by suffocation. The trial court denied Moore's motion.

The jury convicted Moore on all charges, and the trial court sentenced him to life in prison without parole for murder, 60 to 84 months in prison for kidnapping, and 12 to 24 months for robbery.

Moore appealed and challenged his convictions on multiple grounds. Relevant to this appeal, Moore argued that the trial court erred by denying his motion to dismiss the kidnapping charge. The Court of Appeals reversed the trial court's kidnapping judgment in a divided opinion, with the majority holding that there was insufficient evidence of any restraint beyond what was inherent in the murder, and the dissent asserting that

there was sufficient evidence. *Moore*, 296 N.C. App. at 269–70; *id.* at 270–71 (Thompson, J., dissenting).

The State timely filed a notice of appeal based on the dissent.[1]

Analysis

I. Scope of review based on dissent

[1] We begin by discussing the scope of our review. The State filed a notice of appeal based on the dissent but did not petition for discretionary review of any additional issues. Thus, "our review is limited to grounds specifically set out in the dissenting opinion as the basis for that dissent." *Mitchell v. Univ. of N.C. Bd. of Governors*, 388 N.C. 341, 349 (2025) (cleaned up).

The dissent in this case is quite concise and addressed only a single ground: that, under the governing line of cases, the State presented substantial evidence of a restraint of the victim's body independent of any restraint inherent in the murder. *Moore*, 296 N.C. App. at 270–71 (Thompson, J., dissenting).

Most of the State's brief in this case addresses a different issue: Whether this Court should overrule the governing line of cases because those decisions are either contrary to the kidnapping statute, internally inconsistent, or just generally "unworkable." After Moore asserted in his appellee's brief that these arguments went beyond the grounds set out in the dissent, the State responded by citing a footnote from this Court's decision in *Piazza v. Kirkbride*, 372 N.C. 137, 166–67 n.13 (2019). In *Piazza*, we held that an invited error issue not mentioned in either the Court of Appeals majority or dissent was "inherently intertwined" with the grounds in the dissent and the additional issues for which the Court had allowed discretionary review. *Id.* Thus, we reasoned, the invited error issue could be reviewed by the Court without issuing a supplemental writ of certiorari. *Id.* The State contends that the issues in this case are all similarly intertwined.

We do not agree that this case is analogous to *Piazza*. The State's challenges to our precedent in this case are not inherently intertwined with the grounds set out in the dissent. To the contrary, they are mutually exclusive. The dissent focuses solely on whether there was substantial

1. Moore filed his initial notice of appeal to the Court of Appeals before the repeal of the statutory provision creating a right to appeal based on the dissent. *See Durham Green Flea Mkt. v. City of Durham*, 388 N.C. 543, 548 (2025).

evidence of a restraint independent of that necessary for the murder. If we agreed with the State and overruled our precedent requiring evidence of independent restraint, there would be no need to engage in the dissent's analysis at all. These are two entirely discrete issues; they are not inherently intertwined under *Piazza*. Accordingly, although we acknowledge that the precedent identified by the State has caused confusion, we limit our review in this appeal to the specific ground set out in the dissent below. *See Mitchell*, 388 N.C. at 349. We take no position on whether, in an appropriate case, that precedent should be modified or overruled as the State suggests.

II. Restraint inherent in a murder by suffocation

[2] We now turn to the ground set out by the dissent. We begin with an overview of the relevant kidnapping doctrine. Among other things, section 14-39 of the General Statutes makes it unlawful to "restrain" someone for any of the purposes set out in the statute. N.C.G.S. § 14-39(a) (2025).

In this case, no one suggests that the State failed to present substantial evidence that the victim was restrained. Instead, the issue is whether that restraint was an inherent part of the victim's murder. This Court has held that certain felonies "cannot be committed without some restraint of the victim" and that a kidnapping conviction cannot be based on a restraint that is "an inherent, inevitable feature" of that other felony. *State v. Fulcher*, 294 N.C. 503, 523 (1978).

There are a number of cases examining and applying this rule from *Fulcher*. The most relevant to our analysis, and the one relied on by the Court of Appeals majority, is *State v. Prevette*, 317 N.C. 148 (1986). In *Prevette*, the victim suffocated "from having a gag tied across her mouth." *Id.* at 151. When law enforcement found the victim's body, her "hands were bound behind her back" with drapery, "her ankles were tied together by nylon stockings," "her knees were bound by a bathrobe belt," and "her mouth was bound and gagged through the use of an apron." *Id.* A jury convicted the defendant of both murder and kidnapping. *Id.* at 149.

We vacated the kidnapping conviction because "the restraint essential to the kidnapping conviction was an inherent and inevitable feature of this particular murder." *Id.* at 157. We first explained that "the placement of the gag over [the victim's] mouth could not have been the proximate cause of her death without the binding of her hands and feet which prevented the removal of the gag." *Id.* Thus, we explained, "the victim's

death would not have occurred without these other ligatures." *Id.* We emphasized that the State presented no evidence of any restraints or bindings beyond those "preventing [the victim] from removing a mouth gag." *Id.* at 158.

The Court of Appeals majority held that this case is indistinguishable from *Prevette*. The majority explained that, because the victim's "hands, feet, and arms were restrained, she could not remove the bags that caused her suffocation." *Moore*, 296 N.C. App. at 269. Thus, those restraints "were inherent in the murder by suffocation." *Id.* This, in turn, meant "that the State failed to produce substantial evidence that Defendant restrained the victim independently and apart from the murder." *Id.*

The dissent disagreed, pointing to "additional restraints exerted against the victim" that went beyond those described in *Prevette*. *Id.* at 271 (Thompson, J., dissenting). Specifically, the dissent pointed to "a brown electrical cord wrapped around her neck and the bed's headboard" and "zip ties binding her wrists to her knees." *Id.* The dissent asserted that these "additional restraints of the victim" were sufficient to overcome the motion to dismiss. *Id.*

We agree that this case is distinguishable from *Prevette* for the reasons discussed by the dissent. As in *Prevette*, the victim's hands, knees, and feet were bound in a manner that prevented her from removing the plastic bags and duct tape that caused her to suffocate. Under *Prevette*, these restraints are an "inherent" part of the murder by suffocation. 317 N.C. at 157. But there were many other restraints in this case that went beyond those described as necessary in *Prevette*, including cables and zip ties that confined the victim to the bed and others that contorted her body and pulled her hands toward her knees and feet. These additional bindings go beyond any restraint that was either necessary to suffocate the victim or otherwise inherent in the murder. These additional bindings are therefore substantial evidence of the restraint element of the kidnapping offense. *See State v. Stroud*, 345 N.C. 106, 111–12 (1996). Accordingly, the trial court's ruling on the motion to dismiss should have been affirmed.

Conclusion

We reverse the decision of the Court of Appeals.

REVERSED.

Chief Justice NEWBY concurring in the result only.

I fully agree with the way in which the majority applied *Fulcher*, but because I think we should reassess the correctness of that decision, I concur in the result only.

At the Court of Appeals, both the majority and the dissent, as well as the parties, wrestled with the proper application of *State v. Fulcher*, 294 N.C. 503, 243 S.E.2d 338 (1978). In *Fulcher*, this Court determined that a restraint may not be punished as a kidnapping unless it is a separate, complete act, independent and apart from another felony. It was proper for the Court of Appeals and the parties to consider this case under *Fulcher* because neither the Court of Appeals nor the trial court could reconsider *Fulcher*. Only this Court can, and I believe we should do so here.

Fulcher's "separate and apart" requirement is not found in the text of N.C.G.S. § 14-39—the statute that criminalizes kidnapping. This Court mistakenly believed, however, that if we were to interpret the statute otherwise, it would create the risk of the State frequently violating the constitutional prohibition against double jeopardy. To avoid this perceived problem, it employed the canon of constitutional avoidance—even though the statute's plain language was clear and unambiguous. In short, *Fulcher*'s separate and apart requirement was not compelled by the statute's text, was derived from the unwarranted use of a canon of statutory interpretation, and was constitutionally unnecessary. Further, the requirement has created disputes in the trial courts and the Court of Appeals as to its proper application.

Here, in his motion to dismiss the first-degree kidnapping charge, defendant argues that because the restraint of the victim that constituted the kidnapping was not separate and apart from the restraint that led to the victim's death, he cannot be convicted of both first-degree kidnapping and first-degree murder. Put more plainly, defendant argues that the plastic bags, duct tape, and ligatures around the victim's head and neck resulted in asphyxia—which ultimately killed her—only because he had also bound her hands, legs, and feet, which prevented her from removing the obstructions to her airway. If defendant had not restrained her so, she would have lived. *Cf. State v. Prevette*, 317 N.C. 148, 157, 345 S.E.2d 159, 165 (1986) ("[T]he placement of the gag over Ms. Jones' mouth could not have been the proximate cause of her death without the binding of her hands and feet which prevented the removal of the gag. . . . [T]he victim's death would not have occurred without these other ligatures."). Because the restraint was necessary to commit

the murder, defendant maintains the restraint cannot also be punished as kidnapping.

To properly understand the defendant's argument, one must understand the genesis of the separate and apart requirement upon which it relies. The requirement stems from this Court's interpretation of N.C.G.S. § 14-39(a) in *Fulcher*.

In that case, the defendant forced two women to lie upon a bed at knifepoint, bound their hands behind their backs with duct tape, and compelled each of them to perform fellatio on him. *Id.* at 507, 243 S.E.2d at 342. He was subsequently charged with and convicted of two counts of kidnapping and two counts of crimes against nature. *Id.* at 505, 243 S.E.2d at 341. He received sentences for each conviction. *Id.* The defendant argued, however, that the kidnapping charges should have been dismissed as unconstitutional because his bindings of the victims "were merely acts incidental to the commission of the crimes against nature." *Id.* at 517, 243 S.E.2d at 348.

This Court turned to the language of the kidnapping statute, N.C.G.S. § 14-39(a), which was materially identical to the modern statute. *Id.* at 517–18, 243 S.E.2d at 348 (quoting N.C.G.S. § 14-39(a) (1975)). This Court made several observations about the statute. First, "the statute plainly stat[ed] that confinement, restraint *or* removal of the victim for any of the . . . specified purposes [was] sufficient to constitute the offense of kidnapping." *Id.* at 522, 243 S.E.2d at 351. Second, "it was clearly the intent of the [l]egislature to make resort to a tape measure or a stop watch unnecessary in determining whether the crime of kidnapping has been committed"; in other words, it was no longer necessary to physically move a victim a "substantial distance" or detain them "for some appreciable period of time." *Id.* Third, we explained the plain meaning of "restrain": "[O]ne who is physically seized and held, or whose hands or feet are bound, or who, by the threatened use of a deadly weapon, is restricted in his freedom of motion, is restrained within the meaning of this statute." *Id.* at 523, 243 S.E.2d at 351.

The Court then came to the heart of the defendant's argument: whether his restraints of the victims could be punished as kidnappings when those restraints were used to effectuate the crimes against nature. We recognized that

> two or more criminal offenses may grow out of the same course of action, as where one offense is committed with the intent thereafter to commit the other and is actually followed by the commission of the

> other (e.g., a breaking and entering, with intent to commit larceny, which is followed by the actual commission of such larceny).

Id. at 523–24, 243 S.E.2d at 351–52. We stated that "[i]n such a case, the perpetrator may be convicted of and punished for both crimes." *Id.* at 524, 243 S.E.2d at 352; *see also id.* at 525, 243 S.E.2d at 352–53.

But we also observed as "self-evident" that "certain felonies (e.g., forcible rape and armed robbery) cannot be committed without some restraint of the victim." *Id.* at 523, 243 S.E.2d at 351. We reasoned it "would violate the constitutional prohibition against double jeopardy" if a "restraint, which is an inherent, inevitable feature of [another] felony, [is] also kidnapping so as to permit the conviction and punishment of the defendant for both crimes." *Id.*

Putting these pieces together, we remarked, "Thus, there is no constitutional barrier to the conviction of a defendant for kidnapping, by restraining his victim, and also of another felony to facilitate which such restraint was committed, provided the restraint, which constitutes the kidnapping, is a separate, complete act, independent and apart from the other felony." *Id.* at 524, 243 S.E.2d at 352. In light of the foregoing observations, this Court reasoned that the General Assembly did not intend for the kidnapping statute to run afoul of the constitutional prohibition of double jeopardy and therefore "construe[d] the word 'restrain,' as used in [N.C.]G.S. [§] 14-39, to connote a restraint separate and apart from that which is inherent in the commission of the other felony." *Id.* at 523, 243 S.E.2d at 351. In other words, this Court applied the canon of constitutional avoidance and interpreted the statute in a way that would avoid perceived, potential constitutional problems. *See id.*; *id.* at 526–27, 243 S.E.2d at 353. *See generally State v. T.D.R.*, 347 N.C. 489, 498, 495 S.E.2d 700, 705 (1998) ("Where one of two reasonable constructions of a statute will raise a serious constitutional question, it is well settled that our courts should adopt the construction that avoids the constitutional question.").

Ultimately, this Court held the defendant's double jeopardy rights were not violated. *Fulcher*, 294 N.C. at 525, 243 S.E.2d at 352. Because the defendant had bound the victims before forcing them to perform oral sex, "the crime of kidnapping was complete, irrespective of whether the then contemplated crime against nature ever occurred." *Id.* at 524, 243 S.E.2d at 352. "[T]hough closely related . . . in time," the restraints were "not an inherent incident of" the crimes against nature; the restraints were done to prevent either woman from escaping or assisting the other. *Id.*

Both the State and defendant admit that *Fulcher* and its progeny have engendered confusion within the courts below as seen by the Court of Appeals decision in this case, *see State v. Moore*, 296 N.C. App. 264, 907 S.E.2d 779 (2024), as well as in prior cases.

Both the State and defendant briefed to this Court the ongoing validity of *Fulcher* and discussed at oral argument its validity. The State therefore asks this Court to abandon the rule, specifically arguing that *Fulcher*'s separate and apart requirement was not required by the statute's plain language or double jeopardy principles. Understandably, defendant opposes this position. The State, however, is correct.

For starters, *Fulcher* went about statutory interpretation the wrong way. Statutory interpretation's "cardinal goal is to accomplish the intent of the legislature." *State v. Rogers*, 388 N.C. 453, 465, 920 S.E.2d 775, 785 (2025). The best indicator of legislative intent is the statute's plain language. *See N.C. Farm Bureau Mut. Ins. Co. v. Hebert*, 385 N.C. 705, 711, 898 S.E.2d 718, 724 (2024). "[W]hen the language of a statute is clear and unambiguous there is no room for judicial construction[,] and the court must give the statute its plain and definite meaning without superimposing provisions or limitations not contained within the statute." *State v. Williams*, 291 N.C. 442, 446, 230 S.E.2d 515, 517 (1976).

Importantly, "[t]his Court may turn to other sources to determine legislative intent"—including canons of construction like the canon of constitutional avoidance—"only if the statute is ambiguous or susceptible to multiple interpretations." *Hebert*, 385 N.C. at 711, 898 S.E.2d at 724. Indeed, the canon of "constitutional avoidance . . . is only employed when there are two or more reasonable meanings to the statutory language at issue." *JVC Enters., LLC v. City of Concord*, 376 N.C. 782, 788, 855 S.E.2d 158, 162 (2021). In this way, "[w]e are not at liberty to give to a statute a construction at variance with [legislative] intent, even though such construction appears to us to make the statute more desirable and to free it from constitutional difficulties"—a maxim that this Court recited in *Fulcher* yet ignored in practice. 294 N.C. at 520, 243 S.E.2d at 350. In other words, if the plain language of a statute is clear and unambiguous, this Court must interpret the statute in accord with that plain language—even if the statute's plain language runs afoul of the constitution. In that regrettable instance, this Court's obligation is to strike down the statute as unconstitutional, not rewrite the statute in a way to avoid the constitutional conflict. That power and responsibility rests with the General Assembly, not the courts.

The Court in *Fulcher*, however, did not apply this traditional methodology. When this Court walked through N.C.G.S. § 14-39, we did not identify any ambiguity in the statute, nor did we think that "restrain" had multiple reasonable meanings in this context. To the contrary, we provided the plain interpretation of restrain: to restrict one's freedom of motion by physically seizing and holding, binding hands and feet, or threatening the use of a deadly weapon. *Id.* at 523, 243 S.E.2d at 351.

Given the clear, unambiguous language of the statute, this Court's statutory interpretation should have concluded. Nevertheless, we proceeded needlessly to apply the canon of constitutional avoidance anyway. This frolic led the Court to superimpose a limitation that does not appear in the statute's text: that the restraint be "a restraint separate and apart from that which is inherent in the commission of the other felony." *Id.* This was error.

What is more, the engrafting of a separate and apart requirement was based on a faulty constitutional premise—namely, this Court's misapprehension of double jeopardy principles. As explained above, the Court in *Fulcher* reasoned that a restraint could not be punished as kidnapping if it were an "inherent, inevitable feature" of another felony. *See id.* The Court, however, cited no authority for this proposition, which is inconsonant with double jeopardy principles.[1]

This Court has explained that both the Federal Constitution and state constitution include double jeopardy protections to "protect[ ] against (1) a second prosecution for the *same offense* after acquittal, (2) a second prosecution for the *same offense* after conviction, and (3) multiple punishments for the *same offense*."[2] *State v. Gardner*, 315 N.C. 444, 451, 340 S.E.2d 701, 707 (1986) (emphases added). The focus of double jeopardy inquiries is therefore on the offense, not the underlying

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1. As an aside, it is not clear that murder is a type of felony of which restraint is an *inherent* and *inevitable* feature. The Court provided only two examples of crimes where restraint is an inherent, inevitable feature of the crime: forcible rape and armed robbery. *Fulcher*, 294 N.C. at 523, 243 S.E.2d at 351. Indeed, one is hard pressed to envision an instance of forcible rape or armed robbery where the perpetrator has not restricted the victim's freedom of movement by physically seizing them or threatening the use of a deadly weapon. But restraint is not an inherent, inevitable feature of every murder. Indeed, one can think of many ways one might kill another human being without restricting freedom of movement beforehand.

2. The first two scenarios were not implicated in *Fulcher*, and they are not implicated in this case. Both *Fulcher* and this case concern only the third scenario: multiple punishments for the same offense.

factual predicate. The "offense" is the "violation of the law; [the] crime." *Offense*, *Black's Law Dictionary* (12th ed. 2024).

This Court has further cited the *Blockburger* Test as the standard of determining whether a defendant is being punished multiple times for the same offense:

> The applicable rule is that where the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one, is whether each provision requires proof of a fact which the other does not.

Gardner, 315 N.C. at 454, 340 S.E.2d at 708–09 (quoting *Blockburger v. United States*, 284 U.S. 299, 304, 52 S. Ct. 180, 182 (1932)). Thus, "[w]hen each statutory offense has an element different from the other, the *Blockburger* test raises no presumption that the two statutes involve the same offense." *Id.* at 455, 340 S.E.2d at 709. Moreover, "[w]hether . . . multiple punishments may be imposed when a defendant, in a single trial, is convicted of multiple offenses when some are fully, factually embraced within others is to be determined on the basis of legislative intent." *Id.* at 460, 340 S.E.2d at 712.

In other words, a double jeopardy violation does not hinge—as the Court in *Fulcher* assumed—on whether the factual predicate satisfying one element of one crime is an "inherent, inevitable feature" of another crime. *See Fulcher*, 294 N.C. at 523, 243 S.E.2d at 351. Indeed, multiple "criminal offenses may grow out of the same course of action." *Id.* Rather, a double jeopardy inquiry looks at the criminalized offenses to ensure that Crime A requires proof of at least one element that Crime B does not and that Crime B requires proof of at least one element that Crime A does not. If this is so, a defendant is not being punished multiple times for the same offense.

The Court in *Fulcher* did not employ this approach. Rather than focusing on the elements of the charged offenses, this Court relied on a nebulous, difficult-to-parse test of whether a restraint was an "inherent, inevitable" feature of another felony. Therefore, the Court's "double jeopardy" concerns in *Fulcher*, which swayed our interpretation of the kidnapping statute, were not well founded.

This Court recognized as much in *State v. Beatty*, 347 N.C. 555, 495 S.E.2d 367 (1998). There "[t]he State contend[ed] that *Fulcher* was based upon a now-outmoded understanding of the Double Jeopardy Clause,"

and "[i]t argue[d] that under modern double jeopardy analysis, this Court's interpretation of N.C.G.S. § 14-39 in *Fulcher* is unnecessary and should be overruled." *Id.* at 558, 495 S.E.2d at 369. Having summarized the State's argument, this Court did not refute it. Instead, we pivoted to a different defense of *Fulcher*, stating, "This Court did not decide *Fulcher solely* on constitutional grounds, however. Rather, it interpreted the kidnapping statute under the 'cardinal principle of statutory construction . . . that the intent of the [l]egislature is controlling.' " *Id.* (first alteration in original) (quoting *Fulcher*, 294 N.C. at 520, 243 S.E.2d at 350). This Court defended continued adherence to *Fulcher*, but notably, it did not offer double jeopardy concerns as a justification:

> The interpretation of a criminal statute by the highest court of the state that enacted it is generally regarded as an integral part of the statute. This Court's long-standing interpretation in *Fulcher* of legislative intent in the enactment of N.C.G.S. § 14-39 has become an integral part of the kidnapping statute, and it thus remains the appropriate focus for analysis of . . . kidnapping convictions.

Id. at 558–59, 495 S.E.2d at 369 (citation omitted). By moving on to a different defense of *Fulcher* instead of rebutting the State's argument, this Court tacitly conceded the point: the double jeopardy justifications for *Fulcher*'s interpretation of N.C.G.S. § 14-39 were incorrect.[3]

In summary, this Court in *Fulcher* applied the canon of constitutional avoidance—despite the fact that the statute's plain language was clear and unambiguous—to avoid faux double jeopardy issues that were premised upon a misunderstanding of the constitutional prohibition of double jeopardy. Therefore, *Fulcher* should be overruled to the extent it required a restraint to be "separate and apart from that which is inherent in the commission of [another] felony." *See Fulcher*, 294 N.C. at 523,

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3. *Beatty*'s justification for continued application of *Fulcher*'s interpretation of N.C.G.S. § 14-39 was, and still is, unconvincing. First, it is impossible to separate *Fulcher*'s conception of the General Assembly's intent from its misconception about double jeopardy. Indeed, the Court in *Fulcher* opined that an interpretation of the statute that "would violate the constitutional prohibition against double jeopardy" "was not intended by the [l]egislature." 294 N.C. at 523, 243 S.E.2d at 351. Second, the law is not settled until it is settled right. "That's how we've always done it" is a poor justification for continued adherence to an interpretation that is contrary to the text. *See State v. Ballance*, 229 N.C. 764, 767, 51 S.E.2d 731, 733 (1949) ("There is no virtue in sinning against light or in persisting in palpable error, for nothing is settled until it is settled right." (quoting *Sidney Spitzer & Co. v. Comm'rs of Franklin Cnty.*, 188 N.C. 30, 32, 123 S.E. 636, 638 (1924)).

243 S.E.2d at 351. Instead, "restrain" in N.C.G.S. § 14-39 should be reinterpreted consistently with the plain language, which is the true indicator of legislative intent, to simply mean "a restriction [upon freedom of movement] by force, threat or fraud, without a confinement." *See id.*

So construed, defendant's kidnapping conviction and sentence were proper. When considering a motion to dismiss, the question is whether the State presented substantial evidence of each element of the offense charged and that defendant was the perpetrator. *State v. Stroud*, 345 N.C. 106, 111, 478 S.E.2d 476, 479 (1996). "Substantial evidence is 'that amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion.' " *Id.* (quoting *State v. Porter*, 303 N.C. 680, 685, 281 S.E.2d 377, 381 (1981)). The evidence must be viewed "in the light most favorable to the State, and the State is entitled to every reasonable inference to be drawn therefrom." *Id.*

As noted above, there was substantial evidence in this case to support the elements of both first-degree murder and first-degree kidnapping and to support that defendant was the perpetrator. Moreover, applying the *Blockburger* Test, defendant's convictions and sentences do not violate the constitutional prohibition of double jeopardy. Defendant was convicted of first-degree murder on the basis of premeditation and deliberation, the felony murder rule, and murder by torture. He was also convicted of first-degree kidnapping.

In general terms, a "murder" is an intentional unlawful killing of another human being with malice aforethought. *State v. Vance*, 328 N.C. 613, 621, 403 S.E.2d 495, 501 (1991). Our General Statutes "classif[y] murders as either first or second degree, but *only* for the purposes of assigning punishment." *Id.* at 621–22, 403 S.E.2d at 501. First-degree murder is statutorily defined in N.C.G.S. § 14-17(a), which, in relevant part, provides, "A murder which shall be perpetrated by . . . torture, or by any other kind of willful, deliberate, and premeditated killing, or which shall be committed in the perpetration or attempted perpetration of any . . . robbery [or] kidnapping . . . shall be deemed to be murder in the first degree . . . ." N.C.G.S. § 14-17(a) (2025). As the statute lays out, the crime is first-degree murder, and the State can obtain a conviction by use of one or several theories. *State v. Wilson*, 385 N.C. 538, 545, 895 S.E.2d 355, 362 (2023). As noted above, three theories are relevant here: premeditation and deliberation, felony murder, and murder by torture.

To obtain a conviction for first-degree murder under a premeditation and deliberation theory, the State must prove beyond a reasonable doubt that the defendant (1) specifically intended, (2) to unlawfully kill,

(3) another human being, (4) after premeditation (i.e., after thinking for some length of time, however short, before the actual killing), and (5) deliberation (i.e., after developing the requisite intent in a cool state of mind and not as the result of violent passion due to sufficient provocation). *See State v. Rodriguez*, 371 N.C. 295, 314–15, 814 S.E.2d 11, 25 (2018); *State v. Jones*, 303 N.C. 500, 505, 279 S.E.2d 835, 838–39 (1981). "[P]roof of premeditation and deliberation is also proof of intent to kill." *Jones*, 303 N.C. at 505, 279 S.E.2d at 839.

Contrastingly, "[f]irst-degree murder based upon the felony murder rule has only two elements: (1) the defendant knowingly committed or attempted to commit one of the felonies indicated in N.C.G.S. § 14-17, and (2) a related killing." *State v. Thomas*, 325 N.C. 583, 603, 386 S.E.2d 555, 567 (1989) (Mitchell, J., dissenting) (citing *State v. Reese*, 319 N.C. 110, 145, 353 S.E.2d 352, 372 (1987), *overruled on other grounds by*, *State v. Barnes*, 345 N.C. 184, 481 S.E.2d 44 (1997)). Under the felony murder theory, "[w]hether there was insufficient evidence to show that [the] defendant either committed the killing himself, intended that the killing take place, or even knew that the killing would take place is irrelevant." *Reese*, 319 N.C. at 145, 353 S.E.2d at 372.

Finally, if the State proceeds under a first-degree murder by torture theory, it must prove beyond a reasonable doubt (1) "that the defendant intentionally tortured the victim and [(2)] that such torture was a proximate cause of the victim's death." *Stroud*, 345 N.C. at 112, 478 S.E.2d at 479.

> "Torture is defined as the course of conduct by one or more persons which intentionally inflicts grievous pain and suffering upon another for the purpose of punishment, persuasion, or sadistic pleasure," and "[c]ourse of conduct has been defined as the pattern of the same or similar acts, repeated over a period of time, however short, which established that there existed in the mind of the defendant a plan, scheme, system or design to inflict cruel suffering upon another."

State v. Richardson, 385 N.C. 101, 145, 891 S.E.2d 132, 171 (2023) (alteration in original) (quoting *State v. Lee*, 348 N.C. 474, 489, 501 S.E.2d 334, 343–44 (1998)).

Kidnapping is defined in N.C.G.S. § 14-39(a):

> Any person who shall unlawfully confine, *restrain*, or remove from one place to another, any other person

> 16 years of age or over without the consent of such person, or any other person under the age of 16 years without the consent of a parent or legal custodian of such person, shall be guilty of kidnapping if such confinement, *restraint* or removal is for the purpose of:
>
> . . . .
>
> (2) Facilitating the commission of any felony or facilitating flight of any person following the commission of a felony; or
>
> (3) Doing serious bodily harm to or terrorizing the person so confined, restrained or removed or any other person . . . .

N.C.G.S. § 14-39(a) (2025) (emphases added). Subsection (b) explains when a kidnapping is in the first degree: "If the person kidnapped either was not released by the defendant in a safe place or had been seriously injured or sexually assaulted, the offense is kidnapping in the first degree . . . ." *Id.* § 14-39(b). Thus, first-degree kidnapping by restraint requires the State to prove beyond a reasonable doubt: (1) that defendant imposed a restraint; (2) that he did so without legal right; (3) that he did so without the consent of the person restrained (or of the parent or custodian if the person restrained is under the age of sixteen); (4) that he did so for one of the purposes enumerated in N.C.G.S. § 14-39(a); and (5) that the restrained person was (i) seriously injured, (ii) sexually assaulted, or (iii) not released in a safe place.

When the State criminalized kidnapping, it sought to punish the unlawful, nonconsensual confinement, restraint, or removal of another human being for illicit purposes. Substantial evidence in this case shows that defendant restricted the victim's freedom of movement without legal right and without her consent to commit another felony, do serious bodily harm, and/or terrorize her, and that the victim was seriously injured and not released in a safe place. The jury having concluded that the State proved each element beyond a reasonable doubt, defendant may be punished for the crime of first-degree kidnapping.

When the State criminalized murder, it sought to punish the intentional unlawful killing of another human being with malice aforethought. Substantial evidence in this case shows that defendant intentionally and unlawfully killed the victim with malice aforethought. Defendant planned to murder the victim. Having gathered the instruments necessary to block the victim's airways, restrain her limbs, and fasten her to

the bed, defendant then carried out his heinous crime, culminating in the victim's unimaginably horrific death. Defendant also intentionally inflicted grievous pain and suffering upon the victim in order to punish her for being, in defendant's mind, "the ultimate of all strumpets." Defendant's torture of the victim led directly to her death. What is more, defendant killed the victim while perpetrating a kidnapping and robbery.[4] The jury having concluded that the State proved three theories of first-degree murder beyond a reasonable doubt, defendant may therefore be punished for the crime of first-degree murder.

Moreover, there are elements to be proved for each of these crimes that are not required for the other. For instance, for first-degree kidnapping, the State had to prove defendant restrained the victim, which is not an essential element of first-degree murder under any of the theories the jury employed to convict defendant. Similarly, for first-degree murder, the State had to prove defendant unlawfully killed the victim, which is not an essential element of first-degree kidnapping.

Although it is unusual that the restraint that constituted the kidnapping was also used to perpetrate the murder, it is ultimately of no moment. A single action may violate two laws. Punishing both offenses does not violate the constitutional prohibition of double jeopardy. The State may punish defendant's unlawful restraint of the victim, and it may punish his unlawful killing of the victim.

The majority properly reverses the decision of the Court of Appeals and reinstates defendant's kidnapping sentence pursuant to *Fulcher*. But applying *Fulcher* has not been easy, thereby creating confusion in the trial courts and at the Court of Appeals in the application of North Carolina's criminal statutes. As a court of last resort, and critically the

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4. Felony murder carries some unique double jeopardy considerations that ultimately are not implicated in this case. Namely, our cases have held that "in this State a defendant may not be punished for both felony murder and for the underlying, 'predicate' felony, even in a single prosecution." *Gardner*, 315 N.C. at 460, 340 S.E.2d at 712. Had the jury found defendant guilty of first-degree murder solely on a felony murder theory, and had kidnapping been the only underlying felony found by the jury, then the underlying kidnapping would have merged into the murder conviction, and the kidnapping judgment would have been arrested. *See State v. Barlowe*, 337 N.C. 371, 380, 446 S.E.2d 352, 358 (1994). But neither of those conditions are present in this case. The jury found defendant guilty of first-degree murder under two other theories, and it found another underlying felony to support the felony murder conviction—i.e., common law robbery. As such, the rules mentioned above are not triggered. Notably, the rules mentioned above would not have resulted in the kidnapping charge's dismissal in any event.

court that created the present issue in the first place, it is our responsibility to remedy the problem by overruling *Fulcher*. Because the majority does not, however, I respectfully concur in the result only.

Justice BARRINGER joins this concurring in the result only opinion.

STATE OF NORTH CAROLINA
v.
TERRY WAYNE NORRIS, JR.

No. 177PA24

Filed 14 August 2026

Firearms and Other Weapons—possession of a firearm by a felon—constructive possession—evidence viewed in the light most favorable to the State

In reviewing the denial of defendant's motion to dismiss a charge of possession of a firearm by a felon—for insufficient evidence that he constructively possessed a firearm—the Court of Appeals erred by viewing the evidence in the light most favorable to defendant, resolving evidentiary conflicts in defendant's favor, and, as a result, reversing the judgment entered upon defendant's conviction. Properly considered (that is, in the light most favorable to the State), the evidence—that defendant shared nonexclusive possession of the bedroom where the firearm was found; had a key to the house and, upon seeing law enforcement approach, hurried inside; and was arrested a few steps away from the dresser where the firearm was discovered—showed defendant's occupation of the house, control of the premises, proximity to the firearm, and suspicious conduct, which in turn supported an inference that defendant constructively possessed the firearm.

On discretionary review pursuant to N.C.G.S. § 7A-31 of a unanimous decision of the Court of Appeals, 294 N.C. App. 475 (2024), reversing a judgment entered on 3 August 2022 by Judge Jacqueline D. Grant in Superior Court, Rutherford County, and remanding the case for dismissal. Heard in the Supreme Court on 5 November 2025.

Jeff Jackson, Attorney General, by Joshua D. Abram, Special Deputy Attorney General, for the State-appellant.

Mikayla Mann and Kellie Mannette for defendant-appellee.

ALLEN, Justice.

In general, state law prohibits individuals with felony convictions from purchasing, owning, or possessing firearms. N.C.G.S. § 14-415.1(a) (2025). While the actual possession of firearms by such individuals violates the statute, they can also violate the statute by constructively possessing firearms. Constructive possession occurs when a person has the intent and capability to maintain control over an item.

Defendant Terry Wayne Norris Jr. was indicted on a charge of possession of a firearm by a felon. At trial, he moved to dismiss the charge, arguing that the State failed to introduce substantial evidence that he constructively possessed the firearm found in a dresser located three or four steps from the site of his arrest. The trial court denied the motion, and the jury found defendant guilty. The Court of Appeals agreed with defendant and reversed the trial court's judgment.

When considering a motion to dismiss a criminal charge for insufficient evidence, a court must view the evidence in the light most favorable to the State. The Court of Appeals turned this principle on its head by viewing the evidence in the light most favorable to defendant. Accordingly, we reverse the judgment of the Court of Appeals and remand the case.

I.

On 11 July 2020, United States Marshals and officers of the Forest City Police Department (FCPD) arrived at 124 Hamilton Street, a house in Forest City, to serve an arrest warrant on defendant for a charge that was later dismissed. Defendant had previously been convicted of multiple felonies.

Law enforcement officers went to 124 Hamilton Street because Detective Dakotah Thomas of the FCPD knew that defendant lived there and had seen him there "multiple times." The same was true of Detective Thomas's partner, Officer Dylan Radford, who had dealt with defendant at that location at various times throughout his roughly five-year career in law enforcement.

Defendant was standing on the front porch of the house as law enforcement vehicles approached. When he saw the officers, defendant "hurriedly" went inside the house.

The marshals entered the house, apprehended defendant near the front door, and brought him back outside. They advised Detective Thomas and Officer Radford that they had seen marijuana in plain view in the living room.

Defendant's girlfriend, Sherry Renee Ledford, resided at the house with her two children. Detective Thomas was informed that Ms. Ledford "want[ed] to deal with" him specifically. He asked Ms. Ledford for permission to search the residence, and she consented.

A black mailbox with the name "Norris" on it was mounted beside the front door. As officers stepped through the doorway and into the living room, they observed a small bedroom immediately to the right. The bedroom door was open.

Detective Thomas searched the living room, where he noticed packages of marijuana around the sofa. Moving into the kitchen, Detective Thomas recovered a cellular phone with a lock screen that displayed a photograph of defendant and his deceased daughter, Aaliyah Norris.

Officer Radford entered the bedroom, where he observed a plastic dresser against the wall immediately to his right. The dresser contained five translucent gray drawers. It was situated only three or four steps from the front door. Two sets of scales sat on top of it.

In the far corner of the room lay a mattress flanked by two small black nightstands. Elsewhere in the bedroom, a television stood atop a black nine-cube organizer. A mirror mounted on the wall above the television had a school nametag with "Aaliyah" written on it. A portrait of a little girl hung on one of the bedroom walls. The frame was heart-shaped and decorated with a bow and the letter "A."

Piles of clothes covered the bedroom floor. Some of those clothes were men's clothes. Men's shoes were also present. A laundry basket full of mixed clothing, including men's boxer shorts, sat behind the bedroom door.

Turning his attention to the dresser, Officer Radford discovered that it was not locked or otherwise secured. Opening the second drawer, he found a loaded silver .38 Special revolver lying on a pile of toiletries. The toiletries consisted of hairspray and other feminine products.

Officer Radford also discovered pills in the bedroom and a couple of envelopes with defendant's name on them. At trial, Detective Thomas, who assisted Officer Radford with the bedroom search after Officer Radford found the handgun, recalled finding a piece of paper in the

bedroom with defendant's name on it, though he could not remember anything more specific about it. Footage from the officers' body cameras depicted a white envelope on which were handwritten defendant's name and "Bookmarks for Aaliyah Norris." That same footage also depicted an envelope from Rutherford County Schools addressed to "Mr. Terry Norris."

After concluding their search, the officers went outside to speak with Ms. Ledford. She explained that the pills belonged to defendant and that they "kept him calm and helped him sleep." The discussion turned to the handgun discovered in the bedroom. The officers explained that defendant could not be around the weapon because of his status as a convicted felon. Ms. Ledford claimed that the weapon was hers and denied that defendant lived in the house. She did admit that he occasionally stayed there, however.

A grand jury subsequently indicted defendant for possession of a firearm by a felon in violation of N.C.G.S. § 14-415.1. At trial, defendant twice moved to dismiss the charge for insufficient evidence, once at the close of the State's evidence and again at the close of all the evidence. The trial court denied both motions, and the jury found defendant guilty of the charged offense.[1] The court sentenced defendant to imprisonment for a term of 75 to 102 months.

On appeal, defendant argued that the trial court erred by denying his motions to dismiss. In particular, he maintained that "the State proffered insufficient evidence to establish his constructive possession of the firearm." *State v. Norris*, 294 N.C. App. 475, 477 (2024).

The Court of Appeals began its analysis by noting that "[a] trial court properly denies a motion to dismiss if there is substantial evidence (1) of each element of the offence charged and (2) of the defendant being the perpetrator of such offense. Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Id.* at 477 (cleaned up) (quoting *State v. Gallion*, 282 N.C. App. 305, 334–35 (2022)). The appellate court further observed that, "[w]hen determining whether substantial evidence exists, [a trial] court examines all evidence in the light most favorable to the State, allowing the State every reasonable inference thereon." *Id.*

1. Defendant had also been indicted for obtaining habitual felon status in violation of N.C.G.S. § 14-7.1. After the jury found him guilty of possession of a firearm by a felon, he pleaded guilty to the habitual felon offense.

The Court of Appeals remarked that "the State's theory of [defendant's] possession [of the firearm] rests solely upon constructive possession." *Id.* at 478. It explained that a "determination of constructive possession rests on the totality of the circumstances." *Id.* "Constructive possession is established when an item is not under the defendant's physical custody, but he has knowledge of the item alongside the power and intent to control the item." *Id.* Additionally, "[w]hen the defendant does not have exclusive possession of the location where the firearm is found, the State is required to show other incriminating circumstances in order to establish constructive possession." *Id.* (quoting *State v. Taylor*, 203 N.C. App. 448, 459 (2010)).

Relying on *State v. Rich*, 87 N.C. App. 380 (1987), and this Court's decision in *State v. McLaurin*, 320 N.C. 143 (1987), the Court of Appeals reasoned that, even if one assumes that defendant shared nonexclusive control over the house, "the State failed to present such other incriminating circumstances to substantially link [d]efendant with the gun, to the bedroom, or to the dresser drawer where the gun was found along with the other items therein." *Norris*, 294 N.C. App. at 479–80. In reaching this conclusion, the panel characterized the State's case as dependent on four circumstances:

> (1) [d]efendant was found at the home at the same time as the gun; (2) the mailbox listed [d]efendant's last name; (3) a non-descript and unspecified piece of paper was found inside a tote bag inside the bedroom with [d]efendant's name somewhere on it; and, (4) there were both male and female clothes in the closet where the paper was found.

Id. at 480.

Insisting that the facts relied upon by the State "must be considered in totality with all others and not in isolation," the court highlighted evidence that, in its view, undermined the State's argument that defendant constructively possessed the firearm. *Id.* It pointed out, for example, that "[t]he bedroom where the gun was found was decorated and contained numerous items that heavily suggested a female occupant, and the gun was found inside a closed drawer containing only feminine products." *Id.* Moreover, "Ms. Ledford claimed the handgun belonged to her . . . [and] [s]he also testified that the home was rented to her." *Id.* Although defendant's last name appeared on the mailbox, "Ms. Ledford testified [d]efendant's last name was listed on the mailbox because his deceased daughter . . . lived with Ms. Ledford for many years." *Id.* According to

the Court of Appeals, "[t]he totality of the evidence [did] not support a conclusion of constructive possession of the gun by [d]efendant." *Id.*

The court also criticized the State's theory that "[d]efendant had 'stashed' the gun in the closed dresser drawer with Ms. Ledford's personal items during the short period he was not being observed by the officers." *Id.* at 481. "[T]he State offer[ed] no evidence tending to show [d]efendant's actions beyond his entering the home," so "[a]ny conclusions concerning [d]efendant's purported actions cannot be inferred from his simple entry into and exit onto the porch of the home." *Id.* Thus, the State's "stashed" theory "constitutes speculation rather than an inference and does not support a conclusion of substantial evidence." *Id.*

Having determined that the State failed to present substantial evidence of constructive possession, the Court of Appeals reversed the trial court's denial of defendant's motion to dismiss and remanded the case to the trial court for entry of an order of dismissal. *Id.* Although defendant also argued that the trial court committed plain error in its instructions to the jury, the Court of Appeals found it unnecessary to reach that issue. *Id.*

Pursuant to N.C.G.S. § 7A-31, the State petitioned this Court to review whether "the Court of Appeals err[ed] when it held that defendant's motion to dismiss for insufficient evidence of constructive possession should have been granted." We allowed the State's petition for discretionary review.

II.

"Whether the State presented substantial evidence of each essential element of the offense is a question of law; therefore, we review the denial of a motion to dismiss de novo." *State v. Tucker*, 380 N.C. 234, 236 (2022) (quoting *State v. Crockett*, 368 N.C. 717, 720 (2016)). A trial court must deny a motion to dismiss if " 'there is substantial evidence (1) of each essential element of the offense charged, or of a lesser offense included therein, and (2) of defendant's being the perpetrator of such offense.' " *Id.* at 236–37 (quoting *State v. Powell*, 299 N.C. 95, 98 (1980)). "Substantial evidence is relevant evidence that a reasonable mind might accept as adequate to support a conclusion." *State v. Turnage*, 362 N.C. 491, 493 (2008). It "is the same as more than a scintilla of evidence." *Tucker*, 380 N.C. at 237.

"In reviewing challenges to the sufficiency of evidence, we must view the evidence in the light most favorable to the State, giving the

State the benefit of all reasonable inferences. Contradictions and discrepancies do not warrant dismissal of the case but are for the jury to resolve." *State v. Barnes*, 334 N.C. 67, 75 (1993) (citation omitted). "[S]o long as the evidence supports a reasonable inference of the defendant's guilt, a motion to dismiss is properly denied even though the evidence also permits a reasonable inference of the defendant's innocence." *State v. Bradshaw*, 366 N.C. 90, 93 (2012) (quoting *State v. Miller*, 363 N.C. 96, 99 (2009)). On the other hand, "[w]hen the evidence raises no more than a suspicion of guilt, a motion to dismiss should be granted." *Id.* (quoting *Miller*, 363 N.C. at 99).

"If the evidence presented is circumstantial, the court must consider whether a reasonable inference of [the] defendant's guilt may be drawn from the circumstances." *Barnes*, 334 N.C. at 75. "In making this determination, a court 'is to consider all evidence actually admitted, competent or incompetent, which is favorable to the State, disregarding [the] defendant's evidence unless favorable to the State.' " *Tucker*, 380 N.C. at 237 (quoting *State v. Baker*, 338 N.C. 526, 558–59 (1994)). "[If] the court decides that a reasonable inference of [the] defendant's guilt may be drawn from the circumstances, then it is for the jury to decide whether the facts, taken singly or in combination, satisfy it beyond a reasonable doubt that the defendant is actually guilty." *Barnes*, 334 N.C. at 75–76 (cleaned up).

III.

"To convict [a] defendant of possession of a firearm by a felon the [S]tate must prove that [the] defendant (1) was previously convicted of a felony and (2) subsequently possessed a firearm." *Bradshaw*, 366 N.C. at 93 (citing N.C.G.S. § 14-415.1(a) (2011)). "It is well established that possession may be actual or constructive." *Id.*

In his brief to this Court, defendant does not dispute that he was a convicted felon at the time of his arrest. Likewise, he expressly concedes that, at a minimum, he was "an occasional overnight guest [at the house] and therefore [was] considered to have nonexclusive possession" of the same. Consequently, since the State proceeded on a theory of constructive possession, the only issue for this Court is whether the State presented substantial evidence that defendant constructively possessed the firearm.

"Constructive possession of contraband material exists when there is no actual personal dominion over the material, but there is an intent and capability to maintain control and dominion over it." *State v. Brown*, 310 N.C. 563, 568 (1984). If the defendant had sole control

over the place where the contraband was found, then the analysis can be relatively straightforward. If the defendant shared control of the location with another person, however, "the State must show other incriminating circumstances sufficient for the jury to find [that the] defendant had constructive possession." *Miller*, 363 N.C. at 99.

"Whether incriminating circumstances exist to support a finding of constructive possession is a fact-specific inquiry." *State v. Chekanow*, 370 N.C. 488, 496 (2018). In *Chekanow*, this Court set out five factors for courts to consider when evaluating whether sufficient evidence exists of incriminating circumstances in constructive possession cases:

> (1) the defendant's ownership and occupation of the property . . . ; (2) the defendant's proximity to the contraband; (3) indicia of the defendant's control over the place where the contraband is found; (4) the defendant's suspicious behavior at or near the time of the contraband's discovery; and (5) other evidence found in the defendant's possession that links the defendant to the contraband.

Id.

Because "[n]o one factor controls, . . . courts must consider the totality of the circumstances." *Id.* We therefore consider the evidence in this case corresponding to each of the *Chekanow* factors.

A. Ownership and Occupation

The State's evidence of ownership and occupation included the mailbox with the name "Norris" beside the front door of the house. Detective Thomas testified that he knew the house to be defendant's home and had seen him there "multiple times." Likewise, Officer Radford testified that he knew the house to be defendant's residence and had seen defendant there on multiple occasions. As officers approached the house to arrest defendant, he rushed into the house without first knocking on the door or otherwise obtaining permission to enter the premises.

Other evidence tended to show that defendant shared not only the house but also the bedroom with Ms. Ledford. In speaking with law enforcement immediately following defendant's arrest, Ms. Ledford initially denied that defendant lived at the address but conceded that he stayed there sometimes. Detective Thomas observed men's clothes scattered throughout the bedroom. He also recalled seeing men's shoes there. Ms. Ledford admitted that pills found in the bedroom belonged to defendant, who used them to help him sleep. The officers found

an envelope with defendant's name on it and a separate piece of mail addressed to defendant. When viewed together and in the light most favorable to the State, as it must be, the evidence introduced by the State amounted to substantial evidence that defendant shared nonexclusive possession of the house and bedroom with Ms. Ledford.

In determining otherwise, the Court of Appeals noted that Ms. Ledford claimed that she rented the house and that "[t]he décor and items in the bedroom itself alongside the [female] contents of the closed drawer all heavily refute the inference [that] [d]efendant was more than an occasional occupant of the bedroom." *Norris*, 294 N.C. App. at 480. The court also referenced Ms. Ledford's testimony that defendant's last name appeared on the mailbox "because his deceased daughter, whose last name was also 'Norris,' lived with Ms. Ledford for many years." *Id.*

The Court of Appeals erred in its approach. To begin with, even if defendant stayed at the house only occasionally, that fact alone would not preclude a finding of nonexclusive possession. Defendant admits as much in his brief to this Court, conceding that "whether or not he lived there was not a determinative factor in the analysis on constructive possession as he was minimally an occasional overnight guest."

Furthermore, the Court of Appeals contravened our precedent by basing its decision on evidence unfavorable to the State. As explained above, when reviewing a motion to dismiss for insufficient evidence, a court must "consider all evidence actually admitted, competent or incompetent, which is favorable to the State, *disregarding defendant's evidence unless favorable to the State*." *Tucker*, 380 N.C. at 237 (emphasis added) (quoting *Baker*, 338 N.C. at 558–59).

The logic of this rule is obvious if one remembers that trial courts are not allowed to weigh the evidence when deliberating on motions to dismiss for insufficient evidence. *See State v. Malloy*, 309 N.C. 176, 178 (1983) ("In considering such motions, the trial court is concerned only with the sufficiency of the evidence to take the case to the jury and not with its weight."). There is no point in asking a court to consider contradictory evidence if it lacks the power to resolve the contradiction.

It follows that evidence unfavorable to the State, such as Ms. Ledford's claim that the "Norris" on the mailbox referred to defendant's daughter, did not provide the trial court with grounds for dismissing the charge against defendant. "Contradictions and discrepancies [in the evidence] do not warrant dismissal of the case but are for the jury to resolve." *Barnes*, 334 N.C. at 75. The jury could have concluded that Ms. Ledford's testimony was not credible and that defendant's name

appeared on the mailbox because, as Detective Thomas and Officer Radford testified, he lived at 124 Hamilton Street. The trial court properly left it to the jury to resolve conflicts in the evidence. The Court of Appeals impermissibly resolved those conflicts in defendant's favor.

B. Proximity to the Contraband

"[I]n addressing a defendant's proximity to the contraband, this Court considers proximity in terms of space and time." *Chekanow*, 370 N.C. at 497. The bedroom that defendant shared with Ms. Ledford was situated immediately on the right as officers entered the front door. The unlocked dresser in which Officer Radford found the firearm was located only three or four steps from the front door. Thus, when defendant rushed inside the house as officers approached, the dresser was within easy reach. Inasmuch as federal marshals arrested defendant near the front door, it appears that he remained close to the dresser after entering the house. Hence, "in terms of space and time," defendant was sufficiently close to the firearm to support a finding of constructive possession.

This Court's decision in *Bradshaw* confirms our application of the proximity factor. There, the charges against the defendant included possession of a firearm by a felon. *Bradshaw*, 366 N.C. at 91–92. The charges resulted from a search of a residence where at least two men other than the defendant had been known to live. *Id.* Officers discovered cocaine in one of the bedrooms and a rifle in the closet of that same bedroom. *Id.* at 91. Various pieces of evidence linked the defendant to the bedroom, such as "photographs, a Father's Day card, a cable bill, a cable installation receipt, and a pay stub." *Id.* at 90. Some of the evidence appeared to place the defendant in the bedroom two days before the search. *Id.* at 96. Although the defendant was absent when the search occurred, this Court held that "evidence placing the defendant in the . . . bedroom within two days of the search provides a sufficient link between [the] defendant and the contraband to survive a motion to dismiss." *Id.* at 97.

In this case, the State presented evidence showing that defendant was close to the handgun's location. Moreover, unlike the defendant in *Bradshaw*, defendant was present when the search took place; indeed, he was apprehended just a few feet away from the dresser containing the firearm. If the evidence in *Bradshaw* sufficiently established the spatial and temporal proximity needed for constructive possession, then so does the evidence introduced in this case. *See also State v. Baxter*, 285 N.C. 735 (1974) (holding that sufficient evidence existed of defendant's proximity to marijuana found in the bedroom that he shared with his wife, even though officers had not seen the defendant at the apartment

during the preceding week and the defendant was absent at the time of the search).

C. Indicia of Control

"[A] defendant's opportunity to place contraband in the place where it was found is additional indicia of control." *Chekanow*, 370 N.C. at 497. The State presented substantial evidence that defendant had the opportunity to put the firearm in the bedroom dresser: upon seeing law enforcement approach, defendant hurried into the house; he was arrested just a few steps away from the dresser; as Officer Radford testified, the dresser was not "secured or locked in any way"; and the firearm was not under anything but was "laying right on top" when Officer Radford opened the drawer.

In *Chekanow*, we cited *State v. Brown*, 310 N.C. 563 (1984), for the principle that the opportunity to put contraband in the place where it was found can be evidence of control. *Chekanow*, 370 N.C. at 499 (citing *Brown*, 310 N.C. at 569). In *Brown*, police officers arrested the defendant after finding him standing a few inches away from a table on which they observed cocaine and drug-related paraphernalia. 310 N.C. at 564–65. The arrest took place in an apartment allegedly leased by the defendant's brother. *Id.* at 565. The defendant was subsequently convicted of manufacturing a controlled substance by packaging and repackaging cocaine. *Id.* at 564–65.

In the defendant's appeal to this Court, we noted that the State had to rely on the doctrine of constructive possession "because the evidence d[id] not reveal that [the] defendant was in the actual physical possession of the drugs or the related paraphernalia." *Id.* at 568. Furthermore, because the defendant did not exclusively possess the premises, "constructive possession of the contraband materials [could] not be inferred without other incriminating circumstances." *Id.* at 569. We nonetheless upheld the defendant's conviction inasmuch as "there [were] circumstances other than [the] defendant's proximity to the contraband materials which tend[ed] to buttress the inference that [the] defendant was the person engaged in the manufacture of cocaine." *Id.* Specifically, the State presented evidence showing that the defendant (1) had a key to the apartment, (2) had $1,700 cash in his pockets at the time of his arrest, and (3) "had been under surveillance by the police for some time and on every occasion that police observed him, he was at [the apartment] rather than his claimed residence." *Id.* at 569–70.

Here, the evidence of control aside from defendant's proximity to the firearm is plainly sufficient under *Brown*. Though neither

officer testified to finding a key to the house on defendant's person, both Detective Thomas and Officer Radford testified that defendant lived at 124 Hamilton Street. The mailbox mounted beside the front door had defendant's—not Ms. Ledford's—last name on it. The presence of defendant's sleeping pills, an envelope with defendant's name on it, a piece of mail addressed to defendant, and men's clothing in the bedroom constitute further evidence that defendant exercised control over the firearm's location.

In his brief to this Court, defendant argues that the evidence of control in this case must be deemed insufficient under *State v. McLaurin*, 320 N.C. 143 (1987). There, a jury found the defendant guilty of possession of drug paraphernalia after officers searched her residence and found a set of scales in the kitchen, a vial bearing traces of cocaine in the pocket of a man's overcoat hanging in the living room closet, a baggie bearing traces of cocaine on a bar between the living and dining rooms, and "[a] box containing a spoon, eighteen small tinfoil squares, and a plastic bag . . . in a drawer full of children's clothing in a bedroom apparently occupied by children." *McLaurin*, 320 N.C. at 144.

This Court determined that the defendant's control over the premises "was patently nonexclusive" in that two men "had both been observed entering and leaving the day of the search, there was no evidence that defendant was so observed, and the presence of children's and adult male clothes in closets and bureaus indicated that [the] defendant did not reside there alone." *Id.* at 146. Additionally, the defendant and one of the men shared the same last name, and the house contained photographs of that man and the defendant. *Id.* at 145.

Given the evidence of nonexclusive possession in *McLaurin*, we concluded that the defendant's constructive possession of the drug paraphernalia could not be inferred "without other incriminating circumstances." *Id.* at 146 (quoting *Brown*, 310 N.C. at 569). Since "there was no evidence of other incriminating circumstances linking [the defendant] to [the contraband]," we held that "her control was insufficiently substantial to support a conclusion of her possession of the seized paraphernalia." *Id.* at 147. We thus reversed the judgment of the Court of Appeals upholding the defendant's conviction. *Id.*

According to defendant, *McLaurin* governs the outcome in this case because there, "[e]ven though the investigation yielded . . . ample evidence [that] the defendant resided in the home, this Court did not consider any of this to be 'incriminating circumstances' linking her to the items that were found in a drawer that did not contain her belongings,

in a room she did not occupy." Defendant points to Officer Radford's testimony that the dresser drawer containing the handgun "was full of 'lady items, hairspray, different things, stuff like that.' "

Although *McLaurin* bears a superficial resemblance to this case, the evidence there differs materially from the evidence introduced here. Most importantly, the *McLaurin* defendant was absent during the search of her residence. Thus, unlike defendant, she did not dart inside when officers arrived and was not apprehended near contraband. Similarly, none of the contraband seized in *McLaurin* was discovered in the defendant's bedroom, whereas Officer Radford discovered the handgun in the bedroom that defendant shared with Ms. Ledford. In short, the evidence in *McLaurin* did not establish an "opportunity to place contraband in the place where it was found" comparable to the one supported by the evidence in this case. *See Chekanow*, 370 N.C. at 497.

In its opinion reversing the trial court's judgment, the Court of Appeals concluded that the facts of this case are closer to *McLaurin* than to *State v. Rich*, 87 N.C. App. 380 (1987). *Norris*, 294 N.C. App. at 479–81. In *Rich*, the Court of Appeals held that evidence of incriminating circumstances was sufficient to allow the jury to find constructive possession of cocaine where "[t]he evidence showed that [the] defendant was present on the premises when the cocaine was found, that women's clothes and undergarments were in the room and in the dresser where the cocaine was found, and that letters with [the] defendant's name on them were also found in the room." 87 N.C. App. at 382.

The Court of Appeals attempted to distinguish *Rich* from this case on two grounds. First, "[u]nlike in *Rich*, the contraband was not found in a closed drawer with items that coincide with [d]efendant's sex." *Norris*, 294 N.C. App. at 480 (citing *Rich*, 87 N.C. App. at 382–83). Second, "[w]hile the agents in *Rich* found letters addressed to the defendant, including an insurance policy listing defendant as the resident, the only comparable evidence is a non-descript and unspecified piece of paper that had [d]efendant's name somewhere on it, and that paper is not in the record." *Id.*

While Officer Radford did find feminine products in the dresser drawer, that fact alone is not determinative. It must be viewed alongside the many pieces of evidence indicating that defendant occupied the bedroom and the evidence of his proximity to the dresser shortly before Officer Radford discovered the handgun. The Court of Appeals also seems not to have been aware of the body camera footage of the

envelope with defendant's name on it and the piece of mail addressed to defendant.

Interestingly, *Rich* itself expressly distinguishes its own facts from those of *McLaurin*. One of the differences emphasized is that the *McLaurin* defendant "apparently was not present at the time the paraphernalia was found" and "[t]here was no evidence that she had entered or left the premises at all on the day of the search." *Rich*, 87 N.C. App. at 383. Of course, defendant was present when Officer Radford found the handgun, and he had entered the house at 124 Hamilton Street mere moments before that discovery. On balance, then, *Rich* cannot sustain the Court of Appeals' decision in this case.

D. Suspicious Behavior

The evidence before the trial court also provides reason to believe that defendant behaved suspiciously "at or near the time of the contraband's discovery." *See Chekanow*, 370 N.C. at 496. Defendant rushed inside when he saw law enforcement officers approaching the house, and federal marshals arrested him just a few feet away from the unlocked dresser in which Officer Radford found the handgun.

The Court of Appeals discounted this evidence of suspicious conduct because "the State offer[ed] no evidence tending to show [d]efendant's actions beyond his entering the home." *Norris*, 294 N.C. App. at 481. According to the court, this evidence was insufficient to support the State's theory that defendant " 'stashed' the gun in the closed dresser drawer with Ms. Ledford's personal items during the short period he was not being observed by the officers." *Id.* The Court of Appeals concluded that "[d]efendant's purported actions cannot be inferred from his simple entry into and exit onto the porch of the home." *Id.*

In a sense, we agree. The State would have no case if it could show nothing more than that defendant entered the house and shortly thereafter returned to the front porch. The problem is that the Court of Appeals viewed this evidence in isolation. As we have explained, "[a] finding of constructive possession requires a totality of the circumstances analysis." *Chekanow*, 370 N.C. at 493.

This Court's treatment of the suspicious behavior factor in *Chekanow* illustrates the point. The defendants in that case faced criminal charges over twenty-two marijuana plants "found growing on a remote part of the property [the] defendants owned and occupied." *Id.* at 491–92. One of the defendants "directed an 'unfortunate gesture' at the clearly marked State Highway Patrol helicopter as it flew over her property."

Id. at 498. She then "appeared to flee the premises . . . as the helicopter hovered to investigate the possible field of marijuana." *Id.* at 498–99.

By themselves, these two actions did not provide substantial evidence that the *Chekanow* defendants were guilty of drug-related offenses. Nonetheless, this Court held that there was sufficient evidence of constructive possession. We reasoned that "a jury could reasonably infer that [the] defendants knowingly possessed the marijuana plants" based on

> the State['s] . . . evidence of [the] defendants' ownership of the property on which the plants were growing, [the] defendants' reasonable proximity to the growing marijuana plants, [the] defendants' ability to control access to that portion of the property via a fence and sole entry point, one [of the] defendant[s'] recent maintenance of the area where the plants were found, the presence of [the] defendants' chickens and their chicken coop in the area where the plants were found, one [of the] defendant[s'] suspicious behavior—the gesture and flight—before the discovery of the plants, and the discovery of equipment on [the] defendants' property that could have been used to cultivate the plants.

Id. at 500.

The Court of Appeals should have viewed the evidence of defendant's suspicious behavior alongside the evidence of the other *Chekanow* factors. When considered together with evidence demonstrating defendant's occupation of the house, proximity to the weapon, and control of the premises, the suspicious conduct by defendant supports an inference—not mere speculation—that he rushed inside the house to hide the firearm.

E. Other Evidence Found in Defendant's Possession Linking Defendant to Contraband

In addressing this factor in its principal brief to this Court, the State argues that the placement of the firearm in an unlocked dresser easily accessible to Ms. Ledford's children "is further evidence that [d]efendant stashed the gun." We do not regard this circumstance as "additional evidence found in defendant's possession which links . . . defendant to the contraband." *See Chekanow*, 370 N.C. at 499. In *Chekanow*, we cited as an example of such evidence the $1,700 in cash discovered on

the defendant's person in *Brown*. *Id.* (citing *Brown*, 310 N.C. at 569). Similarly, in *State v. Spencer*, 281 N.C. 121 (1972), "the Court considered in its sufficiency analysis the fact that officers found marijuana seeds in the defendant's bedroom at the same time marijuana plants were found in a dilapidated shed located twenty yards behind defendant's home." *Chekanow*, 370 N.C. at 499 (citing *Spencer*, 281 N.C. at 129–30).

Unlike the additional evidence in *Brown* and *Spencer*, the State's "further evidence" does not consist of other items found on the accused or in his possession. Hence, it does not qualify for consideration under the fifth *Chekanow* factor. The absence of other evidence is hardly fatal in this case, however. *See id.* at 496 ("No one factor controls, and courts must consider the totality of the circumstances."). When taken together and viewed in the light most favorable to the State, the evidence pertaining to the other *Chekanow* factors demonstrates the existence of "incriminating circumstances sufficient for the jury to find [that] defendant had constructive possession" of the handgun discovered by Officer Radford. *See Miller*, 363 N.C. at 99.

The trial court correctly determined that substantial evidence supported each element of the charge against defendant. For this reason, the Court of Appeals erred in reversing the trial court's denial of defendant's motion to dismiss for insufficient evidence.

IV.

The judgment of the Court of Appeals is reversed. We hereby remand this case to the Court of Appeals for consideration of any remaining issues on appeal.

REVERSED AND REMANDED.

STATE OF NORTH CAROLINA
v.
CODIE BRUCE SCHIENE

No. 305PA24

Filed 14 August 2026

On discretionary review pursuant to N.C.G.S. § 7A-31 of a unanimous decision of the Court of Appeals, 296 N.C. App. 126 (2024), affirming an order entered on 30 September 2022 by Judge Nathaniel J. Poovey in Superior Court, Mecklenburg County, denying in part and granting in part defendant's motion to suppress. 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.

BERGER, Justice.

The Court of Appeals affirmed the trial court's order denying defendant's motion to suppress evidence seized from a vehicle pursuant to a warrantless search, reasoning that the totality of the circumstances, including the odor of cannabis, provided law enforcement with probable cause to search. *See State v. Schiene*, 296 N.C. App. 126, 131 (2024). Defendant sought discretionary review in this Court of three issues, and on 21 March 2025 we allowed review of a single issue:

> In light of the General Assembly's decision to create legal cannabis, is the odor of cannabis, on its own, a constitutionally viable excuse for ignoring the United States Supreme Court's mandate to consider the totality of the circumstances when deciding whether probable cause justifies a warrantless search for illegal cannabis?

This Court recently reaffirmed that "we continue to follow our precedents which require examination of the totality of the circumstances to determine whether probable cause exists" and that "the odor of cannabis is one factor that may be considered" as part of this examination. *State v. Dobson*, 929 S.E.2d 315, 318 (N.C. 2026) (cleaned up); *see also State v. Rowdy*, 929 S.E.2d 324, 330 (N.C. 2026) ("[W]e consider the

totality of the circumstances in deciding whether law enforcement had reasonable suspicion and probable cause for searches and seizures. The odor of [cannabis] is a factor to be considered under the totality of the circumstances." (citations omitted)).

This Court has therefore already answered the single question on which review was allowed in this matter. As further review of this resolved issue would be superfluous, we conclude that discretionary review was improvidently allowed. To the extent the opinion of the Court of Appeals is consistent with *Dobson*, 929 S.E.2d 315, and *Rowdy*, 929 S.E.2d 324, the opinion below remains undisturbed.

DISCRETIONARY REVIEW IMPROVIDENTLY ALLOWED.

STATE OF NORTH CAROLINA
v.
KEDRICK DAQUANE THOMAS

No. 248PA24

Filed 14 August 2026

1. Jury—juror replacement during deliberations—N.C.G.S. § 15A-1215(a)—application of Chambers test

In reviewing convictions (including for second-degree murder) arising from a drive-by shooting at a Raleigh convenience store, where a juror was replaced with an alternate during deliberations and the resulting jury was instructed to start their deliberations afresh, the Supreme Court reversed the Court of Appeals' grant of a new trial to defendant by applying the holding of *State v. Chambers*, 387 N.C. 521 (2025). *Chambers* upheld the constitutionality of N.C.G.S. § 15A-1215(a)—which authorizes trial courts to replace a juror with an alternate after deliberations have begun—in light of statutory safeguards of the right to a twelve-person jury: (1) substituting an alternate juror only after a sitting juror is excused, and then (2) instructing the newly composed jury to begin deliberations anew. After employing the special preservation rule from *Chambers* to reach the merits of defendant's argument despite his failure to object to the juror substitution at trial, the court declined defendant's request to frame the *Chambers* test as a case-by-case inquiry into how long the jury deliberated, how

recently the jury was instructed to begin deliberations anew, or what additional instructions the court provided.

2. Appeal and Error—preservation of issues—Fourth Amendment search—ankle monitor data—failure to object at trial after denial of motion to suppress

In a prosecution for charges arising from a drive-by shooting at a Raleigh convenience store, where law enforcement officers obtained (without a warrant) location data from an ankle monitor defendant wore as a condition of post-release supervision for other crimes, defendant waived his objection to the alleged search because, although defendant filed a pretrial motion to suppress and renewed that objection at trial when the State's witness referenced the ankle monitor and when the State sought to introduce a spreadsheet containing machine-generated monitoring data, defendant did not object when the State introduced maps showing defendant's ankle monitor location at various points in time, superimposed over aerial or street maps.

3. Appeal and Error—preservation of issues—preservation issue not raised by appellee until additional briefing requested—not waiver

In an appeal by a criminal defendant who sought review of the standard applicable to searches of ankle monitor data collected as a condition of his post-release supervision, the Supreme Court rejected defendant's argument: that it should not reach the question of whether defendant had preserved the issue for review because the State did not raise preservation until supplemental briefing was requested. The State's failure to initially argue defendant's failure to preserve was not waiver because the State was the appellee, and a reviewing court is not constrained to uphold a lower court ruling solely on the legal grounds presented by the appellee.

Justice BERGER concurring.

Justice EARLS dissenting.

Justice RIGGS joins in this dissenting opinion.

On discretionary review pursuant to N.C.G.S. § 7A-31 of a unanimous decision of the Court of Appeals, 295 N.C. App. 564 (2024), affirming an order entered on 20 December 2021 and granting a new trial on

judgments entered on 23 February 2022 by Judge Keith O. Gregory in Superior Court, Wake County. On 27 June 2025, the Supreme Court allowed defendant's conditional petition for discretionary review as to additional issues. Heard in the Supreme Court on 17 February 2026.

Jeff Jackson, Attorney General, by Benjamin Szany, Assistant Attorney General, for the State-appellant.

Thomas, Ferguson & Beskind, LLP, by Olivia A. Warren, for defendant-appellee.

DIETZ, Justice.

We allowed discretionary review in this case to address emerging questions about the scope of our recent decision in *State v. Chambers*, 387 N.C. 521 (2025). *Chambers* concerned the constitutionality of N.C.G.S. § 15A-1215(a), a state law authorizing trial courts to replace a departing juror with an alternate after deliberations have already begun. We held that N.C.G.S. § 15A-1215(a) was constitutional because it includes two "critical safeguards" that protect the right to a twelve-person jury. *Chambers*, 387 N.C. at 526–27.

Since *Chambers*, criminal defendants have argued that the decision is fact-specific and that review of the constitutionality of juror substitutions under N.C.G.S. § 15A-1215(a) requires a case-by-case analysis of factors such as the length of time the previous jury deliberated, the length of time the new jury deliberated, or the length and detail in the trial court's instructions concerning the substitution.

We reject this approach. In *Chambers*, we held that, if a trial court complies with N.C.G.S. § 15A-1215(a) by (1) substituting an alternate juror only after a sitting juror is first excused, and then (2) instructing the newly composed jury to begin deliberations anew, the verdict is rendered by the constitutionally requisite jury of twelve. *Id.* Applying that holding here, the jury substitution was constitutional because the trial court complied with N.C.G.S. § 15A-1215(a). We reverse the portion of the Court of Appeals decision that found the juror substitution unconstitutional.

We also accepted review of a separate Fourth Amendment issue concerning warrantless searches of monitoring data for defendants on post-release supervision. We later ordered supplemental briefing to address whether that Fourth Amendment issue is preserved for

appellate review. After reviewing the parties' supplemental filings, we hold that the issue is not preserved. Accordingly, we modify and affirm this portion of the Court of Appeals decision on preservation grounds. We remand the case for the Court of Appeals to address the remaining issues on appeal.

Facts and Procedural History

In 2019, a car drove by a convenience store in Raleigh and an occupant in the rear passenger side fired multiple shots, killing one person and seriously injuring three others. Law enforcement identified multiple suspects involved in the drive-by shooting, including Defendant Kedrick Daquane Thomas, whom they believed was the shooter. At the time, Thomas was on post-release supervision for other crimes. Investigating officers obtained location data from an ankle monitor Thomas wore as a condition of post-release supervision. The officers did not obtain a warrant or consult with Thomas's post-release supervising officer before acquiring the monitoring data. That data placed Thomas near the crime scene at the time of the shooting.

The State charged Thomas with one count of first-degree murder and three counts of assault with a deadly weapon with intent to kill inflicting serious injury. Thomas moved to suppress the ankle monitor data. The trial court denied the motion.

The case then went to trial. During jury selection, a prospective juror informed the court that he had a vacation in two weeks and had already booked a flight. Despite the possibility that this juror would need to be excused if the trial ran long, both the State and Thomas allowed the juror to be seated. The jury also included two alternate jurors.

After a ten-day trial, the jury began deliberating and, after roughly two hours, sent a note to the trial court stating, "We have a hung jury situation at this point. After reviewing the evidence and discussing it thoroughly, we are not seeing any movement towards a decision." The trial court sent the jury back to continue deliberating after determining that, with only two hours of deliberations so far, an *Allen* charge would be premature.

After another hour of deliberations, the jury sent a second note asking to review evidence concerning Thomas's interrogation with law enforcement officers. The trial court then asked the jury if they preferred to receive the evidence immediately or recess for the weekend and return on Monday. The jury preferred to recess. The trial court then sent the jury home for the weekend. Before doing so, the court

excused the juror who needed to depart for the long-planned vacation. After explaining to the parties that the court would substitute an alternate juror and instruct the jury to restart deliberations, the trial court asked, "Any objection from the defense?" Thomas responded, "No, Your Honor."

The trial court then informed the jury that it was substituting the alternate juror and that "the jury would now be required to start their deliberations over because the alternate juror was not privy to the previous deliberations. So you would be required to start the deliberations over." After re-instructing the jury that all deliberations must take place in the jury room, the court added, "you'll have to start your deliberations, respectfully, over starting Monday at 9:00."

The trial court then released the jury for the weekend and informed the parties that the court would begin proceedings on Monday by granting the jury's request to receive the interrogation evidence. The court again asked whether the parties had any objections: "Any objection to anything as far as how the Court handled any of this?" Thomas again responded that he had no objection.

After the newly composed jury deliberated for most of the day, the jury sent a note to the trial court indicating that "we still do not have a unanimous decision. We have reviewed the evidence multiple times with no movement." The trial court then provided an *Allen* charge and sent the jury back to continue deliberating. Two hours later, the jury returned a verdict finding Thomas guilty of second-degree murder and one count of assault with a deadly weapon with the intent to kill inflicting serious injury.

Thomas appealed on a number of grounds, including that the trial court erred by denying his motion to suppress and violated his constitutional rights by substituting the alternate juror after deliberations had begun. The Court of Appeals rejected Thomas's suppression argument but agreed with Thomas's juror substitution argument. *State v. Thomas*, 295 N.C. App. 564 (2024). The court relied on its then-controlling precedent in *State v. Chambers*, 292 N.C. App. 459 (2024), *rev'd*, 387 N.C. 521 (2025).

By the time the Court of Appeals issued its decision, this Court had already allowed review of *Chambers*, which the Court of Appeals acknowledged in its opinion in this case: "Although the Supreme Court of North Carolina has granted discretionary review of *Chambers*, this Court remains bound by *Chambers* and we are therefore required to grant Defendant's request for a new trial based upon the juror substitution."

Thomas, 295 N.C. App. at 569. Because the court vacated and remanded on the juror substitution issue, it declined to address Thomas's remaining evidentiary arguments.

The State filed a petition for discretionary review on the juror substitution issue, and Thomas filed a conditional petition for discretionary review on the suppression issue. We allowed both petitions.

Analysis

I. Juror substitution after deliberations began

[1] We begin with the trial court's mid-deliberation juror substitution. In *State v. Chambers*, we held that this type of juror substitution is constitutional if it complies with the requirements set out in N.C.G.S. § 15A-1215(a). 387 N.C. at 526–27. We allowed discretionary review in this case to address emerging arguments from criminal defendants concerning the scope of our decision in *Chambers*.

Before we examine the *Chambers* holding, we must first address a preservation argument raised by the State. In *Chambers*, the defendant did not object to the trial court's juror substitution. In response to the State's waiver argument, we held that "issues related to the structure of the jury that found defendant guilty were preserved notwithstanding defendant's failure to object." *Id.* at 524. This exception to ordinary preservation rules was warranted, we explained, because of "the significance of errors related to a jury's structure." *Id.*

The State argues that this case is distinguishable from *Chambers* because Thomas did not merely fail to object; he affirmatively disclaimed any objection. Specifically, when the trial court proposed substituting the alternate juror, the court asked Thomas directly, "Any objection from the defense?" Thomas responded, "No, Your Honor." Thomas repeatedly confirmed to the court that he had no objection to the substitution. The State also points out that Thomas knew from the outset of the trial that the excused juror had a potential scheduling issue and might need to be excused but did not seek to remove the juror from the pool. These facts, the State argues, mean Thomas invited the error, which distinguishes the case from *Chambers*.

"The invited error doctrine applies when a defendant's affirmative actions directly precipitate error." *State v. Gillard*, 386 N.C. 797, 817 (2024) (cleaned up). Typically, invited error requires an "affirmative request for a specific action." *State v. Hooper*, 382 N.C. 612, 626 n.4 (2022).

We have two reservations about the State's invited error argument. First, the State is the party that petitioned for discretionary review in this case. Under Rule 16(a) of the Rules of Appellate Procedure, our review "is limited to consideration of the issues stated in . . . the petition for discretionary review." N.C. R. App. P. 16(a). In its petition, the State did not identify invited error as a ground for discretionary review. Instead, the only preservation issue for which the State sought review was whether the automatic preservation rule from *Chambers* conflicts with earlier precedent from this Court and should be distinguished on the facts of this case. We are not convinced that the waiver issue articulated by the State in the petition is broad enough to include the invited error argument that the State included in its new brief.

In any event, because of "the significance of errors related to a jury's structure," we believe invited error in this context would require more than merely stating "No, Your Honor" when asked if there were any objections. We leave open the possibility that invited error could apply if the defendant affirmatively encouraged the trial court to pursue the substitution. But on these facts, we decline to apply the invited error doctrine. We instead apply the special preservation rule we established for these substitution issues in *Chambers* and hold that the issue is automatically preserved for the reasons set out in *Chambers*. 387 N.C. at 524.

We therefore turn to the merits of Thomas's challenge to the juror substitution. Under N.C.G.S. § 15A-1215(a), a trial court may replace a juror with an alternate after deliberations have begun so long as the substitution occurs after the sitting juror is first excused and the court instructs the jury "to begin its deliberations anew." *Id.* at 526–27.

In *Chambers*, we held that N.C.G.S. § 15A-1215(a) was constitutional. *Id.* The jury in *Chambers* retired to begin deliberations in the afternoon. *Id.* at 522. The jury deliberated for around 30 minutes and then concluded for the day. *Id.* at 522–23. The next morning, the trial court excused a juror for a medical reason. *Id.* The court then substituted an alternate and instructed the jury as required by N.C.G.S. § 15A-1215(a) that it must "begin anew" and "you must restart your deliberations from the beginning." *Id.* at 527.

Importantly, our analysis in *Chambers* was about the constitutionality of the statute, not the practice of substituting a juror after deliberations have already begun. In other words, we examined whether a juror substitution that complies with the statutory criteria is constitutional. *Id.*

We held that it is. The core holding of *Chambers* is that N.C.G.S. § 15A-1215(a) is consistent with the constitutional requirement that a jury be composed of twelve jurors because the statute "provides two critical safeguards that ensure that the twelve-juror threshold remains sacrosanct." 387 N.C. at 526. First, the statute ensures that "in no event shall more than twelve jurors participate in the jury's deliberations" because it permits the participation of an alternate only after a sitting juror is first removed. *Id.* (cleaned up). Thus, we explained, there will only ever be a total of twelve members of the jury that is deliberating. Second, the statute "requires trial courts to instruct juries to 'begin deliberations anew' if an alternative juror is substituted after jury deliberations have begun." *Id.* (cleaned up). This further prevents the "risk that the verdict will be rendered by thirteen people" because, by starting "anew," the jury necessarily "restarts deliberations" and "any discussion in which the excused juror participated is disregarded and entirely new deliberations are commenced." *Id.* at 526–27. Importantly, we did *not* hold that the jury must be expressly instructed to disregard any earlier deliberations. That is not a requirement of N.C.G.S. § 15A-1215(a). Instead, we held that, by instructing the jury to "begin deliberations anew," the jury necessarily will start "entirely new deliberations" and disregard any earlier ones. *Id.*

In short, we held in *Chambers* that when a trial court complies with N.C.G.S. § 15A-1215(a) by substituting an alternate juror only after a sitting juror is first excused and then instructing the newly composed jury to begin deliberations anew, "the ultimate verdict is rendered by the constitutionally requisite jury of twelve" and is not subject to further constitutional challenge on this ground. *Id.*

Having laid out the holding in *Chambers*, we turn to Thomas's argument in this case. This case, like a number of other cases since *Chambers*, seeks to narrow our holding by asking us to "set the parameters" for its use in the lower courts. By "set the parameters" of *Chambers*, what Thomas means is redefine *Chambers* as a case about its specific facts, rather than a constitutional analysis of N.C.G.S. § 15A-1215(a). If we do so, Thomas argues, this case is distinguishable because of three categories of distinct facts.

First, Thomas contends that the trial court in this case gave the "begin deliberations anew" instruction on Friday evening after substituting the alternate juror and then excused the jury for the weekend. In *Chambers*, by contrast, the trial court gave the "begin deliberations anew" instruction in the morning, immediately before the newly composed jury began its new deliberations.

Second, Thomas contends that the trial court's instruction in this case was phrased differently than the one in *Chambers* because the trial court only said that the jury "would now be required to start their deliberations over" and did not, as in *Chambers*, also instruct the jury to "disregard entirely any deliberations taken place before the alternate juror was substituted."

Third, Thomas contends that the deliberations in this case were more advanced at the time of the substitution because the jury deliberated for three hours and had already reported it could not reach a verdict, while in *Chambers* the jury deliberated for 30 minutes and did not give any indication as to the progress of deliberations.

These factors do not distinguish this case from *Chambers*. As noted above, in *Chambers*, we held that the substitution procedure outlined in N.C.G.S. § 15A-1215(a) was constitutional. In other words, we held that when a trial court complies with the two "critical safeguards" of the statute by (1) substituting the alternate juror only after excusing the sitting juror, and (2) instructing the newly composed jury to begin deliberations anew, the substitution is constitutional. *Id*. at 526.

Thus, if the trial court complies with the two "critical safeguards" outlined above, that is the end of the analysis. We decline Thomas's request to frame the *Chambers* test as a case-by-case inquiry with "parameters" that depend on how long the jury deliberated, how recently the jury received the "begin deliberations anew" instruction, or what additional instructions the court provided beyond the critical safeguard of being told to "begin deliberations anew." None of these factors bear on the constitutional analysis we laid out in *Chambers*. If the trial court complies with the requirements of N.C.G.S. § 15A-1215(a), that satisfies the constitutional criteria. In this case, the trial court's instructions to the jury satisfied the constitutional requirements, and thus, even though there are some factual differences between this case and *Chambers*, the substitution was constitutional.

It is worth noting here that the *Chambers* analysis approving N.C.G.S. § 15A-1215(a) is not unusual. This is the same test applied under the United States Constitution and many other state constitutions, which likewise permit "substitution of an alternate juror in place of a regular juror after deliberations have begun" so long as "the judge instructs the reconstituted jury to begin its deliberations anew." *Claudio v. Snyder*, 68 F.3d 1573, 1575–76 (3d Cir. 1995) (collecting cases); *State v. Sullivan*, 949 A.2d 140, 155 (N.H. 2008); *State v. Trent*, 398 A.2d 1271, 1273 (N.J. 1979); *State v. Wirth*, 85 P.3d 922, 925 (Wash. Ct. App. 2004).

Moreover, the purpose of N.C.G.S. § 15A-1215(a) is not unusual. The Criminal Procedure Act contains many examples of statutes intended to create procedural rules that ensure trial courts meet the minimal constitutional floor for that subject matter. *See*, *e.g.*, N.C.G.S. § 15A-1022 (guilty pleas); N.C.G.S. § 15A-1242 (waiver of right to counsel). Each of these statutes provides a roadmap for constitutional compliance. So, for example, with respect to the constitutional requirement to waive the right to counsel, section 15A-1242 sets out a required colloquy with the defendant. "A trial court's inquiry will satisfy this constitutional requirement if conducted pursuant to N.C.G.S. § 15A-1242." *State v. Moore*, 362 N.C. 319, 322 (2008). The same is true here. A juror substitution will satisfy the constitutional requirements if conducted pursuant to N.C.G.S. § 15A-1215(a). *Id.*

In sum, the trial court complied with N.C.G.S. § 15A-1215(a) when it substituted an alternate juror after deliberations began. Under *Chambers*, that substitution was therefore constitutional. We reverse the decision of the Court of Appeals on this issue, acknowledging that the court did not yet have the benefit of our decision in *Chambers* when it issued its decision.

II. Motion to suppress the ankle monitor data

[2] Next, we address Thomas's argument concerning the denial of his motion to suppress. We initially allowed discretionary review on this issue to consider the standard that applies to searches for monitoring data that is collected as a condition of post-release supervision. But during our review, we identified a preservation issue with this constitutional question and directed the parties to submit supplemental briefing. Having reviewed the supplemental briefing, we hold that this issue is not properly preserved for appellate review and affirm the decision of the Court of Appeals on this basis.

In a typical criminal case, preserving a Fourth Amendment challenge for appellate review requires two steps. First, the defendant must pursue a pretrial motion to suppress the evidence under the Criminal Procedure Act and secure a ruling from the trial court. *See* N.C.G.S. § 15A-975. Second, the defendant must renew that challenge with a timely objection during trial. This means a "defendant cannot rely on his pretrial motion to suppress to preserve an issue for appeal." *State v. Golphin*, 352 N.C. 364, 463 (2000). Instead, "the defendant must make an objection at the point during the trial when the State attempts to introduce the evidence." *Id.*

This two-step rule may seem formalistic, but it serves several important purposes. First, a "pretrial ruling on a motion to suppress evidence is preliminary." *State v. Waring*, 364 N.C. 443, 468 (2010). This matters because, at trial, the evidence introduced may differ from what was identified and addressed in the motion to suppress. *Id.* Thus, a "contemporaneous objection" when the evidence is introduced at trial ensures that the trial court is examining the trial evidence itself, rather than a forecast of that evidence in a pretrial filing. *Id.*

Equally important, renewing objections at trial acknowledges the reality of how a criminal prosecution works. As the parties each prepare their case, engage in criminal discovery, assemble evidence, subpoena trial witnesses, and so on, a defendant's trial strategy can evolve. Evidence that the defendant once sought to exclude might now be useful to the defense. As a result, a defendant always has the choice to waive any constitutional infirmity with trial evidence and permit the evidence to be introduced as part of a trial strategy. *See United States v. Petruk*, 929 F.3d 952, 958 (8th Cir. 2019).

A contemporaneous objection to evidence is therefore necessary to confirm to the trial court that the defendant still desires for the evidence to be excluded. *Waring*, 364 N.C. at 468. This also means that the defendant must object again if the same evidence is introduced in another context, through another witness, or at a different stage of the trial. *State v. Alford*, 339 N.C. 562, 570 (1995). After all, the same trial-strategy concerns that may lead a defendant to waive an objection at the outset of trial could also arise during trial. *Id.*

Applying these waiver principles here, we hold that Thomas waived his objection to the challenged evidence by affirmatively informing the trial court, repeatedly, that he did not object to the same evidence. Specifically, Thomas moved to suppress his ankle monitor data in a pretrial motion to suppress. Thomas then renewed that objection at trial when the State's witness referenced that ankle monitor and the State sought to introduce a spreadsheet containing the machine-generated monitoring data.

But as the State's direct examination of the witness continued, the State repeatedly introduced maps showing Thomas's ankle monitor location at various points in time superimposed over aerial or street maps. When the State introduced these maps, the trial court asked Thomas's counsel directly if Thomas had any objection. Counsel repeatedly answered, "No objection" or "No, Your Honor."

Later, on cross-examination, Thomas asked a detective about information received by law enforcement that could suggest people other than Thomas were in the car involved in the drive-by shooting. This line of questioning fit a potential defense theory, which involved Thomas's own statements that he was near the car involved in the shooting but riding in a different car. Thomas's car, he claimed, turned down a side road just before the shooting and was not involved in the crime.

Later in the trial, Thomas called his own expert witness in geolocation data, who compared the tracking data from Thomas's ankle monitor with location data from the cell phone belonging to another participant in the drive-by shooting. That expert ultimately testified that there was insufficient data to determine whether Thomas's ankle monitor was in the same location as that cell phone at the time of the shooting. Again, this testimony could support a defense theory that Thomas was not one of the occupants of the car involved in the shooting.

This sequence of events raises the obvious possibility that Thomas intended to waive his objection to the ankle monitor data in order to use that data in his own defense. That, in turn, distinguishes the case from those cited by Thomas in his supplemental briefing, such as *State v. Corbett*, 376 N.C. 799, 825–26 (2021). In *Corbett*, the defendant objected to an expert report multiple times during the expert's testimony but failed to object at least once during a long line of questioning. *Id.* We held that the defendant's overall objection was preserved despite the occasional failure to object. *Id.*

Here, by contrast, Thomas affirmatively told the trial court—repeatedly—that he had "no objection" to the admission of the evidence. Moreover, there is a basis in the record to understand why Thomas might change positions and waive any objection to the evidence. Accordingly, we hold that Thomas waived his earlier objections to the challenged evidence when he informed the trial court that he had "no objection" to the admission of maps containing that same evidence. *Alford*, 339 N.C. at 570.

[3] We close by addressing Thomas's argument that we should ignore the preservation issue because the State did not raise it until this Court requested supplemental briefing. As explained in more detail in another case decided today, the State's failure to raise the issue is not a waiver because the State is the appellee. *State v. Lingerfelt*, No. 38A25, slip op. at 12 (N.C. Aug. 14, 2026). "A reviewing court is not constrained to uphold a lower court ruling solely on the legal grounds presented by the appellee." *Id.* "Were it otherwise, it could compel an appellate court to

reverse a judgment that is legally sound—in effect permitting litigants to stipulate to what the law is and, as a result, permitting them to force an appellate court to invalidate a proper trial court judgment." *Id.*

This does not mean appellees can feel comfortable omitting arguments that support their position. This Court has long held that it will not engage in a "voyage of discovery through the record," and the same is true for a voyage through potentially meritorious legal arguments and theories. *Cecil v. Snow Lumber Co.*, 197 N.C. 81 (1929). So, when an appellee fails to raise an argument that supports affirmance, that party runs the risk that this Court will not address the argument on its own initiative. Here, however, we believed it important to examine this preservation question. We ordered supplemental briefing to ensure the parties had a fair opportunity to address the issue themselves, and we now hold that Thomas's argument is not preserved for appellate review. We therefore modify and affirm the decision of the Court of Appeals based on this alternative ground. We remand the case to the Court of Appeals to address the remaining evidentiary challenges that the Court of Appeals has not yet examined. *Thomas*, 295 N.C. App. at 580.

Conclusion

We reverse the decision of the Court of Appeals with respect to the juror substitution issue, modify and affirm the Court of Appeals with respect to the motion to suppress, and remand for the Court of Appeals to address Thomas's remaining arguments on appeal.

REVERSED IN PART; MODIFIED AND AFFIRMED IN PART; AND REMANDED.

Justice BERGER concurring.

I concur with the portion of the majority opinion reversing the Court of Appeals' determination regarding the juror substitution. I write separately because I disagree with the majority that *Chambers* was controlling precedent when the Court of Appeals issued its decision.

The underlying premise of horizontal stare decisis is that binding precedent is knowable in advance, i.e., when confronted with an earlier published decision, an intermediate appellate court can ascertain the decisions it must follow with some amount of research and thought. *In re Civil Penalty* solidified the principle of horizontal stare decisis in North Carolina, holding that where a panel of the Court of Appeals has

decided an issue, that Court is bound by the holding until overturned by this Court. 324 N.C. 373, 384 (1989).

A decision that has been stayed has no precedential weight. *See State v. Gonzalez*, 263 N.C. App. 527, 528 (2019) (stating that when this Court stays a mandate, the stayed opinion "does not yet have any precedential effect"). This makes sense because a stay of the mandate suspends the operative force of the decision pending review. *See* N.C. R. App. P. 8; N.C. R. App. P. 23. When this Court allows review of a lower court's decision and stays the mandate, that should alert the lower court to await clarification before extending the rule to new cases, especially in the context of outcome determinative or constitutional holdings. Put another way, a mandate that has been stayed is not effective on the parties to that case and should therefore not be used to bind strangers to that litigation because the decision has not been permitted to take effect. But even if the panel below disagreed with the effect a stay or supersedeas has, it was still bound by *In Civil Penalty* to follow *Gonzalez*. It did not.

In the decision below, the Court of Appeals acknowledged, contrary to *Gonzalez*, that "[a]lthough the Supreme Court of North Carolina has granted discretionary review of *Chambers*, this Court remains bound by *Chambers* and we are therefore required to grant Defendant's request for a new trial based upon the juror substitution." *State v. Thomas*, 295 N.C. App. 564, 569 (2024). The Court of Appeals' reliance on *Chambers* proved dispositive in this case, resulting in a new trial and this appeal.

The panel in *Gonzalez* treated the stay as removing that decision from the body of binding case law. The panel below in this case wrongly treated supersedeas as leaving *Chambers* undisturbed. What is worse, the panel below did not cite to, distinguish, or otherwise acknowledge a conflict with *Gonzalez* or the Rules of Appellate Procedure.

Certainly, allowing discretionary review alone does not divest a case of potential precedential effect. But *Chambers* was not just under review. This Court had issued a writ of supersedeas and the panel below did not grapple with that issue, apparently reflexively relying on *In re Civil Penalty* to do the bulk of its work. If this Court has told the world that a case is under review and the mandate should be stayed, that should have some import on our colleagues next door. It did in *Gonzalez*.

The purpose of a stay or supersedeas is to hold matters in place until this Court speaks. When an intermediate appellate court treats a suspended decision as controlling, the stay is stripped of its meaning. The panel below gave license for lawyers to argue in our trial courts that *Chambers* had some binding effect when it did not. It could absolutely

have been persuasive authority. But that is not what the panel below articulated, and in failing to follow its own precedent or the Rules of Appellate Procedure, the Court of Appeals highlights again what was discussed in one of my prior concurrences.

In *In re N.M.W.*, 389 N.C. 57, 58–60 (2026) (Berger, J., concurring), I expressed concern about problems *In re Civil Penalty* creates with first-in-time panel draws and that inattentiveness to this Court's precedent can have the practical effect of overruling it (something our Constitution does not allow). *See* N.C. Const. art. IV, § 12; *Holmes v. Moore*, 384 N.C. 426, 437 (2023). To reiterate briefly, stare decisis typically attaches when a principle has become settled by a series of decisions. *State v. Ballance*, 229 N.C. 764, 767 (1949). But a single decision seldom has stare decisis impact. *See Mial v. Ellington*, 134 N.C. 131, 157–58 (1903). Rule 31.1 of the Rules of Appellate Procedure now supplies a mechanism for resolving panel disagreements at that Court of Appeals, and that procedure was not available when *In re Civil Penalty* was decided. *See* N.C. R. App. P. 31.1. The conflict between *Gonzalez* and *Thomas* illustrates again that there is a structural problem that needs to be addressed.

So what should the panel below have done? There were at least two options. The better option would have been to hold this case in abeyance until *Chambers* was decided. Alternatively, the Court of Appeals could have issued an unpublished opinion. If the panel below was following *Chambers*, it was not plowing new ground, so why did the panel decide to publish? The reality is that there are few issues on which either this Court or the court below have not spoken. So, unpublished decisions should be the rule rather than the exception, especially with the disruptive potential the jurisprudence of our intermediate court has on this Court's constitutional obligation.

But institutional fidelity means we keep practices intact despite obvious costs, even if the cost is the constitutional authority of this Court.

Justice EARLS dissenting.

I dissent from the majority's holding that the trial court in this case complied with N.C.G.S. § 15A-1215(a) when it substituted an alternate juror after deliberations began.

On the outset, since its amendment in 2021, N.C.G.S. § 15A-1215(a)'s judicial interpretation and binding precedent is *State v. Chambers*, 387

N.C. 521 (2025). In *Chambers*, the specific issue was whether the jury was constitutionally empaneled with the essential number of twelve members. *Chambers*, 387 N.C. at 525, 527; *see also State v. Dalton*, 206 N.C. 507, 512 (1934) (stating the "essential attributes" of a trial by jury include "number, impartiality, and unanimity"). In contrast, the specific issue before this Court in Mr. Thomas's case is whether the jury was properly instructed, in compliance with N.C.G.S. § 15A-1215(a), when the trial court substituted an alternate juror after deliberations began. I would hold that the trial court failed to comply with N.C.G.S. § 15A-1215(a). The jury having failed to begin deliberations anew, Mr. Thomas is entitled to a new trial.

In pertinent part, subsection 15A-1215(a) states, "The judge may permit the seating of one or more alternate jurors. . . . The court should ensure that the alternate jurors do not discuss the case with anyone until that alternate replaces a juror or is discharged. . . . If an alternate juror replaces a juror after deliberations have begun, the court must instruct the jury to begin its deliberations anew." N.C.G.S. § 15A-1215(a) (2025). In determining that the ultimate verdict in *Chambers* was rendered by the constitutionally requisite jury of twelve members, this Court relied on the trial court's jury instruction, which we called "exactly the instruction required by statute." 387 N.C. at 527. It read as follows:

> The law of this state grants the defendant to [sic] a unanimous verdict reached only after full participation of the [twelve] jurors who ultimately return a verdict. This right may . . . only be assured if the jury deliberations begin anew. So, fortunately, this happened after you-all had not gotten far in this because it was late in the day, but I need to tell you that you must restart your deliberations from the beginning. This means that you should disregard entirely any deliberations taken place before the alternate juror was substituted and should consider freshly the evidence as if the previous deliberations had never occurred.

Id. (alternations in original).

In Mr. Thomas's case, both the State and Mr. Thomas agreed to sit a juror that had a planned vacation. The jury included two alternate jurors. The trial of this matter lasted ten days. After the first two hours of deliberation on a Friday, the jury failed to reach a verdict, and it informed the court that it was unable to agree because of "a hung

jury situation." The trial court instructed the jury to continue deliberations. After another hour of deliberations, the jury asked to review the hard copy and video evidence of the police interrogation of Mr. Thomas. The trial court agreed to allow the jury to receive the evidence it sought to review after the weekend recess and excused the juror that had the planned vacation.

After substituting the juror, the trial court provided the new twelve-member jury with instructions about deliberations three times before dismissing the jury for the weekend recess. The first instruction was dubious and skeptical, as the trial court stated that:

> [U]nder the new case law, I think what monkey wrench, as far as [the excused juror], because I think I need to address that. I think I need to address that first also. Because I don't want the alternates to—well, under case law, they're required to start their deliberations over again if, in fact, another juror is replaced. So maybe I'm overthinking it. They're not going to hear any evidence, obviously, or anything.

The trial court's second instruction stated that "[a]s a function of [the alternate juror], . . . the jury would now be required to start their deliberations over because the alternate juror was not privy to the previous deliberations. So you would be required to start the deliberations over."

In its final instruction to the jury, the trial court stated, "You're not allowed to form or express any opinion about this case separate and apart from what you've done in your jury deliberations with the understanding now that there's another—there's a new juror, alternate juror, who is a part of the jury panel and you'll have to start your deliberations, respectfully, over starting Monday at 9:00."

Subsequently, on Monday morning, the evidence that the previous jurors had requested on Friday was passed to the new jury and the requested video played. After the video had been played, the jurors were sent back to the jury room with no instruction given to them on the requirement that they disregard prior deliberations and begin deliberations anew.

While a jury is presumed to follow the instructions of the trial court, *State v. Prevatte*, 356 N.C. 178, 254 (2002), "there are some contexts in which the risk that the jury will not, or cannot, follow instructions is so great, and the consequences of failure so vital to the defendant, that the practical and human limitations of the jury system cannot be ignored,"

Bruton v. United States, 391 U.S. 123, 135 (1968). Jury structure violations have been consistently acknowledged as one of those contexts. *Chambers*, 387 N.C. at 534 (Riggs, J., concurring in part and dissenting in part). This presumption is precisely why the substance and timing of a trial court's instructions matter so greatly.

A bare "begin anew" instruction does not reliably communicate to jurors that everything that came before must be set aside. This is exactly the kind of gap that *Bruton* warns against: the gap between what a jury is presumed to grasp and what a jury can be relied upon to grasp. *See Bruton*, 391 N.C. at 137 (holding that despite clear instructions to the jury to disregard inadmissible evidence, the instruction alone is not a substitute for protecting the constitutional right at issue).

That gap is not merely academic in Mr. Thomas's case; it is dispositive, because this is precisely where the heightened risk *Bruton* and *Prevatte* describe materializes. The trial court's three instructions on Friday afternoon were, at best, tentative and confusing. The court described the substitution as a "monkey wrench"; candidly told the jury, "[M]aybe I'm overthinking it"; and only indirectly referenced "case law" requiring the jury to "start their deliberations over." Nowhere in any of the three instructions did the trial court tell the jury it must disregard the two hours of deliberations that had already occurred with the excused juror. That omission alone should have prompted the trial court to supply the missing language once the jury reconvened. It did not. Instead, the jury was excused for the weekend, returned Monday morning, received the video and documentary evidence that the previous jury had specifically requested as a result of their deliberations before the substitution, and was sent back to deliberate with no instruction whatsoever—begin anew, disregard, or otherwise. In fact, the trial court's decision to give the jury the evidence requested as result of the very deliberations that were supposed to be disregarded essentially prevented the jury from beginning anew.

Whatever force a bare "begin anew" instruction might carry immediately after it is given, that force cannot survive an intervening weekend recess, the receipt of substantive evidence requested by the prior jury, and total instructional silence at the very moment deliberations actually resumed. A trial court that never made an explicit instruction to disregard the prior deliberations, and that let two days and evidence requested by the prior jury intervene before deliberations resumed, has not complied with N.C.G.S. § 15A-1215(a) under any formulation of the statute, whether the majority's or *Chambers*'s.

For these reasons, I would hold that the trial court failed to comply with N.C.G.S. § 15A-1215(a). Nothing in this record suggests that the jury actually did set aside its previous deliberations before returning a verdict finding Mr. Thomas guilty. In fact, by immediately receiving evidence previously requested by the prior jury, they clearly could not have begun anew. Moreover, it cannot simply be assumed that the new jury understood it must begin deliberations anew and disregard everything that came before. Mr. Thomas is entitled to a new trial before a jury of just twelve members, not effectively thirteen, as happened here. I respectfully dissent.

Justice RIGGS joins in this dissenting opinion.

STATE OF NORTH CAROLINA
v.
ALLEN JHALIL WILLIAMS

No. 21PA25

Filed 14 August 2026

Homicide—jury instruction—castle doctrine—occupant of motor vehicle—need not be physically inside—presumption

In a prosecution where defendant was convicted of voluntary manslaughter for killing a man during an altercation—the exact facts of which were disputed at trial, but that began with the victim approaching defendant while defendant was inside his car and ended with defendant exiting his vehicle and fatally shooting the victim—defendant was entitled to a jury instruction on the castle doctrine. Under the plain language of the relevant statute (N.C.G.S. § 14-51.2(b)), although defendant chose to exit his vehicle during the incident, he was an "occupant" for purposes of the castle doctrine instruction. Further, the doctrine's presumption (that a lawful occupant had a reasonable fear of imminent death or serious bodily injury to himself or others) applied to defendant despite the victim's discontinuation of efforts to enter defendant's vehicle, which went toward rebutting the presumption rather than the statute's applicability. Accordingly, the Court of Appeals' decision—remanding for a new trial—was affirmed, but was modified as it pertained to the interpretation of the statute, which was not ambiguous in its application to the matter at bar.

Justice BERGER dissenting.

Appeal pursuant to N.C.G.S. § 7A-31 (2025) from the decision of the Court of Appeals, 297 N.C. App. 512 (2024), reversing the trial court's judgment entered on 1 March 2023 by Judge A. Graham Shirley in Superior Court, Wake County, and remanding for a new trial on voluntary manslaughter and any lesser-included offenses. Heard in the Supreme Court on 17 February 2026.

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

Patterson Harkavy LLP, *by Narendra K. Ghosh*, *counsel for defendant-appellee.*

RIGGS, Justice.

The question presented here is whether Mr. Williams was entitled to an instruction under N.C.G.S. § 14-51.2(b), commonly known as the castle doctrine. Upon review, we affirm the Court of Appeals' holding that Mr. Williams was entitled to the castle doctrine instruction and that the trial court's failure to provide the instruction was prejudicial, warranting a new trial. We modify, however, the Court of Appeals majority's interpretation of section 14-51.2(b) and hold that the statute is clear and unambiguous when it comes to the interpretation of the term "occupant" under these facts.

I. Factual and Procedural Background

A. Factual Background

Allen Jhalil Williams met Miracle Lewis, a woman with whom he had exchanged texts and voice messages via Facebook, for the first time on 1 August 2020, when he arrived at her residence in Raleigh, North Carolina. Prior to meeting Mr. Williams, Ms. Lewis had been in an eight-month long relationship with the victim, Martin Penny, with whom she remained in contact. On that date, Mr. Williams and Ms. Lewis spent a short amount of time together on her porch before getting into Mr. Williams's car and driving to a nearby gas station on New Bern Ave. Then, after driving around for some time longer, Mr. Williams and Ms. Lewis drove back to Ms. Lewis's home and parked on the side of it. Mr. Penny, who lived within walking distance of Ms. Lewis, arrived shortly thereafter in his brother, Tyrelle Peguese's, white pickup truck, exited

from the passenger side of the vehicle, and started walking towards the house, and then, towards Mr. Williams's car. From there, both Ms. Lewis's and Mr. Williams's recollections of the events differ.

1. Ms. Lewis's testimony

According to Ms. Lewis, Mr. Penny approached the passenger side of Mr. Williams's car, where she was seated, tapped the glass, and asked Mr. Williams who he was through the window and closed door. When Mr. Williams did not answer, Mr. Penny opened the passenger side door and asked him again, but Mr. Williams still did not answer. Then, Mr. Penny, leaning into the car and over Ms. Lewis, proceeded to throw a right-hand punch at Mr. Williams, who was sitting in the driver's seat.

After throwing what Ms. Lewis described as "one" punch, Mr. Penny walked around to the driver's side of the car and Mr. Williams got out of the car. According to Ms. Lewis, only "seconds" had passed between the punch and Mr. Penny being completely outside of the car and walking towards the driver's side. Ms. Lewis also got out of the car but remained on the passenger side. The men, according to Ms. Lewis, were "[m]ore in the middle of the road" as opposed to leaning against the vehicle, and "scuffling" or "wrestling." However, Ms. Lewis also stated that she did not see everything as it all "happened very quickly," or rather, in "seconds." At some point during the fight, Ms. Lewis testified that she heard two or three gunshots but never saw a gun nor did she hear Mr. Williams say anything about a gun. After the gunshots, Ms. Lewis testified that she went over to Mr. Penny, who was stumbling backwards towards the back of her house. She also saw the white truck pull off after the gunshots and Mr. Williams immediately get back into his car and leave.

2. Mr. Williams's testimony

Mr. Williams testified that before he could respond when Mr. Penny asked him who he was, Mr. Penny began punching the right side of Mr. Williams's face with his fist from the passenger side of the vehicle, and Mr. Williams raised his right hand, "trying to block" the punches. At the same time, Mr. Williams, in trying to evade the punches, reached his left hand outside of the driver's side window to "try to open the door," because the inside driver's door handle was broken. Initially, Mr. Williams was unable to open the door and continued to "try[ ] to get out of the car and duck[ ] punches" before Mr. Penny stopped punching him.

Mr. Williams testified that the pause in the punches led him to briefly think that Mr. Penny was getting out of Mr. Williams's car. However, when Mr. Williams looked over, he stated that he saw Mr. Penny on the

passenger side with a gun in his hand. After seeing the gun, Mr. Williams stopped trying to get out of the car and reached for Mr. Penny's gun from inside the car, while Mr. Penny was still leaning into Mr. Williams's car. Mr. Williams testified that he took the gun from Mr. Penny to defend himself. Once Mr. Williams got the gun from Mr. Penny, he stated that he put the gun in his left hand to keep it away from Mr. Penny and began trying to open the car door with his right hand. Mr. Williams testified that Mr. Penny continued to punch him in the "[b]ack of the head, shoulders, back of the neck," as his back was turned while he was trying to exit the vehicle. After Mr. Williams was able to get the door open, and "fell out [of] the car," Mr. Penny came around the front of the car to where Mr. Williams on the driver side.

Mr. Williams testified that he aimed the gun at Mr. Penny when Mr. Penny got to the "driver's side headlights." According to Mr. Williams, Mr. Penny charged at him despite the gun being raised and aimed at him, but Mr. Williams stated he did not shoot Mr. Penny at this point. A scuffle began again between the two, with Mr. Williams testifying that Mr. Penny was "cursing and yelling" at him while punching him in the ear, head, and face. Mr. Williams testified that he fired the first shot after he "started hearing ringing" in his ear, had gotten hit in the eye, and feared that Mr. Penny would knock him out and take the gun back.

Mr. Williams testified that Mr. Penny didn't react or respond to being shot "at all" and was continuing to curse at him and punch him. Mr. Williams testified that he shot Mr. Penny a second time "a few seconds later" after he was hit again in the eye. Mr. Williams testified that Mr. Penny continued to scuffle with him and did not let go of him. However, Mr. Williams "ended up breaking free" from Mr. Penny's grip. According to Mr. Williams, Mr. Penny continued to punch, come towards, and curse at Mr. Williams before "[Mr. Penny] stop[ed], stop[ed] talking, grab[ed] his chest, and . . . r[an] towards the dark area towards the back of the house." Not long after, Mr. Williams left.

3. Tyrell Peguese's testimony

Mr. Penny's older brother and the driver of the white pickup truck, Tyrell Peguese, claimed he saw the entire interaction between Mr. Williams and Mr. Penny. He testified that Mr. Penny approached Mr. Williams's car, opened the passenger side car door, reached in, and shut the door. He also testified that he observed Mr. Penny go around the front of the car and Mr. Williams hop out of the car and "basically start [ ] shooting" at Mr. Penny. According to Mr. Peguese, there was no fight or assault other than the shooting, and Mr. Williams already had a gun in

his hand when he got out of the car. Mr. Peguese stated that he heard the gun go off about three or four times.[1]

B. Jury Instructions at Trial

Mr. Williams was indicted for first-degree murder and possession of a firearm by a felon. On 20 February 2023, this matter came for a hearing before the trial court. Mr. Williams requested a jury instruction on the castle doctrine. During the charge conference, the trial court concluded it would instruct the jury on self-defense, but not the castle doctrine. The trial court determined that an instruction on the castle doctrine was not appropriate because Mr. Williams was not an "occupant" of his vehicle at the time of the shooting because he had exited his vehicle. In the trial court's instructions, the jury was informed that if Mr. Williams acted in self-defense and used excessive force, he would be guilty of voluntary manslaughter.

On 28 February 2023, the jury found Mr. Williams guilty of voluntary manslaughter. Mr. Williams timely appealed the judgment to the Court of Appeals on 1 March 2023. *State v. Williams*, 297 N.C. App. 512, 513, 517 (2024).

C. The Court of Appeals Judgment

On appeal, Mr. Williams argued that the trial court reversibly erred in failing to instruct the jury on the castle doctrine theory of self-defense under N.C.G.S. § 14-51.2, and, that, if he was entitled to a castle doctrine instruction, the trial court erred in instructing the jury on the consequences of using excessive force in exercising self-defense. *Williams*, 297 N.C. App. at 519. Mr. Williams also contended that the trial court's denial of his request was prejudicial error. *Id.*

The Court of Appeals majority explained that for Mr. Williams to have been entitled to a castle doctrine instruction, the record must demonstrate: "(1) at the time [Mr. Williams] used lethal force against [Mr.] Penny, he was an 'occupant' of a motor vehicle; and (2) [Mr.] Penny was in the process of unlawfully and forcefully entering, or had unlawfully and forcibly entered, the motor vehicle, and [Mr. Williams] knew or had reason to believe such unlawful and forcible entry was occurring or had occurred." *Williams*, 297 N.C. App. at 522; *see also* N.C.G.S. § 14-51.2(b)(1)–(2).

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1. The evidence at trial never clearly established to whom the gun belonged or whether Mr. Penny or Mr. Williams brought the gun to the encounter.

The Court of Appeals majority concluded that the trial court erred in denying Mr. Williams's request for the castle doctrine instruction. To reach its conclusion, the majority turned to the statutory interpretation of section 14-51.2(b)'s use of "lawful occupant," ultimately determining that the term was "ambiguous and unclear," and that a "lawful occupant, under specific circumstances" includes those no longer within the home, motor vehicle, or workplace. *Williams*, 297 N.C. App. at 525–27. This interpretation, the Court of Appeals reasoned, was consistent with the statute's legislative intent: "the lawful occupant 'of' a home, motor vehicle, or workplace is not bound to become a fugitive from these locations and therefore is not required to flee *or remain* in his home, motor vehicle, or workplace until his assailant is upon him." *Id.* at 527.

The Court of Appeals noted that Mr. Penny, whom Mr. Williams observed to be armed, had entered Mr. Williams's vehicle via the passenger door and began assaulting him. *Id.* at 528. The Court of Appeals also noted that, as Mr. Penny assaulted him, Mr. Williams was seated in the driver's seat of the vehicle and only exited from his vehicle during Mr. Penny's ongoing attack. *Id.* The Court of Appeals concluded that Mr. Williams was not under any obligation to remain in the vehicle during the assault and Mr. Williams, who exited in response to the assault, exercised deadly force while still under attack when Mr. Penny came around the vehicle over to Mr. Williams. *Id.* at 528–29. Viewing the evidence in the light most favorable to Mr. Williams, the Court of Appeals concluded that Mr. Williams was an occupant of his vehicle when he exercised deadly force, entitling him to the castle doctrine defense. *Id.*; *see also State v. Coley*, 375 N.C. 156, 159 (2020) (providing that evidence is viewed in the light most favorable to defendant in determining whether a defendant has presented competent evidence sufficient to support a self-defense instruction (citing *State v. Moore*, 363 N.C. 793, 796 (2010))). Therefore, the Court of Appeals concluded that the trial court erred in failing to grant Mr. Williams's request for the instruction. *Williams*, 297 N.C. App. at 530.

The Court of Appeals further held that Mr. Williams was "prejudiced by the trial court's error because a person who uses permissible defensive force pursuant to N.C.G.S. § 14-51.2 is justified in using such force and is *immune from civil or criminal liability* for the use of such force." *Id.* at 531 (cleaned up). In other words, it held there was a reasonable possibility a different result would have been reached by the jury but for the trial court's error. *Id.*

Ultimately, the Court of Appeals concluded that Mr. Williams had demonstrated by competent evidence that he was entitled to the castle

doctrine instruction and but for the trial court's error, there was a reasonable possibility that the jury would have reached a different result. *Williams*, 297 N.C. App. at 531. Therefore, the Court of Appeals reversed the trial court's judgment and remanded for a new trial. *Id.* The Court of Appeals did not reach Mr. Williams's remaining argument regarding the trial court's excessive force instruction. *Id.* at 531–32.

Judge Stroud, writing separately, concurred in result only, agreeing that Mr. Williams was an occupant for the purposes of the castle doctrine instruction but rejecting the majority's interpretation of section 14-51.2, a statute which she described as "straightforward." *Id.* at 532–33 (Stroud, J., concurring in result only). Judge Stroud explained that, based on the language of the statute alone, "an 'occupant' of a motor vehicle is a person *inside* a motor vehicle *at the time* of an unlawful and forceful entry of the vehicle by another person." *Id.* (emphasis added). As Judge Stroud viewed it, the statute contemplated three scenarios "which could be described as before, during, and after the unlawful and forceful entry into the motor vehicle by an intruder" in which the lawful occupant of a motor vehicle may use defensive and potentially deadly force: "(1) someone is 'in the process of unlawfully and forcefully entering' the occupant's motor vehicle; (2) someone had already 'unlawfully and forcibly entered' the occupant's motor vehicle; or (3) someone has 'removed or was attempting to remove another against that person's will' from the motor vehicle." *Id.* at 533 (quoting N.C.G.S. § 14-51.2(b)(1)).

Judge Stroud explained that the evidence presented in Mr. Williams's case satisfied the requirements for use of deadly force described in both the second and third scenarios. *Id.* In her analysis, "[f]or the third scenario, the only question is if the 'removal' of the occupant 'against that person's will' must be the physical removal . . . or if the removal could occur because the occupant got out of the car to better protect himself during the attack." *Id.* at 534. Judge Stroud interpreted that the statute "envisions a situation where an occupant may need to use force *outside* the car if he is removed in the course of the attack." *Id.* Judge Stroud further emphasized that whether Mr. Williams lost the presumption under § 14-51.2(b), based on the State's evidence that Mr. Penny discontinued all efforts to enter the car, was a question of fact for the jury because the evidence was in dispute—that is, the jury might not ultimately be persuaded that the attack had been continued. *Id.* at 534–35. Nonetheless, Judge Stroud concluded that Mr. Williams was an "occupant" of the car, mandating the trial court to give the jury the requested instruction. *Id.* at 535.

The State filed a petition for discretionary review with this Court, seeking review of whether the trial court correctly declined to instruct the jury under section 14-51.2. The State argues that the Court of Appeals erroneously interpreted N.C.G.S. § 14-51.2(b) when it concluded the trial court erred by not giving the requested instruction the jury because, according to the State, section 14-51.2(b) did not apply in Mr. Williams's case.

II. Standard of Review

We review the decision of the Court of Appeals for any error of law. N.C. R. App. P. 16(a). "To resolve whether a defendant is entitled to a requested instruction, we review de novo whether each element of the defense is supported by the evidence, when taken in the light most favorable to defendant." *State v. Mercer*, 373 N.C. 459, 462 (2020) (holding that the trial court must give the substance of a requested jury instruction if it is correct and supported by the evidence). As for an issue involving statutory interpretation, this Court also employs de novo review. *Phillips*, 386 N.C. at 517. When reviewing an issue de novo, this Court "considers the matter anew and freely substitutes its own judgment for that of the lower courts." *In re McClatchy Co., LLC*, 386 N.C. 77, 85–86 (2024) (quoting *Town of Midland v. Harrell*, 385 N.C. 365, 370 (2023)).

If the trial court erred, appellate reversal and remand for a new trial is appropriate only upon a defendant's demonstration of prejudice, meaning he must show "there is a reasonable possibility that, had the error in question not been committed, a different result would have been reached at the trial out of which the appeal arises." N.C.G.S. § 15A-1443(a) (2025); *see also State v. Benner*, 380 N.C. 621, 628 (2022).

III. Analysis

A. The Castle Doctrine Generally

North Carolina's defense of a home, motor vehicle, or workplace statute provides:

> The lawful occupant of a home, motor vehicle, or workplace is presumed to have held a reasonable fear of imminent death or serious bodily harm to himself . . . or another when using defensive force that is intended or likely to cause death or serious bodily harm to another if both of the following apply:
>
> (1) The person against whom the defensive force was used was in the process of unlawfully and forcefully

> entering, or had unlawfully and forcibly entered, a home, motor vehicle, or workplace, or if that person had removed or was attempting to remove another against that person's will from the home, motor vehicle, or workplace.
>
> (2) The person who uses defensive force knew or had reason to believe that an unlawful and forcible entry or unlawful and forcible act was occurring or had occurred.

N.C.G.S. § 14-51.2(b).

Subject to narrow exceptions, if the statute is satisfied, lawful occupants of vehicles may use force, including deadly force, against unlawful intruders, without being subject to civil or criminal liability. *State v. Allison*, 388 N.C. 664, 670 (2025). That is because, as we explained in *Phillips*, the statute prescribes a non-rebuttable presumption that any person who unlawfully and by force enters or attempts to enter a home, motor vehicle, or workplace is doing so with the intent to commit an unlawful act involving force or violence. *See Phillips*, 386 N.C. at 524. Turning to the lawful occupant's state of mind, the lawful occupant of the protected space may know or may have reason to believe such unlawful entry or attempted entry occurred or is occurring. *Id.* If the lawful occupant ends up using force against the intruder that is intended or likely to cause death or serious bodily injury, the lawful occupant is presumed to have held a reasonable fear of imminent death or serious bodily harm and has no duty to retreat from the intruder. *Id.* The lawful occupant's presumption of "a reasonable fear of imminent death or serious bodily harm to himself or herself or another" is rebuttable under certain circumstances. *See Allison*, 388 N.C. at 671 (quoting N.C.G.S. § 14-51.2(b)). For example, the State can rebut the presumption by showing "[t]he person against whom the defensive force is used (i) has discontinued all efforts to unlawfully and forcefully enter the home, motor vehicle, or workplace and (ii) has exited the home, motor vehicle, or workplace." N.C.G.S. § 14-51.2(c)(5) (2025).

When a defendant asserts the castle doctrine defense at trial, the jury must first determine whether the defendant has satisfied section 14-51.2(b). *Allison*, 388 N.C. at 673. If the jury finds that the defendant has not satisfied the conditions of section 14-51.2(b), the castle doctrine statute does not apply and the jury must instead determine the defendant's culpability under section 14-51.3, the general self-defense statute. *Id.* But if the jury finds that the defendant has satisfied the conditions of

section 14-51.2(b), it must then inquire into whether the State has rebutted the presumption of reasonable fear. *Id.* If the jury finds that the State has rebutted the presumption, the jury must then determine whether the defendant's use of force was proportional. *Id.* "However, if the jury finds that the State failed to rebut the presumption, the defendant *must* be acquitted in accordance with section 14-51.2(e)" and questions about excessive or disproportionate force have no role in the jury's decision-making. *Phillips*, 386 N.C. at 526–27 (explaining that "under the Castle Doctrine, excessive force is impossible unless the State rebuts the Castle Doctrine presumption" (cleaned up)).

B. Mr. Williams was entitled to the castle doctrine instruction under section 14-51.2(b).

This Court stated that "[i]t is fundamental that a jury . . . be properly instructed on the law." *Allison*, 388 N.C. at 674 (quoting *Phillips*, 386 N.C. at 525). "A defendant entitled to *any* self-defense instruction is entitled to a *complete* self-defense instruction . . . ." *Id.* at 674 (alteration in original) (quoting *Coley*, 375 N.C. at 159–60). "[W]here competent evidence of self-defense is presented at trial, the defendant is entitled to an instruction on this defense, as it is a substantial and essential feature of the case, and the trial judge must give the instruction even absent any specific request by the defendant." *Coley*, 375 N.C. at 159 (quoting *State v. Morgan*, 315 N.C. 626, 643 (1986)). To determine whether a defendant has presented competent evidence sufficient to support a self-defense instruction, this Court takes the evidence as true and considers it in the light most favorable to the defendant. *Id.* Once the defendant has presented such competent evidence, "the court must charge on this aspect even though there is contradictory evidence by the State or discrepancies in defendant's evidence." *Id.* (quoting *State v. Dooley*, 285 N.C. 158, 163 (1974)).

When the evidence presented supports that a defendant qualified for the castle doctrine instruction, a trial court's failure to instruct the jury accordingly amounts to an instructional or "non-constitutional" error. *Phillips*, 386 N.C. at 528. Such 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 out of which the appeal arises." *Id.* (cleaned up).

Put simply, the question here is whether Mr. Williams met the statutory criteria to be entitled to the castle doctrine instruction. The gloss on this question presented by the State is where the occupant effectively "chooses" to get out of the vehicle to better protect himself during the

attack, can "removal" of the occupant "against that person's will" (as codified in section 14-51.2(b)(1)) occur?

1. The parties disagree over whether Mr. Williams was entitled to the castle doctrine instruction based on whether he was considered an "occupant."

The State argues that Mr. Williams was no longer an "occupant" when he chose to exit the vehicle. The State also argues, pursuant to N.C.G.S. § 14-51.2(c)(5), that the castle doctrine's presumption did not apply to Mr. Williams because of Mr. Penny's discontinued efforts to enter the vehicle and his exit, which it asserts do not go towards rebutting the presumption but toward the statute's applicability. *See* N.C.G.S. § 14-51.2(c)(5) (providing that the castle doctrine's presumption of fear is rebutted where "[t]he person against whom the defensive force is used (i) has discontinued all efforts to unlawfully and forcefully enter the home, motor vehicle, or workplace and (ii) has exited the home, motor vehicle, or workplace").

The State also argues that the Court of Appeals' decision wrongly applies an event-based construction of the word "occupant," rather than a place-based construction that, it suggests, is the plain meaning of the statute and rooted in the common law tradition of the castle doctrine. Further, the State submits that Mr. Williams's argument for the meaning of "occupant" would allow the term to "extend[ ] to all former occupants automatically and indefinitely" until a jury finds the State rebutted the presumption.

Mr. Williams argues that he was the lawful occupant of the vehicle because he was inside the vehicle when Mr. Penny forcibly entered it. Furthermore, he argues that Mr. Penny removed him from the vehicle against his will by repeatedly assaulting him. As for the State's argument that he chose to exit the vehicle, Mr. Williams argues that he only exited to escape the physical attack inside of his vehicle. Finally, Mr. Williams argues that the Court of Appeals correctly concluded that whether Mr. Penny had discontinued his efforts to enter his vehicle was necessarily a question for the jury—in other words, it did not go to the statute's applicability. Moreover, Mr. Williams points to conflicting evidence regarding whether Mr. Penny did discontinue all efforts to enter the vehicle because after Mr. Williams exited the vehicle, Mr. Penny went to the driver's side and continued to assault Mr. Williams.

2. Mr. Williams was the lawful occupant of his motor vehicle.

Determining whether Mr. Williams was considered an occupant as prescribed under the statute is a matter of statutory construction. "The

goal of statutory interpretation is to determine the meaning that the legislature intended upon the statute's enactment." *State v. Rankin*, 371 N.C. 885, 889 (2018); *see also Wilkie v. City of Boiling Spring Lakes*, 370 N.C. 540, 547 (2018). It is this Court's "primary task . . . to ensure that the purpose of the legislature . . . is accomplished." *Elec. Supply Co. v. Swain Elec. Co.*, 328 N.C. 651, 656 (1991). We first look to the plain meaning of the words in the statute itself. *State v. Ward*, 364 N.C. 157, 160 (2010). "[W]here the language of a statute is clear and unambiguous, there is no room for judicial construction and the courts must construe the statute using its plain meaning." *Wilkie*, 370 N.C. at 547 (quoting *In re Est. of Lunsford*, 359 N.C. 382, 391–92 (2005)). Even if a term is not expressly defined, that does not necessarily mean it is unclear and ambiguous. Where a statute does not define a word, the word must be given its common and ordinary meaning. *Lafayette Transp. Serv., Inc. v. County of Robeson*, 283 N.C. 494, 500 (1973); *In re Clayton-Marcus Co.*, 286 N.C. 215, 219 (1974). If the word is defined, however, then the statutory definition controls, "however contrary to the ordinary meaning of the word it may be." *In re Clayton-Marcus Co.*, 286 N.C. at 219.

Looking first to the plain meaning of the statute, section 14-51.2 applies to the "lawful occupant of a home, motor vehicle, or workplace." N.C.G.S. § 14-51.2(b). "Occupant" is not defined within the statute, although the statute defines other material terms, such as "home," "law enforcement officer," "motor vehicle," and "workplace." N.C.G.S. § 14-51.2(a) (2025). Looking, then, to the ordinary meaning of "occupant," an "occupant" is defined as "[s]omeone who has possessory rights in, or control over, certain property or premises" or "[s]omeone who is rightfully present on certain property or premises—as opposed to *trespasser*." *Occupant*, *Black's Law Dictionary* (12th ed. 2024).[2] "Lawful" is defined as "[n]ot contrary to the law" or "permitted or recognized by the law; rightful." *Lawful*, *Black's Law Dictionary* (12th ed.

2. This Court has defined "occupant" in the context of a Fourth Amendment search by holding that a defendant could be considered the "occupant" of his residence when he was outside "on a wheelchair ramp on the neighboring property," meaning his current occupation inside of the home was not necessary to still be considered a resident. *State v. Tripp*, 381 N.C. 617, 619, 631–32 (2022). Similarly, this Court defined "occupant" as someone in the immediate vicinity of a premise to be searched in the context of officers detaining occupants present during the execution of a search warrant. *State v. Wilson*, 371 N.C. 920, 925 (2018). Both interpretations indicate that an occupant is someone within a certain geographical space. However, as the Court of Appeals recognized with respect to *Tripp*, "occupant" as defined in the context of Fourth Amendment is not necessarily coterminous with the word's use and meaning under the castle doctrine statute.

2024). Either definition of occupant would render Mr. Williams a lawful occupant here because he was seated inside of his car when Mr. Penny approached the car and assaulted him.

Further, the plain language of the castle doctrine statute provides it is a place-based immunity from which we can infer who qualifies as an "occupant." There are three circumstances in which defensive and potentially deadly force may be used: (1) when the person against whom the defensive force was used is in the process of unlawfully and forcefully entering the occupant's motor vehicle; (2) had already unlawfully and forcibly entered the occupant's motor vehicle; or (3) has removed or was attempting to remove another against that person's will from the motor vehicle. N.C.G.S. § 14-51.2(b)(1). Thus, an occupant is a person inside of a motor vehicle before or during an unlawful and forceful intrusion as well as a person who has been removed or is being removed by an intruder.

As Judge Stroud's concurrence pointed out, the statute explicitly references the statute's protection being applicable when the intruder has removed or is removing that person from the vehicle. *See Williams*, 297 N.C. App. at 531. The legislature's express extension of the protection to a lawful occupant even where that occupant may no longer physically be in the vehicle renders the State's definition of "occupant" untenable in light of the entire statute. The legislature plainly intended the protection of the castle doctrine to extend to a lawful occupant who was being forced to leave, by physical means or fear, the protection of the occupant's vehicle. The "occupant" does not lose their "lawful occupant" status when the occupant only chooses to leave the safety of his or her vehicle because of the unlawful and forceful actions of the intruder.

Additionally, the legislature in section 14-51.2(f) (2025) delineated that a lawful occupant "within" their home, motor vehicle or workplace does not have a duty to retreat while section 14-51.2(b) states that a lawful occupant "of" the same locations has the presumption of reasonable fear when certain criteria are met. As noted throughout the decisions of this Court, there is a presumption that the "legislature carefully chose each word used" in the statutes it promulgates. *N.C. Dep't of Corr. v. N.C. Med. Bd.*, 363 N.C. 189, 201 (2009); *see also Rhyne v. K-Mart Corp.*, 358 N.C. 160, 188 (2004) (stating "this Court does not read segments of a statute in isolation"); *Jackson v. Home Depot U.S.A., Inc.*, 388 N.C. 109, 116 (2025) (citing *Dickson v. Rucho*, 366 N.C. 332, 344 (2013)). The ordinary meaning of "within" indicates "enclosure or containment," "an inner place or area," or "inside." *Within*, *Merriam-Webster's Collegiate Dictionary* (12th ed. 2026). Conversely, "of" is a

function word used to indicate belonging or relationship to the word that follows it, a characteristic or distinctive quality, or as an adjective. *Of*, *Merriam-Webster's Collegiate Dictionary* (12th ed. 2026). The legislature's choice to use "of" as opposed to "within" in section 14-51.2(b), when paired with the statute's explicit description of a scenario in which one may use defensive force during or after compelled removal from the motor vehicle, makes clear that the legislature intended for the lawful occupant to retain the presumption even when they are physically forced out of the protected area. To conclude otherwise would render the statute's protection illusory if the occupant has no choice but to remove themselves from the motor vehicle to avoid further danger.[3] This is not to say that there are no bounds to what might be reasonably seen as a forced removal (if, say, Mr. Penny unlawfully intruded into Mr. Williams car but used no force and did not attack Mr. Williams) or that the lawful occupant has license to kill even if he has fled to a substantial distance from his safe vehicle. But those bounds of the statute's protection are not presented by the facts in this case.

Ultimately, we disagree with the conclusion of the majority of the Court of Appeals that the statute was not clear and unambiguous as to the definition of "occupant" but agree with the holding that Mr. Williams was a lawful occupant and entitled to the castle doctrine instruction. The language of the statutory scheme is clear—an "occupant" of a motor vehicle does not lose the protection of the castle doctrine if he was removed or fled from the motor vehicle because of the unlawful and forceful entry.

Thus, based on our statutory interpretation, we hold that Mr. Williams was an occupant under section 14-51.2(b) because the evidence, viewed in light most favorable to Mr. Williams, would show that (1) Mr. Williams was inside his vehicle when Mr. Penny began his attack against him; (2) Mr. Williams exited his vehicle during the attack and only in response to it; (3) Mr. Williams exercised deadly force while

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3. While we conclude that the statute is clear and unambiguous, the evolution of the statute confirms our interpretation and points to the legislature's intent to apply a more expansive definition of occupant that is not restrained to the protected location. In 2011, the legislature replaced section 14-51.1 with a more detailed statutory scheme that expanded the castle doctrine to allow defensive force in a home, motor vehicle, or workplace, whereas the repealed statute only applied a lawful occupant "within" a home or dwelling. *Compare* N.C.G.S. § 14-51.1 (repealed 2011) *with* N.C.G.S. § 14-51.2 (2025). *See Phillips*, 386 N.C. at 520; *see also* An Act to Provide When a Person May Use Defensive Force and to Amend Various Laws Regarding the Right to Own, Possess, or Carry a Firearm in North Carolina, S.L. 2011-268, § 2, 2011 N.C. Sess. Laws 1002, 1004.

standing by his vehicle; and (4) Mr. Williams used such force while Mr. Penny continued to assault him.

Although the State points to Mr. Penny's exit from Mr. Williams's vehicle, or at least his movement from the passenger side to the driver's side, as a discontinued entry and exit, this evidence as to whether the attack or overall intrusion was discontinued is disputed. *See* N.C.G.S. § 14-51.2(c)(5). According to Mr. Williams, Mr. Penny went around the car to the driver's side where Mr. Williams was and continued to assault him, and these events occurred, at least according to Ms. Lewis's testimony, in a matter of "seconds." Our holding on Mr. Williams's entitlement to a castle doctrine instruction, however, does not mean that the jury must believe Mr. Williams's version of events or that it cannot be satisfied, based on the State's evidence, that Mr. Penny had "discontinued all efforts" to enter Mr. Williams's vehicle. A properly instructed jury may have found that the State established that Mr. Penny discontinued the unlawful and forcible intrusion, but ultimately, Mr. Williams presented sufficient evidence such that he was entitled to the castle doctrine instruction.

C. The trial court's failure to provide the castle doctrine instruction was prejudicial error.

If the trial court erred, a new trial is required only if defendant was prejudiced. N.C.G.S. § 15A-1443(a). An error in jury instructions "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 out of which the appeal arises." *Phillips*, 386 N.C. at 528 (cleaned up).

Had the jury received the castle doctrine instruction and found that Mr. Williams was entitled to the presumption of reasonable fear, then the jury would have reached the question of whether the State had rebutted the castle doctrine presumption. *Id.* at 525 (once the jury finds that the defendant is entitled to the presumption, then it must determine whether the State has rebutted the presumption). Here, the jury would have been required to reach a different verdict because it could not take into consideration the proportionality of the force Mr. Williams employed.

Put another way, the reasonable probability of a different outcome is amply established where, as here, even factoring in an intermediate conclusion the jury must reach (that Mr. Williams acted in self-defense), the jury would have been prohibited from convicting Mr. Williams of voluntary manslaughter. The jury was instructed that it could only convict

Mr. Williams of voluntary manslaughter if they found he acted in self-defense but used excessive force. However, excessive force, as this Court has explained, is a legal impossibility when the castle doctrine statute applies. *Id.* at 517. The jury found Mr. Williams guilty of voluntary manslaughter following the incomplete instructions, but not guilty on the charges of first or second-degree murder. It seems possible and even logical that, by finding that Mr. Williams acted in self-defense, the jury did not think that Mr. Penny had discontinued his attack. If that is the case, and there is a reasonable probability that there is, then a different outcome would have been near certain when the jury considered whether the use of force was excessive based on the trial court's instructions. Had the jury been properly instructed under the castle doctrine, the jury could not have considered the proportionality of force at all, *unless* the jury found that the State had rebutted the castle doctrine's presumption by demonstrating that Mr. Penny discontinued his attack. But, as described above, we have already established a reasonable probability that by finding that Mr. Williams acted in self-defense and convicting him of voluntary manslaughter, the jury likely did not believe Mr. Penny had discontinued the attack. Thus, had the jury received the castle doctrine instruction, Mr. Williams may have been acquitted as required under section 14-51.2(e). *See Allison*, 388 N.C. at 679 (holding that erroneous jury instructions probably resulted in conviction rather than acquittal for conduct the legislature, through the castle doctrine statute, deemed "lawful and justified").

We do not suggest or mandate any certain outcome at the new trial: the jury gets to decide whether the State failed to rebut the castle doctrine presumption or whether the defense's theory is the correct version of events. But the question presented before this Court is whether Mr. Williams was entitled to the castle doctrine instruction. We conclude that he was, and the trial court's failure to properly instruct the jury was reversible and prejudicial error. Thus, we affirm the decision of the Court of Appeals.

IV. Conclusion

We conclude that, based on the plain language of the castle doctrine statute and under the specific circumstances of this case, Mr. Williams was an "occupant" of his vehicle, thus entitling him to the castle doctrine jury instruction. We therefore affirm the decision of the Court of Appeals, holding that the trial court reversibly erred in denying his request for a statutory castle doctrine instruction and remanding for a new trial on voluntary manslaughter and any lesser included offenses. And we modify the part of the Court of Appeals decision below as it

pertains to its interpretation of the statute, holding that our statutory construction proceeds from a conclusion that the statute is not ambiguous in its application here.

MODIFIED AND AFFIRMED.

Justice BERGER dissenting.

"The castle doctrine in North Carolina recognizes that unlawful intruders create an inherently dangerous situation in certain specified circumstances, and lawful occupants are thus given the benefit of the doubt in qualifying use of force scenarios." *State v. Allison*, 388 N.C. 664, 670 (2025). We are asked today whether a man standing in the street is a "lawful occupant" of a motor vehicle under N.C.G.S. § 14-51.2 such that a castle doctrine instruction was appropriate. This is not a close case under the statute's plain language, and I respectfully dissent.

When the language in a "statute is unambiguous, we apply the statute as written." *Wynn v. Frederick*, 385 N.C. 576, 581 (2023) (cleaned up). "It should go without saying that we may not interpret what has no need of interpretation and, when the words [in a statute] have a definite and precise meaning, we cannot go elsewhere in search of conjecture in order to restrict or extend the meaning." *State v. Daw*, 386 N.C. 468, 476 (2024) (cleaned up). We have clearly stated in this context that castle doctrine protections "only apply when the defendant satisfies the specific statutory requirements [of N.C.G.S. § 14-51.2(b)]." *State v. Phillips*, 386 N.C. 513, 525 (2024).

The term occupant, both in common usage and the legal context, means physical presence in an area. *See Occupant*, *Black's Law Dictionary* (12th ed. 2024) (defining "occupant" as "[s]omeone who is rightfully present on certain property or premises"). The term "lawful occupant" under the statute therefore means a person who is both physically and lawfully present in a home, motor vehicle, or workplace, and applicability of the statute hinges on the presence in a protected area by one who uses defensive force. *See State v. Copley*, 386 N.C. 111, 122 (2024) ("When a person *inside their dwelling* uses lawful force to fend off another's illicit invasion, *the setting makes all the difference*." (emphasis added)). It does not mean, as the majority contends, a person who merely has "possessory rights" in the property. The General Assembly knows how to distinguish between physical occupancy itself and the *right* to lawfully occupy, and it made this distinction in the castle doctrine statute. *Compare* N.C.G.S. § 14-51.2(b) (2025) ("The

lawful occupant of a home, motor vehicle, or workplace . . . .") *with id.* § 14-51.2(c) (2025) ("The presumption set forth in subsection (b) . . . does not apply in any of the following circumstances: (1) The person against whom the defensive force is used *has the right to be in or is a lawful resident of* the home, motor vehicle, or workplace, such as *an owner or lessee* . . . ." (emphasis added)).

Indeed, it is the "special status" of the protected area that "vests its lawful occupants with the right to defend it." *Copley*, 386 N.C. at 122 (cleaned up). "[O]nce inside their castle, an occupant is entitled to the security and safety of its walls." *Id.* at 123. It is axiomatic that the protection does not apply outside of the statutorily prescribed areas, and a person's physical presence in a protected area is key, not that person's theoretical right to occupy the space. A person standing in the street is not an occupant of a vehicle, just like a person who has stepped off of a plane is no longer a passenger. Prior location or proximity to the vehicle are irrelevant here.[1]

This Court has been very careful in providing necessary clarity to our castle doctrine statute. At least up until now. We have previously said that castle doctrine protections "apply when the defendant satisfies the specific statutory requirements [of N.C.G.S. § 14-51.2(b)]." *Phillips*, 386 N.C. at 525. Chief among these requirements, the doctrine may be invoked only by the lawful occupant of a home, motor vehicle, or workplace. N.C.G.S. § 14-51.2(b).

But the majority now requires us to define occupant as someone who voluntarily exits his vehicle and engages in a confrontation of his own choosing. This creative interpretation extends castle doctrine protections far beyond the plain language of N.C.G.S. § 14-51.2 and injects uncertainty into our jurisprudence. By effectively extending castle doctrine protection to "recent" occupants, courts are left wondering "how recent is recent" and "how close is close." *Thornton v. United States*, 541 U.S. 615, 636 (2004) (Stevens, J., dissenting). Such ambiguity is entirely avoidable by simply applying the statute's plain meaning.

It is uncontroverted that defendant exited his vehicle and stood in the street when he fired two shots at the victim. Defendant was physically outside the vehicle and by definition was not an occupant. The

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1. The analysis would differ if defendant's home was at issue, rather than his motor vehicle. A home is statutorily defined to "include its curtilage[.]" N.C.G.S. § 14-51.2(a) (2025). A motor vehicle, by contrast, has no curtilage.

majority's interpretive gymnastics cannot override this crucial fact, and subsection 14-51.2(b) simply does not extend protections to a now-former occupant who voluntarily exited his motor vehicle. Instead, defendant was entitled to, and received, a regular self-defense jury instruction which the jury rejected. The majority's disregard for the unambiguous statutory language impermissibly expands the castle doctrine's applicability, muddies this State's self-defense jurisprudence, and erases the bright lines in the statute that we have worked diligently to clarify.[2]

STATE OF NORTH CAROLINA
v.
KEVIN LEIGH WINGATE

No. 184A25

Filed 14 August 2026

1. Evidence—expert testimony—sexual offenses against a child—impermissible vouching for victim's credibility—no plain error

In a prosecution for multiple charges of taking indecent liberties with a child and first-degree statutory sexual offense, where the evidence consisted solely of witness testimony, the trial court's admission of two expert witnesses' testimonies did not constitute plain error because, even if both experts had impermissibly vouched for the victim's credibility when testifying, nothing in the record suggested that the jury probably would have reached a different verdict absent those testimonies. Firstly, the victim's uncorroborated testimony, even standing alone, was legally sufficient to convict defendant where it established each element of the charged offenses.

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2. The majority also agrees with the concurring judge below that a lawful occupant need not actually occupy the home, motor vehicle, or workplace at the time defensive force is used because subsection 14-51.2(b) provides that a lawful occupant is afforded the presumption of reasonable fear if, in part, "[t]he person against whom the defensive force was used . . . had removed or was attempting to remove *another* against that person's will from the home, motor vehicle, or workplace." N.C.G.S. § 14-51.2(b)(1) (emphasis added). It is not clear that the term "another" necessarily includes the "lawful occupant." Regardless, this Court need not speak on this question today where there is no evidence defendant was forcibly removed from his vehicle. In fact, it is undisputed that defendant himself opened the driver's side door to exit while Mr. Penny was on the opposite side of the vehicle, and defendant admitted Mr. Penny's attack "didn't hurt that bad."

Additionally, the State introduced other evidence—namely, the expert testimony of a child abuse evaluation specialist who conducted a forensic interview with the victim, and the testimony of the social worker who conducted the victim's initial intake and the investigation that followed—that supported the jury's finding of guilt independent of the alleged vouching testimony.

2. Indictment and Information—statutory sexual offense with a child by an adult—lesser-included offense listed on indictment—not fatally flawed

In the prosecution of a father accused of sexually abusing his twelve-year-old son, where defendant was ultimately sentenced for committing statutory sexual offense with a child by an adult under N.C.G.S. § 14-27.28, but where his indictment expressly charged him with the lesser-included offense of first-degree statutory sexual offense under N.C.G.S. § 14-27.29, the indictment was not fatally flawed such that defendant was entitled to a new trial. The factual allegations in the indictment addressed all elements required for the more serious charge, including that defendant was at least eighteen years old at the time of the abuse, thereby rendering the incorrect statutory reference a harmless scrivener's error. Furthermore, both the allegations in the indictment and the frequent references to the more serious offense throughout the proceedings put defendant on constructive notice of the offense with which he was actually being charged.

Appeal pursuant to N.C.G.S. § 7A-30(2) (2023) from the decision of a divided panel of the Court of Appeals, 299 N.C. App. 800, vacating judgments entered on 27 July 2023 by Judge Keith O. Gregory in Superior Court, Wake County, and remanding for a new trial. On 30 January 2026, the Supreme Court allowed the State's petition for discretionary review as to an additional issue. Heard in the Supreme Court on 15 April 2026.

Jeff Jackson, Attorney General, by Tamika L. Henderson, Special Deputy Attorney General, for the State-appellant.

George B. Currin and Hart Miles for defendant-appellee.

EARLS, Justice.

The issues presented here are (1) whether the Court of Appeals erred in holding that the trial court committed plain error when it admitted

expert testimony alleged to have constituted improper vouching; and (2) whether the Court of Appeals erred when it determined, in dicta, that an indictment was fatally flawed based on a discrepancy in statutory references. We hold that the Court of Appeals erred in both instances. Accordingly, we reverse the Court of Appeals' judgment.

I. Facts

In this case the evidence presented at trial consisted of the victim's testimony and the testimony of four witnesses, three of whom were admitted as expert witnesses. The evidence tended to show that Kevin Wingate sexually abused his son on multiple occasions.

A. Victim Testimony

James[1] was twelve years old when, as he testified, Mr. Wingate, his father, came into his room to "talk[ ] about the birds and the bees" while James's mother was out of the country on vacation. James was somewhat surprised, but he had expected to receive such a talk at some point. He had learned from his schoolmates about their own awkward conversations. James put down his video game controller and listened to Mr. Wingate's description about what to expect throughout puberty. But James could not have anticipated the turn the conversation would take.

After explaining how James might start growing pubic hair, Mr. Wingate, as James told it, stood up and pulled down his pants. "[H]is penis was in front of my face," James testified. Mr. Wingate then told James to touch his penis, but James refused. Undeterred, Mr. Wingate "grabbed [James's] left hand and made [James] pull [Mr. Wingate's penis] once[,] . . . . [then] twice."

Next, Mr. Wingate wanted to examine James's genitals to, as James put it, "see if everything was looking normal." Mr. Wingate then lay down on James's bed and, while fondling his still exposed genitals, asked if James had any questions. That concluded the first "talk." James, unsure what to do once Mr. Wingate left the room, went back to playing video games.

Later that same day, as James recounted, Mr. Wingate reentered James's room. This time, Mr. Wingate wanted to talk to James about

1. "James" is the pseudonym used for the minor victim throughout the Court of Appeals record below.

James's two uncles, described as "gay," and their bedroom activities. Mr. Wingate told James that his uncles engage in "sword playing," which James understood as touching their penises together. About an hour later, Mr. Wingate offered James pizza in exchange for James "playing" with him "like [James's] uncles play." James refused, and Mr. Wingate gave James a "high five."

James testified that Mr. Wingate's transgressive acts did not cease once James's mother returned from abroad. While James's mother was downstairs one day, Mr. Wingate entered James's room to "wrestle." James testified:

> While we were wrestling, wrestling like normal, then I became overpowered. I was then laying flat on my stomach and then I was—I felt something essentially going inside me about roughly 12 times. The last one, the 12th thrust was the hardest. And during that time I brought my left arm forward to my bed frame to try and get out to try and pull myself out, in which he grabbed my left arm, pulled it back, and which I then hurt my shoulder. I started to cry. He got off me. And I went downstairs and I told my mom that Kevin essentially just hurt my shoulder.

James clarified that while he had been wearing thin cotton "superhero" pajamas, he could nonetheless feel Mr. Wingate's erect penis inside his anus through his pajamas. James had difficulty using the restroom for some days following this incident.

While James had expected a "talk" based on what he learned from his schoolmates, it was what James later learned from his health class teacher that revealed to him that the "talk," and the "wrestling" that followed, were, in fact, abuse. Sometime after James learned of the abusive nature of Mr. Wingate's actions, he built up the courage to tell his mother, first about the nonpenetrative abuse. James explained that his feelings of shame and guilt initially prevented him from sharing the penetrative abuse with his mother or counselors. Eventually, after working with a therapist, James felt comfortable enough to share details of the remainder of the abuse he suffered.

B. Indictments

A Wake County grand jury delivered a true bill of indictment on 20 February 2018, indicting Mr. Wingate on one count of taking indecent

liberties with a child under N.C.G.S. § 14-202.1. Mr. Wingate was initially arraigned on 25 July 2018, in Superior Court, Wake County. Mr. Wingate pleaded not guilty and waived a formal reading of charge at that time.

On 5 November 2019, a Wake County grand jury indicted Mr. Wingate on three additional counts of taking indecent liberties with a child (under the same statute), plus one count of "first degree statutory sex offense" under N.C.G.S. § 14-27.29. The indictment for this latter offense attested that "[a]t the time of the act the Defendant was at least eighteen years of age." Section 14-27.29 requires not that the accused be eighteen years of age but rather, that the defendant is "at least 12 years old and is at least four years older than the victim." N.C.G.S. § 14-27.29(a) (2025).

After an interruption of several years due to the COVID-19 pandemic, the criminal case did not proceed until 2023, when Mr. Wingate was again arraigned on four counts of taking indecent liberties with a child and one count of "first degree statutory sex offense." Mr. Wingate again waived a formal reading and pleaded not guilty on all charges.

C. Trial Proceedings

1. State's Witnesses

Prior to trial, Mr. Wingate's counsel objected to two of the State's proposed expert witnesses. First, as to Miriane Portes, the defense objected on the dual grounds (1) that her credentials as a licensed clinical social worker with a master's degree did not qualify her as an expert in child sexual assault examination, and (2) that her opinions were duplicative, irrelevant, and inadmissible. Defense counsel warned that the State had not submitted documentation regarding the basis for Ms. Portes's testimony and forecast its expectation that her testimony would constitute inadmissible vouching. Second, as to Leigh Howell, the defense objected on essentially the same grounds, arguing (1) that her credentials as a licensed school social worker with a master's degree did not qualify her as an expert in child sexual assault examination, and (2) that her opinions were duplicative, irrelevant, and inadmissible. Defense counsel made the same vouching warning regarding Ms. Howell's testimony as it did regarding Ms. Portes. The trial court did not sustain Mr. Wingate's pretrial objections.

At trial, the State presented James's testimony, described above, and the testimony of social workers, including Ms. Howell and Ms. Portes, as well as a physician. First, social worker Kennedy Ganyo testified regarding James's case with the Wake County Child Welfare Department. Mr.

Ganyo had conducted James's intake and the investigation that followed. Mr. Ganyo recounted largely the same story of nonpenetrative abuse as James did, testifying that James had shared the account during the intake appointment.[2] Mr. Ganyo further testified that he spoke with Mr. Wingate regarding the incident. Mr. Wingate explained to Mr. Ganyo that James "had been asking him about what happens to his penis when he grows up." While Mr. Wingate denied forcing James to touch his penis, Mr. Wingate admitted to Mr. Ganyo that he had exposed his own penis to James to "teach him what's going to happen to his penis."

Next, Ms. Howell, at the relevant time a child abuse evaluation specialist, was admitted as an expert and testified regarding her forensic interview with James.[3] Ms. Howell testified, based on her experience, that children often do not reveal all the details of their abuse right away. Ms. Howell explained that children in abuse situations are often wary of the disruption to their lives that may result from telling the whole story. Ms. Howell further explained that children often disclose abuse "over a period of time . . . to more than one person." Ms. Howell testified that the pattern held true in James's case. James had not revealed the penetrative abuse to Mr. Ganyo, but it seems he did reveal it to Ms. Howell.[4] James had expressed that he did not want to "blind-side[ ]" his mother.

The State's third witness, pediatrician Elizabeth Witman, testified as an expert in pediatrics and child abuse, admitted without objection. Dr. Witman explained that a lack of physical evidence of sexual abuse in children is common. "I'm never surprised when they have a normal exam," Dr. Witman stated. Dr. Witman shared that numerous studies have found that "only about five percent of children who present with a concern that they've been sexually abused will have positive physical findings at the time of their exam." The lack of physical evidence results from the fact that mucous membranes such as the anus heal "extremely quickly and extremely well, and they heal without scarring." Thus, Dr. Witman explained, absent a sexually-transmitted infection, recovering physical evidence of penetrative abuse is exceedingly rare.

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2. A difference between James's recounting and Mr. Ganyo's is that Mr. Ganyo recalled James saying he never touched Mr. Wingate's penis in that instance, despite Mr. Wingate's insistence.

3. The State played for the jury a video recording of Ms. Howell's interview with James concurrently with her testimony and entered the video into evidence.

4. While this is not directly stated in the record, it seems to follow contextually from the trial transcript that James discussed the penetrative abuse on the interview video that was played for the jury and entered into evidence.

Turning to James's case, Dr. Witman testified that she examined him and found no physical evidence of sexual abuse. However, Dr. Witman described the lack of physical evidence as "consistent" with James's disclosure of abuse. Mr. Wingate's counsel did not object to this characterization, nor did Mr. Wingate's counsel address the "consistency" assertion on cross-examination.

The State's final witness, Ms. Portes, a clinical therapist, was admitted as an expert in trauma therapy. Ms. Portes testified that James had been referred to her for therapy for sexual abuse. Similar to Ms. Howell's testimony above, Ms. Portes explained that children who have been abused often do not immediately reveal the full scope of their traumatic experiences.

This was the case with James. Ms. Portes guided James through multiple therapy sessions and eventually James opened up to Ms. Portes about both the nonpenetrative and the penetrative abuse incidents. Ms. Portes recounted largely the same details about both incidents as James had described.[5] Ms. Portes characterized Mr. Wingate's actions as "grooming behavior," escalating until the "wrestling" incident and the penetrative abuse. Ms. Portes diagnosed James with post-traumatic stress disorder (PTSD). When asked by the State whether James's PTSD symptoms were "consistent with the trauma he had reported," Ms. Portes answered in the affirmative.

Once again, Mr. Wingate's counsel did not object. On cross-examination, however, Ms. Portes clarified that during therapy she is "not focused on the content [of a client's nightmare]," but instead, she "focuse[s] on how the nightmare made [her client] feel."

Mr. Wingate's counsel also inquired about James becoming angry while playing video games, as indicated in Ms. Portes's clinical notes. Ms. Portes responded by explaining that she was interested in finding out where the anger came from, and whether it was toward Mr. Wingate. On redirect, the State picked up the video game thread. Ms. Portes affirmed the State's framing that James's anger "wasn't as much anger about getting [his video game] taken away, it was anger—something about the [video game] was triggering him."

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5. Ms. Portes clarified that James had described two separate incidents in which Mr. Wingate had exposed himself to James: in the first instance, Mr. Wingate exposed his genitals and told James to touch it, which James refused; in the second instance, Mr. Wingate forced James to "pull on [Mr. Wingate's] penis."

2. Defense's Motion to Dismiss

At the close of the State's case, Mr. Wingate moved to dismiss all charges for insufficiency of the evidence on the grounds that none of the expert witnesses were witnesses to the events at issue and that they could only testify to their opinions about what James had said to them.[6] The State countered that James's own testimony was sufficient to support conviction on its own. The trial court denied the motion to dismiss.

3. Charge Conference

During the charge conference, the parties agreed that the first substantive offense would be listed as "statutory sexual offense with a child *by an adult*" and that the jury instruction would be taken from the associated pattern instructions.[7] (Emphasis added.) Regarding the most serious charge, the trial court instructed the jury, without objection, as follows:

> Statutory sexual offense with a child *with a*[*n*] *adult*. The Defendant has been charged with statutory sexual offense with a child *by an adult*. For you to find the Defendant guilty of the offense, the State must prove three things beyond a reasonable doubt.
>
> First, that the Defendant engaged in a sexual act with the alleged victim. A sexual act means: anal intercourse, which is any—which is any—which is any—I can't say that—which is any penetration, however slight, of the anus of any person by the male sexual organ of another.
>
> Second, that at the time of the act, the alleged victim was a child under the age of 13 years.
>
> And third, that . . . at the time of the act, the Defendant was *at least 18 years of age*.

(Emphases added.)[8]

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6. Mr. Wingate also moved to dismiss all charges based on discrepancies regarding the dates in the indictment, but the trial court, upon its finding that time was not of the essence, allowed the State to amend the dates over the defense's objection. The indictment date issue is not before this Court.

7. The parties also agreed that the multi-count offense would be listed as four counts of "taking indecent liberties with a child."

8. The trial court also instructed the jury regarding four separate counts of taking indecent liberties with a child.

4. Jury Verdict

On 27 July 2023, the jury found Mr. Wingate guilty of three counts of indecent liberties with a child under one file number, an additional count of the same under another file number, and one count of, as the verdict sheet read, "first-degree statutory sex offense" under a third file number.

5. Sentencing

At the sentencing hearing, held the same day, Mr. Wingate's defense counsel asked the trial court to consolidate all the charges for one sentence of 192 months, the minimum for a Class B1 felony at Mr. Wingate's Level I prior record level. *See* N.C.G.S. § 15A-1340.17(c) (2025). At that point, the State did not interject, nor did the trial court question the range contemplated by Mr. Wingate's defense counsel. Shortly thereafter, however, as the court handed down its sentence, the following exchange occurred between the trial court and the State:

> THE COURT: . . . [T]he jury having found you guilty of *first-degree statutory sex offense*, you being a prior record level I, I'm going to—this being a B1 felony, I'm going to sentence you to 240 months' minimum to—
>
> [THE STATE]: Your Honor—Judge, may I quickly, that's the—that is the *big B1*, that's the 300 to 420.
>
> THE COURT: Okay. You know what, Madam DA, I was looking at the wrong one on that. I apologize.
>
> [THE STATE]: That's the statutory mandatory.
>
> THE COURT: Yes, 300 to 420. I was looking at the wrong one.
>
> Well, once again, the jury having found you guilty, I'm going to sentence you to 300 months minimum to 420 months maximum.

(Emphases added.) Mr. Wingate's defense counsel made no objection.

The trial court subsequently sentenced Mr. Wingate to sixteen to twenty-nine months on each of the four counts of taking indecent liberties with a child. The court ordered that all the sentences run consecutively, for a total of 364 to 536 months in prison.

II. Court of Appeals Proceedings

In a split decision, the Court of Appeals vacated the trial court's sentence and remanded for a new trial on the bases (1) that the testimony of Ms. Portes and Dr. Witman both constituted improper vouching and (2) that the indictment failed to properly place Mr. Wingate on notice of the crime charged. *State v. Wingate*, 299 N.C. App. 800, 807, 810 (2025). First, citing *State v. Hall*, 330 N.C. 808, 821 (1992), the Court of Appeals held that the trial court erred (1) in admitting James's PTSD diagnosis as substantive evidence that the abuse occurred, and (2) in admitting the explanation that a lack of physical evidence of penetrative abuse was consistent with James disclosing sexual abuse. *Wingate*, 299 N.C. App. at 805–06.

Regarding indictment sufficiency, the Court of Appeals found that the "various references to defendant's charge" throughout the record prevented Mr. Wingate from being able to prepare for trial. *Id.* at 809. The Court of Appeals explained:

> Contained within defendant's indictment were all the facts necessary to convict under § 14-27.28; however, § 14-27.29 is a lesser-included offense, as it contains all the same elements except the adulthood of the defendant. It was *uncertain* under the indictment with which offense defendant had been charged, as was made clear by the confusion of the trial court.

Id. at 809–10. Based on the foregoing analysis, the Court of Appeals vacated the trial court's sentence and remanded Mr. Wingate's case for a new trial. *Id.* at 810.

Additionally, the Court of Appeals, in dicta, applied this Court's holding in *State v. Singleton*, 386 N.C. 183, 210 (2024), which requires a showing of actual prejudice to support a claim of insufficient indictment. *Wingate*, 299 N.C. App. at 809–10. The Court of Appeals opined that Mr. Wingate was prejudiced here because of the substantial difference between the possible sentences under N.C.G.S. §§ 14-27.28 (statutory sexual offense with a child by an adult) and 14-27.29 (first-degree statutory sexual offense). *Id.* at 810.

Writing in dissent, Chief Judge Dillon would have vacated only the sentence and remanded for entry of judgment sentencing Mr. Wingate under N.C.G.S. § 14-27.29 (first-degree statutory sexual offense). *Id.* at 810–11 (Dillon, C.J., dissenting). The Chief Judge agreed with the majority that the indictment prejudiced Mr. Wingate, and he agreed that the

vouching testimonies of Ms. Portes and Dr. Witman were improper, but he would have held that the trial court did not err in admitting the testimonies for two reasons. *Id.* at 810, 812. First, citing *State v. Williams*, 370 N.C. 526 (2018), and *State v. Jones*, 355 N.C. 117, 133 (2002), the Chief Judge explained that a trial court commits plain error with respect to admission of evidence only where the trial court had previously held the evidence inadmissible or where a specific affirmative duty to intervene exists. *Wingate*, 299 N.C. App. at 811 (Dillon, C.J., dissenting). Furthermore, the Chief Judge reasoned that Mr. Wingate's failure to object could have been a defense strategy intended to prevent drawing the jury's attention to the vouching. *Id.* Second, the Chief Judge would have held that Mr. Wingate failed to show that the jury's verdict would probably have been different absent the improper vouching as required under *State v. Reber*, 386 N.C. 153, 160 (2024). *Wingate*, 299 N.C. App. at 811 (Dillon, C.J., dissenting).

III. Analysis

A. Plain Error Review

[1] While the Court of Appeals analyzed the propriety of the admission below, this Court need not decide whether the alleged vouching itself was in fact improper, because that issue is not before us. The precise issue before us is whether the admission of the alleged vouching, if it were improper, would constitute plain error. We hold that it did not amount to plain error because we cannot conclude that without that evidence the jury probably would have reached a different result in this case.

This Court reviews the Court of Appeals holding regarding the improper vouching issue for abuse of discretion, applying our plain error precedent. Generally, preserving an issue for appeal requires an objection or motion at trial. N.C. R. App. P. 10(a)(1). However, an issue in a criminal trial court action "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 (2012), this Court reviewed its various and sometimes conflicting precedents regarding plain error. We then clarified that to establish plain error, the defendant bears the burden of showing: (1) that a fundamental error occurred at trial; (2) that the error had a "probable impact" on the jury verdict such that "absent the error, the jury probably would have returned a different verdict"; and (3) that the error was "exceptional," typically such that it affected "the fairness, integrity, or public reputation of judicial proceedings." *Lawrence*, 365 N.C. at 518–19.

To determine whether the assumed error had a probable impact on the jury verdict, we start with the understanding that uncorroborated victim testimony, even standing alone, suffices for conviction where it establishes every element of the offense. *State v. Quarg*, 334 N.C. 92, 95, 100 (1993) (citing *State v. Vehaun*, 34 N.C. App. 700, 705 (1977), *cert. denied*, 294 N.C. 445 (1978)) (upholding a conviction for taking indecent liberties with a child despite improper admission of a PTSD diagnosis on cross-examination, because independent victim testimony was sufficient to convict).

Looking at all the evidence in the case, here the State presented other evidence supporting the jury's finding of guilt independent of the alleged vouching testimony. Ignoring entirely the testimonies of Ms. Portes and Dr. Witman, the testimonies of Mr. Ganyo and Ms. Howell corroborate the criminal claims and stand unobjected-to in the record. Even if the jury had only heard James's testimony and seen Mr. Wingate's apparent age, it would have been properly equipped to reach a guilty verdict.[9] No facts were introduced at trial that would make such a finding unreasonable. James testified that his father showed him his penis, and the jury believed him. James testified that his father "examined" James's penis, and the jury believed him. James testified that his father penetrated his anus, and the jury believed him. The jury believed a survivor's testimony and convicted the accused.

There is nothing in the record here to indicate that without the two experts' testimonies, the jury would *probably* have reached a different verdict. "Probably" is operative, and as we explained in *Reber*, "the proper consideration [is] not the strength of the State's evidence, but whether, 'absent the error, the jury *probably* would have reached a different result.' " 386 N.C. at 160 (emphasis added) (quoting *State v. Maddux*, 371 N.C. 558, 564–65 (2018)). Like the dissent below, this Court is not persuaded that the jury would have *probably* ignored the entirety of James's testimony if not for two experts briefly noting that

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9. The jury could have properly adduced Mr. Wingate's age by seeing him in open court. *See State v. Gray*, 292 N.C. 270, 286 (1977) ("[T]he jury may base its determination of a defendant's age on its own observation of him even when the defendant does not testify." (citing *State v. Overman*, 269 N.C. 453, 470 (1967))).

Additionally, at sentencing, Mr. Wingate's defense counsel noted he was sixty years old. Because that attestation occurred after the close of the State's case, this Court takes judicial notice of Mr. Wingate's age as is its prerogative. N.C.G.S. § 8C-1, Rule 201(f) (2025) ("Judicial notice may be taken at any stage of the proceeding."); *see State v. Vogt*, 200 N.C. App. 664, 669 (2009) (noting that appellate courts can take judicial notice (citing *State ex rel. Utils. Comm'n v. S. Bell Tel. & Tel. Co.*, 289 N.C. 286, 288 (1976))).

his PTSD symptoms and physical examination results were consistent with the abuse he described. There is no indication that James required such corroboration to be believable. Because the expert testimony was not such that it would *probably* change the outcome in this case, we hold that its admission was not plain error.

B. Sufficiency of Indictment

[2] This Court reviews the sufficiency of the indictment de novo, as did the Court of Appeals below, because the sufficiency of an indictment is a jurisdictional issue, which may be raised for the first time on appeal. N.C. R. App. P. 10(a)(1); *see State v. McKoy*, 196 N.C. App. 650, 652 (2009); *State v. Harwood*, 243 N.C. App. 425, 427–28 (2015). Thus, the sufficiency of an indictment is an automatically preserved issue regardless of a lack of objection at trial. *Singleton*, 386 N.C. at 210. Upon review, we hold that the indictment was sufficient.

As the Court of Appeals noted below, an indictment is sufficient if (1) "[t]he offense is charged in a plain, intelligible, and explicit manner"; (2) "[t]he offense is charged properly so as to avoid the possibility of double jeopardy"; and (3) "[t]here is such certainty in the statement of the accusation as to enable the accused to prepare for trial and to enable the court, on conviction or plea of [n]olo contendere or guilty to pronounce sentence according to the rights of the case." *Wingate*, 299 N.C. App. at 809–10 (quoting *State v. Reavis*, 19 N.C. App. 497, 498 (1973)). An incorrectly listed statute or a mistake in the name of the offense in a bill of indictment is not necessarily a fatal flaw. *Reavis*, 19 N.C. App. at 498; *State v. Billinger*, 213 N.C. App. 249, 257 (2011); *see also United States v. Cotton*, 535 U.S. 625, 630 (2002) (stating that "defects in an indictment do not deprive a court of its power to adjudicate a case," which was adopted by this Court in *Singleton*, 386 N.C. at 209).

Notwithstanding the above, the State retains a "duty to draft indictments in a manner that 'satisf[ies] both statutory strictures . . . and constitutional purposes.' " *Singleton*, 386 N.C. at 210 (alterations in original) (quoting *State v. Lancaster*, 385 N.C. 459, 462 (2023)). This duty was the basis for the Court of Appeals stating in dicta that Mr. Wingate was prejudiced at trial. The Court of Appeals dicta application of *Singleton* was mistaken.

"An indictment might fail to satisfy constitutional purposes by failing to provide notice sufficient to prepare a defense and to protect against double jeopardy . . . or [by] failing to assert facts supporting every element of a criminal offense." *Id.* (cleaned up) (first quoting *Lancaster*, 385 N.C. at 462; and then quoting N.C.G.S. § 15A-924(a)(5) (2023)). However,

"jurisdictional defects are rare, only arising where an indictment wholly fails to allege a crime against the laws or people of this State." *Id.* at 184. Typographical defects do not invalidate an indictment that properly pleads all essential elements because the included elements cure any ambiguity. *See* N.C.G.S. § 15A-924(a)(6) (2025) ("Error in the [statutory] citation or its omission is not ground for dismissal of the charges or for reversal of a conviction."). So long as an indictment substantially tracks the language of the statute, an indictment is generally valid because it has provided the defendant adequate notice. *State v. Williams*, 368 N.C. 620, 626 (2016) (citing *State v. James*, 321 N.C. 676, 681 (1988)).

The statute under which Mr. Wingate was sentenced provides that "[a] person is guilty of statutory sexual offense with a child by an adult if the person is *at least 18 years of age* and engages in a sexual act with a victim who is a child under the age of 13 years." N.C.G.S. § 14-27.28(a) (2025) (emphasis added). The statute further provides that violation of the statute comprises a Class B1 felony, sentenced as under Article 81B of Chapter 15A of the General Statutes "except that in no case shall the person receive an active punishment of less than 300 months" and that "the court may sentence the defendant to active punishment . . . up to and including life imprisonment without parole" if certain aggravating circumstances are found. N.C.G.S. § 14-27.28(b), (c) (2025).

The statute under which Mr. Wingate was sentenced specifies that the offense in section 14-27.29 is a lesser included offense. N.C.G.S. § 14-27.28(d) (2025). Section 14-27.29 differs slightly from section 14-27.28 in providing that "[a] person is guilty of first-degree statutory sexual offense if the person engages in a sexual act with a victim who is a child under the age of 13 years and the defendant is at least 12 years old and is at least four years older than the victim," compared to the "at least 18 years of age" under subsection 14-27.28(a). A violation under section 14-27.29 is still a Class B1 felony, N.C.G.S. § 14-27.29(b) (2025), but without the additional sentencing guidelines included in subsections 14-27.28(b) and (c).

Mr. Wingate correctly points out that the indictment, in relevant part, was for "first degree statutory sex offense" under section 14-27.29, while he was sentenced for "statutory sexual offense with a child by an adult" under section 14-27.28. This Court is sensitive to the fact that such a mismatch has the potential for harm. However, the supporting factual allegations in the indictment included that Mr. Wingate was over eighteen years old at the time in question, an assertion of limited relevance to the former statute but dispositive to the latter in that it tracks the latter statute's language.

It is undisputed that Mr. Wingate is both over eighteen years old as well as more than four years older than his son James. Being sixty years old at trial in July 2023, Mr. Wingate would have been in his mid-fifties when the events at issue occurred in 2017. James's testimony at trial established him to have been twelve years old in 2017. Thus, at the relevant time, Mr. Wingate was both (a) over eighteen years old as required under N.C.G.S. § 14-27.28(a) (statutory sexual offense with a child by an adult) and (b) over twelve years old and more than four years older than his victim, James, as required under N.C.G.S. § 14-27.29(a) (first-degree statutory sexual offense). The remaining element of each criminal offense is the same: engaging in a sexual act with the victim—the jury found this element met based on the evidence at trial. Thus, notwithstanding the back-and-forth references between the two statutes throughout the record, the same asserted facts meet all the elements of both statutes.

Mr. Wingate's argument before this Court is that he was prejudiced because, had he known he was being tried for the statute with the more severe penalty, that information would have influenced his decision to proceed to trial rather than accepting a plea agreement. The Court of Appeals accepted this argument. We disagree.

This Court does not often decide questions of fact such as the motivation behind trial actions by counsel, and we need not do so here. Regardless of whether Mr. Wingate's counsel (1) failed to notice the discrepancy or (2) noticed it and chose to ignore it as a trial strategy, the determinative fact on appeal is this: throughout the arraignment, the trial, and the charge conference, Mr. Wingate and his defense team heard the phrase "by an adult" appended to the charge multiple times. Most importantly, the trial court instructed the jury on the proper statute, which means we must assume the jury applied the proper law to the evidence before it. Even after the State told the trial court to look to the "big B1" for sentencing, Mr. Wingate's defense counsel said nothing.

Because it incorporated an essential element of the crime, the factual assertion in the indictment that Mr. Wingate was over eighteen years old showed from the beginning the State's intention to charge him with statutory sexual offense with a child *by an adult*. Taking the indictment as a whole renders the incorrect statutory reference akin to a scrivener's error.

The North Carolina General Statutes anticipated this issue, specifying that a criminal pleading must contain "[f]or each count a citation of any applicable statute, rule, regulation, ordinance, or other provision

of law alleged therein to have been violated" but also clarifying that "[e]rror in the citation or its omission is not ground for . . . reversal of a conviction." N.C.G.S. § 15A-924(a)(6). This is consistent with this Court's jurisprudence, as we have over a century of precedents holding that "[t]he Court will not distinguish and divide a hair betwixt South and Southwest side" where typographic errors occur in various other contexts. *State v. Woolard*, 119 N.C. 779, 781 (1896) (cleaned up); *see, e.g.*, *In re B.J.H.*, 378 N.C. 524, 549 n.8 (2021) (noting date discrepancy in factual findings in parental rights proceeding as harmless scrivener's error); *In re A.L.A.*, 379 N.C. 383, 390 n.4 (2021) (noting almost identically to *In re B.J.H.* that a date discrepancy in a finding of fact in a parental rights proceeding was harmless scrivener's error); *Canady v. Creech*, 288 N.C. 354, 358 (1975) ("Having constructive notice of the facts upon which the claim of lien is based, [a party] may not take advantage of a scrivener's error in the claim . . . upon which they did not rely to defeat a lien . . . ."); *City of Raleigh v. Morand*, 247 N.C. 363, 367–68 (1957) (holding in zoning dispute that one incorrect statutory reference in a factual finding was not fatal where other references were correct); *Flake v. Bd. of Comm'rs*, 192 N.C. 590, 593 (1926) ("[P]ublished notice referr[ing] to an election to be held under chapter 135 instead of 136 [of the General Statutes] . . . was a typographic error which did not invalidate the petition, the order, or the election.").

The indictment provided Mr. Wingate all the information he needed to defend against the more serious charge that ultimately was the crime the jury was instructed to consider. In light of our precedent in multiple other contexts and the language of N.C.G.S. § 15A-924(a)(6), we hold the incorrect statutory reference in Mr. Wingate's indictment to be harmless scrivener's error. By extension of the same reasoning, the incorrect statutory references that occurred intermittently throughout the proceedings were harmless instances of *lapsus linguae* because Mr. Wingate's notice of the crime for which he was charged cured those mistaken references. *Cf. State v. Sanders*, 280 N.C. 81, 86 (1971) (holding that trial court instruction that the defendant entered the building "with the consent" of the owner, rather than "without the consent" of the owner, was *lapsus linguae* and did not warrant a new trial in a breaking and entering case because "[i]n view of the charge as a whole and the total absence of any evidence the owner consented to the entry, it is apparent the jury could not have misunderstood the court's language").

In sum, constructive notice of the charges against him was available to Mr. Wingate. Whether notice was actually received is an issue of effectiveness of counsel, not one for appeal in this posture. Accordingly,

we hold that, because of the unambiguous supporting language included in the indictment, plus the constructive notice available at trial as to the nature of the charges, the flaws in Mr. Wingate's indictment were not fatal.

To be sure, this holding should not be read to relieve the State of its duty to draft satisfactory indictments. *See Singleton*, 386 N.C. at 210. The State must allege information sufficient, taken as true, to support each element of the criminal charge. *See id.* Moreover, this holding should not be read to enable a "bait-and-switch," in which the State leads a criminal defendant to believe that one charge is at issue, only to clarify at sentencing that it was a lesser included charge all along and the more serious charge is the correct one. This holding also should not be taken to mean that an improper statutory reference is *always* harmless. But where, as here, from the language of the indictment and all the circumstances at trial, a defendant knows or should know with what crime he has been charged, the improper statutory reference in an indictment is not fatal.

IV. Conclusion

Having held (1) that the Court of Appeals erred in holding that the trial court committed plain error when it admitted expert testimony alleged to have constituted improper vouching, and (2) that the Court of Appeals erred when it determined, in dicta, that an indictment was fatally flawed based on a discrepancy in statutory references, the judgment of the Court of Appeals is hereby reversed.

REVERSED.

TURPIN v. CHARLOTTE LATIN SCHOOLS, INC.

[390 N.C. 281 (2026)]

DOUG TURPIN AND NICOLE TURPIN
v.
CHARLOTTE LATIN SCHOOLS, INC.; CHARLES D. BALDECCHI; TODD BALLABAN; DENNY S. O'LEARY; MICHAEL D. FRENO; R. MITCHELL WICKHAM; COURTNEY HYDER; IRM R. BELLAVIA; PHIL COLACO; JOHN D. COMLY; MARY KATHERINE DUBOSE; ADAORA A. ERUCHALU; DEBBIE S. FRAIL; DON S. GATELY; ISRAEL K. GORELICK; JOY M. KENEFICK; KARIM LOKAS; JOHN T. MCCOY; KRISTIN M. MIDDENDORF; A. COY MONK IV; UMA N. O'BRIEN; DAVID A. SHUFORD; MICHELLE A. THORNHILL; FLETCHER H. GREGORY III; TARA LEBDA; AND PAIGE FORD

No. 86A23-2

Filed 14 August 2026

1. Civil Procedure—Rule 12(b)(6) motion to dismiss—standard of review—documents outside of complaint—incorporation-by-reference doctrine

In an appeal regarding an order granting a Civil Procedure Rule 12(b)(6) motion to dismiss claims raised against a private school by parents whose children were expelled from the school after the parents complained about controversial changes to the curriculum, the Supreme Court expressly endorsed the incorporation-by-reference doctrine, which states that a court reviewing a Rule 12(b)(6) motion may consider documents that are not attached to the complaint but are submitted by the movant if: (1) the document is referenced in the complaint, (2) the document is central to the factual allegations or the claims asserted, and (3) there is no dispute about the document's authenticity.

2. Contracts—breach—private school enrollment contract—termination by school—sufficiency of complaint—notice pleading standard met

In a lawsuit filed against a private school and its leadership (defendants) where, after plaintiffs—the parents of two students at the school—complained about the addition of polarizing political issues into the curriculum, the school terminated plaintiffs' enrollment contracts and expelled their children, the trial court improperly granted defendants' motion to dismiss under Civil Procedure Rule 12(b)(6) where plaintiffs alleged a narrow set of facts that, if taken as true and viewed in the light most favorable to plaintiffs, stated a proper breach of contract claim. Specifically, the complaint alleged that: a clause in the enrollment contracts permitted the school to terminate enrollment if certain criteria were satisfied;

the school expelled plaintiffs' children for reasons not permitted under the contract and then used the termination clause as a false pretext; and, as a result, the school violated the termination clause and, therefore, breached the enrollment contracts.

3. Fraud—private school enrollment contract—termination by school—sufficiency of complaint—notice pleading standard met

In a lawsuit filed against a private school and its leadership (defendants) where, after plaintiffs—the parents of two students at the school—complained about the addition of polarizing political issues into the curriculum, the school terminated plaintiffs' enrollment contracts and expelled their children, the trial court improperly granted defendants' motion to dismiss under Civil Procedure Rule 12(b)(6) where the complaint, in accordance with the applicable "notice pleading" standard of review, alleged a narrow set of facts sufficiently stating a claim of fraud. Specifically, plaintiffs alleged that: defendants promised there would be no "blowback" or "retaliation" against plaintiffs or their children if they met with school leadership to discuss their concerns; this promise was false, made with the intent to deceive and lure plaintiffs into the meeting to create a pretext for expelling the children; plaintiffs believed defendants' promise and therefore spoke openly during the meeting; and the school, at the same meeting, expelled the children, resulting in damage to plaintiffs. Importantly, taking the allegations as true and viewing them in the light most favorable to plaintiffs, the promise of "no blowback" included a promise not to terminate the enrollment contracts and expel plaintiffs' children.

4. Unfair Trade Practices—unfair and deceptive trade practices—private school enrollment contract—termination by school—sufficiency of complaint

In a lawsuit filed against a private school and its leadership (defendants) where, after plaintiffs—the parents of two students at the school—complained about the addition of polarizing political issues into the curriculum, the school terminated plaintiffs' enrollment contracts and expelled their children, plaintiffs' complaint sufficiently stated a claim of unfair and deceptive trade practices (UDTP) under the applicable "notice pleading" standard of review, where: the allegations, which concerned the regular activities of a private school that charges fees in exchange for its educational services, established that defendants' conduct was "in or affecting commerce;" and, because plaintiffs properly pleaded a fraud claim,

as determined on appeal before the Supreme Court, the complaint also satisfied the unfair or deceptive element of the UDTP claim. Thus, the trial court erred in dismissing plaintiffs' UDTP claim pursuant to Civil Procedure Rule 12(b)(6).

5. Negligence—negligent misrepresentation—private school enrollment contract—termination by school—forward-looking promise—improper basis for claim

In a lawsuit filed against a private school and its leadership (defendants) where, after plaintiffs—the parents of two students at the school—complained about the addition of polarizing political issues into the curriculum, the school terminated plaintiffs' enrollment contracts and expelled their children, the trial court properly dismissed plaintiffs' negligent misrepresentation claim pursuant to Civil Procedure Rule 12(b)(6). Plaintiffs' allegations—namely, that the school promised plaintiffs there would be "no blowback" or "retaliation" against them if they met with school leadership to discuss their concerns, and that this promise was false at the time it was made—were based on the type of forward-looking promise that, according to the relevant case precedent, could not serve as the basis of a negligent misrepresentation claim.

6. Libel and Slander—defamation—private school curriculum dispute—school characterization of parents' concerns—sufficiency of complaint

In a lawsuit filed against a private school and its leadership (defendants) by parents (plaintiffs) whose children were expelled from the school after plaintiffs complained about controversial changes to the curriculum, the trial court improperly dismissed plaintiffs' defamation per quod claim pursuant to Civil Procedure Rule 12(b)(6) where the complaint alleged that defendants circulated an email to the greater school community accusing plaintiffs of making racist comments during a presentation at a parental focus group meeting. On appeal, the Supreme Court clarified that statements critiquing Critical Race Theory in education or advocating for meritocracy over race-conscious hiring and admissions were not legally equivalent to racist remarks; thus, the alleged defamatory statements—that the presentation referred to minority students and faculty as not having "earned their positions and honors" at the school and being "not up to the merit of the school" when compared to their white peers—did not accurately characterize the presentation, and therefore plaintiffs adequately pleaded that the statements were materially false. Additionally, the complaint adequately alleged

the statements were "of and concerning" plaintiffs, since they were identifiable members of the focus group.

7. Pleadings—sufficiency—negligent infliction of emotional distress—negligent retention—discretionary review improvidently allowed

In an appeal about an order granting a Civil Procedure Rule 12(b)(6) motion to dismiss claims raised against a private school by parents whose children were expelled from the school after the parents complained about controversial changes to the curriculum, the Supreme Court held that discretionary review was improvidently allowed with respect to their dismissed claims for negligent infliction of emotional distress and negligent retention, since neither claim involved matters over which there was any conflict in current jurisprudence, or issues sufficiently significant to meet the standard for discretionary review.

Justice RIGGS concurring in part and dissenting in part.

Justice EARLS joins in this concurring in part and dissenting in part opinion.

Appeal pursuant to N.C.G.S. § 7A-30(2) (2023) from the decision of a divided panel of the Court of Appeals, 293 N.C. App. 330 (2024), affirming an order granting defendants' motion to dismiss plaintiffs' complaint entered on 13 October 2022 by Judge Lisa C. Bell in Superior Court, Mecklenburg County. Heard in the Supreme Court on 29 October 2025.

Ward and Smith, P.A., by Christopher S. Edwards, Alex C. Dale, and Alexandra E. Ferri; and Vogel Law Firm PLLC, by Jonathan A. Vogel, for plaintiff-appellants.

Brooks, Pierce, McLendon, Humphrey & Leonard, LLP, by Kimberly M. Marston, Jim W. Phillips Jr., Jennifer K. Van Zant, and William A. Robertson, for defendant-appellees.

Dowling PLLC, by Troy D. Shelton, for Richard Hudson, Pat Harrigan, Brad Overcash, Dana Jones, W. Ted Alexander, Amy S. Galey, David Willis, Celeste C. Cairns, Grant L. Campbell, Brian Echevarria, Neal Jackson, Keith Kidwell, Heather H. Rhyne, Coalition for Liberty, Moms for Liberty, American

Center for Education and Knowledge, *Color Us United*, *Future Prep Educational Services*, *National School Boards Leadership Council*, *New Tolerance Campaign*, *Our Duty*, *The Palm Beach Freedom Institute*, *The Patriots Business Alliance*, *United Families International*, *and Advocates for Faith & Freedom*, *amici curiae.*

Smith, *Anderson*, *Blount*, *Dorsett*, *Mitchell & Jernigan*, *L.L.P.*, *by Christopher G. Smith*, *B. Davis Horne Jr.*, *Michael W. Mitchell*, *and Jang H. Jo*, *for North Carolina Association of Independent Schools and the Southern Association of Independent Schools*, *amici curiae.*

Troutman Pepper Locke LLP, *by Joshua D. Davey*, *for the Roman Catholic Diocese of Charlotte*, *North Carolina*, *amicus curiae.*

DIETZ, Justice.

Once again, we are confronted with a case where the factual allegations "concern matters that are controversial in contemporary politics" but where the legal issues "are so time-tested that they border on mundane." *Kinsley v. Ace Speedway Racing, Ltd.*, 386 N.C. 418, 420 (2024).

According to the complaint in this case, Plaintiffs Doug and Nicole Turpin sent their children to a private school called Charlotte Latin School. Beginning in the summer of 2020, the school began to change its curriculum to focus on politicized issues of race and gender identity. At some point, the Turpins learned that the school was teaching their sixth-grade child various polarizing concepts such as "Republicans are white supremacists." The school also required young students to read books on sexuality and gender identity that were not age appropriate.

The Turpins started organizing with other parents to voice their concerns about the school curriculum in 2021. Eventually, the Turpins scheduled a meeting with school leadership. At the meeting, the school was not interested in discussing the Turpins' concerns. Instead, the school terminated the Turpins' enrollment contracts and expelled their children with no advance warning. The school also falsely accused the Turpins of making racist comments about non-white students and faculty. The Turpins responded by bringing this lawsuit, alleging a long list of claims including breach of contract, fraud, unfair and deceptive trade practices, and defamation.

The subject matter of this lawsuit no doubt touches on divisive topics in contemporary social discourse. But none of those divisive topics have any bearing on the legal issues before this Court today. Our task is to determine if the Turpins' complaint satisfies the "notice pleading" standard that applies in civil cases. *Pyco Supply Co. v. Am. Centennial Ins. Co.*, 321 N.C. 435, 442 (1988). That well-settled standard requires the complaint to contain a "short and plain statement" sufficient to notify the defendants of "the events or transactions which produced the claim." *Id.* When reviewing a complaint under this standard, courts must take all the allegations as true and cannot grant a motion to dismiss unless it "appears *certain* that plaintiffs could prove no set of facts which would entitle them to relief." *Howell v. Cooper*, 388 N.C. 71, 78 (2025).

Applying that standard here, the Turpins have alleged a number of claims that meet the notice pleading requirements and cannot be dismissed at this early stage of the case. Now, to be fair, the Turpins' complaint is far from a "short and plain statement." The sixty pages of allegations occasionally resemble a press release more than a legal filing. This likely complicated the lower courts' review because many portions of the complaint assert claims or legal theories that are meritless as a matter of law and were properly dismissed.

But, as explained in more detail below, when we take the allegations in the complaint as true, the Turpins have alleged a narrow set of facts that, if proven, properly state claims for breach of contract, fraud, unfair and deceptive trade practices, and defamation. We therefore reverse the decision of the Court of Appeals and remand the case so that the Turpins can proceed on this more limited set of properly pleaded claims.

Facts and Procedural History

Our factual discussion throughout this opinion is based on the allegations in the complaint. Under the applicable standard of review, we must take these unproven allegations as true for purposes of our review. *Jones v. J. Kim Hatcher Ins. Agencies, Inc.*, 387 N.C. 489, 492 (2025).

Plaintiffs Doug Turpin and Nicole Turpin have two children who attended Charlotte Latin School for a number of years. Until the 2020–2021 school year, Charlotte Latin offered a traditional, "apolitical" curriculum focused on classical education.

That changed after the death of George Floyd and the racial justice movement that followed in the summer of 2020. At that point, the school began to focus its attention and curriculum on the "continued marginalization of Black Americans" and the need to "prioritize racial equity."

School leaders suggested that the school had roots in racism and sent a letter to parents stating that it had heard "about injustices experienced by students of color and about the shame felt by white students."

The Turpins saw the effects of these changes in the classroom. In a sixth-grade humanities class, the teacher taught students that "Republicans are white supremacists" and pressured the Turpins' child to believe "what Republicans stand for is racial suppression and white supremacy in action."

The new curriculum also expanded beyond the intense focus on divisive racial issues. Students of every age were told to choose their preferred pronouns, and even young children were required to read books and poems about "homosexuality and transgenderism that were pornographic and/or not age appropriate."

Eventually, a group of concerned parents formed "Refocus Latin," an informal organization to push for changes to the school curriculum. The Turpins were founding members of Refocus Latin. The group asked to make a presentation to Charlotte Latin's Board of Trustees. The board agreed to meet with ten parents from the group and listen to their concerns. Before and during the meeting, members of the board repeatedly assured the group that "no parent who raises concerns about Latin's curriculum and culture will be subjected to retaliation and that any parent who participates in the presentation would be even more protected from being subjected to retaliation." The ten parents, including Doug Turpin, then gave the presentation, which described "specific and serious concerns that Latin had changed its curriculum and culture to comport with views associated with a political agenda."

Immediately after the presentation, Charlotte Latin told the group of parents that neither the Board of Trustees nor the school's administrators would have any further discussions with the group about the matters raised in the presentation. Instead, the school said parents must meet individually with school administrators to discuss any concerns with their children's education.

The Turpins later emailed school administrators requesting a meeting to discuss specific concerns with their sixth-grader's humanities class. In the email, the Turpins explained that they did not want their child to experience "any possible blowback because of what we are bringing to your attention." A school administrator responded that "there will be no blowback, I assure you."

A few days later, Doug Turpin went to Charlotte Latin to meet with school leadership. Defendant Charles Baldecchi, Charlotte Latin's "Head of School," and Defendant Todd Ballaban, Charlotte Latin's "Head of Middle School," attended the meeting. After allowing Turpin to briefly discuss concerns about the sixth-grade humanities class, Baldecchi accused Turpin and the other Refocus Latin parents of displaying a PowerPoint document that included the racist statement that students and faculty of color at Charlotte Latin are "not up to the merit of the school." The PowerPoint presentation did not contain this statement.

Baldecchi then took out copies of the children's enrollment agreements and told Turpin that Charlotte Latin was terminating the children's enrollment and expelling them effective immediately. Baldecchi told Turpin that the children must leave Charlotte Latin by the end of the day and were prohibited from ever returning.

Several days later, Charlotte Latin sent an email to all parents, students, faculty, and staff accusing the Turpins and the other parents involved in the Refocus Latin presentation of making racist statements that "diverse students and faculty have not earned their positions and honors at Latin." Neither Turpin nor any other parent made these statements at the meeting, and the presentation itself did not include those statements.

The Turpins later brought this action against Charlotte Latin, Baldecchi, Ballaban, and the members of the school's board of trustees. The complaint alleged breach of contract, fraud, unfair and deceptive trade practices, defamation, and a number of other related claims. The defendants moved to dismiss all claims under Rule 12(b)(6) for failure to state a claim on which relief can be granted.

The trial court granted the motion with respect to every claim except breach of the implied covenant of good faith and fair dealing. The Turpins then voluntarily dismissed that sole surviving claim and appealed the trial court's order.

On appeal, a divided panel at the Court of Appeals affirmed the trial court's order. *Turpin v. Charlotte Latin Schs., Inc.*, 293 N.C. App. 330 (2024). The Turpins filed a notice of appeal based on the dissent, and we allowed discretionary review to examine additional issues that were not the basis for the dissenting opinion.[1]

1. The Turpins filed their notice of appeal before the repeal of N.C.G.S. § 7A-30(2) (2023), which authorized an appeal by right based on a dissenting opinion at the Court of Appeals. *See Durham Green Flea Market v. City of Durham*, 388 N.C. 543, 548 (2025).

Analysis

I. Standard of review

[1] We begin our analysis with the standard of review. This case is before us on Charlotte Latin's motion to dismiss under Rule 12(b)(6) of the Rules of Civil Procedure. N.C.G.S. § 1A-1, Rule 12(b)(6) (2025). In that motion, Charlotte Latin argued that the Turpins' lengthy, multi-count complaint failed to state any claim on which relief can be granted. We therefore start our discussion with the pleading requirements necessary to satisfy Rule 12(b)(6).

Under the Rules of Civil Procedure, a complaint must contain a "short and plain statement of the claim sufficiently particular to give the court and the parties notice of the transactions, occurrences, or series of transactions or occurrences, intended to be proved showing that the pleader is entitled to relief." *Id.* Rule 8(a)(1). Courts refer to this as the "notice pleading" standard. *Pyco*, 321 N.C. at 442.

Notice pleading is a "liberal" rule, not a "hyper-technical" one. *Howell*, 388 N.C. at 77. "At the Rule 12(b)(6) stage, a court must take the allegations in the complaint as true and draw all reasonable inferences in the plaintiff's favor." *Jones*, 387 N.C. at 492 (cleaned up). Treating those allegations as true, a complaint "complies with the rule if it gives sufficient notice of the events or transactions which produced the claim to enable the adverse party to understand the nature of it and the basis for it, to file a responsive pleading, and—by using the rules provided for obtaining pretrial discovery—to get any additional information he may need to prepare for trial." *Howell*, 388 N.C. at 77 (cleaned up).

"To that end, a plaintiff does not have to prove his case at the pleading stage, and few complaints fail to survive a motion to dismiss under Rule 12(b)(6)." *Id.* at 78 (cleaned up). "Dismissal under Rule 12(b)(6) is warranted only when (1) it appears *certain* that plaintiffs could prove no set of facts which would entitle them to relief under some legal theory; (2) *no* law exists to support the claim made; or (3) the complaint on its face discloses facts that *necessarily* defeat the claim." *Id.*

This notice pleading standard is nothing new; it is so well-settled in our state's jurisprudence that repeating it in full, as we have done above, can feel excessive. But one portion of the rule, although well-settled in Court of Appeals jurisprudence, has never been expressly endorsed by this Court. That portion concerns what constitutes the "complaint" for purposes of review under Rule 12(b)(6). As noted above, the "function of a motion to dismiss is to test the law of a claim, *not the facts*

which support it." *Id*. For this reason, review at the Rule 12(b)(6) stage is typically limited to the so-called "four corners" of the complaint. *Blue v. Bhiro*, 381 N.C. 1, 3 (2022). If, in a Rule 12(b)(6) motion, the movant includes evidence outside the four corners of the complaint, and that evidence is not excluded by the court, the motion is converted into a summary judgment filing and must comply with Rule 56. N.C.G.S. § 1A-1, Rule 12(b); *see also Blue*, 381 N.C. at 6.

But this Court has long held that the "four corners" of the complaint can extend beyond the limits of the complaint itself and reach documents that are "central to the claim" and "attached to the complaint and incorporated therein by reference." *Mauck v. Cherry Oil Co., Inc.*, 388 N.C. 325, 332–33 (2025) (cleaned up). In *Mauck*, it was a contract attached to the complaint. But we have acknowledged the same is true for other documents central to an asserted claim, including wills and other instruments, and copies of legal filings from other lawsuits. *See, e.g.*, *Ladd v. Est. of Kellenberger*, 314 N.C. 477, 480, 482 (1985); *Stanback v. Stanback*, 297 N.C. 181, 205 (1979). Simply put, we have long held that if a document is central to a claim and is attached to the complaint, it can be considered as part of the "four corners" of the complaint for purposes of Rule 12(b)(6).

This is straightforward enough, but it raises a follow-up question: What if a document is central to a claim, referenced in the allegations, but *not* attached to the complaint? The Court of Appeals has long held that these documents, too, are properly considered under Rule 12(b)(6). *See Oberlin Cap., L.P. v. Slavin*, 147 N.C. App. 52, 60–61 (2001). So long as the document's authenticity is not disputed, "a court may properly consider documents which are the subject of a plaintiff's complaint and to which the complaint specifically refers even though they are presented by the defendant." *Id.*; *see also Holton v. Holton*, 258 N.C. App. 408, 419 (2018); *Robertson v. Boyd*, 88 N.C. App. 437, 441 (1988); *Coley v. N.C. Nat'l Bank*, 41 N.C. App. 121, 126 (1979).

This accords with the approach in the federal courts. "Under the incorporation-by-reference doctrine, a court may consider evidence attached to a motion to dismiss without converting the motion into one for summary judgment if (1) the plaintiff refers to certain documents in the complaint, (2) those documents are central to the plaintiff's claim, and (3) the documents' contents are undisputed." *Baker v. City of Madison*, 67 F.4th 1268, 1276 (11th Cir. 2023) (cleaned up); *see also Friedman v. AARP, Inc.*, 855 F.3d 1047, 1051 (9th Cir. 2017); *Berneike v. CitiMortgage, Inc.*, 708 F.3d 1141, 1146 (10th Cir. 2013). This means that, so long as the document is "integral to the complaint and there

is no dispute about the document's authenticity," a court can examine the document at the Rule 12(b)(6) stage and even "credit the document over conflicting allegations in the complaint." *Doriety ex rel. Est. of Crenshaw v. Sletten*, 109 F.4th 670, 679 (4th Cir. 2024) (cleaned up).

We take this opportunity to expressly endorse this incorporation-by-reference rule long followed by our Court of Appeals and federal courts. Under the North Carolina Rules of Civil Procedure, a court reviewing a motion to dismiss under Rule 12(b)(6) may consider a document submitted by the movant if (1) the document is referenced in the complaint; (2) the document is central to the factual allegations or the claims asserted; and (3) there is no dispute about the document's authenticity. With this standard of review in mind, we now turn to the lengthy list of claims asserted in this complaint.

II. Breach of contract

[2] We begin with the Turpins' breach of contract claim. The pleading requirements for a contract claim are among the most well-settled in the entire body of state common law. A complaint sufficiently states a claim for breach of contract if it alleges "(1) the existence of a contract between plaintiff and defendant, (2) the specific provisions breached, (3) the facts constituting the breach, and (4) the amount of damages resulting to plaintiff from such breach." *Intersal, Inc. v. Hamilton*, 373 N.C. 89, 108–09 (2019) (cleaned up).

Here, the crux of this contract claim is a termination clause permitting Charlotte Latin to end enrollment if one of two contractual criteria is satisfied. As noted above, because the Turpins alleged the existence of a written contract, that contract is incorporated into the complaint and can be considered at the pleading stage when reviewing a Rule 12(b)(6) motion to dismiss. *Oberlin Cap.*, 147 N.C. App. at 60.

The termination provision permits Charlotte Latin to "discontinue enrollment" whenever it determines that one of two criteria is satisfied: (1) a parent's actions make a "positive, collaborative working relationship" with the school impossible or (2) the parent's actions "seriously interfere" with the school's mission:

> A positive, collaborative working relationship between the School and a student's parent/guardians is essential to the fulfillment of the School's mission. Therefore, the School reserves the right to discontinue enrollment if it concludes that the actions of a

> parent/guardian make such a relationship impossible or seriously interfere with the School's mission.

The Turpins allege that the school violated this termination provision and, as a result, breached the contract. Their factual allegations are straightforward: Charlotte Latin *claimed* to be expelling the students under this termination clause because the Turpins made a collaborative relationship impossible or were seriously interfering with the school's mission. But, according to the complaint, Charlotte Latin didn't actually *believe* that. The Turpins allege that the school decided to expel their children for reasons that were not permitted by the contract and then used the contractual grounds as a false pretext.

Importantly, even Charlotte Latin concedes that, if this were true—that is, if the school acted under a false pretext—it would be a breach of the contract. In their briefing, the school acknowledged that the Turpins could state a claim based on "allegations of some improper pretext on Latin's part—such as an attempt to get out of a bad deal." And at oral argument, Charlotte Latin again conceded that the termination clause "may not be invoked with a pretext or in bad faith."

This is precisely what the complaint alleges. The Turpins contend that the school acted under a false pretext and knew that the termination criteria were not actually satisfied. That is the core factual theme of the Turpins' lengthy complaint—they allege that Charlotte Latin knew the Turpins were being collaborative and respectful and knew that their views did not interfere with the mission of a school whose very name invokes a focus on the classical traditions of discourse, rationality, and critical thinking. But, the Turpins allege, the school was determined to retaliate against them for other reasons and used the contractual grounds as the false pretext to do so.

Notably, these are not stray remarks that might be overlooked by a reader. Indeed, 18 times throughout the complaint, the Turpins allege that Charlotte Latin's purported basis for expelling the children was "pretextual" or a "pretext" and not based on the grounds set out in the contract. It is the entire focus of the complaint. The Turpins support it with specific factual allegations about their respectful conduct, the school's history and values, its more recent embrace of what the complaint labels "cancel culture," and various other facts from which the possible wrongful motives of school leadership can be inferred.

Thus, under the "notice pleading" standard described above, the Turpins have stated a claim that moves past the pleading stage. *Pyco*, 321 N.C. at 442. We can dismiss the complaint only if it "appears *certain*

that plaintiffs could prove no set of facts which would entitle them to relief." *Howell*, 388 N.C. at 78. Here, if the Turpins prove the school acted under a false pretext, they will prevail on their claim. Thus, they have satisfied the notice pleading requirements.

This is where both the Court of Appeals majority and our dissenting colleagues reach an inflection point with the well-settled notice pleading standard. They are compelled to demand more of the Turpins than is required for any other claimant. Take, for example, the dissent's insistence that "neither the complaint nor the majority is clear what impermissible reason the alleged pretext masked."

Of course, the Turpins cannot yet know the real reason behind the pretext. How could they? Are they mind-readers? Or does the dissent truly believe the only way this sort of claim moves forward is if the school said: "We're expelling your kids under the contract but that's just a false pretext. Here's the real reason for you to include in your lawsuit."

This is precisely why these types of factual allegations, concerning something in the mind of the defendant, cannot be fully explained at the pleading stage. *See* N.C.G.S. § 1A-1, Rule 9(b). Instead, "intent, knowledge, and other condition of mind of a person may be averred generally." *Id*. That is what the Turpins did here.

It is worth noting, as well, that the complaint *does* contain many possible explanations for the false pretext. At this point, these are all reasonable inferences from the allegations because, again, the Turpins cannot know for certain the true reasons in the minds of the defendants (nor are they expected to). *See id*. But to point out just one obvious explanation contained in the complaint, look to its introduction. The Turpins allege that the school was infected by "what has come to be known in American society as 'cancel culture.' " They further allege that they chose to stand up to that "cancel culture" movement and formed the Refocus Latin group to challenge it. One can readily infer from the complaint that one possible reason for the school's pretext was that leadership had to "cancel" the Turpins, as they allege, because school officials were fearful that if they didn't find a way to cancel the Turpins, they might be canceled themselves.

The impossible mind-reading demanded from our dissenting colleagues is not the only bizarre part of their reasoning. Take, for example, the dissent's insistence that "the contract did not prohibit pretextual termination, as long as Charlotte Latin believed in its sole discretion that the parent-school relationship was untenable." If the school believed

the relationship was untenable, then that reason isn't pretextual, it's an actual, permissible reason.

This weird, circular logic gets at another fallacy. Both the Court of Appeals majority and our dissenting colleagues are convinced that Charlotte Latin had a right to "unilateral termination" essentially whenever the school wanted and should never have to prove the contractual grounds existed. We have acknowledged that parties can include this type of unilateral provision in a contract. *Canteen v. Charlotte Metro Credit Union*, 386 N.C. 18, 25 (2024). In *Canteen*, for example, the contract permitted the defendant to "change the terms of this Agreement" at any time. *Id.* at 20. No strings attached. Charlotte Latin could have included a similar termination clause in the enrollment contract. It didn't. Instead, the contract limits the school's "unilateral" ability to terminate to situations where one of the two contract conditions is satisfied. The Turpins are entitled to the benefit of that bargain. *See Fulcher v. Nelson*, 273 N.C. 221, 224 (1968).

All of this is a rather long way of saying that this claim boils down to a single straightforward allegation. As Charlotte Latin conceded in open court, the school's right to terminate the Enrollment Agreement "may not be invoked with a pretext or in bad faith." In the complaint, the Turpins expressly alleged that the school invoked those grounds as a pretext and provided factual allegations to support many possible inferences about the school's true motives behind the false pretext. That is enough to state a claim for breach of contract. At this stage of the case, we must "construe the complaint liberally" and "treat the complaint's factual allegations as true." *Howell*, 388 N.C. at 78. Taking as true the Turpins' allegation that the school was acting under a false pretext, the complaint adequately alleges that Charlotte Latin breached the plain terms of the contract. *See Intersal*, 373 N.C. at 108–09.

In addition to this pretext theory, the complaint also alleges other contract theories that do not state a claim on which relief can be granted. These include the theories that the Turpins had a "contractually-protected right to respectfully communicate" with the school and had a contractual right to "notice" or "an opportunity to be heard" before the school expelled their children.

The contract does not contain these rights. By its plain terms, the contract permits Charlotte Latin to terminate enrollment whenever the school determines that a parent's actions make a positive, collaborative working relationship impossible or seriously interfere with the school's mission. It is not limited to parental actions that are disrespectful and

does not require the school to offer any advance notice or process before terminating enrollment. These are certainly contract terms that *could* be bargained for and included in a private school enrollment agreement. They are not terms in this contract.

In sum, the Turpins have stated a valid claim for breach of contract based on the theory that Charlotte Latin's motives were pretextual. As the case progresses, the Turpins will, of course, have to put forth evidence that Charlotte Latin's motives were pretextual. They cannot rest on allegations alone. But that is a question for another day, after the parties have an opportunity to conduct discovery. At this early stage of the case, the Turpins have satisfied the requirement to plead a claim on which relief could be granted, and the Court of Appeals erred by holding otherwise. *See Howell*, 388 N.C. at 78.

III. Fraud

[3] Next, we examine the Turpins' fraud claim. Again, the pleading requirements for common law fraud are well-settled in this state. To bring a claim for fraud, a plaintiff must allege a "(1) false representation or concealment of a material fact, (2) reasonably calculated to deceive, (3) made with intent to deceive, (4) which does in fact deceive, (5) resulting in damage to the injured party." *Forbis v. Neal*, 361 N.C. 519, 526–27 (2007) (cleaned up). Rule 9 of the Rules of Civil Procedure also imposes special "particularity" pleading requirements for fraud claims. N.C.G.S. § 1A-1, Rule 9(b). The "particularity requirement is met by alleging time, place and content of the fraudulent representation, identity of the person making the representation and what was obtained as a result of the fraudulent acts or representations." *Value Health Sols., Inc. v. Pharm. Rsch. Assocs., Inc.*, 385 N.C. 250, 263 (2023).

Here, the complaint alleges that Charlotte Latin promised the Turpins there would be no "blowback" or "retaliation" against them or their children if they met with school leadership to discuss their concerns; that this promise was false and, from the beginning, Charlotte Latin intended to deceive the Turpins and lure them to the meeting in order to create a pretext for expelling the children; that the Turpins believed Charlotte Latin's promise and spoke openly about their concerns because they believed the school would not use those discussions as the pretextual grounds to expel the children; that the school, in that same meeting, expelled the children, as they intended from the outset, despite promising the Turpins they would not do so; and that the school's deceit caused significant damage to the Turpins.

Again, as with the contract claim, these allegations on their face satisfy the requirements of notice pleading. They cover each of the essential elements of the claim and meet the particularity requirements of a fraud claim by alleging who made the fraudulent statement, when it was made, where it was made, how it was reasonably calculated to deceive, why the Turpins reasonably relied on it, and the harm that resulted. *See id.* at 263.

But, much like the contract claim, the Court of Appeals held that the claim was subject to dismissal by looking beyond the pleadings. Specifically, the Court of Appeals examined the emails that contained the allegedly fraudulent statements. As noted above, because those emails form the basis of the fraud claim and are expressly referenced in the complaint, the emails are incorporated by reference into the complaint and can be examined at the pleadings stage when reviewing a Rule 12(b)(6) motion to dismiss. *Oberlin Cap.*, 147 N.C. App. at 60.

The Court of Appeals held that facts disclosed in the emails necessarily defeated the fraud claim. The court explained that the allegedly fraudulent statement is contained in a series of emails where the Turpins asked to meet school leadership to discuss the curriculum for one of their children's classes. *Turpin*, 293 N.C. App. at 344. The allegedly false statement is this sentence in a response email from Charlotte Latin to the Turpins: "Our teachers do not retaliate and there will be no blowback, I assure you."

This statement, according to the Court of Appeals, only promised no "blowback from *the teacher* towards plaintiffs' child." *Id.* (emphasis added). That blowback from the teacher did not occur, the court reasoned, because the child's "removal from the school was an *ancillary effect* of the termination of the enrollment contract *between plaintiffs and defendants*," not a retaliatory action by "a teacher." *Id.* at 344–45.

This reasoning turns the standard of review on its head. "When reviewing a Rule 12(b)(6) motion, we treat the complaint's factual allegations as true and view them in the light most favorable to the plaintiff." *Howell*, 388 N.C. at 78. Viewed in the light most favorable to the Turpins, the promise of no "blowback" contained in the email is not nearly as narrow as the Court of Appeals interpreted it. Instead, that promise of "no blowback" plainly included a promise not to terminate the Turpins' enrollment contract and kick the child out of school.

This discussion began with the Turpins emailing school leadership about one of their children, a sixth grader taking a humanities class. The Turpins explained that the humanities teacher taught the students that

"Republicans are white supremacists" and that "what Republicans stand for is racial suppression and white supremacy in action." The Turpins also recounted many other "left wing progressive" topics in the course that they believed were wrongly politicized and inappropriate for a sixth grader. When asking to meet with school leadership to discuss their concerns, the Turpins emphasized that they did not want their child "to experience any possible blowback because of what we are bringing to your attention":

> I wanted to discuss with you a situation that is of serious concern to Nicole and I at your convenience. I would prefer that we discuss this situation on a call, before you address this with the teacher I am referencing in this email. We do not want [our child] to experience any possible blowback because of what we are bringing to your attention.

In response to this email, the school stated that its teachers "do not retaliate" and that "there will be no blowback, I assure you":

> Thank you for the email. You make some serious claims that I need to investigate with the teacher, which is only fair so she can provide context. Our teachers do not retaliate and there will be no blowback, I assure you. Please give me a day or two to look into it and will get back to you shortly.

It is entirely reasonable to view the meaning of the term "no blowback" in this context to mean *more* than just retaliation by the teacher in the classroom. After all, the school's email expressly assured the Turpins *both* that there would be no retaliation from the teacher *and* that there would be no blowback, which a reasonable person certainly could interpret as being two separate things. But even more fundamentally, in ordinary English usage, when parents want to discuss a sensitive topic with school administrators but caution that they do not want their child to "experience any possible blowback because of what we are bringing to your attention," and the school administrator responds with "there will be no blowback, I assure you," it is quite reasonable to understand the assurance of "no blowback" to include terminating the child's enrollment at school. Thus, when we properly apply the standard of review and view this allegation and all its reasonable inferences in the Turpins' favor, not the school's, the assurance went beyond a promise of no blowback from the teacher alone. *See id.*

It is worth noting here that proving the elements of this claim will be a daunting task. The Turpins allege that the school falsely promised them no blowback "in order to lure" the Turpins to the meeting where they could use the Turpins' discussion as the pretext to justify an expulsion decision that the school had already made.

But from the other allegations in the complaint, there were already many actions by the Turpins that could have functioned as that alleged "pretext," such as the Refocus Latin presentation or the Turpins' emails to administrators. It is quite odd that the school would find these other grounds insufficient; that, instead, the school would feel compelled to construct an elaborate lie to "lure" the Turpins to a meeting where they could obtain the necessary pretext for the decision to expel the children.

Our dissenting colleagues fixate on this issue, pointing out Doug Turpin could not have relied on their fraud "since Charlotte Latin could terminate his children's enrollments regardless of whether he attended the meeting." But again, the Turpins allege otherwise; they contend that the school did not have any sincere grounds to terminate the contract when they lured the Turpins to the meeting to create the false pretext.

This is where the standard of review comes into perhaps its starkest focus. In federal court, this fraud claim might well be dismissed. Two decades ago, the federal courts moved away from the notice pleading test we use in state court today—in particular, the principle that a claim survives a Rule 12(b)(6) motion unless "it appears *certain* that plaintiffs could prove no set of facts which would entitle them to relief under some legal theory." *See Howell*, 388 N.C. at 78. Instead, federal courts use what is often called the *Twombly/Iqbal* standard, named for the cases adopting the test. *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007); *Ashcroft v. Iqbal*, 556 U.S. 662 (2009). That test requires the plaintiff to plead "enough facts to state a claim to relief that is plausible on its face." *Twombly*, 550 U.S. at 570. The allegations must "permit the court to infer more than the mere possibility of misconduct" based on the court's "judicial experience and common sense." *Iqbal*, 556 U.S. at 679. "At bottom, a plaintiff must nudge its claims across the line from conceivable to plausible to resist dismissal." *Wag More Dogs, LLC v. Cozart*, 680 F.3d 359, 365 (4th Cir. 2012) (cleaned up).

The Turpins' fraud claim might fail this test. Is it *conceivable* that the Turpins will prove Charlotte Latin needed this complicated fraud to manufacture the necessary pretext? Yes, it is *conceivable*. But it is incredibly unlikely and thus may not be enough to nudge the claim across the line to plausibility. *See id*. So, if this claim were filed in federal court, it might be dismissed.

It is strange that both federal law and state law use almost exactly the same language in their pleading rules but there could be such a stark difference in outcomes. *Compare* Fed. R. Civ. P. 8, 12, *with* N.C.G.S. § 1A-1, Rules 8, 12. In an appropriate case, this Court might examine the resulting tension and whether our state law should evolve to avoid this outcome in the future. But defendants did not ask us to do so here, nor did the defendants in other recent cases where we have restated the familiar "no set of facts" standard. *See Howell*, 388 N.C. at 78. We must therefore apply that existing standard here. Doing so, the Turpins have pleaded facts that, if proven, satisfy all the elements of a fraud claim. *See id.*

We emphasize, as we did with the breach of contract claim, that the Turpins ultimately will have to put forth evidence for these allegations, including evidence that the school was lying from the beginning, that it lured the Turpins to the meeting to create the necessary pretext to cover up its wrongful motives, and so on. But at this early stage of the case, the Turpins have satisfied the requirement to plead facts that, if proven, support a claim on which relief could be granted. *See id.*

In its briefing, Charlotte Latin also raises an alternative argument not embraced by the Court of Appeals. The school contends that, even if the "no blowback" statement encompasses termination of the child's enrollment at the school, that statement was a "forward-looking statement about the future that is not a 'misrepresentation' of an existing fact."

Charlotte Latin is correct that forward-looking statements often cannot constitute fraud. "As a general rule, a mere promissory representation will not be sufficient to support an action for fraud." *Johnson v. Phoenix Mut. Life Ins. Co.*, 300 N.C. 247, 255 (1980). This sort of forward-looking statement becomes fraudulent only if "the promisor, at the time of making it, has no intent to comply." *Id.*

But again, this is precisely what the Turpins allege here. They allege that school administrators knew the "no blowback" promise was false when they made it. That misrepresentation, according to the Turpins, was part of "creating a pretext." It was designed to lure the Turpins to the meeting and induce them to discuss their concerns, so that the school could use those discussions as a sort of pretextual cover story to justify a decision the school had already made for improper reasons. Taking these allegations as true, the Turpins properly pleaded a claim on which relief can be granted.

Charlotte Latin also makes a few other pleading arguments not addressed by the Court of Appeals. First, the school argues that the

Turpins inadvertently "plead themselves out of showing reliance" by alleging that they "had already requested the meeting" with school administrators before receiving the false assurance that there would be no blowback. Second, the school argues that the complaint fails to allege "that the meeting itself or anything that happened during the meeting gave rise to the termination of the Enrollment Agreements."

These arguments, once again, do not view the complaint in the light most favorable to the Turpins. With respect to the request to meet with school leadership, Charlotte Latin ignores that the Turpins expressed reservations about potential "blowback" in the same email requesting a meeting. The complaint alleges that the Turpins only agreed to attend the meeting *after* receiving the school's assurance that there would be no blowback.

Likewise, with respect to the argument that nothing in the meeting gave rise to terminating the children's enrollment, the complaint alleges that the school lured the Turpins to that meeting to create a pretext for terminating the agreement and that the children would not have been expelled had the Turpins not been deceived into attending.

At the risk of tedious repetition, we emphasize—once again—that at this stage of the proceeding we must take these allegations as true. *Howell*, 388 N.C. at 78. When we do so, the Turpins have properly pleaded with particularity all the essential elements of a fraud claim. We therefore reverse the decision of the Court of Appeals with respect to this claim and remand for further proceedings.

IV. Unfair and deceptive trade practices

[4] We turn next to the unfair and deceptive trade practices claim under Chapter 75 of the General Statutes. This is a statutory claim and, as with its common law counterparts, it has a solid body of case law establishing its pleading requirements. To plead a valid claim, "a plaintiff must show: (1) defendant committed an unfair or deceptive act or practice, (2) the action in question was in or affecting commerce, and (3) the act proximately caused injury to the plaintiff." *SciGrip, Inc. v. Osae*, 373 N.C. 409, 426 (2020).

When reviewing an unfair and deceptive trade practices claim, the complaint "must first establish that defendants' conduct was 'in or affecting commerce' before the question of unfairness or deception arises." *HAJMM Co. v. House of Raeford Farms, Inc.*, 328 N.C. 578, 592 (1991). Here, neither the lower courts nor Charlotte Latin assert that the alleged conduct was not "in or affecting commerce." This is because the

statute broadly defines "commerce" as "all business activities." N.C.G.S. § 75–1.1(b). "Business activities" are an organization's "regular, day-to-day activities, or affairs" and include the activities of non-profits that charge fees for a service. *HAJMM*, 328 N.C. at 594; *see Davis Lake Cmty. Ass'n, Inc. v. Feldmann*, 138 N.C. App. 292, 296 (2000). Thus, the allegations in the complaint, which concern the regular activities of a private school that charges fees in exchange for its educational services, are "in or affecting commerce" under the statutory definition. *Id.*

Next, we examine whether the complaint alleges an "unfair or deceptive act or practice." *SciGrip*, 373 N.C. at 426. This is a question of law for the court. *Ellis v. Northern Star Co.*, 326 N.C. 219, 226 (1990). A practice is "unfair" if it "offends established public policy" or is "immoral, unethical, oppressive, unscrupulous, or substantially injurious to consumers." *Bumpers v. Cmty. Bank of N. Va.*, 367 N.C. 81, 91 (2013). A practice is "deceptive" if it "has the capacity or tendency to deceive." *Id.*

Importantly, fraud claims "necessarily constitute a violation of the prohibition against unfair and deceptive acts." *Bhatti v. Buckland*, 328 N.C. 240, 243 (1991). Thus, a complaint that properly pleads a fraud claim automatically satisfies the unfair or deceptive element of this statutory claim. *See id.* Because the Turpins properly pleaded a fraud claim, they have pleaded this element of the unfair and deceptive trade practices claim as well.

The Turpins also allege that Charlotte Latin engaged in an unfair and deceptive practice when it "retaliated" against the Turpins for exercising their "contractually-protected right to respectfully communicate" and offered a "false, pretextual, and improper reason" for terminating the enrollment contracts. These allegations concern the parties' obligations under the contract, which we discussed in more detail above.

Conduct that amounts to a breach of contract is an unfair or deceptive practice only if there are "substantial aggravating circumstances." *SciGrip*, 373 N.C. at 426. We have taken a strict approach to evaluating substantial aggravating circumstances to prevent litigants from "repackaging" their breach of contract claims as unfair and deceptive trade practice claims. *Value Health Sols.*, 385 N.C. at 277. This strict approach is necessary to prevent Chapter 75 of the General Statutes from inadvertently merging contract law into tort law. *See id.*

Here, the Turpins attempt to do what this Court has long prohibited. The only breach-of-contract theory on which relief can be granted is that Charlotte Latin used a false and pretextual ground to terminate the enrollment contracts. This means the use of that false and pretextual

ground cannot be a "substantial aggravating circumstance" because the contract cannot be breached without that circumstance. *SciGrip*, 373 N.C. at 426. A breach of contract "standing alone, simply does not suffice to support the assertion of an unfair and deceptive trade practices claim." *Id.* at 427. Thus, although the Turpins have properly pleaded unfair and deceptive practices based on their fraud allegations, they have not done so for their other, contract-related allegations in the complaint.

Finally, the Turpins properly alleged that the unfair and deceptive acts proximately caused them injury and neither the lower courts nor Charlotte Latin have suggested otherwise. Accordingly, because the Turpins properly pleaded all the essential elements of a claim for unfair and deceptive trade practices, we reverse the Court of Appeals and remand for further proceedings on this claim.

V. Negligent misrepresentation

[5] Next, we examine the Turpins' negligent misrepresentation claim. "The tort of negligent misrepresentation occurs when a party justifiably relies to his detriment on information prepared without reasonable care by one who owed the relying party a duty of care." *Cummings v. Carroll*, 379 N.C. 347, 366 (2021). In other words, the claim arises when the defendant makes a statement that is false and, in the exercise of ordinary care, should have known it was false at the time. *Id.* Thus, "negligent misrepresentation is closely akin to fraud, differing primarily in the requisite state of mind of the purported actor." *Value Health Sols., Inc.*, 385 N.C. at 266 (cleaned up).

Here, the Turpins' negligent misrepresentation claim closely mirrors the fraud claim, relying on essentially the same allegations concerning the "no blowback" email discussed above. This similarity creates an insurmountable problem for the negligent misrepresentation claim, however. As discussed above, the allegations are based on a forward-looking promise that there would be no blowback—a promise that the Turpins allege was false when it was made.

This type of forward-looking promise cannot be the basis of a negligent misrepresentation claim. *See Rhodes, Inc. v. Morrow*, 937 F. Supp. 1202, 1215 (M.D.N.C. 1996). As explained by the Tenth Circuit in a similar circumstance, the problem is that, for a forward-looking statement to be false when it is made, the speaker must act intentionally, not negligently:

> A promise cannot serve as the predicate for a negligent-misrepresentation claim. . . . This is not some obscure technical rule. It is a natural consequence of

> the meanings of the terms *negligent* and *misrepresentation*. A misrepresentation conveys "false information" . . . that is, it must be a false statement of fact. But a promise in itself contains no assertion of fact other than the implied representation that the speaker intends to perform the promise. . . . The misrepresentation must therefore be that the promissor is falsely declaring that he has the intent to perform. If the promissor intends not to perform, however, the misrepresentation (that the promissor intends to perform) is not negligent; it is, rather, knowing and intentional.

Alpine Bank v. Hubbell, 555 F.3d 1097, 1107 (10th Cir. 2009) (cleaned up). Put another way, if the Turpins prove that Charlotte Latin and Ballaban *knew* the "no blowback" assurance was false at the time they made it, it is fraud. If the Turpins cannot prove the statement was false at the time, that statement cannot be fraud or negligence. Accordingly, we affirm the dismissal of the negligent misrepresentation claim.

VI. Defamation

[6] Next, we address the Turpins' defamation per quod claims. To plead a claim for defamation per quod, the plaintiff must allege that the defendant "caused injury to the plaintiff by making false, defamatory statements of or concerning the plaintiff, which were published to a third person." *Desmond v. News & Observer Publ'g Co.*, 375 N.C. 21, 41 (2020) (cleaned up). In a defamation per quod claim, the "defamatory statement" is one that is "not obviously defamatory but when considered with innuendo, colloquium, and explanatory circumstances" becomes defamatory. *Arnold v. Sharpe*, 296 N.C. 533, 537 (1979). A defamatory statement is "false" if "the substance, the gist, *the sting*" of the statement is untrue. *Desmond*, 375 N.C. at 67.

The factual allegations in the Turpins' complaint satisfy these pleading requirements. The Turpins allege that Charlotte Latin and Baldecchi made false statements about the contents of the PowerPoint presentation—specifically, that the PowerPoint contained the racist assertion that minority students and faculty at the school "have not earned their positions and honors" and that those minority students and faculty were "not up to the merit of the school" like the white students and faculty; that those false statements were of and concerning the Turpins because people understood the false statements as meaning the Turpins endorsed or supported the false, racist statements; that the harmful character of these false statements to the Turpins "does not appear on its face as

a matter of general acceptance, but rather becomes clear only in consequence of extrinsic, explanatory facts showing its injurious effect"; and that Charlotte Latin and Baldecchi published the false statements to third parties, causing special damages to the Turpins.

As with the earlier claims, the Court of Appeals did not take issue with the sufficiency of these factual allegations on their face. Instead, the court looked beyond the allegations in the complaint to affirm dismissal. Specifically, the court examined the contents of the PowerPoint document that is the subject of the defamatory statements. As noted above, a court may consider documents attached to a Rule 12(b)(6) motion without converting the motion into a summary judgment motion if (1) the document is referenced in the complaint, (2) the document is central to the allegations or claims asserted, and (3) there is no dispute about the document's authenticity. *See Doriety*, 109 F.4th at 679.

That is the case here. The Turpins allege that both defamatory statements falsely claimed the PowerPoint document contained racist remarks about minority faculty and students at Charlotte Latin. Because the contents of that PowerPoint are central to this claim and no party disputes the document's authenticity, the document properly can be considered when reviewing this Rule 12(b)(6) motion although it was not attached to the complaint.

After examining the PowerPoint document, the Court of Appeals concluded that the defendants' statements were not "materially false." *See Turpin*, 293 N.C. App. at 352–53. The court first observed that the presentation expressed concern over how "weighting of DEI and Critical Theory on a 'culturally responsive education' eventually erodes the quality of student, quality of curriculum, quality of teacher and the academic rigor at the school." *Id.* The court then pointed to portions of the PowerPoint document stating that "admissions is weighting diversity over academic excellence," that Charlotte Latin was "moving away from educational meritocracy in line with progressive concepts of restorative justice and equity," and that "DEI goals" are "superseding optimizing evaluations for admitting most qualified students and hiring most qualified faculty." *Id.* (cleaned up).

Then, the Court of Appeals held that the alleged defamatory statements—that minority students and faculty at Charlotte Latin "have not earned their positions and honors" at the school and that those minority students and faculty "were not up to the merit" of their white counterparts at the school—"accurately characterize the 'gist or sting' of the Refocus Latin PowerPoint presentation." *Id.*

In other words, the Court of Appeals held as a matter of law that critiques of using "Critical Theory" in education, or establishing "DEI goals," or applying race-conscious criteria to hiring or admissions are the legal equivalent of racist comments that no minority candidate earned their position or no minority candidate is up to the standards of their white counterparts.

We reject this errant holding. The defamatory statements by Charlotte Latin do not accurately characterize the "gist" or "sting" of the PowerPoint discussion. *See Desmond*, 375 N.C. at 67. First, the only portion of the presentation referencing how the school's approach "erodes the quality of student" and the "quality of teacher" expressly addresses *all* students and faculty, regardless of color. That section of the presentation asserted that the excessive focus on "DEI and Critical Theory" was shifting the school away from a classical education teaching "objectivity," "science," "canonical reading," and so on, to instead embrace a "political and ideological agenda." When a school that was long focused on the importance of a classical education instead shifts toward a partisan, politicized curriculum, as the PowerPoint claimed, that shift impacts every student and every teacher equally. Nothing in these statements suggests the school's changed curriculum or ideological agenda negatively impacted minority students and faculty but not their white counterparts.

The remaining portions of the PowerPoint examined by the Court of Appeals are critiques of non-merit-based hiring or admissions practices and a pitch to return to a "meritocracy." Importantly, none of these statements refer to the quality or merit of particular students or groups of students. The statements simply assert that the school should commit to a meritocracy where the driving goal is "academic excellence." Were we to adopt the Court of Appeals' reasoning with respect to these statements, it would mean any statement criticizing non-merit-based hiring or admissions practices is, as a matter of law, a statement that people who benefited from those practices would not otherwise qualify based on merit. This is a fallacy. Someone who benefits from a non-merit-based factor can still be qualified based on merit alone. The presence of that additional factor says nothing about the merit-based qualifications of the candidate.

Simply put, criticizing so-called "DEI goals" or other race-conscious criteria in hiring and admissions, and urging a return to a "meritocracy," is not the equivalent of claiming that minority students and faculty have not earned their positions and honors or are not up to the merit of other students. We do not agree that "the gist" or "the sting"

of these two categories of comments are the same as a matter of law. The latter—statements focused on the purported inferiority of minority students or faculty—are pernicious and racist. They are the sort of offensive statements that, if heard by others, can damage one's reputation and good name. Accordingly, in appropriate contexts, claiming that someone made this kind of offensive statement when they did not can be defamatory. *See id*. Taking as true all the allegations in the complaint, this is one of those cases.

Our dissenting colleagues again take issue with our analysis. To them, "allegations of racism, like many subjective viewpoints, are in the eye of the beholder and do not squarely fit into the falsity test." This is a faulty equivalence. The school did not make a subjective statement of opinion such as "the Turpins are racists." The school told its entire community of students, parents, and faculty that the Turpins *said* a specific racist thing. That claim has an objective answer: the Turpins either said it or they didn't. The correct analogy is not claiming someone is a racist, as in the cases the dissent cites, but claiming someone used a racial epithet. If that is a lie, it is defamatory. *Desmond*, 375 N.C. at 67.

As we have done with respect to other factual allegations in this divisive case, we again point out that there may be more going on factually than what is alleged in the complaint. For example, we do not yet know what the presenters said as they displayed the PowerPoint document. At this stage of the case, we can look only at the document itself. Both the school's email and Baldecchi's statements may, in full context, have been addressing matters beyond the PowerPoint document.

Courts cannot seek out this sort of full context at the pleadings stage. That is the purpose of fact discovery. *See Sutton v. Duke*, 277 N.C. 94, 106 (1970). At this early stage of the case, we take the allegations in the complaint as true and draw all reasonable inferences in favor of the Turpins. *Jones*, 387 N.C. at 492. Doing so here, the Turpins have sufficiently alleged that defendants made materially false statements. We therefore reject the reasoning of the Court of Appeals with respect to falsity.

Charlotte Latin also argues that, even if the Turpins adequately pleaded materially false statements, the defamation claims were properly dismissed because those defamatory statements were not "of and concerning" the Turpins. But once again, this argument fails because Charlotte Latin ignores the actual allegations in the complaint. As noted repeatedly above, we must view those allegations in the light most favorable to the Turpins and make every reasonable inference in the Turpins' favor. *Id*. Doing so here, the complaint properly alleges that the defamatory statements concern the Turpins.

First, the complaint alleges that Charlotte Latin made materially false statements about the content of a PowerPoint presentation. Second, the complaint alleges that a group of parents known as "Refocus Latin," including the Turpins, prepared the PowerPoint presentation. Third, the complaint alleges that Charlotte Latin knew the Turpins were part of Refocus Latin and prepared the PowerPoint presentation. Finally, the complaint alleges that, by making false statements about the content of the PowerPoint presentation, Charlotte Latin also conveyed that the Turpins themselves said or believed those false statements.

When "a statement defames a small group or class of persons in its entirety . . . any member of that class may pursue an action for defamation, despite the fact that the statement fails to specifically identify that particular individual." *Boyce & Isley, PLLC v. Cooper*, 153 N.C. App. 25, 33 (2002) (cleaned up); *see also* Restatement (Second) of Torts § 564A (A.L.I. 1976). So, for example, a juror can bring a defamation claim based on a statement that asserted all but one member of a twelve-person jury had been bribed. *See Carter v. King*, 174 N.C. 549, 553 (1917). Likewise, each member of a four-person law firm could bring defamation claims based on a statement that the law firm committed unethical business practices. *Boyce & Isley*, 153 N.C. App. at 33.

Here, the complaint alleges a sufficiently small group of people to invoke this precedent. The Turpins allege that they formed Refocus Latin, a group of concerned parents known to the school, and that as members of that group the Turpins either prepared or presented the PowerPoint document. Again—as we have repeated many times—the Turpins will need to prove these allegations. But at this stage, they have sufficiently alleged that the statements were of and concerning them because they are members of the Refocus Latin group that prepared and presented the PowerPoint document.

Charlotte Latin also argues that, even if the complaint alleges that the *school* knew the Turpins were part of the group that prepared the PowerPoint document, the complaint does not allege that any *recipients* of the defamatory statements knew of the Turpins' involvement.

This gets at an issue inherent in this type of "per quod" claim. The false statements in this case concern the contents of a document. Documents are not defamed; people are. So the allegation in the complaint is not that the false statements are defamatory per se, but that the defamatory nature "becomes clear only in consequence of extrinsic, explanatory facts showing its injurious effect." Specifically, the complaint alleges that there are extrinsic facts showing that the recipients of

the false, racist statements about the PowerPoint would believe that the Turpins, as the creators of the document, endorsed those racist views.

We agree with Charlotte Latin that, to prove this claim, the Turpins will need to present far more evidence than is contained in the allegations in the complaint. But the complaint's failure to allege all of these extrinsic facts with particularity is not a pleading deficiency. Rule 9 of the Rules of Civil Procedure creates special pleading requirements for defamation per quod claims and requires only that a plaintiff allege the defamatory statement was "published or spoken concerning the plaintiff":

> In an action for libel or slander it is not necessary to state in the complaint any extrinsic facts for the purpose of showing the application to the plaintiff of the defamatory matter out of which the claim for relief arose, but it is sufficient to state generally that the same was published or spoken concerning the plaintiff, and if such allegation is controverted, the plaintiff is bound to establish on trial that it was so published or spoken.

N.C.G.S. § 1A-1, Rule 9(i)(1).

As noted above, the Turpins included allegations that the defamatory statements were published concerning them. The extrinsic facts needed to prove the truth of this allegation need not be pleaded; that is a matter for summary judgment or trial. *Id.*

We close by noting that we allowed discretionary review of the Turpins' defamation claims primarily to address the errant Court of Appeals reasoning concerning falsity. We therefore limit our review to that issue, and to the additional "of and concerning" issue expressly raised by Charlotte Latin in its briefing. We acknowledge that the Turpins' defamation per quod claims involve a number of complex legal issues and the law of per quod claims is not well-developed in our jurisprudence. Our opinion addresses only the issues presented to us by the parties or examined by the lower courts and should be understood as limited to those issues.

VII. Negligent infliction of emotional distress and negligent retention

[7] Finally, we turn to the Turpins' claims of negligent infliction of emotional distress and negligent retention. The Court of Appeals affirmed dismissal of these two claims for failure to state a claim on which relief

can be granted. *Turpin*, 293 N.C. App. at 351, 354. The Court of Appeals' analysis with respect to these two claims was among the lengthy list of issues presented in the Turpins' petition for discretionary review. We allowed the petition in its entirety to ensure that we had jurisdiction over the many matters warranting discretionary review in this multi-claim case.

Upon further review of these two specific claims, we agree with Charlotte Latin that they fail to state a claim on which relief can be granted for a number of reasons that are well-settled in this state's tort jurisprudence. Those claims also do not involve documents not attached to the complaint or the incorporation-by-reference doctrine that we adopted above. Thus, we are not persuaded that these claims involve matters where there is any conflict in our jurisprudence, or where there are issues sufficiently significant to meet the standard for discretionary review. We therefore dismiss our review of these issues as improvidently allowed without addressing or endorsing the reasoning of the Court of Appeals decision.

Conclusion

We reverse the decision of the Court of Appeals in part as to the properly pleaded claims for breach of contract, fraud, unfair and deceptive trade practices, and defamation, and we remand for further proceedings on those claims. We conclude that discretionary review was improvidently allowed as to the remaining issues.

REVERSED AND REMANDED IN PART; DISCRETIONARY REVIEW IMPROVIDENTLY ALLOWED IN PART.

Justice RIGGS concurring in part and dissenting in part.

North Carolina, like much of the country, is currently hosting vigorous debate on the role of private schools in educating our children and the need to address diversity and inclusion in our schools. While this case does not invite us to dive into either of those debates, we must ensure that the rules that emerge from this Court are applied uniformly, no matter the kind of private schools at issue. As the Roman Catholic Diocese of Charlotte and the North Carolina Association of Independent Schools and Southern Association of Independent Schools pointed out in their amicus briefs, the result the plaintiffs seek here would open the door to litigation against all private schools. I doubt that is the majority's

intent, but while the rule emerging from this Court today is erroneous, it will need to be applied evenhandedly: schools with different ideologies cannot be treated differently than Charlotte Latin here.

I agree with the majority's dismissal of the negligent misrepresentation claim and dismissal of review of the negligent infliction of emotional distress and negligent retention claims as improvidently allowed. However, we should have also affirmed the dismissal of the breach of contract, fraud, and defamation claims. Therefore, I respectfully dissent.

I. The breach of contract and fraud claims do not survive Charlotte Latin's 12(b)(6) motion to dismiss because the Turpins' arguments relating to pretext fail as a matter of law.

Addressing the breach claim first, to state a claim for breach of contract, the plaintiff must allege "(1) the existence of a contract between plaintiff and defendant, (2) the specific provisions breached, (3) the facts constituting the breach, and (4) the amount of damages resulting to plaintiff from such breach." *Intersal, Inc. v. Hamilton*, 373 N.C. 89, 108–09 (2019) (cleaned up). When deciding cases arising from a 12(b)(6) motion to dismiss, "we must take the complaint's factual allegations as true." *Morris v. Rodeberg*, 385 N.C. 405, 406 (2023) (citing *Blue v. Bhiro*, 381 N.C. 1, 2 (2022)). Here, even taking all facts in the complaint as true, the Turpins failed to sufficiently allege facts constituting breach of contract as a matter of law.

As a preliminary matter, I agree with the majority's treatment of the materials outside of the four corners of the complaint. *See* majority *supra* Parts I, II. The majority correctly concludes that both the Enrollment Agreement (EA) and the Parent-School Partnership (PSP) can be incorporated by reference in the consideration of a motion to dismiss. However, while the majority goes on to then interpret the contract as a part of its 12(b)(6) analysis, it misreads the documents, particularly the termination provision in the PSP. The EA provides that "I understand that a student's attending the School is a privilege and not a right, and that, in all cases, the School retains the right to determine, in its sole discretion, whether or not to select a student for admission or to re-enroll a student." The PSP, incorporated into the EA, allows Charlotte Latin to terminate a student's enrollment at any time, in its discretion, based on parental behavior. The termination provision reads:

> A positive, collaborative working relationship between the School and a student's parent/guardians is essential to the fulfillment of the School's mission. Therefore, the School reserves the right to

> discontinue enrollment if it concludes that the actions of a parent/guardian make such a relationship impossible or seriously interfere with the School's mission.

Under both provisions, Charlotte Latin has broad, and indeed, near unfettered discretion to terminate a student's enrollment.

Obviously, any school enrollment contracts that vest the schools with such unfettered rights are still subject to controlling state and federal law. *See*, *e.g.*, N.C.G.S. § 115C-556 (2025) (requiring "qualified nonpublic" schools to abide by certain health and safety regulations); *id.* § 115C-548 (requiring religious private schools to abide by certain health and safety regulations); 42 U.S.C. § 2000d (prohibiting racial discrimination in private schools receiving federal funding). But, unlike public schools, private schools enter into contractual agreements with parents that set out terms for a child's enrollment. In forming these contractual relationships, parents and schools enjoy the freedom of contract. *See*, *e.g.*, *Hlasnick v. Federated Mut. Ins. Co.*, 353 N.C. 240, 243 (2000) ("Indeed, our state's legal landscape recognizes that, unless contrary to public policy or prohibited by statute, freedom of contract is a fundamental constitutional right."); *Am. Tours*, *Inc. v. Liberty Mut. Ins. Co.*, 315 N.C. 341, 350 (1986). Parents may negotiate for different terms, including narrower termination clauses, and private schools have the right to establish their own set of rules. *Teeter v. Horner Mil. Sch.*, 165 N.C. 564, 568 (1914) (reasoning that a private school "had the undoubted power to adopt and enforce suitable rules and regulations for the government and management of the school"); *see Canteen v. Charlotte Metro Credit Union*, 386 N.C. 18, 25 n.5 (2024) ("While lay consumers may not understand every legal intricacy involved in the contractual process with companies, the market provides a way for consumers to respond to policies with which they disagree. As needs arise, competitor companies can provide alternatives for consumers, forcing improvements or updates to products or services . . . .").[1] Parents are under no

1. In *Canteen*, the majority rejected the dissent's argument that "unrestricted unilateral amendment clauses," where a credit union could make whatever changes to a consumer contract it saw fit under the expansive rights it reserved for itself, would render that contract illusory. 386 N.C. at 26–27. Here, although acknowledging the rule from *Canteen*, the majority fails to adequately distinguish Charlotte Latin's termination clause from the permissible unilateral change provision in *Canteen*. The majority here just asserts without explanation that the unilateral power reserved by Charlotte Latin is different than the unilateral power reserved by Charlotte Metro Credit Union. It cannot be correct, under contract law, that defendant private schools are somehow bound to treat the consumers of their product better or more generously than defendant credit unions are required to treat their customers.

obligation to enroll their children at a particular private school—they may choose to accept the private school's contractual terms (and enroll their children) or reject the terms (and enroll their children elsewhere). *See Brenner v. Little Red Sch. House, Ltd.*, 302 N.C. 207, 213 (1981) (reasoning that "[t]here was no inequality of bargaining power" between parents and a private school because "Plaintiff was not forced to accept defendant's terms, for there were other private and public schools available to educate the child").

The reality is that private schools, founded on the freedom to contract and associate, are *allowed* to not tolerate differing viewpoints or independent thought. As long as they do not violate state or federal law or seek to enforce contracts in convention of public policy, private schools may terminate enrollments based on political ideology—and if parents are unhappy, they may exercise the right to contract with a different school that better aligns with their preferences or send their children to public schools, where the freedom to contract does not vest the school administrators with such unfettered discretion.[2] To the extent that the complaint alleges that any reason Charlotte Latin gave for the termination was pretext, and that the children's enrollment was terminated because of "cancel culture," Charlotte Latin was allowed to do exactly that under the broad discretion it retained under the contract.

The PSP and EA expressly provided for unilateral termination at Charlotte Latin's sole discretion, whenever Charlotte Latin determined that the parent-school relationship was untenable. The majority concedes that exactly this sort of unilateral clause is permissible under *Canteen*. *See* majority *supra* Part II. Per the plain language of both the PSP and the EA, the determination of the unworkability of the parent-school relationship is entirely the school's decision to make—despite the majority's cursory attempt to distinguish *Canteen*, this is the same sort of unilateral authority retained by one of the contracting parties. The Turpins exercised the right to contract and agreed to abide by the termination clause in the contract when they chose to enroll their children at Charlotte Latin. In doing so, they agreed to give Charlotte Latin broad discretion over whether, when, and why to terminate their children's enrollment. The Turpins could have negotiated for a clause limiting Charlotte Latin's unilateral ability to terminate the enrollment agreement. They did not. Instead, Charlotte Latin retained the unilateral discretion to terminate the children's enrollment whenever it decided

2. That private schools retain the right to enforce orthodoxy with their viewpoints is one of the central policy arguments against public funding of private schools.

the relationship was untenable—including if it believed the Turpins' political beliefs were inconsistent with the school's values.

The Turpins allege that the EA obligated Charlotte Latin to educate their children and comply with the PSP in exchange for the Turpins paying tuition and complying with the PSP. They claim that Charlotte Latin breached this contract in three ways: (1) expelling their children in violation of Charlotte Latin's promise to educate them, (2) expelling the children without procedural protections in violation of an alleged promise to "uphold and enforce rules and policies detailed in the Family Handbook in a fair, appropriate and equitable manner," and (3) expelling the children in retaliation for the Turpins' communications in violation of Charlotte Latin's promises involving communication. The majority rightly rejects the alleged contractual rights to procedural protections and communication but should have also rejected the Turpins' first breach theory. *See* majority *supra* Part II. Even from the face of the complaint and taking as true all the facts alleged, Charlotte Latin retained the sole and entire discretion to determine that the relationship could not continue. The Turpins made no allegations that Charlotte Latin's decision to terminate enrollment was based on a prohibited discriminatory basis.[3] Instead, Charlotte Latin exercised its discretion under the express terms of the contract when it terminated the children's enrollment. The Turpins failed to demonstrate any facts evincing breach, so the breach of contract claim should have been dismissed.

For both the fraud and the breach of contract claims, the Turpins argue that Charlotte Latin provided pretextual reasons to terminate their children's enrollment. However, the contract did not prohibit pretextual termination, as long as Charlotte Latin believed in its sole discretion that the parent-school relationship was untenable. This is true even if the relationship was untenable because of "cancel culture." So, even taking the facts in the complaint as true and assuming that Charlotte Latin did terminate the children's enrollments for pretextual reasons, the Turpins fail to plead illegal grounds for termination and therefore establish neither fraud nor breach of contract.

Put another way, as the majority references, the Turpins' complaint repeatedly invokes the term "pretext," but neither the complaint nor the majority is clear what impermissible reason the alleged pretext masked. *See* majority *supra* Part II ("But, the Turpins allege, the school

3. For example, if private schools receive federal funding, they cannot discriminate on the basis of race, color, or national origin. 42 U.S.C. § 2000d.

was determined to retaliate against them for other reasons and used the contractual grounds as the false pretext to do so."). What were the other reasons? Those reasons matter—the term "pretext" is not some shibboleth that automatically guarantees survival of a 12(b)(6) motion.

Whether Charlotte Latin terminated the children's enrollment because it did not like how the Turpins were communicating with the school, it disagreed with how the Turpins sought to shape curriculum to match their political beliefs, or for any other reason not prohibited by anti-discrimination laws, both the EA and PSP allowed the children's enrollment to be terminated in Charlotte Latin's sole discretion, based on Charlotte Latin's sole perception of the future tenability of the parent-school relationship.[4] Charlotte Latin was permitted to terminate the contract whenever it decided a positive, collaborative working relationship was impossible, and it did so here, regardless of whether its proffered reason of communication was pretext for simply disliking the Turpins' views. Charlotte Latin was entitled to determine that either reason was sufficient to discontinue enrollment.

"Dismissal under Rule 12(b)(6) is warranted only when (1) it appears certain that plaintiffs could prove no set of facts which would entitle them to relief under some legal theory; (2) no law exists to support the claim made; or (3) the complaint on its face discloses facts that necessarily defeat the claim." *Howell v. Cooper*, 388 N.C. 71, 78 (2025) (emphasis omitted). Here, because the supposed pretext was not prohibited by law or the contract itself, even assuming arguendo that Charlotte Latin terminated the children's enrollment for pretextual reasons, "no law exists" to support the Turpins' breach of contract claim.

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4. To the extent that Charlotte Latin conceded in oral argument that it could not terminate the children's enrollment in bad faith, as a matter of law, what was alleged in the complaint did not establish any kind of bad faith action prohibited by the contract. For example, the majority points out that Charlotte Latin explained in briefing that it could not discontinue enrollment if it just wanted to get out of a "bad deal." *See* majority *supra* Part II. But Charlotte Latin's point was that the complaint did not allege that Charlotte Latin just wanted to get out of a bad deal, or charge the Turpins more, or anything that would actually be impermissible under the contract. Despite invoking the term "pretext" frequently, the Turpins did not allege that Charlotte Latin terminated the children's enrollment for any reason other than its sole determination that a positive relationship with the Turpins was "impossible." That the term "impossible" was not defined in the contract does not give more weight to the unexplained and vague accusations of "pretext." Even if Charlotte Latin determined the relationship was untenable because it disagreed with the method of the Turpins' communication, or as the Turpins might think, because the school did not like the Turpins' views, the school's decision was fully permitted by the termination clause in either case and, thus, the termination could not be made in bad faith for those reasons.

Id. Further, since the EA and PSP are incorporated by reference into the complaint and contain termination clauses that justify termination in Charlotte Latin's sole discretion, the complaint by reference discloses facts that necessarily defeat the Turpins' breach of contract claim. For those reasons, the Turpins' breach of contract claim was properly dismissed under 12(b)(6), and the majority should have affirmed the Court of Appeals' holding.

Similarly, the Turpins' claim that the termination was fraudulent because it was pretextual is meritless. To state a claim for fraud, the complaint must allege: "(1) [f]alse representation or concealment of a material fact, (2) reasonably calculated to deceive, (3) made with intent to deceive, (4) which does in fact deceive, (5) resulting in damage to the injured party." *Head v. Gould Killian CPA Grp., P.A.*, 371 N.C. 2, 9 (2018). Additionally, fraud has a heightened pleading standard, requiring that "the circumstances constituting fraud . . . shall be stated with particularity," N.C.G.S. § 1A-1, Rule 9(b) (2025), including "time, place and content of the fraudulent representation, identity of the person making the representation and what was obtained as a result of the fraudulent acts or representations." *Value Health Sols., Inc. v. Pharm. Rsch. Assocs., Inc.*, 385 N.C. 250, 263 (2023) (quoting *Terry v. Terry*, 302 N.C. 77, 85 (1981)).

The Turpins allege that Charlotte Latin committed fraud by concealing material facts and making false representations, specifically that teachers would not retaliate against the children and that a 10 September 2021 meeting to discuss the Turpins' son's curriculum would be an opportunity for school officials to "answer and/or address" the Turpins' concerns. The Turpins claim that

> [T]he September 10, 2021 meeting was designed by Baldecchi and Ballaban to provoke Mr. and Mrs. Turpin into saying or doing something that would violate the Parent-School Partnership and, thus, justify Baldecchi expelling their children and/or to falsely accuse them of having violated the Parent-School Partnership in the past.

As part of that plan, the Turpins allege that Charlotte Latin officials sought to deceive the Turpins and "lure" them into the meeting:

> In actuality, Baldecchi and Ballaban scheduled the [10 September 2021] meeting in order to lure Mr. and Mrs. Turpin into a meeting that had the objective of intentionally agitating Mr. and Mrs. Turpin to the

> point that Baldecchi could justify expelling their two children and/or to falsely accuse them of having violated the Parent-School Partnership in the past.

The Turpins claim that Mr. Turpin attended the meeting in reliance on the false representations and concealed facts. The complaint further alleges that he "communicated with Ballaban [at the meeting] with respect, courtesy, and dignity throughout Ballaban's response to Mr. and Mrs. Turpin's concerns regarding their son's education, in the spirit of a positive, collaborative working relationship as is consistent with Latin's Mission" and that his words, tone of voice, and volume were "professional and civil."

The Turpins allege that despite Mr. Turpin's civility at the meeting,[5] a Charlotte Latin official expelled the children "because he disliked the manner in which Mr. Turpin had communicated to Latin about Mr. and Mrs. Turpin's concerns about their children's education, including Latin's recent change in curriculum and culture and its focus on a political agenda." The Turpins allege that this stated reason was "false, pretexual, and improper" because "respectfully communicating with Latin is contractually-protected activity under the Parent-School Partnership," so the expulsions were actually retaliation for the Turpins' "exercise of their contractually-protected right to respectfully communicate with Latin about their children's education."

However, while the Turpins' fraud claim relies on the notion that Charlotte Latin's stated reason for terminating the children's enrollment must be pretextual because the Turpins had a contractual right to communicate, the majority is clear and correct that "[t]he contract does not contain [this] right[ ]." *See* majority *supra* Part II. Without the contractual right to communicate, the Turpins' fraud claim collapses—Charlotte Latin's claim that it terminated the children's enrollment because the Turpins' communication made the relationship untenable is squarely within the bounds of the termination clause. Charlotte Latin did not need a pretextual reason to terminate the agreement, since the contract expressly permitted it to terminate the children's enrollment in its sole discretion when it decided the relationship was untenable, as the Turpins admit it did here. Rather than creating an unnecessary

5. The Turpins' fraud claims have a logical inconsistency: they allege they were provoked to become agitated and to act in a manner that would violate the PSP, but then the Turpins claim to have acted with civility. Both cannot be true.

and fraudulent pretext to terminate the children's enrollment, Charlotte Latin simply exercised its contractual rights.

Even assuming arguendo that Charlotte Latin terminated the children's enrollment because its administrators found the Turpins' viewpoints on diversity and equity to be loathsome, rather than finding how the Turpins communicated to be in violation of the PSP, it matters not: either reason is an acceptable reason under the contract for Charlotte Latin to terminate its relationship with the Turpins and their children. And even assuming Charlotte Latin *did* intend to terminate the enrollment agreement for pretextual reasons, under the terms of the contract, there is no reason why Charlotte Latin would not be able to do so. Under the terms of the EA and PSP, incorporated by reference into the complaint, Charlotte Latin did not need to manufacture permission to terminate the children's enrollment. Even with a pretextual reason for the 10 September meeting, Charlotte Latin was fully within its rights to terminate the agreement if it believed the relationship was "impossible," and such termination could not have been fraudulent under any interpretation of the facts. Charlotte Latin's reservation of its rights in the contract was that expansive.

Additionally, the Turpins claim that Mr. Turpin attended the meeting and was unprepared to address Charlotte Latin's allegation that his conduct violated the PSP, so he relied on the alleged misrepresentation and was therefore harmed when Charlotte Latin terminated his children's enrollment. However, even taking as true that Mr. Turpin attended a meeting for which he was unprepared, such reliance does not prove fraud, since Charlotte Latin could terminate his children's enrollment regardless of whether he attended the meeting, rebutted any claims, or even violated the PSP. *See Arnesen v. Rivers Edge Golf Club & Plantation, Inc.*, 368 N.C. 440, 452 (2015) (affirming dismissal of several claims including fraud because plaintiffs failed to allege actual reliance and defendant's action was not the proximate cause of the alleged injury); *Sullivan v. Mebane Packaging Grp., Inc.*, 158 N.C. App. 19, 32 (2003) (rejecting fraud claim because, even if concealed information had been disclosed, it "would not have been material" to plaintiff's outcome). Under the terms of the contract, Charlotte Latin could terminate the enrollments without a meeting, or without regard to Mr. Turpin's civility at a single meeting, if it believed in its sole discretion the relationship had become untenable. Since Charlotte Latin could unilaterally terminate the enrollment agreement, regardless of whether Mr. Turpin relied on the allegedly pretextual justification for the meeting, he has only alleged that Charlotte Latin exercised its contractual rights,

not that it committed fraud. Therefore, the fraud claim was properly dismissed below, and the majority should have affirmed the Court of Appeals' decision.[6]

II. The defamation claim does not survive Charlotte Latin's 12(b)(6) motion to dismiss because the Turpins failed to adequately allege falsity.

In their complaint, the Turpins allege that Charlotte Latin committed defamation *per quod* by making statements indicating that the Refocus Latin presentation,[7] in which the Turpins participated, contained statements that "the school accepts students and hires faculty because of their color" and that those students and faculty "are also not up to the merit of the school." The Turpins also claim that Charlotte Latin sent an email to all families, faculty, and staff with the allegedly defamatory statement that "Furthermore, the Board categorically rejects the assertion that diverse students and faculty have not earned their positions and honors at Latin and that diversity comes at the expense of excellence."

To adequately allege a claim for defamation *per quod*, "a plaintiff generally must show that the defendant caused injury to the plaintiff by making false, defamatory statements of or concerning the plaintiff, which were published to a third person." *Desmond v. News & Observer Publ'g Co.*, 375 N.C. 21, 41 (2020) (cleaned up). Unlike defamation *per se*, defamation *per quod* involves statements "which are not obviously defamatory, but which become so when considered in connection with innuendo, colloquium and explanatory circumstances." *Ellis v. N. Star Co.*, 326 N.C. 219, 223 (1990) (quoting *Flake v. Greensboro News Co.*, 212 N.C. 780, 785 (1938)). Here, the Turpins failed to adequately allege that Charlotte Latin's statements were false. And, while the majority limits its opinion to the issues of falsity and whether the statements were "of and concerning" the Turpins, the complaint's allegation of publication also raises questions of how to defend against defamation claims at the 12(b)(6) stage.

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6. As to the unfair and deceptive trade practices (UDTPA) claim, the majority is correct that if a plaintiff has sufficiently alleged fraud, the UDTPA claim should survive. However, if a plaintiff's breach of contract claim survives, the substantial aggravating factors pleading requirement should be treated as generously as the notice pleading requirement. Since neither the fraud claim nor the breach claim are adequately pleaded here, the majority should have affirmed the dismissal of the UDTPA claim.

7. The majority correctly incorporates the PowerPoint presentation by reference into the complaint.

The Turpins allege that Charlotte Latin made known false statements characterizing the Refocus Latin presentation as stating that minority faculty and students at Charlotte Latin were not qualified for their roles, were hired or admitted based on racial preferences, and that Charlotte Latin conducts hiring and admissions in violation of federal law. The majority claims that Charlotte Latin's statements mischaracterize the PowerPoint document, and that "[t]he school also falsely accused the Turpins of making racist comments about non-white students and faculty." *See* majority *supra* Introduction, Part VI. Plaintiffs "must establish that 'the sting,' the aspect causing injury to plaintiff's reputation, is materially false." *Desmond*, 375 N.C. at 67. "[T]he issue of falsity relates to the *defamatory* facts implied by a statement." *Id.* (quoting *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 20 n.7 (1990)). Here, the core of the defamatory statements, and the "sting" allegedly harming the Turpins' reputation, is that they made racist statements during the Refocus Latin presentation.

The majority argues that the Turpins adequately alleged that Charlotte Latin's statements, asserting that the Turpins made racist statements, were false. *See* majority *supra* Part VI. However, allegations of racism, like many subjective viewpoints, are in the eye of the beholder and do not squarely fit into the falsity test. How could a plaintiff prove that a statement alleging he expressed a particular viewpoint is false? How can a defendant prove that it is true?

"[A] statement of . . . public concern which does not contain a provably false factual connotation will receive full constitutional protection." *Milkovich*, 497 U.S. at 20. Consider the examples in *Milkovich*: while a statement like, "In my opinion Mayor Jones is a liar," is provable and therefore not protected, a statement that is not provable, such as, "In my opinion Mayor Jones shows his abysmal ignorance by accepting the teachings of Marx and Lenin," is not capable of truth or falsity, so "would not be actionable." *Id.* In the marketplace of ideas, where First Amendment doctrine seeks to ensure that "debate on public issues remains 'uninhibited, robust, and wide-open,' " statements that cannot be proven false are protected. *Id.* (quoting *New York Times v. Sullivan*, 376 U.S. 254, 270 (1964)).

While this Court has not established the contours of opinion statements that cannot be proven and thus are not actionable in defamation cases, both the Court of Appeals and the Fourth Circuit have held that opinions are protected speech that cannot support a defamation claim and identified examples thereof. *See Daniels v. Metro Mag. Holding Co., L.L.C.*, 179 N.C. App. 533, 539 (2006) ("Rhetorical hyperbole and

expressions of opinion not asserting provable facts are protected speech"); *Lewis v. Rapp*, 220 N.C. App. 299, 305 (2012) (determining whether a statement "was merely an opinion on a matter of public concern" because "[i]f it was, then defendant is not liable for defamation and the inquiry ends"); *Snyder v. Phelps*, 580 F.3d 206, 218 (4th Cir. 2009) (stating that "although there is no categorical constitutional defense for statements of opinion, the First Amendment will fully protect statements that cannot reasonably be interpreted as stating actual facts about an individual" (cleaned up)). And while caselaw is scarce and "there appears to be no North Carolina court expressly addressing this issue, many courts in other jurisdictions that have faced the issue of defamation claims based on accusations of bigotry or racism have held the statements to be nonactionable statements of opinion." *Squitieri v. Piedmont Airlines, Inc.*, No. 3:17CV441, 2018 WL 934829, at *4 (W.D.N.C. Feb. 16, 2018) (not reported) ("Statements indicating that Plaintiff is racist are clearly expressions of opinion that cannot be proven as verifiably true or false.").

The Turpins make the conclusory statement that Charlotte Latin's statements are false, but they do not explain how Charlotte Latin's subjective interpretation that the Refocus Latin presentation was racist could be false. The majority fails to analyze whether the alleged defamatory statement is a fact, which can be false, or an opinion, which cannot. Charlotte Latin's email, about which the Turpins complain and that they infer is made in reference to them, states that parents complained "that diverse students and faculty have not earned their positions and honors at Latin and that diversity comes at the expense of excellence." Complaint at 22, *Turpin v. Charlotte Latin Schools, Inc.*, No. 22-CVS-6443 (N.C. Super. Ct. April 25, 2022). It is a faulty equivalence to suggest this actual statement, a reflection of values and opinion that the school rejected, is more like "claiming someone used a racial epithet" than "claiming someone is a racist." *See* majority *supra* Part VI.[8] Instead, the crux of the Turpins' defamation claim is that Charlotte Latin, in characterizing the Refocus Latin presentation, portrayed them in a negative light. This is an entirely subjective inference, which does not lend itself to the falsity analysis. Even with the low notice pleading standard, the

8. The majority's reliance on *Desmond v. News & Observer Publ'g Co.*, 375 N.C. 21 (2020), does not actually advance its cause. *Desmond* was a much more nuanced case than the instant one, coming after a jury trial. The *Desmond* Court found no error in jury instructions, "considered and reviewed in their entirety," in a situation where plaintiff alleged falsity in both attribution and the underlying statement. *Id.* at 66–67.

Turpins must state a legally cognizable claim—which they cannot do if the alleged defamatory statement is an opinion incapable of falsity.

As a matter of law, allegations of racism should be treated as unprovable opinion, not fact, as they are in other jurisdictions. *See*, *e.g.*, *Stevens v. Tilman*, 855 F.2d 394, 402 (7th Cir. 1988) (holding that an allegation of racism "is not actionable unless it implies the existence of undisclosed, defamatory facts"); *Murphy v. Rosen*, 329 A.3d 913, 916 (Conn. 2025) (joining "numerous other jurisdictions" to hold that an allegation a person was a "white supremacist" was "not objectively verifiable" so was a non-actionable opinion); *Cousins v. Goodier*, 283 A.3d 1140, 1157–58 (Del. 2022) (holding that an allegation of racism was not "provably false" and that "the First Amendment is clear that [determining what it means to be racist] would be the opposite of our role"); Liam H. McMillin, *Proving Racism: Gibson Bros. Inc. v. Oberlin College and the Implications on Defamation Law*, 90 U. Cin. L. Rev. 1021, 1030–36 (2022). The majority entirely fails to engage with the enormous body of law and literature around the First Amendment implications of permitting defamation claims for allegations of racism. The Turpins have not adequately alleged falsity here because they cannot do so—opinions can be neither true nor false. Instead, as protected speech, a subjective opinion that another person expressed a racist viewpoint cannot form the basis of a defamation claim. Without an allegation whose truth or falsity is capable of proof, the Turpins have not alleged defamation, and the claim should have been dismissed. I fear this superficial treatment of the limitations on the use of state defamation law to constrain free speech will have significant chilling effects on important public discourse and will fling open the courthouse doors to disputes that should be settled in open, public conversations, not by judges.

Further, while the majority limits its opinion to only falsity and whether the statement was "of and concerning" the Turpins, I am also skeptical that the complaint's publication allegation survives as a matter of law. The Turpins separately allege slander *per quod* and libel *per quod*. For slander *per quod*, the Turpins claim that the allegedly defamatory statement was "uttered on September 10, 2021 in the physical presence of Ballaban, a third party" and that "[u]pon information and belief, Baldecchi's Defamatory Statement was uttered between September 10, 2021 and September 14, 2021 to one or more of the other Board Defendants, who are third parties." Even assuming that the falsity and "of and concerning" prongs are satisfied, and they are not, the allegation in the slander *per quod* claim that the statement was made to an unspecified someone over a multi-day span is unacceptably vague and should

not form the basis for publication. It is not clear how a defendant could ever succeed at the 12(b)(6) stage if all a plaintiff needs to do is allege that a statement was made somewhere, to someone.[9] Under the notice pleading standard, we must take this factual allegation as true, even as vague as it is. *Morris*, 385 N.C. at 406. But how vague is too vague to survive under Rule 12(b)(6)? Do we permit every vague statement, merely because we must assume that it is true? How would defendants put on a defense if they are not on notice of the identity of the person or persons to whom they allegedly published the defamatory statement? While publication may be met here on other grounds, the broader allegations present a serious issue for defendants seeking to dismiss vague and meritless claims at the 12(b)(6) stage, and this Court should clarify specificity under the notice pleading requirements.

Because I would have affirmed the dismissal of the breach of contract, fraud, and defamation claims, I respectfully dissent.

Justice EARLS joins in this concurring in part and dissenting in part opinion.

9. If the publication allegation is simply that the statement was made in the presence of Mr. Ballaban, then this one prong of the test may be satisfied. *See Bouvier v. Porter*, 386 N.C. 1, 10 (2024) (listing as an element of defamation that a plaintiff must prove the defendant's defamatory statements "were published to a third person").

IN RE J.A.S.F.

[390 N.C. 323 (2026)]

IN THE MATTER OF

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

From N.C. Court of Appeals
24-1006

From Caldwell
22JA000020, 22JA000021, 22JA000134

No. 151PA25

ORDER OF THE COURT

Respondent's Motion to Clarify Issues for Discretionary Review is decided as follows: the Court allows review of the additional issues presented in Respondent's response to the joint petition for discretionary review.

By order of the Court this the 20th day of July 2026.

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 20th day of July 2026.

s/Grant E. Buckner

Grant E. Buckner
Clerk of the Supreme Court

STATE v. AMERSON

[390 N.C. 324 (2026)]

STATE OF NORTH CAROLINA	From N.C. Court of Appeals 20-836
v.	From Lee 14CR050705-520
PIERRE ALEXANDER AMERSON	

No. 45PA18-4

ORDER OF THE COURT

Petitioner Mr. Pierre Alexander Amerson's motion for appeal, petition of writ of certiorari to review order of superior court, and motion to appoint counsel, filed 18 May 2026, are dismissed with leave to refile with the Court of Appeals. Petitioner's motion to remand petition for writ of certiorari to the Court of Appeals, filed 1 June 2026, is dismissed as moot.

By order of the Court this the 12th day of August 2026.

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 14th day of August 2026.

s/Grant E. Buckner

Grant E. Buckner
Clerk of the Supreme Court

STATE v. BACOTE

[390 N.C. 325 (2026)]

STATE OF NORTH CAROLINA v. HASSON JAMAAL BACOTE	From Johnston 07CRS1865, 07CRS1866, 07CRS51499

No. 360A09-1

ORDER OF THE COURT

The stay in this matter entered by order of this Court on 7 September 2010 is dissolved and this matter is remanded to the Court of Appeals for review of defendant's appeal pursuant to N.C.G.S. § 7A-27(b)(1) and *State v. Robinson*, 929 S.E.2d 533 (N.C. 2026).

By order of the Court this the 12th day of August 2026.

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 14th day of August 2026.

s/Grant E. Buckner

Grant E. Buckner
Clerk of the Supreme Court

STATE OF NORTH CAROLINA

v.

HASSON JAMAAL BACOTE

From Johnston
07CRS1865, 07CRS1866, 07CRS51499

No. 360A09-2

ORDER OF THE COURT

Pursuant to this Court's decision in *State v. Robinson*, 929 S.E.2d 533, 540 (N.C. 2026), defendant's motion to dismiss appeal and transfer to the Court of Appeals is allowed and this matter is remanded to the Court of Appeals. The State's petition for writ of certiorari is dismissed without prejudice to refile in the Court of Appeals.

By order of the Court this the 12th day of August 2026.

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 14th day of August 2026.

s/Grant E. Buckner

Grant E. Buckner
Clerk of the Supreme Court

STEIN v. HALL

[390 N.C. 327 (2026)]

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

From N.C. Court of Appeals
25-745

From Wake
25CV004705-910

No. 53PA26

ORDER OF THE COURT

Plaintiff filed a "Motion to Partially Consolidate Cases for Briefing and Oral Argument" in this case and in No. 333PA25, *Stein v. Berger*. Several defendants filed responses in opposition in one or both of these appeals, proposing alternative methods of consolidating either the briefing or the entire proceedings.

When the parties submitted their filings, they did not yet know when these appeals would be heard by this Court. These cases will be scheduled for hearing and oral argument together on the same day in consecutive time slots during the upcoming November court session.

With this understanding, it appears likely to the Court that if all parties meet and confer in good faith, they can reach an agreement on a briefing order and proposed division of oral argument time, consistent with the spirit of the Rules of Appellate Procedure. *See* N.C. R. App. P. 37(c). We therefore hold this motion in abeyance and direct the parties to meet and confer in good faith to prepare a joint motion concerning the briefing, deadlines, and division of argument time in these appeals. The parties shall file this joint motion, or provide a status update on their progress, no later than five business days from the date of this order.

By order of the Court this the 30th day of July 2026.

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 30th day of July 2026.

s/Grant E. Buckner

Grant E. Buckner
Clerk of the Supreme Court

STEIN v. BERGER

[390 N.C. 329 (2026)]

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; DESTIN C. HALL, IN HIS OFFICIAL CAPACITY AS SPEAKER OF THE NORTH CAROLINA HOUSE OF REPRESENTATIVES; THE STATE OF NORTH CAROLINA; NORTH CAROLINA ENVIRONMENTAL MANAGEMENT COMMISSION; AND JOHN (JD) SOLOMON, IN HIS OFFICIAL CAPACITY AS CHAIR OF THE NORTH CAROLINA ENVIRONMENTAL MANAGEMENT COMMISSION; CHRISTOPHER M. DUGGAN, IN HIS OFFICIAL CAPACITY AS VICE-CHAIR OF THE NORTH CAROLINA ENVIRONMENTAL MANAGEMENT COMMISSION; AND YVONNE C. BAILEY, TIMOTHY M. BAUMGARTNER, CHARLES S. CARTER, MARION DEERHAKE, MICHAEL S. ELLISON, STEVEN P. KEEN, H. KIM LYERLY, JACQUELINE M. GIBSON, JOSEPH REARDON, ROBIN SMITH, KEVIN L. TWEEDY, ELIZABETH J. WEESE, AND BILL YARBOROUGH, IN THEIR OFFICIAL CAPACITIES AS COMMISSIONERS OF THE NORTH CAROLINA ENVIRONMENTAL MANAGEMENT COMMISSION

From N.C. Court of Appeals
24-440

From Wake
23CV028505-910

No. 333PA25

ORDER OF THE COURT

Plaintiff filed a "Motion to Partially Consolidate the Cases for Briefing and Oral Argument" in this case and in No. 53PA26, *Stein v. Hall*. Several defendants filed responses in opposition in one or both of these appeals, proposing alternative methods of consolidating either the briefing or the entire proceedings.

When the parties submitted their filings, they did not yet know when these appeals would be heard by this Court. These cases will be scheduled for hearing and oral argument together on the same day in consecutive time slots during the upcoming November court session.

With this understanding, it appears likely to the Court that if all parties meet and confer in good faith, they can reach an agreement on a briefing order and proposed division of oral argument time, consistent with the spirit of the Rules of Appellate Procedure. *See* N.C. R. App. P. 37(c). We therefore hold this motion in abeyance and direct the parties to meet and confer in good faith to prepare a joint motion concerning the briefing, deadlines, and division of argument time in these appeals. The parties shall file this joint motion, or provide a status update on their progress, no later than five business days from the date of this order.

By order of the Court this the 30th day of July 2026.

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 30th day of July 2026.

s/Grant E. Buckner

Grant E. Buckner
Clerk of the Supreme Court

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

14 AUGUST 2026

5P26	In the Matter of Z.R.B., M.B., M.B., Jr.	1. Petitioner and Guardian ad Litem's Motion for Temporary Stay (COA25-475) 2. Petitioner and Guardian ad Litem's Petition for Writ of Supersedeas 3. Petitioner and Guardian ad Litem's PDR Under N.C.G.S. § 7A-31	1. Allowed **01/09/2026** 2. Allowed 3. Allowed
9P26	Chadwick Zuleger, Plaintiff v. Robert M. Clore, Jr., Defendant/Third Party Plaintiff v. Noelle Zuleger Lowry and Eric Melvin Zuleger, Third Party Defendants	Plt and Third-Party Defs' PDR Under N.C.G.S. § 7A-31 (COA25-160)	Denied
15P26-2	Theodore Justice v. Carriage Hill of Carthage Homeowners Association, Inc.	1. Plt's Pro Se PDR Under N.C.G.S. § 7A-31 (COA26-429) 2. Plt's Pro Se Motion to Proceed *In Forma Pauperis* 3. Plt's Pro Se Expedited Motion for Leave to Withdraw and Supersede Specified Procedural Statements in the PDR 4. Plt's Pro Se Motion for Leave to File Reply Brief in Support of PDR 5. Plt's Pro Se Motion for Leave to File Reply Brief in Support of PDR 6. Plt's Pro Se Motion for Temporary Stay 7. Plt's Pro Se Petition for Writ of Supersedeas 8. Plt's Pro Se Petition for Writ of Certiorari to Review Order of the COA	1. Denied **07/23/2026** 2. Allowed **07/23/2026** 3. Dismissed as moot **07/23/2026** 4. Dismissed as moot **07/23/2026** 5. Dismissed as moot **07/23/2026** 6. Denied **07/23/2026** 7. Denied **07/23/2026** 8. Denied **07/23/2026**
24P23-8	SCGVIII-Lakepointe, LLC v. Vibha Men's Clothing, LLC; Kalishwar Das	1. Def's Pro Se Notice of Appeal Based Upon a Constitutional Question (COA25-924) 2. Def's Pro Se PDR Under N.C.G.S. § 7A-31 (COA21-690, 21-740) 3. Def's Pro Se Motion for Leave to Amend Notice of Appeal 4. Def's Pro Se Motion for Leave to File Errata to PDR	1. Dismissed *ex mero motu* 2. Denied 3. Dismissed as moot 4. Dismissed as moot **Dietz, J., recused** **Riggs, J., recused**

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

14 AUGUST 2026

29P26	State v. Stacy Elizabeth Miller	Def's PDR Under N.C.G.S. § 7A-31 (COA25-35)	Denied
30A26	State v. Durward Wilson Leggett III	Def's Motion for Clarification	Denied
45PA18-4	State v. Pierre Alexander Amerson	1. Def's Pro Se Motion for Appeal (COA20-836) 2. Def's Pro Se Petition for Writ of Certiorari to Review Order of Superior Court, Lee County 3. Def's Pro Se Motion to Appoint Counsel 4. Def's Pro Se Motion to Remand Petition for Writ of Certiorari to the COA	1. Special Order 2. Special Order 3. Special Order 4. Special Order
45P26	State v. Richard D. Braswell	1. State's Motion for Temporary Stay (COA25-286) 2. State's Petition for Writ of Supersedeas 3. State's PDR Under N.C.G.S. § 7A-31	1. Allowed **02/10/2026** Dissolved 2. Denied 3. Denied
49P26	Jennifer Bullins, Plaintiff v. Haley [Hayley] Nicole Riddle, Intervenor v. Justin A. Turner, Defendant	1. Plt's PDR Under N.C.G.S. § 7A-31 (COA25-55) 2. Intervenor's Motion to Correct Caption	1. Denied 2. Allowed
52P26	Weldon Moore v. Richmen Enterprises, LLC d/b/a Darth Vapor; Joyetech USA, Inc.; and Midwest Goods, Inc.	1. Def's (Midwest Goods, Inc.) Motion for Temporary Stay (COA24-509) 2. Def's (Midwest Goods, Inc.) Petition for Writ of Supersedeas 3. Def's (Midwest Goods, Inc.) PDR Under N.C.G.S. § 7A-31	1. Allowed **02/13/2026** 2. Allowed 3. Allowed

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

14 AUGUST 2026

53PA26	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 Motion to Partially Consolidate Cases for Briefing and Oral Argument 2. Parties' Joint Motion for Briefing Order and Division of Oral Argument Time	1. Special Order **07/30/2026;** Dismissed as moot **08/10/2026** 2. Allowed **08/10/2026**
62P26	State v. Emily Jean Robinson	1. Def's Notice of Appeal Based Upon a Constitutional Question (COA25-199) 2. Def's PDR Under N.C.G.S. § 7A-31 3. State's Motion to Dismiss Appeal	1. --- 2. Denied 3. Allowed
68A23	State v. Joshua Lee Burgess	Def's Motion for Transmission of Original Exhibits Pursuant to Rule 9(d)(2)	Allowed

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68A26	Kelly F. Moore, individually and as Executor of the Estate of Drue A. Moore; Miles Moore, individually and on behalf of his minor brother, Cole Moore; KMC Moore LLC, as Trustee of the Redwood Trust, u/a/d April 10, 2017; and Rick Graves, as Trustee of the Redwood Life Insurance Trust u/a/d November 15, 2018 v. Robert Scott Brooks; Winthrop Intelligence, LLC; D. Scott Robinson; Opes Directed Fiduciary Services, LLC; Robinson Law Group LLC d/b/a Opes Law; Redwood WI Holdings, LLC; Redwood RE I, LLC; Redwood RE II, LLC; Teton Global Ventures LLC; and DAC Worldwide LLC	1. Defs' Motion to Admit Kevin W. Welsh Pro Hac Vice 2. Plt's (Kelly Moore) Petition for Writ of Certiorari to Review Order of Superior Court, Durham County 3. Defs' Motion for Extension of Time to File Response to Petition for Writ of Certiorari	1. Allowed 2. 3. Allowed up to and including 14 August 2026 **08/07/2026**
74P26	State v. Luis Alberto Sanchez	1. State's Motion for Temporary Stay (COA24-644) 2. State's Petition for Writ of Supersedeas 3. State's PDR Under N.C.G.S. § 7A-31	1. Allowed **03/09/2026** Dissolved 2. Denied 3. Denied
75P26	Valle Cay Property Owners Association, Inc. v. Slocum Mountain Real Estate, LLC, Benjamin Slocum, and Karen Slocum	1. Def's (Slocum Mountain Real Estate, LLC) PDR Under N.C.G.S. § 7A-31 (COA25-532) 2. Plt's Conditional PDR Under N.C.G.S. § 7A-31	1. Denied 2. Dismissed as moot
76P26-2	Charles Udoh v. Walmart Supercenter #3371	Plt's Pro Se Petition for Writ of Certiorari to Review Order of the COA (COA25-540)	Denied

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92P26-2	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 (COA26-433) 2. Def's Pro Se Petition for Writ of Supersedeas 3. Def's Pro Se Petition for Writ of Certiorari to Review Order of the COA 4. Def's Pro Se Motion to Proceed *In Forma Pauperis* and to Waive Fees	1. Denied **07/09/2026** 2. Denied **07/09/2026** 3. Denied **07/09/2026** 4. Allowed **07/09/2026**
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** Dissolved 2. Denied 3. Denied
95P26	State v. Allija Daniel Massey	Def's PDR Under N.C.G.S. § 7A-31 (COA25-346)	Denied
96PA24-2	State v. Jaron Monte Cornwell	Def's PDR Under N.C.G.S. § 7A-31 (COA23-36)	Denied
97P26	State v. Aubrey Renee Williams	1. Def's Notice of Appeal Based Upon a Constitutional Question (COA24-990) 2. Def's Petition in the Alternative for Discretionary Review Under N.C.G.S. § 7A-31 3. State's Motion to Dismiss Appeal 4. State's Motion to Deem Response Timely Filed	1. --- 2. Denied 3. Allowed 4. Allowed
100P25	State v. Eric Ruffin	1. Def's PDR Under N.C.G.S. § 7A-31 (COA24-276) 2. Def's Motion to File Amended PDR and Deem it Timely Filed 3. Def's Amended PDR Under N.C.G.S. § 7A-31	1. --- 2. Allowed **04/11/2025** 3. Denied
106P26	State v. Richard James Ussery, Jr.	Def's PDR Prior to a Determination by the COA (COA26-266)	Denied
112P26	State v. Dhruva Maharaja-Das Barbour	Def's PDR Under N.C.G.S. § 7A-31 (COA24-664)	Denied
118P26	Bobby Dales, Jr. v. Gardner-Webb University	Plt's PDR Under N.C.G.S. § 7A-31 (COA25-699)	Denied

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122P24-2	State v. Jessiah James Hubbard	1. Def's Pro Se Petition for Writ of Certiorari to Review Decision of the COA (COA25-102)	1. Denied
		2. Def's Pro Se Motion to Expedite and for Full Public Disclosure	2. Dismissed
		3. Def's Pro Se Motion for Immediate Preliminary Injunction	3. Dismissed as moot
		4. Def's Pro Se Second Motion for Immediate Preliminary Injunction	4. Dismissed as moot
		5. State's Motion to Deem Response Timely Filed	5. Allowed
		6. Def's Pro Se Motion to Expedite and for Full Public Disclosure	6. Dismissed
		7. Def's Pro Se Motion for Immediate Preliminary Injunction	7. Dismissed as moot
		8. Def's Pro Se Motion to Expedite and for Full Public Disclosure	8. Dismissed
		9. Def's Pro Se Motion for Immediate Preliminary Injunction	9. Dismissed as moot
		10. Def's Pro Se Motion to Expedite and for Full Public Disclosure	10. Dismissed
		11. Def's Pro Se Motion for Immediate Preliminary Injunction	11. Dismissed as moot
		12. Def's Pro Se Motion to Expedite and for Full Public Disclosure	12. Dismissed
		13. Def's Pro Se Motion to Expedite and Disregard State's Response	13. Dismissed as moot
		14. Def's Pro Se Motion for Immediate Preliminary Injunction	14. Dismissed as moot
		15. Def's Pro Se Motion to Expedite and for Full Public Disclosure	15. Dismissed
		16. Def's Pro Se Motion for Immediate Preliminary Injunction	16. Dismissed as moot
		17. Def's Pro Se Motion to Expedite and for Full Public Disclosure	17. Dismissed
		18. Def's Pro Se Motion for Immediate Preliminary Injunction	18. Dismissed as moot
		19. Def's Pro Se Motion to Expedite and for Full Public Disclosure	19. Dismissed
		20. Def's Pro Se Motion for Immediate Preliminary Injunction	20. Dismissed as moot
		21. Def's Pro Se Motion to Expedite and for Full Public Disclosure	21. Dismissed
		22. Def's Pro Se Motion for Immediate Preliminary Injunction	22. Dismissed as moot

		23. Def's Pro Se Motion to Expedite and for Full Public Disclosure	23. Dismissed
		24. Def's Pro Se Motion for Immediate Preliminary Injunction	24. Dismissed as moot
		25. Def's Pro Se Motion to Expedite and for Full Public Disclosure	25. Dismissed
		26. Def's Pro Se Motion for Immediate Preliminary Injunction	26. Dismissed as moot
		27. Def's Pro Se Motion to Expedite and for Full Public Disclosure	27. Dismissed
		28. Def's Pro Se Motion for Immediate Preliminary Injunction	28. Dismissed as moot
		29. Def's Pro Se Motion to Expedite and for Full Public Disclosure	29. Dismissed
122P26	State v. Antonio Tobias Greene	Def's PDR Under N.C.G.S. § 7A-31 (COA25-506)	Denied
125P26	Joshua Kenneth Ledford v. Adrian Bryant Ledford	1. Plt's PDR Under N.C.G.S. § 7A-31 (COA25-1174)	1. Denied
		2. Attorney William Krueger's Motion to Withdraw as Counsel of Record	2. Allowed
131P01-20	State v. Anthony Dove	1. Def's Pro Se Motion for Court to Rule/ Review Superior Court's Conclusions of Law De Novo	1. Dismissed
		2. Def's Pro Se Motion to Proceed *In Forma Pauperis*	2. Allowed
		3. Def's Pro Se Motion to Correct Naming/Titling of Motion	3. Dismissed
131P16-36	State v. Somchai Noonsab	1. Def's Pro Se Motion for Immediate Release and 990 Trillion 990 Billion 990 Million Dollars Cash and 990 Million Upon Release	1. Dismissed
		2. Def's Pro Se Motion for Immediate Release, Exoneration, Tax-Free Monetary Relief, and Expungements	2. Dismissed
		3. Def's Pro Se Motion for Work Release and Lost Wages in the Amount of 10 Million Dollars	3. Dismissed
131P26	Joshua Kenneth Ledford v. Adrian Bryant Ledford	Plt's Pro Se PDR Prior to a Determination by the COA	Denied

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133P26	State v. Richard Nathan Smathers	1. Def's Notice of Appeal Based Upon a Constitutional Question (COA25-357) 2. Def's PDR Under N.C.G.S. § 7A-31 3. Def's Motion to Amend Notice and Petition to Include Additional Authority 4. State's Motion to Dismiss Appeal	1. --- 2. Denied 3. Allowed 4. Allowed
134P26	In the Matter of P.G., O.G., H.G.	Respondent-Mother's PDR Under N.C.G.S. § 7A-31 (COA25-677)	Denied
135P25	State v. Kerby Demarco McLean	Def's Petition for Writ of Certiorari to Review Decision of the COA (COA24-90)	Denied
135P26	State v. Mario Blanding	Def's PDR Under N.C.G.S. § 7A-31 (COA25-584)	Denied
138P26	State v. David Bradley Webber	1. Def's Pro Se Notice of Appeal Based Upon a Constitutional Question (COA25-613) 2. Def's Pro Se Notice of Appeal Based Upon a Constitutional Question 3. Def's Pro Se PDR Under N.C.G.S. § 7A-31 4. State's Motion to Dismiss Appeal	1. --- 2. --- 3. Dismissed 4. Allowed
141P26	Elizabeth Anna Cello and Ryan Thomas Cello v. Christopher Michael Secrest and Shelia Rae Secrest	Defs' PDR Under N.C.G.S. § 7A-31 (COA25-519)	Denied
143P26	State v. Julian Rodriguez	Def's Pro Se Motion for Verified Complaint	Dismissed
144P23-2	Justin Marlow, as Administrator of the Estate of Michelle Marlow (Deceased) v. TCS Designs, Inc., Jobie G. Redmond, Jeff McKinney, and Eric Parker	1. Plt's Motion for Temporary Stay (COA25-31) 2. Plt's Petition for Writ of Supersedeas 3. Plt's PDR Under N.C.G.S. § 7A-31	1. Allowed **08/06/2026** 2. 3.
144P26-2	State v. DeNey Nicole Krystel Serieu Joseph	Def's Pro Se Motion for Reconsideration, Vacation, or Modification of Orders	Dismissed

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150P26	Judith A. Hernandez v. Justin Beddingfield and Brandi Beddingfield	1. Defs' Pro Se PDR Under N.C.G.S. § 7A-31 (COA25-1081) 2. Defs' Pro Se Motion to Proceed *In Forma Pauperis*	1. Denied 2. Allowed
151PA25	In re J.A.S.F., J.A.S.F., M.S.S-F.	Respondent-Mother's Motion to Clarify Issues for Discretionary Review	Special Order **07/20/2026**
151P26	Stanley L. Williams v. Judy Williamson	Plt's Pro Se PDR Under N.C.G.S. § 7A-31 (COA25-1213)	Denied
153P26	State v. Davon Kareen Allen	1. Def's PDR Under N.C.G.S. § 7A-31 (COA25-623) 2. State's Conditional PDR Under N.C.G.S. § 7A-31	1. Denied 2. Dismissed as moot
164P26	Douglas S. McGlohon v. U.S. Army	Plt's Pro Se Petition for Writ of Certiorari	Dismissed
171A26	Kelly F. Moore, individually and as Executor of the Estate of Drue A. Moore; Miles Moore, individually and on behalf of his minor brother, Cole Moore; KMC Moore LLC, as Trustee of the Redwood Trust, u/a/d April 10, 2017; and Rick Graves, as Trustee of the Redwood Life Insurance Trust u/a/d November 15, 2018, Plaintiffs v. Robert Scott Brooks and Winthrop Intelligence, LLC, Defendants ——— Robert Scott Brooks and Winthrop Intelligence, LLC, Crossclaim Plaintiffs v. Redwood WI Holdings, LLC, Crossclaim Defendant	Def's (Robert Scott Brooks) Motion to Dismiss Appeal	Allowed **06/22/2026**
174P26	State v. Christopher R. Williams	Def's Pro Se Motion for Appropriate Relief	Dismissed

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175P26	Anzhelika Faritovna Gilmanova, formerly Anzhelika Gilmanova Surratt v. Dr. Alexei Radiontchenko, M.D. Family Medicine [sic]	Plt's Pro Se PDR Under N.C.G.S. § 7A-31 (COA26-380)	Denied
176P25-2	Jacqueline Amato v. Karl W. Miller	1. Def's Pro Se Protective Petition for Writ of Certiorari (COAP26-435) 2. Def's Pro Se Petition for Writ of Mandamus 3. Def's Pro Se Petition for Writ of Prohibition 4. Def's Pro Se Motion for Temporary Stay 5. Def's Pro Se Emergency Petition for Writ of Supersedeas 6. Def's Pro Se Petition in the Alternative for Discretionary Review Under N.C.G.S. § 7A-31 7. Def's Pro Se Motion for Determinate Record Preservation, File-Status, and Certification Order 8. Def's Pro Se Motion for Limited Treatment, Record-Status Certification, Preservation, and Status-Quo Relief 9. Def's Pro Se Motion for Order that Conclusory Dispositions Not Defeat Supreme Court Review 10. Def's Pro Se Conditional Motion for Treatment of Pending Petition and Supplemental Motion as Expressly Raising Federal Due-Process, Property-Deprivation, Meaningful-Review, and Access-to-Courts Grounds 11. Def's Pro Se Motion for Independent- and- Adequate-State-Ground Clarity	1. Dismissed **07/02/2026** 2. Dismissed **07/02/2026** 3. Dismissed **07/02/2026** 4. Denied **07/02/2026** 5. Dismissed **07/02/2026** 6. Dismissed **07/02/2026** 7. Dismissed **07/02/2026** 8. Dismissed **07/02/2026** 9. Dismissed **07/02/2026** 10. Dismissed **07/02/2026** 11. Dismissed **07/02/2026**
180P26	State v. Augustine Perez, Jr.	Def's Pro Se Petition for Writ of Certiorari to Review Order of the COA (COAP26-336)	Dismissed
181P26	In the Matter of the Adoption of Z.N.D., a minor child	Respondent-Father's Pro Se PDR Under N.C.G.S. § 7A-31 (COA25-906)	Denied
182P26	Jamaal Gittens v. Brett Lawrence, Tiffany Stinson-Wah, Department of Motor Vehicles	Plt's Pro Se Motion to Remove	Dismissed

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184P26	Garry Yarborough v. Lisa Anderson Williams	Plt's Pro Se PDR Under N.C.G.S. § 7A-31 (COA25-994)	Denied
189P26	State v. Thurman Ruth Hargrove, Jr.	Def's Pro Se Petition for Writ of Certiorari to Review Order of Superior Court, Franklin County	Dismissed
190PA24	State v. Tyron Lamont Dobson	Def's Motion to (1) Set Aside this Court's 22 May 2026 Decision so as to Prevent Manifest Injustice and (2) Calendar Additional Oral Arguments	Denied **07/01/2026**
196P26	Brandy Chenell Brown v. North Carolina State Bar	Plt's Pro Se Motion for Review of NC State Bar Complaint Handling and Preservation of Record Regarding an Attorney	Dismissed
197P26	Wanda Gail Reeves v. Christopher Tolen & Kristi Reeves Tolen	1. Def's (Kristi Reeves Tolen) Pro Se Notice of Appeal Based Upon a Constitutional Question (COA24-1128) 2. Def's (Kristi Reeves Tolen) Pro Se Petition in the Alternative for Discretionary Review Under N.C.G.S. § 7A-31 3. Def's (Kristi Reeves Tolen) Pro Se Motion for Temporary Stay 4. Def's (Kristi Reeves Tolen) Pro Se Petition for Writ of Supersedeas 5. Def's (Kristi Reeves Tolen) Pro Se Petition for Writ of Certiorari to Review Decision of the COA	1. Dismissed *ex mero motu* **06/22/2026** 2. Denied **06/22/2026** 3. Denied **06/22/2026** 4. Denied **06/22/2026** 5. Denied **06/22/2026**
199P26	Birch Hill Apartments LLC d/b/a Birch Hill Apartments v. Savannah Abercrombie, Earnestine George	1. Defs' Pro Se Notice of Appeal Based Upon a Constitutional Question (COA25-1020) 2. Defs' Pro Se PDR Under N.C.G.S. § 7A-31	1. Dismissed *ex mero motu* 2. Denied
202P26	State v. Robert Steven Smith	Def's Pro Se PDR Under N.C.G.S. § 7A-31 (COAP26-372)	Dismissed
204P26	State v. Omar Amante Galvan	Def's Pro Se PDR Under N.C.G.S. § 7A-31 (COA25-866)	Denied
205P26	State v. Charles B. Randolph	Def's Pro Se PDR Under N.C.G.S. § 7A-31 (COAP26-195)	Denied

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206A26	PCS Phosphate Company, Inc. and PCS Administration (USA), Inc. v. Jacobs Engineering Group, Inc. and Buss Chemtech AG	1. Plts' Motion to Expedite and for Peremptory Setting 2. Plts' Motion to Admit Ashley Parrish Pro Hac Vice 3. Plts' Motion to Admit Christopher Taylor Pro Hac Vice 4. Plts' Motion to Admit Mike Stenglein Pro Hac Vice	1. 2. Allowed 3. Allowed 4. Allowed
207P26	State v. Jeffery Michael Phelps	1. State's Motion for Temporary Stay (COA25-934) 2. State's Petition for Writ of Supersedeas 3. State's PDR Under N.C.G.S. § 7A-31	1. Allowed **06/22/2026** 2. 3.
210P26	State v. Brandon Anthony Dade	1. State's Motion for Temporary Stay (COA25-721) 2. State's Petition for Writ of Supersedeas 3. State's PDR Under N.C.G.S. § 7A-31	1. Allowed **07/30/2026** 2. 3.
212P21-4	State v. Milton Eugene Lancaster	1. Def's Pro Se Petition for Writ of Certiorari to Review Order of Superior Court, Craven County 2. Def's Pro Se Motion to Proceed *In Forma Pauperis* 3. Def's Pro Se Motion to Appoint Counsel 4. Def's Pro Se Petition for Writ of Habeas Corpus (COAP21-182)	1. 2. 3. 4. Denied **07/23/2026**
218P26	Teresa and John Craig v. Nicole and Neal Sadler, Christopher Jack Thompson, Michael Brandon Hanna, and Jennifer Cox v. Joanne Arrowood, Intervenor	Plts' Pro Se PDR Under N.C.G.S. § 7A-31 (COA24-1078)	Denied
219P26	Dominique R. Jackson v. Charter Communications, Inc.	Plt's Pro Se PDR Under N.C.G.S. § 7A-31 (COA25-606)	Denied
220P26	Harvey Ingram, Jr. v. Terri Copley and Ashley Penn	1. Plt's Pro Se Petition for Writ of Certiorari to Review Order of the COA (COA26-272) 2. Def's (Terri Copley) Pro Se Motion of Joinder	1. Denied 2. Dismissed as moot

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221P26-1	Karl W. Miller, LL.M., MCIArb v. Jeffrey Amato	1. Plt's Pro Se Motion for Temporary Stay (COAP26-461) 2. Plt's Pro Se Emergency Petition for Writ of Supersedeas 3. Plt's Pro Se Petition in the Alternative for Writ of Certiorari 4. Plt's Pro Se Petition in the Alternative for Writ of Prohibition 5. Plt's Pro Se Motion for Expedited Review 5. Plt's Pro Se Motion for Record-Preservation Order	1. Denied **07/01/2026** 2. Dismissed as moot **07/01/2026** 3. Denied **07/01/2026** 4. Denied **07/01/2026** 5. Dismissed **07/01/2026** 6. Dismissed **07/01/2026**
222P26	Donald Duran Hill, Employee v. Ruan Transportation Management Systems, Inc., Employer, and Ace American Insurance Company, Carrier	Plt's Pro Se PDR Under N.C.G.S. § 7A-31 (COA25-848)	Denied
225P26	Debbie M. Booker-King v. WMI Capital Flats & Magnolia Square and Raleigh Rescue Mission	1. Plt's Pro Se Motion for Temporary Stay (COA25-948) 2. Plt's Pro Se Petition for Writ of Supersedeas 3. Plt's Pro Se PDR Under N.C.G.S. § 7A-31	1. Denied **07/06/2026** 2. Denied **07/06/2026** 3. Denied **07/06/2026**
226P26	Hickory Place LLC v. Denzeria Reid	1. Def's Pro Se Motion for Appeal (COAP26-389) 2. Def's Pro Se Motion for Stay of Writ of Possession/Eviction Pending Appeal 3. Def's Pro Se Motion to Set Reasonable Appeal Bond Under Rule 8(a)	1. Dismissed **07/07/2026** 2. Denied **07/07/2026** 3. Dismissed as moot **07/07/2026**
227P26	State v. Frankie Eugene Shipman	1. Def's Pro Se Petition for Writ of Habeas Corpus 2. Def's Pro Se Motion for Temporary Stay 3. Def's Pro Se Petition for Writ of Supersedeas 4. Def's Pro Se Petition for Writ of Certiorari to Review Decision of District Court, Orange County	1. Denied **07/09/2026** 2. Denied **07/09/2026** 3. Denied **07/09/2026** 4. Dismissed **07/09/2026**
229P26	State v. Victor Alexander Newman	Def's Pro Se Petition for Writ of Certiorari to Review Order of the COA (COAP26-64)	Denied

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230P26	108 Grace, LLC v. Riverbend #1, LLC	1. Plt's PDR Under N.C.G.S. § 7A-31 (COA25-659) 2. Plt's Petition for Writ of Certiorari to Review Decision of the COA	1. Denied 2. Denied
233P14-4	State v. Domenico Alexander Lockhart	1. Def's Pro Se Motion for Petition to Reverse or Modify Order 2. Def's Pro Se Petition for Writ of Certiorari to Review Order of Superior Court, Guilford County	1. Dismissed 2. Dismissed
235P26	State v. Brandon Lee Boggs	1. Def's Pro Se Petition for Writ of Habeas Corpus 2. Def's Pro Se Petition for Writ of Certiorari to Review Decision of District Court, Wake County	1. Denied **07/15/2026** 2. Dismissed **07/15/2026**
238P26	Muinde Bull v. WRAL, Unplugged TV	Plt's Pro Se Petition for Writ of Certiorari to Review Order of the COA (COAP26-90)	Denied
242P25	State v. Thomas Clayton Johnson and Emmalei G. Trevathan	1. Def's (Johnson) PDR Under N.C.G.S. § 7A-31 (COA24-758) 2. Def's (Trevathan) Notice of Appeal Based Upon a Constitutional Question 3. Def's (Trevathan) PDR Under N.C.G.S. § 7A-31 4. State's Motion to Dismiss Appeal of Defendant Trevathan	1. Denied 2. --- 3. Denied 4. Allowed
243P25	State v. Leon Council	Def's PDR Under N.C.G.S. § 7A-31 (COA25-78)	Denied
246P26	State v. James Patrick Crowe	Def's Pro Se Petition for Writ of Habeas Corpus	Denied **08/03/2026**
248PA24	State v. Kedrick Daquane Thomas	Def's Motion Requesting Court Take Judicial Notice	Dismissed as moot
251P25	State v. Jermaine Martin Jackson	Def's PDR Under N.C.G.S. § 7A-31 (COA24-979)	Denied
252P26	Jeffrey L. Amato v. Karl W. Miller and Jack Miller	1. Defs' Pro Se Motion for Immediate Temporary Stay (COAP26-549) 2. Defs' Pro Se Petition for Writ of Supersedeas (COAP26-549) 3. Defs' Pro Se Emergency Petition for Writ of Certiorari to Review Order of the COA	1. Denied **08/04/2026** 2. Dismissed as moot **08/04/2026** 3. Denied **08/04/2026**

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253P26	In the Matter of M.D., Jr.	1. Guardian ad Litem's Motion for Temporary Stay (COA25-884) 2. Guardian ad Litem's Petition for Writ of Supersedeas 3. Guardian ad Litem's PDR Under N.C.G.S. § 7A-31	1. Allowed **08/07/2026** 2. 3.
272P25	Puma Biotechnology, Inc. v. Hedrick Gardner Kincheloe & Garofalo, LLP and David L. Levy	1. Defs' Notice of Appeal Based Upon a Constitutional Question (COA24-722) 2. Defs' PDR Under N.C.G.S. § 7A-31 3. Defs' Motion to Amend Notice of Appeal and PDR with Additional Authority	1. Dismissed *ex mero motu* 2. Allowed 3. Denied
280A24-3	State v. Grant Lee Hunt	1. Def's Motion to Reconsider Ruling on PDR 2. Def's Petition in the Alternative for Writ of Certiorari to Review Decision of the COA (COA23-890-2)	1. Dismissed 2. Dismissed
281P06-22	Joseph E. Teague, Jr., P.E., C.M. v. NC Department of Transportation	Plt's Pro Se Motion for Clarification and Reconsideration of the June 17, 2026 Order	Dismissed
291P25	State v. Charles Lamont Cottingham	Def's PDR Under N.C.G.S. § 7A-31 (COA23-715)	Denied
305PA24	State v. Codie Bruce Schiene	1. Def's Conditional Motion for Additional Briefing and Oral Arguments (COA23-682) 2. Def's Motion to Supplement Conditional Motion for Additional Briefing and Oral Arguments	1. Denied **07/01/2026** 2. Dismissed as moot **07/01/2026**
314P25	State v. Jose Felix Pardo	1. Def's Notice of Appeal Based Upon a Constitutional Question (COA24-1036) 2. Def's PDR Under N.C.G.S. § 7A-31	1. Dismissed *ex mero motu* 2. Denied
315P25	State v. Letoya Benton	Def's PDR Under N.C.G.S. § 7A-31 (COA25-92)	Denied

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323P23-7	Owl House Cafe, LLC, OHC Grill, LLC and Hamza Tebib, individually and in his official capacity as CEO and sole owner of both entities v. Mike Waters, District Attorney for 11th Judicial District; Robert D. Fountain, Granville County Sheriff; James Champion, Chief, Butner Public Safety; and Troy Wheless, Chief, Creedmoor Police Department	Plt's Pro Se PDR Under N.C.G.S. § 7A-31 (COA25-1149)	Denied
332P25	State v. Tristan Phillip Hines	1. Def's Notice of Appeal Based Upon a Constitutional Question (COA25-43) 2. Def's PDR Under N.C.G.S. § 7A-31 3. State's Motion to Dismiss Appeal	1. --- 2. Dismissed 3. Allowed
333PA25	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. Plt's Motion to Partially Consolidate Cases for Briefing and Oral Argument 2. Parties' Joint Motion for Briefing Order and Division of Oral Argument Time	1. Special Order **07/30/2026;** Dismissed as moot **08/10/2026** 2. Allowed **08/10/2026**
345P16-5	State v. Dwayne Demont Haizlip	1. Def's PDR Under N.C.G.S. § 7A-31 (COA25-469) 2. Def's Petition for Writ of Certiorari to Review Decision of the COA	1. Denied 2. Denied
352P25	State v. Michael Lee Crawford	1. Def's Pro Se Motion for Relief Brought in Presentment 2. Def's Pro Se Petition for Writ of Certiorari to Review Order of Superior Court, Beaufort County 3. Def's Pro Se Motion and Request to Vacate Punishment - Imprisonment	1. Dismissed 2. Dismissed 3. Dismissed
354P25	State v. Carlos Jose Jacome	Def's PDR Under N.C.G.S. § 7A-31 (COA24-420)	Denied
359P25	State v. Erick Gael Hernandez-Mendez	Def's PDR Under N.C.G.S. § 7A-31 (COA24-873)	Denied

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

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360A09-1	State v. Hasson Jamaal Bacote	The Court's Order to Dissolve Stay and Remand to the Court of Appeals	Special Order
360A09-2	State v. Hasson Jamaal Bacote	1. State's Petition for Writ of Certiorari to Review Order of Superior Court, Johnston County 2. Def's Motion to Dismiss Appeal and Transfer to the COA 3. North Carolina Conference of District Attorneys' Motion to Supplement Amicus Curiae Brief	1. Special Order 2. Special Order 3. Dismissed as moot
361P25	State v. Tony Lamond Williamson	1. Def's PDR Under N.C.G.S. § 7A-31 (COA25-206) 2. State's Conditional PDR Under N.C.G.S. § 7A-31	1. Denied 2. Dismissed as moot
364P25	State v. Terry William Riegel	Def's Pro Se PDR Under N.C.G.S. § 7A-31 (COAP25-851)	Denied
370P04-24	State v. Anthony Leon Hoover	Def's Pro Se Motion for Appropriate Relief	Dismissed
372P25	State v. Jerimy R. Love	1. Def's Pro Se Motion for Extension of Time to File Notice of Appeal (COA25-241) 2. Def's Pro Se Notice of Appeal Based Upon a Constitutional Question 3. Def's Pro Se PDR Under N.C.G.S. § 7A-31 4. Def's Pro Se Petition for Writ of Certiorari to Review Decision of the COA	1. Dismissed 2. Dismissed *ex mero motu* 3. Dismissed 4. Denied
375P25	State v. Valencia McLean	Def's PDR Under N.C.G.S. § 7A-31 (COA24-938)	Denied
377P25	State v. Timothy Allen Mitchell	Def's PDR Under N.C.G.S. § 7A-31 (COA25-405)	Denied
401P10-3	State v. Tyrone Raynard Gladden	Def's Pro Se Petition for Writ of Certiorari to Review Decision of the COA (COA09-626)	Dismissed
404P19-2	State v. Joshua Dustin Lutz	1. Def's Pro Se Petition for Writ of Certiorari to Review Order of Superior Court, New Hanover 2. Def's Pro Se Motion to Proceed *In Forma Pauperis* 3. Def's Pro Se Motion to Appoint Counsel	1. Denied 2. Allowed 3. Dismissed as moot
405P11-3	State v. Nicholas Jermaine Steele	Def's Pro Se Petition for Writ of Certiorari to Review Order of Superior Court, Rowan County	Denied

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

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415P17-3	Michael Scott Davis v. Pia Law	Plt's Pro Se PDR Under N.C.G.S. § 7A-31 (COAP25-584)	Denied
421P10-8	State v. Robert Alan Lillie	1. Def's Pro Se Motion for Notice of Appeal (COAP26-171) 2. Def's Pro Se Motion for PDR 3. Def's Pro Se Motion for *In Forma Pauperis* 4. Def's Pro Se Motion for Suspension of Rules	1. Dismissed *ex mero motu* 2. Dismissed 3. Allowed 4. Dismissed as moot
524P20-3	State v. William Charles Melton	Def's Pro Se Petition for Writ of Habeas Corpus	Denied **06/26/2026** **Dietz, J., recused**
535A95-4	State v. Jerry Dale Hill	Def's Petition for Writ of Certiorari to Review Order of Superior Court, Harnett County	Denied

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