



Session 3

Small Group Sign-Up: link to Google Form in e-mail from Patrick on Thursday, June 4 at 1:20p.m.; another email today with materials for the sessions with Judge Dietz

Small Group Availability

- Thursday, June 11 at 10:00a.m. – 10 participants
- Thursday, June 11 at 11:30a.m. – 13 participants
- **Friday, June 12 at 1:00p.m. – 15 participants (at capacity)**
- Friday, June 12 at 2:30p.m. – 7 participants
- Tuesday, June 16 at 10:00a.m. – 14 participants
- Tuesday, June 16 at 11:30a.m. – 8 participants
- Tuesday, June 16 2:00p.m. – 12 participants
- Thursday, June 18 at 10:00a.m. – 5 participants
- Thursday, June 18 at 11:30a.m. – 3 participants
- Thursday, June 18 at 2:00p.m. – 3 participants

Waitlist & WebEx Link: You will only receive an email if the session you select is at capacity. You will receive the WebEx link the morning of your session.

# STATUTORY INTERPRETATION



“The principal goal of statutory construction is to accomplish the legislative intent. The intent of the General Assembly may be found first from the plain language of the statute, then from the legislative history, the spirit of the act and what the act seeks to accomplish.”

*Lenox, Inc. v. Tolson*, 353 N.C. 659, 664, 548 S.E.2d 513, 517 (2001) (*purgandum*).





STATE OF NORTH CAROLINA  
In the General Court of Justice  
Superior Court Division  
Warren County

File No. 92 CRS <sup>1837</sup> 1840

Film No.

STATE VERSUS

INDICTMENT

Kevin Alphonso Alexander  
(Defendant)

MURDER

Date of Offense: 09-17-92

Offense in Violation of G.S. 14-17

The jurors for the State upon their oath present that on or about the date of offense shown and in the county named above the defendant named above unlawfully, willfully and feloniously and of malice aforethought did kill and murder Carl Eugene Boyd.

Douglas B. Gery  
Signature of Prosecutor

WITNESSES

<input checked="" type="checkbox"/> W. H. Aiken, WCSD	_____ *****
_____ Stanley, Rodwell, WCSD	_____ *****
_____ Rick Sims, SBI	_____ *****
_____ *****	_____ *****

The witnesses marked "X" were sworn by the undersigned Foreman of the Grand Jury and, after hearing testimony, this bill was found to be:

☒ A TRUE BILL by twelve or more grand jurors, and I the undersigned Foreman of the Grand Jury, attest the concurrence of twelve or more grand jurors in this Bill of Indictment.

\_\_\_\_\_ NOT A TRUE BILL

Oct. 19, 1992  
Date

B. Miller  
Signature of Grand Jury Foreman



STATE OF NORTH CAROLINA  
In the General Court of Justice  
Superior Court Division  
Warren County

File No. 92 CRS <sup>1540</sup>~~1819~~  
Film No.

STATE VERSUS

INDICTMENT

Kevin Alphonso Alexander  
(Defendant)

ROBBERY WITH DANGEROUS WEAPON

Date of Offense: 09-17-92

Offense in Violation of G.S. 14-87

The jurors for the State upon their oath present that on or about the date of offense shown and in the county named above the defendant named above unlawfully, willfully and feloniously did steal, take, and carry away and attempt to steal, take and carry away another's personal property, United States currency of the value of seventy dollars, from Boyd's Amoco Oine Road Station when Carl Eugene Boyd was present and in attendance. The defendant committed this act by means of an assault consisting of having in his possession and threatening the use of a firearm, whereby the life of Carl Eugene Boyd was threatened and endangered.

Douglas Bergan  
Signature of Prosecutor

WITNESSES

☒ W. H. Aiken, WCSO  
☐ Stanley Rodwell, WCSO  
☐ Rick Sims, SBI  
☐ .....

.....  
.....  
.....  
.....

The witnesses marked "X" were sworn by the undersigned Foreman of the Grand Jury and, after hearing testimony, this bill was found to be:

☒ A TRUE BILL by twelve or more grand jurors, and I the undersigned Foreman of the Grand Jury, attest the concurrence of twelve or more grand jurors in this Bill of Indictment.

☐ NOT A TRUE BILL

Oct. 19, 1992  
Date

B. J. Miles  
Signature of Grand Jury Foreman





In The General Court Of Justice  
☐ District ☒ Superior Court Division

Warren County

## STATE VERSUS

Name Of Defendant

KELVIN A. ALEXANDER

## TRANSCRIPT OF PLEA

G.S. 15A-1022

The defendant, having offered a plea of guilty and being first duly sworn, makes the following answers to the questions set out below:

## Answers

1. Are you able to hear and understand me? yes
2. Do you understand that you have the right to remain silent and that any statement you make may be used against you? yes
3. Are you now under the influence of alcohol, drugs, narcotics, medicines, pills, or any other intoxicants?  
(a) When was the last time you used or consumed any such substance? never used alcohol or drugs, no pills in 14 months
4. Have you discussed your case fully with your lawyer and are you satisfied with his legal services? yes
5. (a) Do you understand that you are pleading (guilty) (~~no contest~~) to the felonies of second degree murder? yes
5. (b) Do you understand that you are pleading (guilty) (no contest) to the misdemeanors of \_\_\_\_\_? n/a
6. Have the charges been explained to you by your lawyers and do you understand the nature of the charges, and do you understand every element of each charge? yes
7. Do you understand that upon your plea you could be imprisoned for a possible maximum sentence of life years \_\_\_\_\_ months (and that the mandatory minimum sentence is \_\_\_\_\_ years \_\_\_\_\_ months)? yes
8. Do you understand that you have the right to plead not guilty and be tried by a jury and at such trial to be confronted with and to cross-examine the witnesses against you, and by this plea you give up these and your other constitutional rights relating to trial by jury? yes
9. (if applicable) Do you understand that, because you are not a citizen of the United States of America, this plea may result in deportation, the exclusion from admission to this country, or the denial of naturalization under federal law? n/a
10. Do you now personally plead (guilty) (~~no contest~~)? yes
11. (a) (if applicable) Are you in fact guilty? yes  
(b) (if applicable) Do you understand that upon your plea of no contest you will be treated as being guilty whether or not you admit your guilt? n/a
12. Have you agreed to plead as a part of a plea arrangement? Before you answer, I advise you that the Courts have approved plea negotiating, and if there is such, you may advise me truthfully without fear of incurring my disapproval. yes

13. (if applicable) The prosecutor and your lawyer have informed the Court that these are all the terms and conditions of your plea.

1. The sentence imposed by the court shall run concurrently with the sentence the defendant is now serving.
2. The charge of robbery with a dangerous weapon shall be dismissed.
3. The sentence on second degree murder is with the court's discretion.
4. That the State of NC through its District Atty. has represented to the Defendant through his attorneys that the State has and will produce at sentencing an eye witness who can and will identify the Defendant as one of the persons involved in the murder of Mr. Boyd. Defendant's attorneys have not seen or interviewed said witness. yes  
(a) Is this correct as being your full plea arrangement? yes  
(b) Do you now personally accept this arrangement? yes

14. (Other than the plea arrangement between you and the prosecutor) has anyone made any promises or threatened you in any way to cause you to enter this plea against your wishes? no
15. Do you enter this plea of your own free will, fully understanding what you are doing? yes
16. Do you have any questions about what has just been said to you or about anything else connected with your case to this point? no

I am 21 years of age and have completed the 12th grade of school. (List any additional education, if applicable.)

I have read or have heard all of these questions and understand them. The answers shown are the ones I gave in open court and they are true and accurate. Neither my lawyer nor anyone else has told me to give false answers in order to have the Court accept my plea in this case. The conditions of the plea as stated on the reverse, if any, are accurate.

## SWORN AND SUBSCRIBED TO BEFORE ME

Date

November 16, 1993

Date

11-16-93

Signature Of Defendant

Kelvin Alexander

Signature Of Deputy Or Assistant CSC

Cynthia H. Williams

Name Of Defendant (Type Or Print)

Kelvin Alphonso Alexander

## CERTIFICATION BY LAWYER FOR DEFENDANT

As lawyer for the defendant named above, I hereby certify that the conditions stated on the reverse, if any, upon which the defendant's plea was entered are correct and they are agreed to by the defendant and myself upon which the defendant's plea was entered. I further certify that I have fully explained to the defendant the nature and elements of the charges to which he is pleading.

Date

11-16-93

Signature Of Lawyer For Defendant

Cynthia H. Williams

## CERTIFICATION BY PROSECUTOR

As prosecutor for the 9th Prosecutorial District, I hereby certify that the conditions stated on the reverse, if any, are the terms agreed to by the defendant and his lawyer and myself for the entry of the plea by the defendant to the charge in this case.

Date

11-16-93

Signature Of Prosecutor

David R. Waters

## PLEA ADJUDICATION

Upon consideration of the record proper, evidence presented, answers of defendant, and statements of the lawyer for the defendant and the prosecutor, the undersigned finds:

1. That there is a factual basis for the entry of the plea.
2. That the defendant is satisfied with his lawyer.
3. That the defendant is competent to stand trial and that the plea is the informed choice of the defendant and is made freely, voluntarily and understandingly.

NORTH CAROLINA COURT OF APPEALS

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STATE OF NORTH CAROLINA )  
 )  
 v. ) From Warren County  
 )  
KELVIN ALPHONSO ALEXANDER )

\*\*\*\*\*

DEFENDANT-APPELLANT’S BRIEF

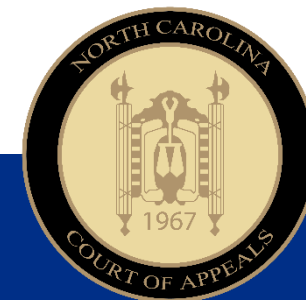
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ISSUES PRESENTED

- I. DID THE TRIAL COURT ERR BY SUMMARILY DENYING MR. ALEXANDER’S MOTION TO TEST DNA EVIDENCE?
  
- II. DID THE TRIAL COURT ERR BY FAILING TO ORDER THAT THE LATENT LIFTS BE COMPARED TO JOHN TERRY’S PRINTS AND RUN THROUGH IAFIS?



ARGUMENT .....	11
I. THE TRIAL COURT DID NOT ERR BY DENYING DEFENDANT’S MOTION FOR POSTCONVICTION DNA TESTING OF THE SHELL CASINGS AND PROJECTILE .....	11
A. Defendant cannot show materiality because he pled guilty .....	12
B. Even if it is possible for a defendant who pled guilty to show materiality, Defendant failed to do so here .....	16
C. Remand is not necessary in this case .....	26
II. THE TRIAL COURT DID NOT ERR BY NOT ORDERING A COMPARISON OF LATENT FINGERPRINT LIFTS .....	27
A. Defendant’s argument is not properly before this Court .....	28
B. In any event, Defendant’s mandamus request is meritless .....	29





# N.C. GEN. STAT. § 15A-269



- (a) A defendant may make a motion before the trial court that entered the judgment of conviction against the defendant for performance of DNA testing and, if testing complies with FBI requirements and the data meets NDIS criteria, profiles obtained from the testing shall be searched and/or uploaded to CODIS if the biological evidence meets all of the following conditions:
  - (1) Is material to the defendant's defense.
  - (2) Is related to the investigation or prosecution that resulted in the judgment.
  - (3) Meets either of the following conditions:
    - a. It was not DNA tested previously.
    - b. It was tested previously, but the requested DNA test would provide results that are significantly more accurate and probative of the identity of the perpetrator or accomplice or have a reasonable probability of contradicting prior test results.

N.C. Gen. Stat. § 15A-269



# N.C. GEN. STAT. § 15A-269



- (b) The court shall grant the motion for DNA testing and, if testing complies with FBI requirements, the run of any profiles obtained from the testing, upon its determination that:
  - (1) The conditions set forth in subdivisions (1), (2), and (3) of subsection (a) of this section have been met;
  - (2) If the DNA testing being requested had been conducted on the evidence, there exists a reasonable probability that the verdict would have been more favorable to the defendant; and
  - (3) The defendant has signed a sworn affidavit of innocence.

N.C. Gen. Stat. Ann. § 15A-269



# STATUTORY INTERPRETATION



“When the language of a statute is plain and free from ambiguity, expressing a single, definite and sensible meaning, that meaning is conclusively presumed to be the meaning which the Legislature intended, and the statute must be interpreted accordingly.” *Dep't of Transp. v. Adams Outdoor Advert. of Charlotte Ltd. P'ship*, 370 N.C. 101, 107, 804 S.E.2d 486, 492 (2017) (citation and quotation marks omitted).

“The intent of the legislature ... is to be found not in what the legislature meant to say, but in the meaning of what it did say.” *Burnham v. Adm'r, Unemployment Comp. Act*, 184 Conn. 317, 325, 439 A.2d 1008, 1012 (1981).





# WHAT DO YOU THINK?

- Is 15A-269 ambiguous?
- When is post-conviction DNA testing available to a defendant?
- Is post-conviction DNA testing available to this defendant?
- Why or why not?



# WHAT IS A “VERDICT”

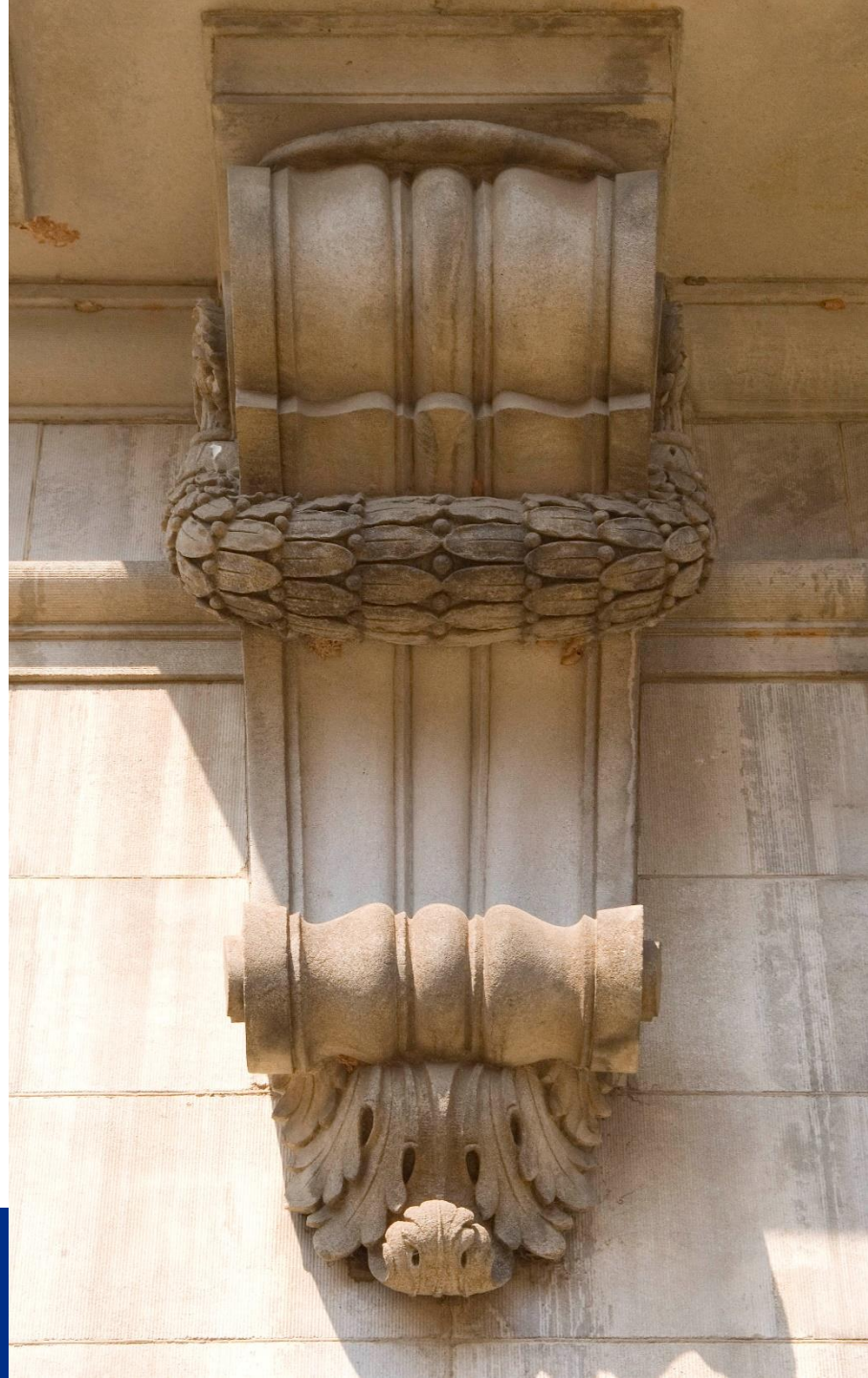
- (a) The verdict must be in writing, signed by the foreman, and made a part of the record of the case.
- (b) The verdict must be unanimous, and must be returned by the jury in open court.
- (c) If the jurors find the defendant not guilty on the ground that he was insane at the time of the commission of the offense charged, their verdict must so state.
- (d) If there are two or more defendants, the jury must return a separate verdict with respect to each defendant. If the jury agrees upon a verdict for one defendant but not another, it must return that verdict upon which it agrees.
- (e) If there are two or more offenses for which the jury could return a verdict, it may return a verdict with respect to any offense, including a lesser included offense on which the judge charged, as to which it agrees.

N.C. Gen. Stat. § 15A-1237



# THE COURT'S OPINION

- Judge Dillon
- Judge Berger





# WHAT DO YOU THINK?

- Did the Court get it right?
- Why or why not?
- What if Defendant confessed to shooting and surveillance video captures the shooting?
- What if Defendant had pled no contest or entered and Alford plea?
- What if Defendant argued self-defense at trial?
- Questions?

